BOOK REVIEW

The Law of International Business Transactions by Robin Burnett [Sydney, The Federation Press, 1994, xxxiv + 296 pages; ISBN 1 86287 122 1; soft cover]

For several years it had been said that there is no basic textbook which may be prescribed for the subject, International Business Transactions. As a result, students had to be assigned materials from various sources in the hope that they would search out and read at least some of those materials. This unsatisfactory situation has now been rectified by Robin Burnett's *The Law of International Business Transactions*. Written for the undergraduate student, it is a solid introduction to the subject but as such it cannot be considered a prescription for dispensing with the use of other sources of material when the student has to undertake more serious research on the subject.

Generally speaking, the book is easy to read and its chapters are presented in logical sequence. A glance at the Table of Contents provides an immediate and comprehensive overview of the subject and this is important in any introductory textbook. The Introduction also contains a concise excerpt of the various chapters, adding to the user-friendly charm of the book.

The book is divided into two parts. Part I deals with goods; Part II deals with services. The parts are further divided into seven chapters, reflecting the traditional areas which collectively form the basis of the law of international business transactions ie the international sale of goods, the international carriage of goods, financing of an international transaction, the governmental regimes concerning the sale of goods, the regulatory framework governing services, international agreements on services and the multilateral agreement on trade in services.

Although the book is very much presented from the Australian and New Zealand perspectives, the author has extended discussion to other jurisdictions, including "[s]ervices trade in the European Community" (Chapter 6, Section 1), and trade between Canada and the United States (Chapter 6, Section 2). And because of its inherent nature, the book would not be complete without the inclusion of the most important trade regulation agreement in the world ie the General Agreement on Tariffs and Trade (GATT), which had only 23 original signatories in 1948 "but now has become the central multilateral trade agreement affecting the laws and administrative practices of over 120 countries." (page 189) In fact, 125 countries participated in the GATT's Uruguay Round of Multilateral Trade Negotiations and 111 of them eventually signed the Final Act which emerged from the Round. Further, 104 countries signed the Marrakesh Agreement establishing the World Trade Organisation, with 33 of them not requiring subsequent ratification.[1]

International agreements dealing with services trade in the European Community are discussed in Chapter 6. The European Community became known as the European Union following the European Union Treaty which was signed on 7 February 1992 and which

entered into force on 1 January 1993. Agreement for this treaty, which had been obtained in Maastricht on 11 December 1991, has resulted in the implementation of the Single European Market and paved the way for the establishment of the European Economic Area with the EFTA states.

If the book has any downsides, it is the timing of its publication in early 1994. This may be considered by some to be unfortunate because in late 1993, the Uruguay Round of Multilateral Trade Negotiations came to a successful conclusion. It appears that as the changes were happening, the book had gone to press. Consequently, it would not have been possible for the important initiatives and amendments brought about by the negotiations to be incorporated into the book in a more definitive manner. However, to ensure that the reader understood that there were implicit constraints relating to the timing of the book's publication, the author had inserted vague but cautious (and perhaps even pre-emptive) statements like "[t]he Gatt and related agreements have been substantially revised in the Uruguay Round negotiations during the 1980s and earlier 1990s." (note 3, page 189) This reinforces the fact that the successful negotiations and their impact had not been inadvertently omitted by the author.

It is with the benefit of hindsight that one is now better equipped to comprehend the sheer magnitude of the changes brought about by the Uruguay Round negotiations. But as to what the full extent of those changes is going to be, only time will tell. At present, the trading world is trying to fully digest the implications of the changed circumstances and new regulatory structures, and one sometimes wonders if this will ever be achieved because the Final Act is very long, being more than 450 pages, and it also includes an addendum reputed to be some 20,000 pages!

The Final Act not only includes legal texts which contain the outcomes of the negotiations since the Round began in Punta del Este, Uruguay in September 1986, but also the texts of Ministerial Decisions and Declarations which further clarify certain provisions of some of the agreements.[2] However, there are 21 distinctly identifiable main components ie (1) Agreement Establishing the World Trade Organisation; (2) General Agreement on Tariffs and Trade 1994; (3) Marrakesh Protocol to GATT 1994; (4) Agreement on Agriculture; (5) Agreement on Sanitary and Phytosanitary Measures; (6) Agreement on Textiles and Clothing; (7) Agreement on Technical Barriers to Trade; (8) Agreement on Trade Related Aspects of Investment Measures; (9) Agreement on Implementation of Article VI (Anti-Dumping); (10) Agreement on Implementation of Article VII (Customs Valuation); (11) Agreement on Preshipment Inspection; (12) Agreement on Rules of Origin; (13) Agreement on Import Licensing Procedures; (14) Agreement on Subsidies and Countervailing Measures; (15) Agreement on Safeguards; (16) General Agreement on Trade in Services; (17) Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods; (18) Understanding on Rules and Procedures Governing the Settlement of Disputes; (19) Trade Policy Review Mechanism; (20) Decision on achieving greater coherence in global economic policy-making; and (21) Government Procurement.[3]

In effect, the Final Act includes all of the negotiating areas cited in the Punta del Este Declaration with two important exceptions ie (1) the results of the "market access

negotiations" in which individual countries have made binding commitments to reduce or eliminate specific tariffs and non-tariff barriers to merchandise trade, which are recorded in national schedules which form an integral part of the Final Act and (2) the "initial commitments" on liberalisation of trade in services, which are also recorded in national schedules.[4]

The changes and initiatives brought about by the success of the Uruguay Round negotiations mean the GATT has now ventured into new areas like intellectual property rights, agriculture, and film and broadcasting, and the provisions on trade in services are similarly novel. Other areas have been revamped like the provisions governing the settlement of disputes. Various government regimes have been affected and when the relevant provisions enter into force, the discussion on "*Government Regimes Impacting on International Sale of Goods*" (Chapter 4) will take on a different look. In addition, there will be an impact on intergovernmental agreements (Chapter 4, Section 1), and on domestic legislation and practices governing international business transactions (Chapter 4, Section 2). The customs regime (page 196 et seq), anti-dumping and countervailing duties (page 205 et seq), and in particular non-tariff barriers (page 216), inter alia, are also affected.

Another matter worthy of clarification concerns the following extract when the author tries to explain how the various Warsaw regimes operate in relation to the international carriage of goods:

> Major problems are alleviated by the fact that many air carriers, as opposed to governments, are parties to the ICAO Montreal agreement 1966 under which carriers into and out of the USA voluntarily accept higher limits of liability than are required under the original [Warsaw] Convention. (page 123)

As rightly pointed out by the author, the 1966 Montreal Agreement involves "many air carriers, as opposed to governments". Since this is the case, the Agreement should not be referred to as an "ICAO" Agreement because the International Civil Aviation Organisation is an organisation of states and does not deal with individual air carriers. It appears that the common use of "Montreal" when referring to the Agreement is more a matter of convenience and short reference and because it was signed in Montreal. But to refer to it as an ICAO agreement is inaccurate even though it is true that the organisation is headquartered in Montreal and may have facilitated in its negotiations.

The Agreement is actually "Agreement - CAB No 18900". It was approved by the Civil Aeronautics Board of the Untied States on 13 May 1966 and its main purpose was to raise the civil liability limits of air carriers to levels above those established by the original 1929 Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, and as amended by the 1955 Hague Protocol. Article 1 of the Agreement provides that it shall apply to carriers which are party to it if the contract of carriage "includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place." Furthermore, under Article 3, it has to be filed with the Civil Aeronautics Board "for approval pursuant to section 412 of the 1958 US Federal Aviation Act, as amended, and filed with other governments as required", and it will only become effective when approval is granted under that provision.

Unlike the Warsaw Convention, the Agreement does not contain any provisions on the carriage of goods. The Agreement was originally limited to the liability of the air carrier for the passenger's death, wounding or other bodily injury (Article 1(i)); later on, the provisions on the carriage of the passenger's baggage, both checked and unchecked (ie hand luggage), were added by CAB Regulation ER837 on 27 February 1974 which, inter alia, required on each passenger ticket a notice of baggage liability limitations. However, baggage is not goods and the distinction between baggage and goods is also made in the Warsaw Convention (see Articles 4, 5 and 22(2)). (For the distinction in the Convention between checked and unchecked baggage, see for example, Article 22(2) for checked baggage and Article 22(3) for unchecked baggage.)

As a consequence, the Montreal Agreement 1966 is irrelevant in any discussion on the carriage of goods by air (international or domestic) and therefore should have been excluded.

In spite of the above glitches, it would be fair to say that readers, and especially the law (and even business) student, will discover that the book is indispensable as an introduction to the subject. One, therefore, looks forward to the next edition which can only promise to be better and bigger, and especially if the outcomes of the successful Uruguay Round negotiations of GATT are dealt with in a more comprehensive manner.

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Notes

1. Owing to national legislative procedures of a preventive nature, a handful of countries (including Australia, India, Japan, Korea and United States) has not signed the Marrakesh Agreement: News of the Uruguay Round of Multilateral Trade Negotiations, 18 April 1994 p 1.
2. Ibid, 5 April 1994 p 1.
3. Ibid at 3-4.
4. Ibid.