

ASPEN CASEBOOK SERIES

*PAUWELYN
GUZMAN
HILLMAN*

**INTERNATIONAL
TRADE LAW**

*Third
Edition*



Wolters Kluwer

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INTERNATIONAL TRADE LAW

Third Edition

JOOST H.B. PAUWELYN

Professor of International Law, Graduate Institute of International
and Developmental Studies, Geneva

Visiting Professor of Law, Georgetown University Law Center

ANDREW T. GUZMAN

Dean, USC Gould School of Law

JENNIFER A. HILLMAN

Former Member, WTO Appellate Body

Visiting Professor of Law, Georgetown University Law Center



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To Jeannie

—ATG

To Fanny

—JP

To Mitch, Ben and Daniel

—JAH

And to our trade law students, past, present, and future

Preface to Third Edition

Another four years have passed between the second and the third edition of this book. The main addition, of course, is a third author: Jennifer A. Hillman, formerly a member of the WTO Appellate Body, US International Trade Commission and General Counsel at the Office of the US Trade Representative, and now a Visiting Professor at Georgetown University Law Center. With Andrew Guzman becoming Dean Guzman at USC Gould School of Law, extra help was needed. Jennifer has been a tremendous help and source of inspiration in producing this third edition, in particular a revamp of the trade remedies chapters with new hands-on practical problems. We have updated the book with reference especially to new WTO case law. The TBT Chapter, for example, is completely re-done as in the span of just a couple of years a rich TBT jurisprudence has developed thanks to essentially three cases: *US—Clove Cigarettes*, *US—Tuna II* and *US—COOL*. Also the traditional topic of national treatment needed a substantial re-work in the wake of the influential *EC—Seals* dispute. Other post-2011 seminal cases included in this edition are: *Canada—Feed-in Tariffs*, *China—Rare Earths* and *Peru—Agricultural Products*. Other important developments incorporated in this third edition are renewed Trade Promotion Authority in the United States (granted in 2015), the conclusion of mega-regionals such as the Trans-Pacific Partnership and the 2014 WTO Trade Facilitation Agreement.

Once more, we tried our best to make all of these updates without making the book (much) longer. This means that we had to be selective and drop, or not include, certain issues or cases that some teachers may have liked to see included. This third edition also updates data and statistics on trade flows and other economic data (Chapters 1 and 20), dispute settlement (Chapter 5), trade remedy investigations and preferential trade agreements (Chapters 16 and 12), and country classifications (Chapter 22).

The third edition's cut-off date for inclusion of dispute settlement reports and other developments is October 2015.

*Joost H.B. Pauwelyn
Andrew T. Guzman
Jennifer A. Hillman*

March 2016

Preface to Second Edition

About three years have passed between the first and the second edition of this book. We thought an update was needed for several reasons. First, we wanted to take account of comments and feedback received from colleagues and students. Second, the world economy is undergoing major changes and challenges as a result of the 2008 financial crisis. The crisis has impacted trade flows and renewed pressures for protectionist policies. It has also supported the continuing rise of emerging countries in particular China who joined the WTO in 2001 (also Russia was admitted to the WTO in late 2011). Third, important new disputes have been decided at the WTO between 2009 and 2011, in particular, *China—IP Rights*, *Colombia—Ports of Entry*, *US—Cotton* retaliation proceedings, *China—Audiovisuals*, *EC—IT Products*, *EC—Aircraft*, *China—Raw Materials* and *US—AD & CVDs* as well as a series of fascinating TBT disputes still under appeal at the time of writing. Other important developments are the entry into force in the EU of the Lisbon Treaty (December 2009) and the adoption by the United States Congress of preferential trade agreements with Colombia, Panama, and Korea (October 2011). The Doha Round of WTO trade negotiations (which started at the end of 2001) has now been ongoing for over 10 years, with no end in sight.

We tried our best to make all of these updates without making the book (much) longer. This second edition also updates data and statistics on trade flows and other economic data (Chapters 1 and 20), dispute settlement (Chapter 5), trade remedy investigations and preferential trade agreements (Chapters 16 and 12), and country classifications (Chapter 22).

The second edition's cut-off date for inclusion of dispute settlement reports and other developments is December 2011.

Andrew T. Guzman
Joost H.B. Pauwelyn

February 2012

Preface to First Edition

This book offers an introduction to international trade law and, in particular, the law and agreements made at the World Trade Organization (WTO). As such, it is a book about *international* law (not about the domestic trade laws of particular countries) and, more particularly, *public* international law, that is, the rules applicable between countries (not private international law or commercial contracts between private economic operators). Throughout the book, our goal is to put this international trade law in the context of economic theory and economic policy or politics. To understand why countries conclude trade agreements and to grasp fully the reasoning behind the content and interpretation of specific trade law rules, it is crucially important to know about some trade economics and politics (see, in particular, Chapters 1-3).

We tried to combine the U.S. case law approach with core elements of the European textbook method so as to explain basic concepts and rules (with summaries and core legal provisions referenced in each chapter) and, hopefully, bring them to life through real and extensively excerpted disputes and practical problems or case studies at the end of each chapter.

The bulk of the book, once the background economics, politics, and institutional structure and history are explained (Chapter 1-4), follows the structure of the major WTO agreements: Chapters 5 and 6 explain the WTO dispute settlement system. Chapters 7 to 14 address trade in goods through the core principles and exceptions under the *General Agreement on Tariffs and Trade* (GATT): tariffs, quantitative restrictions, national treatment, most-favored nation, preferential trade agreements, and general (including environmental) exceptions. Chapters 15 to 17 address trade remedies (subsidies, dumping, and safeguards). The sensitive question of sanitary, phytosanitary, and other technical or non-tariff barriers to merchandise trade are addressed in Chapters 18 and 19. Chapters 20 and 21 move from the first pillar of the WTO (trade in goods) to the WTO's second and third pillars: trade in services (GATS) and the protection of intellectual property rights (TRIPS). The book concludes with an assessment of a cross-cutting theme: development and the WTO's treatment of developing countries (Chapter 22).

We hope that newcomers to the field will share our passion for international trade law as it touches on crucial societal questions of our times: globalization, balancing economic development with protecting health, the environment and other non-economic values, the role of the state versus market forces, etc. International trade law is specific and "legalized" enough to offer multiple employment opportunities, be it in private practice, government, international institutions, NGOs, or business. This book prepares students to be critical and effective operators in any of these functions.

Andrew T. Guzman
Joost H.B. Pauwelyn

May 2009

Acknowledgments

This book has profited greatly from the assistance of several institutions and individuals. All three of us have been teaching/practicing international trade law for a good number of years now, and the interactions, questions, and feedback from our students and colleagues have helped us a great deal in structuring and writing this book. Many of our academic colleagues used drafts of the book in their teaching, and their feedback has been invaluable. We have also benefited from our own institutions, Berkeley Law School, the Graduate Institute in Geneva, Georgetown University Law Center (GULC), and the University of Southern California Gould School of Law, which have provided financial assistance as well as other support. Of the many individuals who provided us with feedback on the book, we owe special thanks to Jeff Atik, Jeff Dunoff, Rob Howse, Greg Shaffer and Amy Kapczynski whose advice and comments were indispensable. We also wish to thank our research assistants, all of whom worked tirelessly to help us prepare the book and whose unfailing good humor helped us make it to the finish line: Miguel Burnier, Karis Gong, Luz Gonzales, Amy Hunt, Elaine Meckenstock, Facundo Perez Aznar, Sabrina Ross, Luiz Salles, and Lindsay Walter. For the third edition we benefitted a great deal from the proofreading done by the following GULC students: Gladys R. Bagasin, Shannon Togawa Mercer, Maha Munir and Claire Schachter. Writing a casebook often takes more time and energy than originally expected. This one is no exception, and has pulled us away from our families for more than one weekend. We would like to thank them for their patience. We do hope that readers will agree that the end result is worth it. We certainly tried our best to combine, among many other things, Andrew's background in economics and Joost's hands-on experience with WTO rules and disputes, Andrew's North American perspective and Joost's European outlook, and, for the third edition, Jennifer's wealth of practical experience especially as a former member of the WTO Appellate Body and the US International Trade Commission, to produce what we hope is a stimulating set of materials that trade law teachers and students all over the world may find useful and attractive.

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