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Book Review

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BOOK REVIEW

ANTITRUST AND AMERICAN BUSINESS ABROAD. James Atwood and Kingman Brewster. 2d ed. New York: McGraw-Hill Publishing Co., 1981. Two-volume text. Pp. 359 and 355. *Reviewed by Joel Davidow**

International antitrust is one of the gourmet specialties on the menu of United States law. The combination of competition law, international law, and patent law, spiced with complex diplomatic and trade issues as well as a dash of foreign flavor, is irresistible to the connoisseur. The proof: even though few law schools offer a separate course in international antitrust law and few lawyers deal with the subject regularly, articles, hornbooks, and even treatises are produced in this area with amazing frequency. It even appears that expensive texts are purchased in substantial numbers.

Four texts have appeared in the last decade. Wilbur Fugate's *Foreign Commerce and the Antitrust Laws* was published in 1973 and *An International Antitrust Primer* by Kintner and Joelson was published in 1974. Professor Hawk of Fordham Law School produced *United States, Common Market and International Antitrust* in 1979, followed by the Atwood-Brewster two volume text in 1981. Authors of such texts face difficult choices when selecting and organizing the legal materials to be presented. The heart of the book usually deals with "the international application of United States antitrust law." That concept, however, is difficult to define or segregate. Is every case involving some conduct abroad, a foreign firm, or imported goods an international case? Are the rules governing international transactions significantly different from those applicable to domestic ones? No, but interesting arguments may be made about how much difference does, or should, exist.[1] The author initially must set out some basic an-

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1. *See* J. ATWOOD & K. BREWSTER, ANTITRUST AND AMERICAN BUSINESS ABROAD § 7 (2d ed. 1981); E. KINTNER & M. JOELSON, AN INTERNATIONAL ANTI-

titrust rules, but these must be abbreviated lest the book duplicate those on domestic antitrust law. Atwood and Brewster chose to assume that the reader is acquainted with basic United States antitrust law.

The Atwood-Brewster book's extensive introduction is a major virtue. For over a hundred pages, the authors survey the history of United States international antitrust enforcement, its relation to the rules of international trade, its current applications, and the policy issues relating to United States national interests and foreign relations. They argue persuasively that the recent Organization of Petroleum Exporting Countries (OPEC) and uranium cases, foreign blocking statutes, and United Nations codes of conduct for enterprises indicate that international antitrust issues have become too important to be considered by academics and government specialists alone. The authors point to six significant bills currently before Congress as indicative of the topic's importance.[2]

Atwood and Brewster chose to set out, in an orderly manner, what the rules of international antitrust are before prescribing what the rules ought to be. They did this in an admirably clear, sensible, and well-organized way. The treatment, however, is more like an analytic text than a casebook or a full treatise. Many important decisions are not quoted or analyzed in depth, dissenting positions are sometimes not mentioned, and the notes are often more pinpointed or suggestive than comprehensive. Nevertheless, certain key topics are discussed fully. Most rules, the rationales supporting them, and the policy positions of the enforcement agencies are explained and analyzed with great accuracy and understanding of the policy choices involved. A reader could feel confident that he has read enough in their few succinct pages on a topic to understand it and predict most results accurately. Still, the scholar or active practitioner might find it desirable to have another book, such as the Hawk treatise,[3] for fuller treatment of the cases and precedents on particular topics.

"International antitrust" treatises frequently include a review or detailed description of the antitrust laws of other countries. In

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TRUST PRIMER 260-72 (1974); Maw, *United States Antitrust Law Abroad—The Enduring Problem of Extraterritoriality,* 40 ANTITRUST L.J. 796 (1971).

2. J. ATWOOD & K. BREWSTER, *supra* note 1, § 1 n.7.

3. B. HAWK, UNITED STATES, COMMON MARKET AND INTERNATIONAL ANTITRUST (1979).

the Hawk text, this results in a somewhat unbalanced presentation in which the international application of United States antitrust laws is contrasted with a complete survey of Common Market antitrust law. The Atwood-Brewster solution is to select a few interesting principles from foreign antitrust laws without attempting to describe those laws or regulatory systems in detail.[4] Most texts also include a discussion of Organization for Economic Cooperation and Development (OECD) or United Nations antitrust resolutions and codes of conduct. Though these international declarations have proliferated in recent years, they clearly lack the force of law. The United States in particular has insisted that the word "voluntary" or an appropriate synonym be included in each code or resolution. It is therefore arguable that such international declarations should be examined in depth by students of political science rather than by practicing lawyers. Nevertheless, it is possible that international codes gradually can form a body of "soft law" which influences the behavior of states and enterprises, affects the discretionary rulings of some courts, and gradually alters or supplements customary international law. Moreover, a number of the codes create committees, notification and consultation procedures, and technical assistance programs that have or will have fairly immediate and practical effects.[5] The Atwood-Brewster book devotes a thoughtful chapter to this emerging topic, "The International Law of Antitrust" as they dub it. They conclude that these nonbinding rules will influence national legislation and will elicit some cooperation from multinational corporations. For these reasons, they conclude that these rules are worthy of close study by lawyers.[6]

In addition to the difficult problems involved in determining what aspects of the law should be described under the rubric of "international antitrust law," the authors of these texts also must decide what, if anything, to prescribe. Though generally pro-antitrust and pro-United States in assumption and orientation, the Fugate text is almost devoid of policy prescription.[7] The Hawk

4. *See, e.g.*, J. ATWOOD & K. BREWSTER, *supra* note 1, § 4.02 (differences in enforcement administration).

5. *See, e.g.*, UNCTAD, The Set of Multi-Laterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, U.N. Doc. TD/RBP/CONF/10 (1980)(Provision G) [hereinafter cited as UNCTAD CODE].

6. J. ATWOOD & K. BREWSTER, *supra* note 1, ch. XIII.

7. W. FUGATE, FOREIGN COMMERCE AND THE ANTITRUST LAWS (1973).

book takes approximately the same approach, though the author occasionally offers a comment indicating disagreement with a particular decision or sympathy for a particular approach.[8] The Atwood-Brewster book, following the tradition of its 1958 predecessor[9] (written by Brewster alone), devotes a very substantial segment to policy analysis and advice.[10]

There can be no doubt that the application of United States antitrust laws to international transactions remains highly controversial. At least six legislative proposals are now pending before the United States Congress to change that application in some way, or to create a commission for further study.[11] Many of these proposals have a reasonable chance of success. At the same time, at least a dozen OECD countries have legislation designed to keep antitrust information out of the United States or otherwise to limit United States international antitrust enforcement.[12] Extraterritorial application of antitrust law also has been a subject of United Nations examination and debate.[13]

It should be recognized, however, that all criticisms of United States international antitrust law by no means cut in the same direction.[14] The typical argument of business interests in the United States is that United States antitrust law is too hard on United States firms and hampers their ability to compete successfully in international markets.[15] The typical position of European

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8. *See supra* note 3.

9. K. BREWSTER, ANTITRUST & AMERICAN BUSINESS ABROAD (1958).

10. J. ATWOOD & K. BREWSTER, *supra* note 1, §§ 2.02, .14, .17, 3.18, .19, .26.

11. *See id.* § 1 n.7.

12. *See, e.g.*, Foreign Antitrust Judgments (restriction of enforcement) 1979 AUSTL. ACTS P. No. 13; Law pertaining to the disclosure of documents and information of an economic, commercial, industrial, or technical nature to foreign, natural, or juristic persons, Law No. 80-538, 1980 D.S.L. 285 (Fr.); Evidence amendment law (No. 2) 1980 (N. Z.); Protection of Trading Interests Act, The Law Reports, 1980, Part I, ch. 11, p. 243 (U.K.).

13. *See, e.g.*, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, RECOMMENDATION OF THE COUNCIL CONCERNING COOPERATION BETWEEN MEMBER COUNTRIES ON RESTRICTIVE BUSINESS PRACTICES AFFECTING INTERNATIONAL TRADE (1979); UNCTAD CODE, *supra* note 5.

14. *See* PERSPECTIVES ON THE EXTRATERRITORIAL APPLICATION OF U.S. ANTITRUST AND OTHER LAWS (J. Griffen ed. 1979).

15. *See, e.g., Hearings on International Aspects of Antitrust Laws Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. & 2d Sess. 1416 (1975). The Hearings included a study by the National Association of Manufacturers. That study revealed that 70% of the firms responding to a questionnaire prepared by the National Association of

businesses is that United States antitrust law is too hard on them, and should not apply to them at all regarding conduct committed abroad.[16] Some members of Congress believe that United States antitrust law is not tough enough on foreign cartels, such as the uranium cartel or OPEC, and that the law should be changed to weaken the "act of state" or sovereign immunity defenses that usually are available to defendants in cartel cases.[17] Finally, developing countries argue that it is inappropriate for the United States to exempt or encourage export cartels aimed at them, or to fail to discipline its multinational corporations when they engage in restrictive business practices in the Third World.[18]

Atwood and Brewster negotiate this welter of confusing, contradictory, and often unsupported and unsound contentions with considerable sanity and moderation. Initially, they observe that there is a fairly persuasive case for leaving United States international antitrust law just about the way it is.[19] At the last moment, however, they consider the weight of events, or the depth of displeasure, to require some changes. There are three particular changes they favor. The first, which can be traced back to Brewster's 1958 book, is that the *Alcoa*[20] effects test for United States antitrust jurisdiction be modified by a "rule of reason" or "balancing test."[21] They conclude that such an approach is being

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Manufacturers indicated their belief that United States antitrust laws had impaired their ability to compete in international markets. Their concerns included the inability to respond to challenges from foreign cartels, intergovernmental friction over antitrust enforcement, and uncertainty regarding the scope of antitrust laws as applied to foreign trade. *But see* J. ATWOOD & K. BREWSTER, *supra* note 1, § 17.27.

16. *See generally* United States v. Watchmakers of Switz. Information Center, Inc., 1963 Trade Cas. (CCH) ¶ 70,600 (S.D.N.Y. 1963) (activities of a Swiss corporaton found to be in violation of section 1 of the Sherman Act, 15 U.S.C. § 1 (Supp. III 1976)); J. ATWOOD & K. BREWSTER, *supra* note 1, § 4.

17. *See* S. 2724, 95th Cong., 2d Sess. (1978); S. 2486, 95th Cong., 2d Sess. (1978); S. 2395, 95th Cong., 1st Sess. (1977); *see also* J. ATWOOD & K. BREWSTER, *supra* note 1, § 5 n.133.

18. *See* Davidow, *Extraterritorial Application of U.S. Antitrust Law in a Changing World*, 8 L. & POL'Y IN INT'L BUS. 895 (1976).

19. J. ATWOOD & K. BREWSTER, *supra* note 1, § 18.03.

20. United States v. Aluminum Co. of Am., 148 F.2d 416 (2d Cir. 1945). The *Alcoa* court concluded that United States antitrust law applied to foreign agreements that were intended to affect, and did affect, United States imports and exports. *Id.* at 443-44.

21. J. ATWOOD & K. BREWSTER, *supra* note 1, §§ 18.28, 19.05.

adopted voluntarily by the courts in *Timberlane*,[22] *Mannington Mills*,[23] and subsequent cases and thus that no legislation in this area is necessary.[24] They note also that the Justice Department has adopted a similar approach in its policy statements.[25] Some serious caveats and qualifications seem necessary before concluding that the balance test approach is new, workable, and capable of solving more problems than it creates. Certainly the Justice Department as a prosecutorial agency, in consultation with the State Department and other interested agencies or parties, should consider the degree of government involvement—foreign or domestic—in an international transaction, the effect of the prosecution on important interests of the United States, and the likelihood that foreign reaction may hamper or even nullify attempts to achieve the purposes of the prosecution. This was good policy before the Antitrust Guide of 1977[26] was published, and it remains good policy.[27] It seems doubtful that there is much new policy here, although there may be somewhat better communication and articulation of standards. In judicial decisions, however, the utility of the balancing test is not so clear cut. Without witnesses from the State Department, courts are both reluctant and ill-equipped to weigh or evaluate foreign interests.[28] Even when they do, it is not quite clear how the balancing test or jurisdictional rule of reason adds to the existing legal defenses of sovereign immunity, act of state, and foreign compulsion. Furthermore, the balancing test allows the court to accommodate foreign interests that are too weak to qualify under the specific legal defenses.[29]

The second recommendation calls for the Justice Department and other prosecutorial or regulatory agencies dealing with for-

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22. Timberlane Lumber Co. v. Bank of America, 549 F.2d 597 (9th Cir. 1976).

23. Mannington Mills, Inc. v. Congoleum Corp., 595 F.2d 1287 (3d Cir. 1979).

24. *See* J. ATWOOD & K. BREWSTER, *supra* note 1, § 6.11.

25. *Id.* § 6.11 & n.105.

26. UNITED STATES DEPARTMENT OF JUSTICE, ANTITRUST DIVISION, ANTITRUST GUIDE FOR INTERNATIONAL OPERATIONS (rev. ed. 1977).

27. *See, e.g.*, W. FUGATE, FOREIGN COMMERCE AND THE ANTITRUST LAWS § 15.7 (3d ed. 1982).

28. *In re* Uranium Antitrust Litig., 480 F. Supp. 1138, 1148 (N.D. Ill. 1979).

29. *See* J. ATWOOD & K. BREWSTER, *supra* note 1, § 6; Davidow, *Extraterritorial Antitrust and the Concept of Comity*, 15 J. WORLD TRADE L. 500, 512-14 (1981).

eign offenses to "clear" their investigations and prosecutions with the State Department.[30] This point seems passé with respect to the Justice Department and the Federal Trade Commission, which have been notifying, clearing through, and consulting with the State Department since 1961. If the suggestion is that greater deference should be accorded to the State Department's opinions, this writer would be skeptical of its wisdom. The State Department is better able to protect itself from foreign pressure and public or congressional criticism when it adheres to the position that it can inform prosecutors about foreign government involvement and positions, but that it cannot, absent instruction by the President in a matter involving the national interest, control law enforcement. The other, more attractive aspect of this recommendation is that agencies other than the Department of Justice and the Federal Trade Commission—such as the Securities and Exchange Commission and the Commodities Futures Trading Commission—should notify and consult with State regarding matters involving foreign government interests. The need for such coordination is demonstrated by the fact that the first use by the British government of its new "anti-antitrust" blocking statute was against a Commodities Futures Trading Commission investigation seeking documents relating to silver trading on the London exchange. A new American Bar Association committee on extraterritoriality also has recommended expansion of consultation to include agencies in addition to the Justice Department and the Federal Trade Commission.[31] It seems likely that this Atwood-Brewster proposal soon will become a reality.

The authors' final recommendation is that the Sherman Act be amended to "clarify" the position that United States antitrust jurisdiction is limited.[32] Curiously, after considering a number of possible approaches, the authors end up favoring one that is likely to satisfy no one fully. Some United States business groups would support an amendment stating that the antitrust laws do not apply abroad. Atwood and Brewster decline to go that far. Many foreigners would favor an amendment making the law—or at least its private treble damage provisions—inapplicable to foreign conduct by foreigners. Atwood and Brewster propose almost precisely the opposite: that an amendment clarify that the law is

30. J. ATWOOD & K. BREWSTER, *supra* note 1, § 19.07.
31. ABA Recommendation 101A (1981).
32. *See* J. ATWOOD & K. BREWSTER, *supra* note 1, §§ 7.02-.10.

fully applicable to penalize foreigners acting abroad who injure United States interests[33] but cannot be applied to protect foreigners injured by United States businesses. Expressing some dislike for the Webb-Pomerene Act,[34] the authors would simply substitute an amendment that does approximately the same thing, but without requiring registration of export associations.[35] The Webb-Pomerene Act has been criticized because it is used by only about two percent of United States exporters in an era when, although strong and rising, United States exports often have not increased enough to overcome OPEC price increases and achieve a trade surplus. Some observers attribute the scant use of Webb-Pomerene to the slightly uncertain immunity it bestows, to its exclusion of services, and to the inability and unwillingness of the administering agency, the Federal Trade Commission, to encourage its use.[36] Others contend that, regardless of the wording or administration of the Webb-Pomerene Act, most United States firms simply prefer to compete abroad individually. Arguably, altering the injury standard of the Sherman and Clayton Acts to emphasize the goal of protecting United States consumers and exporters will increase the certainty of immunity for United States exporters and foreign joint venturers while at the same time making it clear that foreign purchasers are not protected by United States law. All of this could be achieved without any increase in federal bureaucracy or surveillance.

This writer can understand the temptations of that approach. Nevertheless, enforcement experience, years of negotiating common antitrust standards with foreigners, and textual analysis of the bill dictate the conclusion that tampering with the basic language of the antitrust laws is unjustified, unwise, and dangerous, and in any event is riskier and less desirable than the alternatives now before Congress. As John Shenefield testified in congressional hearings, there is no convincing proof that antitrust—or any other law—significantly hampers United States exports. In fact, exports are high and growing.[37] No joint venture of United

33. *Id.* § 14.28.

34. 15 U.S.C. §§ 61-65 (1976)(effective Apr. 10, 1918).

35. J. ATWOOD & K. BREWSTER, *supra* note 1, § 19.06.

36. *See id.* §§ 9.35-.37, 17.09.

37. *Foreign Trade Antitrust Improvements Act: Hearings on H.R. 2326 Before the House Comm. on the Judiciary*, 97th Cong., 1st Sess. (1981)(statement of John Shenefield) [hereinafter cited as Shenefield Statement].

States firms to sell abroad has been challenged under the antitrust laws for thirty years.[38] Only one United States firm has sought an export-related business review clearance in the last three years.[39] The *Pfizer, Inc. v. Government of India*[40] case probably will be settled without great damage to the defendants. The questions of when or whether another such case might arise, and what equities might be present, are highly problematic. The United States has not altered the wording of its basic antitrust law for ninety years. The Sherman Act has served well in maintaining free and open competition in both our domestic and foreign commerce. There is no present crisis justifying tampering with or cutting back this basic statute. At the OECD, the major free world economic organization, United States officials regularly participate in the work of a Committee of Experts on Restrictive Business Practices. This Committee has studied many antitrust problems of common concern and formulated recommendations intended to advance and harmonize free market principles.[41] In a 1974 report on export cartels, the Committee unanimously recommended that OECD nations require the registration of all joint export groups. The Committee saw this registration as having two advantages: it enabled the home government to determine whether there were domestic effects and it gave the buyer's government notice that a selling group confronted it.[42] Changing the antitrust laws to make the Webb-Pomerene Act unnecessary could create a situation in which neither the United States Government nor any foreign government would know precisely which rival companies were coordinating their exports, export prices, or

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38. Davidow, *supra* note 18, at 898.

39. *U.S. Antitrust and Export Trade*, Address by Carl Cira, Assistant Chief, Foreign Commerce Section, Antitrust Division, to the World Trade Institute, in New York City (Oct. 3, 1980).

40. 434 U.S. 308 (1978).

41. *See, e.g.*, COMMITTEE OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, REPORT ON CONCENTRATION AND COMPETITION POLICY (1979); COMMITTEE OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, REPORT ON RESTRICTIVE BUSINESS PRACTICES RELATING TO TRADEMARKS (1978); COMMITTEE OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, REPORT ON COLLUSIVE TENDERING (1976).

42. *See* COMMITTEE OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, REPORT ON EXPORT CARTELS (1974).

foreign bids. That situation would be inferior to the present in terms of antitrust policy.

The authors' third proposal is inconsistent with recent United States activity in the international trade legislation field. During the past five years, United States officials participated with delegates from eight other nations in negotiating a Set of Principles and Rules for the Control of Restrictive Business Practices.[43] This "antitrust code of conduct" was adopted unanimously by a United Nations conference and enforced by the General Assembly.[44] It morally commits all nations to pro-antitrust policies and to important related principles such as fair and equal treatment for all companies, whether private or state owned, and respect for the confidentiality of business secrets.[45] Another principle, particularly important to developing countries, requires nations to eliminate all restrictive business practices that injure international trade, particularly the trade and development of developing countries. Certain recent United States antitrust cases and decisions, such as *Pfizer v. Government of India*,[46] have been or may be helpful to developing countries. It would be anomalous for the United States to try to reduce the benefits to developing countries of its antitrust laws less than one year after agreeing to a United Nations antitrust code which represents movement in the opposite direction. Because that code contains many free market and fairness doctrines which the United States would like to see strengthened abroad, it would seem undesirable to create a climate of retreat from the code, especially when the need for doing so is doubtful.

The denial to foreigners of the use of United States antitrust laws may hinder United States efforts to expand the scope of legislative jurisdiction. In the context of important but controversial cases such as those involving the international uranium cartel, a number of its Western allies have complained about international application of United States antitrust laws.[47] United States officials have defended those laws and enforcement policies, not only by reference to international acceptance of the "effects doctrine,"

43. U.N. Doc. A/Res/35/60 (1980).

44. *See id.*

45. *Id.*

46. 434 U.S. 308, 315 (1978).

47. *See, e.g.*, Amicus Curiae Memorandum of the Government of Australia, *In re* Uranium Antitrust Litig.; 617 F. Supp. 1248 (7th Cir. 1979).

but also by contending that antitrust enforcement is neutral because it protects those foreigners involved in commerce with the United States who are victims, as well as penalizing those who are conspirators. Adoption of Atwood and Brewster's third proposal would overrule the "effects doctrine" decision and severely undermine the use of this second rationale to expand the application of United States antitrust laws.[48]

The Atwood-Brewster proposal is especially unnecessary when one considers the potential harm it would do to foreign relations and to the campaign for increased acceptance of antitrust principles around the world. The potential effect of the proposal on protection of legitimate United States interests is of greater significance. Legislation currently under consideration by Congress demonstrates that the dangers found in the Atwood-Brewster proposal far outweigh the benefits to be gained from its adoption. First, addition of the words "direct and substantial" to the Sherman Act could unduly limit circumstances in which the antitrust laws could redress an injury to important United States interests. The phrase might be interpreted to preclude challenge to incipient schemes which have yet to injure United States commerce. Thus, a foreseeability standard is necessary. Second, it is unclear how the injury standards of the new act would apply to international shipping, international aviation, deep sea mining, or other offshore activities. Third, the proposed act would not allow recovery by an injured domestic person unless such person is exporting from or importing into the United States. Present law compensates any significant degree of injury. This change could mean that joint venturers or affiliates of United States firms investing abroad would not be protected from any conduct by a United States foreign subsidiary subject to United States jurisdiction. Fourth, the Supreme Court ruled that the Webb-Pomerene exception does not protect conspiracies aimed at foreign purchasers who are using United States AID funds.[49] The legislation before Congress would, apparently inadvertently, overrule this decision and deny protection to United States interests in such a situation.[50]

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48. 434 U.S. 308 (1978).

49. United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199 (1968).

50. *See* H.R. 2326, 97th Cong., 1st Sess. (1981); S. 795, 97th Cong., 1st Sess. (1981).

It is significant to note that, although supporting certain objectives of this legislation, testimony by the Business Roundtable, the New York City Bar Association, James Atwood and John Shenefield mentions nearly all difficulties and objections noted above.[51] Their recommendations would have changed nearly every significant word of both bills. Nevertheless, this writer does not believe that all of their suggested changes, taken together, can cure all of the defects and uncertainties of the proposed bill. United States courts required many years and many types of cases to develop rules in this difficult area. It is widely believed that recent decisions in the *Timberlane*[52] and *Mannington Mills*[53] cases represent a good approach. This is no time to take the issue away from the courts and substitute a hastily written text containing both obvious and unforeseen infirmities.

This reviewer's disagreement with the Atwood-Brewster proposal may be summarized as follows: There is no urgent need for legislation addressing the international application of United States antitrust laws at this time. Enforcement agencies, courts, and international committees are working to achieve balance and harmonization. If the problems are serious enough to warrant some action, then the most prudent course would be to enact legislation establishing an expert commission to examine, compare, and draft alternative approaches to any jurisdictional or substantive issues found to justify revision.

Despite disagreements with some of Atwood and Brewster's recommendations, it is possible to admire and value their thorough exposition of law and policy and their extraordinary efforts to present a fair and balanced discussion of the policy choices. Their book will be both useful and influential. Though the courts and the Congress have been and are likely to be impressed by their recommendations, this reviewer continues to doubt that their proposals concerning antitrust jurisdiction will really solve, or even simplify, the problems in this complex area. In October 1982, Congress passed the Export Trading Company Act of 1982,

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51. *Foreign Trade Antitrust Improvements Act: Hearing on H.R. 2326 Before the House Comm. on the Judiciary*, 97th Cong., 1st Sess. (Apr. 8, 1981) (statement of J.R. Atwood); *see* Shenefield Statement, *supra* note 37.

52. 549 F.2d 597 (9th Cir. 1976); J. ATWOOD & K. BREWSTER, *supra* note 1.

53. 595 F.2d 1287 (3d Cir. 1979).

title IV[54] of which contains text similar to that suggested by Atwood and Brewster. It remains to be seen whether this legislation will achieve the goal Atwood and Brewster sought.

54. The Foreign Trade Antitrust Improvements Act, Pub. L. No. 97-290, §§ 401-03.