

**The World Trade
Organization: Legal,
Economic and Political
Analysis**

Volume I

The Editors

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United States—Rules of Origin for Textiles and Apparel Products:

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FOREWORD

Supachai Panitchpakdi

In the relatively short time since the World Trade Organization (WTO) was founded, both the institution itself and the vast and complex set of rules it administers have generated enormous debate and controversy, both in the meeting rooms of Geneva and in legislatures, in the press, and on the streets of countries around the world. Interestingly, discussions in and about the WTO have tended to mirror not only the trade-related concerns of the world today but also concerns about a wide variety of other issues whose relationship to the WTO is still being defined.

From one perspective, the WTO is a system of trading rules; from another, it is a forum to implement those rules and to negotiate new ones. As an intergovernmental institution with a broad membership and a wide mandate, the WTO's ultimate success or failure will depend heavily on the effectiveness of those who guide it, rather than those who make demands upon it. But to appreciate fully the importance of, and the potential for, the WTO to make a positive contribution to the well-being of the world requires more than a casual understanding of what the WTO is and is not, its experiences to date, and its possibilities for the future.

At a time when the WTO has embarked on a major new effort through the Doha Development Agenda to further refine itself in some areas and to extend itself in others, this book is a major contribution to helping people around the world understand what the WTO is, where it has been, and where it is headed. Authored by a highly qualified group of individuals, it reviews the experience to date with WTO rules, discusses a wide array of political and economic issues related to these rules, and provides a series of commentaries on the WTO from the perspective of particular WTO Members—large and small, original and new, and developed and developing.

What has been achieved in the WTO since 1995 has been nothing short of remarkable, which fosters expectations of greater success in the years ahead. While most of what has occurred to date has focused on the implementation of the results of the Uruguay Round, including the successful establishment and operation of an efficient system for the settlement of trade disputes, the case for the WTO's core business of continued trade liberalization remains as valid today as it ever was. Such course of action will continue to help raise material standards of living around the world, and will also help to ensure that developing countries, especially the least-developed countries, secure a greater share in the growth of international trade in the future.

I congratulate all those who have worked so hard to produce this impressive new publication. It is an outstanding contribution to our collective understanding of today's world trading system as embodied in the WTO.

INTRODUCTION

The international trading system came of age on January 1, 1995, with the establishment of the World Trade Organization (“WTO”). The vast majority of international trade is now subject to this rule-based trading system. Almost all of the major trading nations can be counted among its 148 Members,¹ and with just a very few exceptions, those that are not members are seeking to accede.²

Many of the WTO Agreements are technical and complex. This obscures the fact that the WTO is built on many of the time-tested principles of the 1947 General Agreement on Tariffs and Trade (“GATT”). The GATT-based trading system provided a strong economic, philosophical and political underpinning for the WTO, and the 1947 General Agreement forms a part of the WTO Agreements.

The GATT was however organizationally flawed. Indeed, it was never intended to be an organization, and only took on this role by default when the International Trade Organization was still-born. The GATT dispute settlement system was weak. While the successive rounds of multilateral trade negotiations held under the auspices of the GATT did produce massive tariff reductions, particularly on imports of manufactured goods by developed countries, the GATT was less successful in reducing non-tariff barriers, which became greater obstacles to trade as tariffs came down. For example, in the 1980s administrative actions restricting trade grew in significance and “voluntary” export restraints (“VERs”) became more commonplace, even as tariffs on manufactures were reduced to post-war lows. There were significant exceptions to the rules governing trade in agricultural goods, and trade in textiles fell outside the GATT system altogether. Trade in services, insignificant in 1947 when the GATT came into being, was not covered by the Agreement, yet was becoming an increasingly important component of international trade. These omissions and shortcomings, many of which operated to the detriment of developing countries, provided the negotiators of the WTO Agreements with the inspiration to strengthen and broaden the system.

Unlike its GATT predecessor, the WTO is a full-fledged international organization. In addition to trade in goods, the only form of trade that was covered by the GATT, the WTO covers trade in services and trade-related aspects of intellectual property. The separate trade regime long applicable to textiles trade has been phased out. The Agreement also seeks, albeit with less success, to impose “GATT discipline” on trade in agricultural goods. The flawed GATT approach to dispute settlement, which allowed the losing party to block adoption of a panel report, has been replaced by a highly developed and frequently used dispute settlement system. It would thus be wrong to regard the WTO as the mere offspring of the GATT; in many ways it is an evolutionary step forward, albeit imperfect, and riddled with loopholes waiting to be plugged when sufficient political will again arises.

The WTO has been in place long enough to justify an in-depth analysis. Ideally, like John Jackson’s magisterial 1969 analysis of the GATT,³ the book should be written by one person. However, the WTO covers so much more than the GATT, and has become so complex, that no one person could produce a work of the detail we had in mind. This

¹ August 2004.

² For example, Russia, Saudi Arabia, Algeria and Kazakhstan.

³ JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT*.

work, finalized as the Doha Development Agenda negotiations make fitful progress, is perhaps the first to offer such an in-depth analysis of each of the covered agreements and to integrate panel and Appellate Body decisions into this analysis. It is also the first to offer in the same text economic and political points of view, commentaries on new trade issues, and the perspective of diplomats who participated in the Uruguay Round of trade negotiations.

Our first goal was to produce a legal work that would be easy to use, practical in nature, and which would appeal to practitioners, government officials, professors, scholars and students alike. For each of the covered agreements we sought to find a practitioner, scholar, diplomat or WTO official who had special knowledge and experience with the particular agreement. We chose top names in the field—or individuals whom we were convinced would become top names. With only a couple of exceptions, almost everyone that we approached accepted our invitation to contribute. Occasionally we were too good in our selection process. In three cases authors had to withdraw when they accepted senior positions in the WTO or government service. We are pleased to offer a foreword by the Director-General of the WTO, and chapters by two of his predecessors. We also have contributions from a past Deputy Director-General, two Appellate Body Members, and past and present Members of the WTO Secretariat and the diplomatic corps. We are also fortunate to count among our contributors top legal practitioners and well-known professors of law and economics.

Our second goal was to provoke debate but to avoid rhetoric. This being said, we did not shy away from controversial new issues, nor have we avoided development-related concerns. Controversial chapters were presented to the Editorial Board and outside experts for review. Balance was further achieved by presenting more than one point of view, and by seeking geographical, economic and political diversity among contributors.

Our third goal was to produce a readable and lively work. This necessitated an enormous amount of patience and time on the part of our contributors—many of whom have revised and updated their chapter several times. It has also necessitated the patience of several members of the Editorial Board to whom we have turned for advice. The result, we hope, is a challenging and often lively treatment of the WTO Agreements, made only somewhat uniform by templates provided to each author in an attempt to avoid a “cacophony of styles”.

We had originally planned to limit the book to the legal aspects of the WTO. However, the publisher urged us to expand its scope to include economic and political aspects of the international trading system, as well as a series of chapters examining the WTO from the viewpoint of a number of individual members. We hope that readers find these additional topics useful and informative.

The book is divided into five principal parts. The first part is introductory in nature. One chapter discusses the history of the Uruguay Round. Other chapters deal with the politics of trade policy development and organizational aspects of the WTO.

Part II analyses the Legal Framework governing the international trade system. It is divided into two sections, Institutional Issues and the Uruguay Round Agreements, with the latter including an examination of both the multilateral and the plurilateral agreements. This part is divided into three subsections: (1) a detailed legal analysis of each of the substantive “Covered Agreements”, (2) ten chapters on the Dispute Settlement system, merited because it is one of the most significant achievements of the Round, and (3) an examination of other important legal issues, more specifically Special and Differential Treatment of developing countries, national security, transparency and customs classification. Customs classification, while falling under the purview of the World

Customs Organization rather than that of the WTO, is included in this subsection because of its importance in international trade and because classification issues have arisen in the context of the WTO.

Part III of the book deals with what we have called “Economic and Political Issues”. This part begins with an analysis of the basic economic principles applicable to international trade, then turns to economic questions associated first with some of the more important WTO Agreements, and second to economic questions associated with key trade policy issues such as environmental and labor-related issues. Part III then examines important and timely political issues as regionalism, developing country concerns, and new and controversial issues that are not now covered by the WTO system but are, at least in some cases, candidates for inclusion in the system in the future. These include E-commerce, investment, competition, labor rights, environmental issues, human rights, and gender issues.

Part IV consists of a series of what we have called “country reports”—an analysis of the WTO system from the viewpoint of particular countries, ranging from the Quad countries (the United States, Canada, the EU, and Japan) to one of the smallest members, Mongolia. We hope that these chapters, most of whose authors are present or former senior trade officials, will provide a useful and slightly different perspective.

Part V, while not a Conclusion as such, looks toward the future, touching briefly on important issues such as the Doha Work Program and globalization.

We are grateful to many people for their assistance in the creation of this book. Alex Schwartz, formerly of Kluwer Academic, had the idea for the book. We particularly wish to thank Marilea Fried and Jill Strathdee of Springer for their unfailing support and enthusiasm. Members of the Editorial Board have been extremely helpful, as have Kevin Kennedy and Simon Lester, both of whom have given very freely of their time. Lastly, we gratefully acknowledge the contributions of Ali Oromchian and Boris Figeli.

Finally, we wish to dedicate this book to the memory of Anna Morner of Queen Mary’s and Westfield College, University of London, one of the original editors, who died in a tragic accident in the fall of 2000.

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