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BOOK REVIEW

The Fall of the U.S. Consumer Electronics Industry: An American Trade Tragedy. By Philip J. Curtis. Westport: Quorum Books, 1994. Pp. xv, 357. Index.

Robert W. McGee*

This book tells the story of *Matsushita et al. v. Zenith*.¹ The title, plus the fact that the author is one of the attorneys who represented Zenith, quickly alerts the reader that the book makes no pretense about being objective. The author does not hide the fact that he is arguing Zenith's position, and for that he is to be commended. Lesser authors would have wrapped their arguments in language that appears unbiased on the surface, yet subtly supports Zenith's side of this trade controversy. Curtis does a commendable job of presenting Zenith's side of the story. He is a good advocate for his client's position. However, he is representing the wrong client, in this reviewer's opinion.

Curtis begins his dramatic story by relating some of Zenith's business history. When David Sarnoff, a ruthless Russian emigré, came to the United States, he seized control of RCA's radio patent pool by negotiating a consent decree separating RCA from GE and Westinghouse, its parent companies.² He then locked up the radio manufacturing business all over the world and, with the help of some friends, was able to control the industry for more than three decades by using a scurrilous patent package-licensing scheme. Scrappy young Zenith managed to break the cartel after an eleven-year antitrust suit, but its victory was short-lived. Sarnoff then helped organize and license the Japanese electronics industry and built it into a vast cartel. Within twenty years this cartel would decimate the American radio and television manufacturing industry.

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¹ 475 U.S. 574 (1986).

² PHILIP J. CURTIS, *THE FALL OF THE U.S. CONSUMER ELECTRONICS INDUSTRY: AN AMERICAN TRADE TRAGEDY* xiv (1994).

Sarnoff is shown as a notorious industrialist who helped prepare the Japanese for their first successful industrial market capture attempt in the United States. He portrays Zenith as a valiant American company that fought this injustice for three decades, only to lose its fight in a 1986 Supreme Court case that was decided 5-4. Sarnoff is shown as teaching the Japanese the tricks that they would use in the future to capture industries by the use of predatory cartels, the purchase of political influence and the subversion of the American legal system. He distills his story from the unpublished evidence that was adduced by compulsory pretrial processes in Zenith's various litigation struggles.

Curtis would have us believe that an army of perfidious Washington lobbyists, including former government officials and insiders funded by large lobbying fees were responsible for the Supreme Court's 5-4 decision. He insists that his book is not a Japan bashing diatribe, but merely a critical exposé of the merchants of political influence and American legal tricksters who sold their skills to the Japanese, and of the United States government officials who were used by these tricksters to help perpetrate the fraudulent defenses to the Japanese predatory dumping scheme.

Curtis spends most of the first 120 pages presenting a history of the electronics conspiracies, the evolution of antitrust law in this area, Zenith's challenge to the patent "racket," and the trial history. He then presents some exhibits and a reprint of a 1979 law review article that discusses the enforcement of the antidumping laws in the television dumping case. He then discusses Japanese government subsidies, for which Zenith petitions for countervailing duties on, of course. Actually, there is little actual discussion of the subsidies. More than two-thirds of this chapter consists of exhibits of legal documents in the case, followed by his discussion of the topic.

The next chapter he titles "The Final Battle: *Matsushita et al. v. Zenith.*" It looks like a showdown is coming, and the author does not disappoint us. It all begins in 1974 when "the giant Matsushita" acquires Motorola's color television business. Zenith is worried about what the acquisition will do to Zenith's competitive position. The Japanese are seen as entering into an illegal scheme to fix prices and allocate markets. He discusses the conspiracy to gain control of American television companies in some depth. He places the blame for the 5-4 decision squarely on Thurgood Marshall, whom he sees as casting the tie-breaking vote. Marshall's opinion was simply that he could not see why he should be concerned that American consumers get lower

prices than Japanese consumers. He cites Marshall for aiding in approving the most rapacious and illegal attack on competition since the robber barons. The last ninety some pages consist of legal documents relating to the case.

If anyone is interested in seeing a detailed presentation of a trade case, this book would be a good source. The legal documents, while boring at times, do present a wealth of information and give the reader a flavor for what is involved in the prosecution of such a case. However, the reader should keep in mind that the author is presenting only one side of the case. The author's writing style is a feature that makes the book interesting to read. His approach — attack, really — and his use of adjectives keeps the reader's interest.

Numerous weaknesses in Curtis' arguments could be pointed out. I would like to play devil's advocate and discuss some of the main ones in this review. Perhaps the major weakness in Curtis' argument is that he falls prey to what Hazlitt,³ writing in the 1940's, and Bastiat,⁴ writing before him in the 1840's, referred to as the central fallacy in economics: looking only at the immediate consequences of an act or proposal, or looking only at the effect a policy has on one group, while ignoring its effects on other groups.⁵

For example, consider a scenario where adopting a particular protectionist policy would save 16,900 jobs, as was the case with the 1984 voluntary restraint agreement on steel.⁶ Someone arguing the steel industry position would surely mention this statistic. But this statistic tells only half of the story. The other half is that, if steel imports are restricted, 52,400 jobs will be lost in the industries that use steel.⁷ Higher steel prices will cause these industries to cut corners, which includes laying off employees and not hiring others. Thus, there were more than three jobs destroyed for every job saved. Yet those who look at only one side of the coin would have us believe that voluntary restraint agreements were good for America because they saved

³ HENRY HAZLITT, *ECONOMICS IN ONE LESSON* (1979).

⁴ Bastiat did most of his writing during the 1840s. He discussed this central fallacy in several places, including pamphlets and books. Bastiat's best exposition of this fallacy, which he called "What Is Seen and What Is Not Seen," was written in the late 1840's and first published as a pamphlet in July, 1850. See FREDERIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY* 1-50 (1964); FREDERIC BASTIAT, *OEUUVRES COMPLETES DE FRÉDÉRIC BASTIAT* (1851-79).

⁵ HAZLITT, *supra* note 3, at 17.

⁶ ARTHUR T. DENZAU, *HOW IMPORT RESTRAINTS REDUCE EMPLOYMENT* (Center for the Study of American Business Formal Publication 80, 1987).

⁷ *Id.*

nearly 17,000 jobs in the domestic steel industry.⁸ They would not look at the other side of the coin. Thus, the picture is distorted and incomplete. Yet this is exactly the approach that many trade protection advocates take when they put forth their arguments.

Curtis, too, looks only at one side of the controversy — his client's side. While it is true that Zenith was harmed by the competition, it is also true that many American consumers benefitted by being able to buy televisions at lower prices. The money they saved by buying cheap televisions could then be spent on other goods, thus permeating many other domestic industries and stimulating employment. Based on the job gain/loss ratios computed by various researchers over the years who have estimated job gains and losses as a result of various trade policies, it is not unreasonable to expect that two or three jobs were created somewhere in the domestic economy for every job destroyed at Zenith by Japanese competition. Yet Curtis completely ignores this fact.

Another weakness — error, actually — in Curtis' thesis is that America is deindustrializing. A look at relevant statistics reveals that the number of industrial jobs in America has remained about constant for the past few decades, and that American industry cranks out more goods now than ever because of increased productivity. The size of the pie has been increasing as more people enter the workforce, so industry jobs have shrunk as a percentage of total jobs held because the service sector has expanded while the number of industry jobs has remained constant.⁹

Curtis's argument that the antidumping laws must be reformed in the "public interest"¹⁰ is a curious one. Two different criticisms can be made of his attempt to relate antidumping reform to the public interest. If one takes the Novak approach,¹¹ the argument would be that in a free society, where individuals have different values, aims and goals, there can be no common good, since there is no common interest. Domestic producers have an interest in halting foreign competitors

⁸ The results in this study were not a fluke. Other studies have also found that various protectionist policies destroy more jobs than they save. For example, in another study, the researcher estimated that implementation of a particular policy would have saved 36,000 apparel manufacturing jobs while destroying 58,000 apparel retailing jobs. See I.M. DESTLER AND JOHN S. ODELL, *ANTI-PROTECTION: CHANGING FORCES IN UNITED STATES TRADE POLITICS* 56, n.43 (1987).

⁹ RICHARD B. MCKENZIE, *THE AMERICAN JOB MACHINE* 43-67 (1988); RICHARD B. MCKENZIE, *COMPETING VISIONS: THE POLITICAL CONFLICT OVER AMERICA'S ECONOMIC FUTURE* 33-64 (1985).

¹⁰ Curtis, *supra* note 2, at 230.

¹¹ MICHAEL NOVAK, *FREE PERSONS AND THE COMMON GOOD* 19-39 (1989).

from selling their products at low prices, and consumers have an interest in seeing that the practice is maintained and extended.

Even if one accepted the argument that there can be a public interest in a pluralist society, the antidumping laws come down on the wrong side. They protect domestic producers at the expense of the general public. Antidumping laws are special interest legislation, not general interest legislation. Such laws cannot be justified on utilitarian grounds because they do not provide the greatest good for the greatest number. Enforcement of the antidumping laws produces more losers than winners, thus resulting in what economists call a negative-sum game.¹²

The philosophy behind the antidumping laws will not hold up to analysis. For one thing, predatory dumping is either rare or nonexistent, and even if it does exist, it benefits consumers. In effect, the antidumping laws protect consumers from low prices. The antidumping laws are special interest legislation that protect domestic producers at the expense of the general public. Antitrust economists would find laughable Curtis' hypertension over the alleged existence of predatory pricing when economists over the last few decades have been unable to find any.

Curtis makes Matsushita out to be the bad guy. But United States antidumping laws have perpetrated some atrocities against Matsushita, too. For example, Matsushita decided to withdraw from the United States' small business telephone systems market,¹³ thus abandoning more than \$50 million in annual sales revenue, because of the Commerce Department's request (on a Friday afternoon) that it translate 3,000 pages of Japanese financial documents into English by the following Monday morning.¹⁴ Such Commerce Department abuses of power and discretion should be viewed as atrocities by any upstanding person who is interested in fair play. Yet Curtis wants to use Commerce and Justice Department muscle to prevent a foreign competitor from selling its products in the domestic market at prices that American consumers are anxious to pay.

Curtis presents a good case from Zenith's point of view. His writing style is lively and holds the reader's interest. But the clarity and amusement value of his writing style should not fool the reader into

¹² For a discussion of this point, see Robert W. McGee, *The Case to Repeal the Antidumping Laws*, 13 Nw. J. INT'L L. & Bus. 491 (1993).

¹³ Investigation 731-TA-426, listed in I.M. DESTLER, *AMERICAN TRADE POLITICS* 393 (2d ed. 1992).

¹⁴ JAMES BOVARD, *THE FAIR TRADE FRAUD* 136 (1991).

believing that the Zenith case was wrongly decided. While Curtis does a good job of advocating his client's position, the economic and legal literature screams out to tell us that Matsushita should not be punished for giving American consumers televisions at low prices.