

# WORLD TRADE WITHOUT BARRIERS



The World Trade  
Organization (WTO)  
and Dispute Resolution

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# **WORLD TRADE WITHOUT BARRIERS**

## **The World Trade Organization (WTO) and Dispute Resolution**

### **Volume I**

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## DEDICATION

This book is dedicated to Students and Professors of Law, Lawyers, Bankers, Economists, Financiers, Business Administrators, Government Executives, and those engaged in related academic and practicing disciplines. May they all master the complexities and intricacies of Dispute Resolution in international trade and commerce, so that they will be able to advise their clientele (manufacturers, agriculturalists, exporters, importers, politicians, intellectual property owners, and the many others skilled in such endeavors) correctly in how to avoid or to prevail should disputes arise between any of them and others engaged in foreign commercial law.

**Better to Ship Goods than Soldiers Across  
International Borders**

## FOREWORD

One need not be an international lawyer with expertise in international trade law to appreciate the importance of international trade in today's world. It is difficult to think of areas that have the far-reaching effects of international trade on the economy and well-being of a nation. International trade, always important to our nation, is more important today than ever before. As the impact of international trade on the international economy has grown, there has been a corresponding need and demand to resolve the international trade disputes that arise within the international trade community. The affected parties include nations, foreign and domestic manufacturers, trade associations, consumer groups, labor unions, and concerned individuals.

For the American lawyer, a new international dimension has been added to the practice of international trade law. In the recent past, a knowledge of the various pertinent administrative agencies, the United States Courts in general, and the United States Court of International Trade in particular, may have been sufficient for the practice of international trade law. On April 15, 1994, at an international conference convened in Morocco, and attended by the United States and 124 other countries, agreement was reached to establish a new international legal entity to be entitled the *World Trade Organization* (WTO).

This new World Trade Organization was the culmination of the Uruguay Round of Multilateral Trade Negotiations that were started in 1986 under the auspices of the General Agreement on Tariffs and Trade (GATT). The importance and value of this work, *World Trade Without Barriers — The World Trade Organization (WTO) and Dispute Resolution* by Professors Swacker, Redden, and Wenger, stem from the clear and authoritative presentation and explanation of the role and operation of the WTO in resolving disputes among its member countries and its panel process, which includes the power to impose sanctions on violators.

Few will dispute the assertion that, except for existing regional trade agreements, no international institution for reduction of world tariffs and trade barriers could be effective without the participation of the United States. In presenting the essence of the approximately 22,000-page United States Uruguay Round Agreements Act, the authors have made a valuable contribution to the understanding of the important function of the World Trade Organization and the multinational agreements that the Act implements. Their treatment of the history and evolution of the new World Trade Organization offers a clear guide to the motivating legislative intent. In the process, they also trace the post-World War II development of the General Agreement on Tariffs and Trade.

In addition to a brief introductory explanatory note on "How to Use This Book" and a bibliography, this treatise includes several key documents and reports that reflect the Congressional battle waged by free-trade legislators, who, as a result of bipartisan compromise, succeeded in passing the Act.

On the signing of the United States-implementing legislation on December 8, 1994, President Clinton stated:

We must never run away from the world. We must go into the 21st century convinced that the only way to preserve the American dream is to be involved with the rest of the world, to be willing to compete, to be determined to win, to be serious about overcoming our problems, but to realize that the only way you can ever do it is to see the opportunities that are plainly there.

The authors expand upon the theme that no country can escape the global economy, least of all the United States. This aspect is presented with enthusiasm in Chapter 3, which is entitled *The New Commercial Global Village*. The broad scope of the eighteen World Trade Organization Agreements serves as a framework to permit Member governments to conduct their trade relations pursuant to those agreements.

The explanation and commentary provided for each of the Articles of the Dispute Settlement of Understanding, which define the establishment and rules of the Dispute Settlement Body and the Appellate Body of the World Trade Organization, will be of special interest and value to law professors, international practitioners, economists, and political scientists. The text will be appreciated not only by experts, but also by those who seek a better understanding of the new World Trade Organization, and the far-reaching effects that it will have upon the economic welfare of nations and their citizens. Of particular interest to readers will be the emphasis placed on Article 25 of the Dispute Settlement Understanding that invites Member countries to arbitrate their disputes when the issues are clearly defined.

A brief word about the authors and their unique qualifications may be useful. Professor Swacker has devoted four decades of his professional career specializing in International Trade Arbitration. Professor Redden has published or assisted in the publication of over fifty books to the great benefit of the legal profession. Although *World Trade Without Barriers* may shortly surpass the others, some of them, such as *Punitive Damages*, *Lawyers Medical Cyclopedia*, *Federal Rules of Evidence Manual*, and *Modern Legal Systems Cyclopedia* are still widely used. Professor Wenger and his library staff provided the necessary research support and technical assistance for the successful completion of this timely work in a complex and unchartered new area of the law. The vast experience and expertise of the authors have made possible a welcomed blend of law, economics, and diplomacy.

Three fourths of the nations in the world are already Members of the WTO, which became effective on January 1, 1995. Proponents have predicted that it is only a matter of time before the remaining countries will join because of the expectation that the economy of every Member country will be vastly improved as well as the standard of living of its citizens. For these reasons, commentators have stated that the WTO is the most important trade pact that has ever been promulgated by the international community.

## FOREWORD

The authors of *World Trade Without Barriers* are to be congratulated for their contribution to the emerging literature on this important subject. Its timeliness may be noted by a report from Geneva that states that, on April 10, 1995, at the first meeting of the Dispute Settlement Body, the World Trade Organization set in motion its trade dispute machinery by establishing a panel to rule on a dispute between Venezuela and the United States.

In presenting in a clear and orderly fashion such a vast quantity of material, the authors of this work have performed a welcomed service. The grateful readers will not only be international trade lawyers, but will also include general practitioners, government officials, and concerned members of the international trade community.

Edward D. Re  
Chief Judge Emeritus  
United States Court of International Trade  
Distinguished Professor of Law  
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## PREFACE

On April 15, 1994, a conference conducted under the auspices of the General Agreement on Tariffs and Trade (GATT) was held in Morocco as part of the Uruguay Round of Multilateral Trade Negotiations that began in 1986. At the Morocco conference, the attendees, which included representatives of the United States and 124 other countries, reached an agreement to establish a separate international legal entity entitled the World Trade Organization (WTO).

It was left open for any country in the world, including those present at the Morocco meeting, to make its own unilateral decision whether to join this new organization, whose purpose is to reduce and eliminate tariffs, quotas, government subsidies, bans, marketing devices, and trade barriers of any type, among its Member countries.

The WTO will improve the economy and raise the standard of living of every Member nation. Accordingly, on December 8, 1994, President Clinton signed into law a Bill that had been approved by the Senate and House of Representatives for the United States to join the WTO. Some commentators have stated that this is one of the most important Federal laws ever enacted in the United States. Thereafter, on December 30, 1994, in accord with that implementing legislation, the United States deposited its Instrument of Acceptance with the Director General of the GATT. In doing so, United States membership in the WTO became effective on January 1, 1995.

This book is an introductory general text designed to explain the WTO and how it operates to resolve disputes among its Member countries through a Panel Process that imposes sanctions on violators.

We hope that the early publication of this volume on this most complex and complicated new law will enlighten professors and students, and enable practitioners in the fields of law, government policy, business administration, banking, finance, and economics, to advise their clientele accurately in the successful discharge of their professional duties and responsibilities.

To the extent that English has become the international language of Law, Diplomacy and Business, we trust that practitioners in other countries will also find our text helpful in their comprehension of the WTO, which has been proclaimed to be the most powerful economic organization ever created.

Frank W. Swacker  
Kenneth R. Redden  
Larry B. Wenger

## PUBLISHER'S NOTE

Frank W. Swacker is an alumnus of the University of Virginia School of Law. He has spent over four decades as a specialist in the international arbitration and dispute resolution aspects of foreign trade and investment at home and abroad and has written books and articles on the subject. He has also acted as an advisor to major corporations and law firms in regard to such matters. Currently, he serves as a member of the faculty of Stetson University College of Law in St. Petersburg, Florida, and is a frequent CLE lecturer on international trade litigation and arbitration.

Kenneth R. Redden is Emeritus Professor of Law of the University of Virginia, having taught there for forty-five years. During that time he spent nine years overseas as a legal advisor to nations in Europe, the Middle East, Asia, Africa, and the Caribbean. In addition to having published fifty law books, he has lectured widely to such groups as the Federal Judicial Center and the Judge Advocate General's School and has appeared on various CLE programs. He also has presented lectures overseas for the United States Department of State and International Foundations.

Larry B. Wenger is Law Librarian and Professor of Law at the University of Virginia. He and his superb staff have done extensive research for this publication.

No two members of the above trio of authors could have produced this work. The project required the unique and complementary professional skills of all three, each of whom has special ties to the University of Virginia, which was founded in 1819 by Thomas Jefferson. Since its inception, the University of Virginia School of Law has been considered one of the top ten national legal education centers in the United States. In 1995, *U.S. News and World Report* ranked it as the number one public law school in the nation. Michie Butterworth is proud to have sponsored this work on world trade, which is so befitting to the memory of internationalist President Jefferson.

Michie Butterworth

## ACKNOWLEDGMENTS

The Authors wish to express their deep gratitude to the many United States and foreign specialists in international dispute resolution in general and the World Trade Organization in particular, who graciously shared their expertise with us in consultation or by granting permission to reprint their published comments on aspects of this most important and often complex area of the Law. Indeed, our work product could not have been published without such splendid advice and contributions, nor could we have accomplished our timely completion of this project had it not been for the superb supervision of Executive Editor Ruth Knight of Michie Butterworth and the assistance of editorial consultant Richard Patterson.

# HOW TO USE THIS BOOK

## Chapter 1

### Introduction

This chapter contains an answer to the question why was this book written. We hope that our answer will whet your appetite and encourage you to consult the volume often for insight into what the WTO is, how it operates, and the impact it may have on your professional career.

## Chapter 2

### Glossary and Directory of Agencies and Organizations

We have placed the Glossary as the first substantive chapter because it may very well be the most important part of the book. It contains hundreds of definitions, carefully selected for their value to you.

Many readers will not have had a university course or any practical experience in dealing with international commercial trade or how disputes that may arise in conjunction therewith may be resolved. The acceptance by the United States of the WTO will bring about a distinct change in our daily lives from many points of view. One will encounter terms, abbreviations, concepts, and organizations that are completely new. This Glossary should shed light where before there was darkness. Refer to it as often as possible to assist your orientation and understanding of this most complex and complicated WTO.

In the interest of expediting publication, the authors have not included many of the terms that will be found in the "covered agreements." For example, Article 1 of the Agreement on Rules of Origin states that the term shall, for the purposes of that agreement, mean those laws and administrative determinations of general application applied to determine the country of origin of goods other than rules related to "contractual or autonomous trade regimes" that provide tariff preferences beyond those required by the GATT MFN rule. The footnote to Article 1 further attempts to clarify application of Rules of Origin by separating out such terms as "like products of domestic industry" as defined by governments.

The Glossary is a reprint of one compiled by former Senator and United States Trade Representative William E. Brock, which was published in Chapter Seven of Volume 1A of co-author Professor Kenneth R. Redden's *Modern Legal Systems Cyclopedia* (1985) and which has been brought up-to-date by co-author Professor Swacker.

Following the Glossary, there is a directory containing the names and addresses of the United States Government agencies and departments that the reader may wish to contact for additional information on any given subject. If abroad and seeking information, it is recommended that contact be made with the Commercial Attaché of the United States Consulate or American Embassy in the country for similar assistance. If you are home, you

may do so with the appropriate State agency or department. Following the directory of government agencies and departments is a list of multilateral organizations from which additional valuable information may be obtained.

### Chapter 3

#### The New International Commercial Global Village

Chapter Three sets out in detail how the new International Commercial Global Village, which was created in 1994 by regional economic organizations, will be viewed by historians, with special attention to the most important development of that eventful year, the World Trade Organization (WTO).

### Chapter 4

#### The GATT-WTO Law in General

In our research on this book, the authors have read over 500 government reports, law review articles, newspaper accounts, and journalistic commentaries by specialists on the WTO. Instead of reinventing the wheel by our own writing, we are reprinting what we believe to be the best works that these distinguished authors have graciously agreed to share with you on the general creation and operation of the WTO.

### Chapter 5

#### The Birth of the GATT-WTO in the United States

How and why did the United States decide to become part of the WTO? What will its vast economic impact be in the future on the United States and other Member countries of the WTO? Is the United States really the biggest winner and Japan the biggest loser? After reading this chapter, you be the judge.

### Chapter 6

#### Dispute Resolution in the WTO — Rules and Regulations

The most important part of the WTO may well be that dealing with resolution of disputes that arise under the WTO and decision enforcement. We present this in a format that has been favorably accepted in other books by the authors, such as the *Federal Rules of Evidence Manual*, which was published in 1975 and is now in its sixth edition.

First, we present the official text of each article of Rules and Regulations of the WTO. We then follow these with Editorial Explanatory Comments, which we hope will answer any questions you may have concerning the particular Article's construction and application. We include appropriate cross-references to other Articles when necessary and citations to books and law review sources for your further enlightenment.

## **Chapter 7**

### **A Critical Analysis of the Former GATT**

It may well be that you wish to know about the GATT that has been replaced by the WTO. What was its original purpose and jurisdiction? How did it operate in the resolution and enforcement of sanctions in a dispute? Did it have any defects that were cured or inherited by the WTO? Will the GATT Rules and Regulations, as construed in WTO panel decisions over the years, help you to understand how the Rules and Regulations of the WTO work?

The best way that we could think of to assist you in this respect is to present a brief history on the creation and operation of GATT and then reprint some of the leading articles that have been published by the outstanding authorities in the field.

## **Chapter 8**

### **The American Legislative History of Dispute Resolution in the WTO**

When legal researchers encounter a stumbling block because of an unclear or ambiguous provision in a Federal treaty or statute, they check the legislative history of that treaty or statute and often discover a statement that clarifies its interpretation. This will be provided for the Dispute Resolution issues in the 22,000-page WTO law in the first Supplement to this volume because the full text of the relevant government documents was not available at the time this volume went to press. This should assist you in resolving any ambiguities and clarifying any confusion in the official text of the Dispute Settlement Understanding, which is presented in Chapter 6. We also include a reprint of the introduction to the Administrative Action Statement summary of the Uruguay Round Agreement, P.L. 103-465, enacted by the second session of the 103rd Congress of the United States in November 1994.

## **Chapter 9**

### **Conclusion**

This chapter is a summation of what we have attempted to accomplish in Volume I of this work.

## **Chapter 10**

### **Transition to Volume II**

This chapter is an explanation of why it was necessary to have a second volume to *World Trade Without Barriers*. Volume II will cover how disputes that arise may be resolved under private negotiation, mediation, conciliation or arbitration, or under International Trade Treaties or Agreements apart from the WTO Panel Process for settlement of disagreements. Thus, Volume II will be a complementary Comparative Law coverage to Volume I.

### Appendix

In the comments on the Dispute Settlement Body (DSB), comparative references are made to differences among commercial rules of organizations that administer private commercial alternative dispute resolution. It is thought that, to grasp fully the import and magnitude of whatever rules and terms of reference a given DSB panel might adopt, the reader unfamiliar with alternate dispute resolution should be able to examine not just the particular rule or rules cited, but see how it relates to the context of other rules for the particular administering organization. For that reason, we have included each set of rules in its entirety, such as in the case of the American Arbitration Association International Rules.

### Bibliography

Readers may wish to investigate in more detail some aspect of particular interest. The Bibliography contains over 100 of the best law review articles on the GATT, WTO and related topics. A Bibliography dealing with books will be published in the first Supplement.

### Supplements

The authors' initial goal in the publication of *World Trade Without Barriers* was to provide an introductory general text on this important subject as soon as possible. The distribution of the periodic supplements will enable the reader to continue to use the text in his or her professional practice, whatever it might be.

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