

AMERICAN
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LEGAL PROBLEMS OF
INTERNATIONAL
ECONOMIC RELATIONS
CASES, MATERIALS AND TEXT
Sixth Edition



John H. Jackson
William J. Davey
Alan O. Sykes, Jr.

WEST

INTERNATIONAL ECONOMIC RELATIONS

CASES, MATERIALS AND TEXT ON THE NATIONAL AND INTERNATIONAL REGULATION OF TRANSNATIONAL ECONOMIC RELATIONS

Sixth Edition



By

John H. Jackson

*University Professor
Georgetown University Law Center*

William J. Davey

*Guy Raymond Jones Chair in Law, Emeritus
University of Illinois College of Law*

Alan O. Sykes, Jr.

*Robert A. Kindler Professor of Law
New York University School of Law*

AMERICAN CASEBOOK SERIES®

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610 Opperman Drive

St. Paul, MN 55123

1-800-313-9378

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Printed in the United States of America

ISBN: 978-0-314-28026-8

PREFACE TO THE SIXTH EDITION

In the preface to the First Edition of this Casebook, we said that “preparing a book on the subject of international economic regulation is like trying to describe the landscape by looking out the window of a moving train—events tend to move faster than one can describe them.” Nothing could be more true in our experience as we prepared the Sixth Edition.

The breadth and scope of the subject matter has become almost overwhelming, and has posed great challenges to us, as well as our many colleagues in law teaching who teach from this book, and all of our students. The treaty framework of our subject has not greatly changed since the Third Edition—which described in detail the full results of the Uruguay Round and the creation of the World Trade Organization (WTO). However, since 1996 an amazingly rich and detailed jurisprudence has developed in the WTO, particularly through the over 110 decisions of the new Appellate Body, which has put its stamp on the interpretation of a number of important GATT provisions (especially Articles III and XX), as well as several of the other WTO agreements (particularly, the Antidumping, Safeguards, TBT, SPS and Subsidies Agreements). It has been the goal of our work on the Sixth Edition to incorporate this jurisprudence into these teaching materials to the fullest extent possible and the new edition contains significant excerpts from some 50 WTO decisions.

The basic theme of the previous editions—the impact of international economic interdependence and the struggle of legal institutions to cope with that circumstance—has been confirmed many times over, and is carried forward in this edition.

We have benefited from our own experiences in teaching with the previous editions. We have also benefited from the suggestions and criticisms of the many student and faculty users. The Uruguay Round expanded the subject, and to keep the book manageable, it will be easily seen that both the subtractions and the additions for this edition have been substantial. We do not claim the perfect balance between the myriad of competing desires of teachers and students of this subject, but we hope and expect that we have considerably improved the book with our efforts.

An important basic goal of all editions, however, needs to be repeated. It is very easy to tally up multiple dozens of subjects which a potential international legal practitioner would find useful when he or she begins to grapple with real world problems. We do not intend to offer a complete coverage of these dozens of subjects, nor even a substantial portion of them. We aim, instead, to offer the student, professor, or current practi-

tioner, the means to achieve a basic understanding of the international economic system as it operates in real life, and as it is constrained or aided by a number of fundamental legal institutions, including national and international constitutional documents and processes. In doing this adequately, we have necessarily had to minimize the coverage of many other practical topics. In a number of cases, however, many of those topics have been covered in other courses in the curriculum.

Our goal for this book, and courses based upon it, is to penetrate deeply into subjects which can have great importance to the government or private practitioner, but which are essentially not covered in other law courses. In addition our goal is to build for the student a knowledge of the “foundations” of the legal system and institutions of international economic relations. This implies knowledge of the constituent international instruments and processes, and the ways those interact with the important national constituent instruments and processes.

The objective of this book is to look at the legal principles and processes as they affect decisions regarding international economic relations, whether the decisions be those of private citizens or enterprises, or government officials. Thus there is an integration of national regulation and international law, and to a much lesser extent private transaction law (which however is not emphasized in this course because it is often a part of or at least analogous to material learned in other courses). For example, United States constitutional and regulatory rules have an intimate and weighty connection and influence on the international rules of the WTO. One must study both to fully understand how they operate, because they interact.

Secondly, the emphasis is on trade in goods because this is generally at the center of international economic relations. However, we have expanded our treatment of the new topics added in the Uruguay Round negotiations, with particular focus on dispute settlement decisions in the intellectual property area and services. Nonetheless, it is our view that the principles learned in discussing trade in goods are almost always transferable to other economic relation subjects, e.g. the constitutional problems of division of governmental authority within a nation, the practicalities of negotiating new international rules, the “constitutional” status of international norms, the difficulties of international dispute settlement procedures, the particular weight of special interest groups and their influence compared with broader but more diffuse foreign policy objectives or the interests of the consumers, the operation of legislative bodies, the decision and voting processes of international organizations, the economic complexity of some of the rules and the difficulty of fact finding.

Thirdly, the emphasis of this book is on the legal processes in *context*, but the emphasis is on *law*. The context obviously includes difficult conceptual and empirical questions of economics and political science, of soci-

ology, history and especially overall foreign policy. But the emphasis here is on those subjects which have developed relatively sophisticated *rule* systems. There are many important subjects which have not yet developed such rule systems, and while touched upon they have not been selected for extensive treatment. (A course in economics, or world politics, therefore, might involve quite a different selection.) For example, both export controls and problems of developing countries merit considerable policy attention. But rule systems or the influence of law on those subjects is not (yet) weighty. Both subjects are dealt with in this book, but the focus on the primary goal of understanding the operation of *law*, means that it is necessary to eschew some tempting elaborations of policy questions when they, as yet, depend so little on law. This does not foreclose, of course, the opportunity for a particular teacher to construct for his or her class a rule formulating exercise based on the current and temporary materials bearing on the policy issues. Nor does this reflect any view of the authors regarding the relative importance in a broader context of non-legal materials or information. It reflects our view that it is useful for law students to examine closely to what extent their particular skills and knowledge could contribute to solution of the myriad international economic problems.

Fourthly, a basic goal of these materials is to be sensitive to their use in the setting of the American law school curricula, so as to avoid unnecessary duplication of other courses, and to present to the student a coherent subject matter that is not likely to be obtained elsewhere. This is the reason, for example, for de-emphasizing private transaction law in this book, while focusing on government regulation. It is also a reason for minimizing duplication of material often included in either public or private (conflicts) international law. To a certain degree we see this course as a logical sequel to the course in public international law. However, this book is designed to accommodate the many students who take it without first having taken international law.

Fifthly, closely related to the previous “premise,” is the notion that this course should be sensitive to the problems faced by practitioners—lawyers or officials, but should also offer the student something which he or she may never again (in practice) have the opportunity to get—namely, an opportunity to examine at length and in depth the overall operation of the “legal system” governing international economic affairs. The day to day problems faced by practitioners will quickly give the young lawyer experience in “how to do it,” and great expertise on rather precise narrow topics. What is hard to obtain after leaving law school is the opportunity to spend a considerable amount of time achieving a comprehensive understanding of the total system and the interrelationships of its parts. This book emphasizes this comprehensive viewpoint.

Finally, so as to minimize the otherwise rapid obsolescence of both this book and students' learning, attention has been directed more toward the "constitutional" or fundamental aspects of the subject, eschewing too much concern with very recent "current events."

This book is designed primarily for a three-semester hour course (45 classroom hours) although it is clear that a course of such length cannot cover all of this book. A four-hour (60 classes) course would likely be both necessary (and sufficient) to complete all of this book. A shorter course is feasible with careful selection, as many of our users know.

JOHN H. JACKSON
WILLIAM J. DAVEY
ALAN O. SYKES

Washington, D.C.
Champaign, Illinois
New York, New York
March 2013

ACKNOWLEDGMENTS

The sixth edition of this book has built considerably on the first five, and thus we continue to be in the debt of all those who contributed so much to them. As the book evolved into its sixth edition, we were particularly indebted to the comments and reactions received from teachers and students who used prior editions, in particular those who have taken our courses in international trade law at the University of Michigan Law School, the Georgetown University Law Center, the University of Illinois College of Law, the University of Chicago Law School, the Stanford University School of Law and the New York University School of Law. In addition, we are much indebted to our friends and colleagues, both within and without the legal profession, both here and abroad, who have patiently engaged in discussions with us and/or reviewed drafts of the manuscript covering some of the difficult issues raised in a book with such a broad scope as this one.

While it is not possible to name all of those who contributed significantly to our work and thinking in preparing this edition, a few individuals who have worked with us closely are particularly worthy of recognition. Professor Jackson thanks his research assistant Keigan T. Mull, Professor Davey thanks his administrative assistant Sue Carrell, and Professor Sykes wishes to thank Loic Coutelier and Stefania Fusco for invaluable research assistance.

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