

LEGAL PROBLEMS OF
**INTERNATIONAL
ECONOMIC RELATIONS**
CASES, MATERIALS AND TEXT
Fifth Edition

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

American Casebook Series®

THOMSON

WEST

LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS

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

Fifth Edition

By

John H. Jackson

*University Professor
Georgetown University Law Center*

William J. Davey

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

Alan O. Sykes, Jr.

*James and Patricia Kowal Professor of Law
Stanford University School of Law*

AMERICAN CASEBOOK SERIES®

THOMSON
—★—™
WEST

Thomson/West have created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson/West are not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series and West Group are trademarks registered in the U.S. Patent and Trademark Office.

COPYRIGHT © 1986, 1995 WEST PUBLISHING CO.

© West, a Thomson business, 2002

© 2008 Thomson/West

610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-16026-3



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



Preface to the Fifth 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 Fifth 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 85 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, SPS and Subsidies Agreements). It has been the goal of our work on the Fifth Edition to incorporate this jurisprudence into these teaching materials to the fullest extent possible and the new edition contains over 30 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 practitioner, 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 sociology, 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 devel-

oped 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."

One last note. Many non-case materials are included. In particular, documents are important, and the supplement contains the text of key documents. Most chapters contain many queries or problems, and often

these must be discussed in the context of the documents in the supplement. Consequently the class time needed for such discussion may be greater than would appear from the number of pages devoted to a topic. Often class discussion can center around the problems in the light of the material furnished, including the documents.

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
Palo Alto, California

Acknowledgments

The fifth edition of this book has built considerably on the first four, and thus we continue to be in the debt of all those who contributed so much to them. As the book evolved into its fifth 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, and the Stanford 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 Davey thanks his administrative assistant Sue Carrell, and Professor Sykes wishes to thank Stefania Fusco for invaluable research assistance.

Table of Cases

The principal cases are in bold type. Cases cited or discussed in the text are roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

Court Decisions (U.S. and European)

- Aguilar, *United States v.*, 883 F.2d 662 (9th Cir.1989), 107
- Aimcee Wholesale Corp. v. United States**, 60 C.C.P.A. 1, 468 F.2d 202 (Cust. & Pat.App.1972), 81
- Alvarez-Machain, United States v.**, 504 U.S. 655, 112 S.Ct. 2188, 119 L.Ed.2d 441 (1992), 117
- Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO v. Connally**, 337 F.Supp. 737 (D.D.C.1971), 77
- American Ass'n of Exporters and Importers-Textile and Apparel Group v. United States**, 751 F.2d 1239 (Fed. Cir.1985), 122
- American Coalition for Competitive Trade v. Clinton, 128 F.3d 761, 327 U.S.App. D.C. 27 (D.C.Cir.1997), 533
- Amministrazione delle Finanze dello Stato v. Simmenthal SpA** (106/77), 1978 WL 139253 (ECJ 1978), 152
- Arbitration Between International Thunderbird Gaming Corp., In re v. United Mexican States**, 473 F.Supp.2d 80 (D.D.C.2007), 1140
- Atlantic Sugar, Ltd. v. United States*, 6 C.I.T. 190, 573 F.Supp. 1142 (CIT 1983), 823
- Atlantic Sugar, Ltd. v. United States*, 4 C.I.T. 248, 553 F.Supp. 1055 (CIT 1982), 823
- Atlantic Sugar, Ltd. v. United States*, 2 C.I.T. 18, 519 F.Supp. 916 (CIT 1981), 823
- Azinian v. United Mexican States**, Case No. ARB(AF)/97/2, p. 1121
- Azteca Milling Co. v. United States*, 890 F.2d 1150 (Fed.Cir.1989), 419
- Baldwin-Lima-Hamilton Corp. v. Superior Court*, 208 Cal.App.2d 803, 25 Cal.Rptr. 798 (Cal.App. 1 Dist.1962), 249
- Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), 113
- Belmont, United States v.**, 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134 (1937), 111
- Bethlehem Steel Corp. v. Board of Commissioners*, 276 Cal.App.2d 221, 80 Cal. Rptr. 800 (Cal.App. 2 Dist.1969), 134, 249
- BMT Commodity Corp. v. United States*, 11 C.I.T. 524, 667 F.Supp. 880 (CIT 1987), 816
- Boesch v. Graff*, 133 U.S. 697, 10 S.Ct. 378, 33 L.Ed. 787 (1890), 1039
- Bratsk Aluminium Smelter v. United States*, 444 F.3d 1369 (Fed.Cir.2006), 847
- British Steel Corp. v. United States**, 10 C.I.T. 224, 632 F.Supp. 59 (CIT 1986), 924
- Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 113 S.Ct. 2578, 125 L.Ed.2d 168 (1993), 761, 762
- Brunner v. European Union Treaty*, [1994] 1 CMLR 57, p. 155
- Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), 118
- Chicago & Southern Air Lines v. Waterman S.S. Corp.**, 333 U.S. 103, 68 S.Ct. 431, 92 L.Ed. 568 (1948), 114
- Commission v. ——— (see opposing party)**
- Conair Corp. v. United States**, Court of Int'l Trade, Slip Op. 05-95 (2005), 398
- Consumers Union of United States, Inc. v. Kissinger**, 506 F.2d 136, 165 U.S.App.D.C. 75 (D.C.Cir.1974), 74

- Container Corp. of America v. Franchise Tax Bd.**, 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545 (1983), 139
- Crosby v. National Foreign Trade Council**, 530 U.S. 363, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000), 127
- Curtiss-Wright Export Corporation, United States v.**, 299 U.S. 304, 57 S.Ct. 216, 81 L.Ed. 255 (1936), 67
- Dames & Moore v. Regan**, 453 U.S. 654, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981), 72
- Diggs v. Richardson**, 555 F.2d 848, 180 U.S.App.D.C. 376 (D.C.Cir.1976), 110
- E.C. McAfee Co. v. United States**, 842 F.2d 314 (Fed.Cir.1988), 410
- E.I. Du Pont de Nemours Inc. v. Commissioners of Customs & Excise**, Case 234/81, [1982] ECR 3515, p. 401
- Federal Energy Administration v. Algonquin SNG, Inc.**, 426 U.S. 548, 96 S.Ct. 2295, 49 L.Ed.2d 49 (1976), 81
- Federal Trade Commission v. Gratz**, 253 U.S. 421, 40 S.Ct. 572, 64 L.Ed. 993 (1920), 118
- F.F. Zuniga v. United States**, 996 F.2d 1203 (Fed.Cir.1993), 419
- FIAMM v. Council**, T69-00, Court of First Instance Judgment of Dec. 14, 2005, p. 167
- Footwear Distributors and Retailers of America v. United States**, 18 C.I.T. 391, 852 F.Supp. 1078 (CIT 1994), 250
- Ford Motor Co., United States v.**, 463 F.3d 1267 (Fed.Cir.2006), 410
- Former Employees of Computer Sciences Corp. v. United States Secretary of Labor**, 366 F.Supp.2d 1365 (CIT 2005), 748
- Francovich v. Italy**, Case C-6/90, [1991] ECR I-5357, p. 154
- F.T.S. International BV v. Belastingdienst-Douane West**, Case C-310/06, Judgment of July 18, 2007, p. 167
- Garcia v. San Antonio Metropolitan Transit Authority**, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), 125
- Generra Sportswear Co. v. United States**, 905 F.2d 377 (Fed.Cir.1990), 408
- Gerald Metals, Inc. v. United States**, 132 F.3d 716 (Fed.Cir.1997), 842
- Gerling Global Reinsurance Corp. of America v. Low**, 240 F.3d 739 (9th Cir.2001), 135
- Getz Bros. & Co., United States v.**, 55 C.C.P.A. 11 (Cust. & Pat.App.1967), 410
- Goss Intl. Corp. v. Man Roland Druckmaschinen AG**, 491 F.3d 355 (8th Cir.2007), 804
- Goss Intl. Corp. v. Tokyo Kikai Seisakusho, Ltd.**, 321 F.Supp.2d 1039 (N.D.Iowa 2004), 804
- Griffin v. Keystone Mushroom Farm, Inc.**, 453 F.Supp. 1283 (E.D.Pa.1978), 1039
- Guy W. Capps, Inc., United States v.**, 204 F.2d 655 (4th Cir.1953), 73
- Haig v. Agee**, 453 U.S. 280, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981), 116
- Hamdi v. Rumsfeld**, 542 U.S. 507, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004), 61
- Hauptzollamt Mainz v. C.A. Kupferberg & Cie., Case 104/81**, [1982] ECR 3641, p. 164
- Hines v. Davidowitz**, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941), 134
- Humboldt v. Directeur des Services Fiscaux**, Case 112/84, [1985] ECR 1367, p. 562
- Ikea Wholesale Ltd. v. Commissioner of Customs and Excise**, Case C-351/04, Judgment of Sept. 27, 2007, p. 167
- Import of a Compact Disc Player**, In re, [1993] 1 CMLR 780 (Case VII K 2/91, Bundes-finanzhof, June 2, 1992), 403
- In re (see name of party)**
- I.N.S. v. Cardoza-Fonseca**, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987), 119
- I.N.S. v. Chadha**, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983), 78
- International Fruit Co. v. Produktschap**, Cases 21-24/72, [1972] ECR 1219, p. 164
- International Labor Rights Educ. and Research Fund v. Bush**, 752 F.Supp. 495 (D.D.C.1990), 1163
- Itel Containers Intern. Corp. v. Huddleston**, 507 U.S. 60, 113 S.Ct. 1095, 122 L.Ed.2d 421 (1993), 139
- Japan Line, Ltd. v. Los Angeles County**, 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336 (1979), 139
- J.W. Hampton, Jr., & Co. v. United States**, 276 U.S. 394, 48 S.Ct. 348, 72 L.Ed. 624 (1928), 78
- Katunich v. Donovan**, 8 C.I.T. 156, 594 F.Supp. 744 (CIT 1984), 122
- K Mart Corp. v. Cartier, Inc.**, 486 U.S. 281, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988), 119, 1039
- Koru North America v. United States**, 12 C.I.T. 1120, 701 F.Supp. 229 (CIT 1988), 420
- K.S.B. Technical Sales Corp. v. North Jersey Dist. Water Supply Commission of State of New Jersey**, 75 N.J. 272, 381 A.2d 774 (N.J.1977), 140
- Leon van Parys NV v. BIRB**, Case C-377/02, [2005] ECR I-1465, p. 166

- Lever Bros. Co. v. United States*, 981 F.2d 1330, 299 U.S.App.D.C. 128 (D.C.Cir. 1993), 1048
- Locke, United States v.*, 529 U.S. 89, 120 S.Ct. 1135, 146 L.Ed.2d 69 (2000), 135
- Lucchino v. Brazil**, 82 Pa.Cmwlth. 406, 476 A.2d 1369 (Pa.Cmwlth.1984), 140
- Made in the USA Foundation v. United States*, 242 F.3d 1300 (11th Cir.2001), 99
- Maple Leaf Fish Co. v. United States**, 762 F.2d 86 (Fed.Cir.1985), 121, 697, 698
- Marshall Field & Co. v. Clark*, 143 U.S. 649, 12 S.Ct. 495, 36 L.Ed. 294 (1892), 78
- Marubeni America Corp. v. United States*, 17 C.I.T. 360, 821 F.Supp. 1521 (CIT 1993), 403
- Mast Industries, Inc. v. Regan*, 8 C.I.T. 214, 596 F.Supp. 1567 (CIT 1984), 82
- Mead Corp., United States v.*, 533 U.S. 218, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001), 401
- Medellin v. Texas*, — U.S. —, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008), 106
- Merck Genericos v. Merck & Co.*, Case C-431/05, Judgment of Sept. 11, 2007, p. 166
- Metalclad Corp. v. United Mexican States**, 40 I.L.M. 36 (2001), 1128
- Michelin Tire Corp. v. Wages**, 423 U.S. 276, 96 S.Ct. 535, 46 L.Ed.2d 495 (1976), 140
- Mississippi Poultry Ass'n, Inc. v. Madigan*, 992 F.2d 1359 (5th Cir.1993), 250
- Missouri, State of v. Holland**, 252 U.S. 416, 40 S.Ct. 382, 64 L.Ed. 641 (1920), 111, 126
- Murray v. Charming Betsy, The*, 6 U.S. 64, 2 L.Ed. 208 (1804), 108
- National Council for Indus. Defense, Inc. v. United States*, 827 F.Supp. 794 (D.D.C. 1993), 533
- National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir.1999), 131
- National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), 125
- New York v. United States**, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), 125
- Nissho Iwai American Corp. v. United States*, 982 F.2d 505 (Fed.Cir.1992), 410
- N.L.R.B. v. United Food and Commercial Workers Union, Local 23, AFL-CIO*, 484 U.S. 112, 108 S.Ct. 413, 98 L.Ed.2d 429 (1987), 119
- Ospig Textilgesellschaft KG W. Alhers v. Hauptzollamt Bremen—Ost*, Case 7/83, [1984] ECR 609, p. 410
- Palestine Liberation Organization, United States v.*, 695 F.Supp. 1456 (S.D.N.Y. 1988), 111
- Petrotub SA v. Council*, Case 76/00, [2003] ECR I-79, p. 167
- Pink, United States v.*, 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942), 112, 134
- Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992), 196
- Polydor Ltd. v. Harlequin Records Shop Ltd.*, Case 270/80, [1982] ECR 329, p. 164
- Portland Pipe Line Corp. v. Environmental Improvement Commission**, 307 A.2d 1 (Me.1973), 138
- Portuguese Republic v. Council**, Case C-149/96, [1998] ECR I-7379, p. 164
- Power Authority of New York v. Federal Power Commission*, 247 F.2d 538, 101 U.S.App.D.C. 132 (D.C.Cir.1957), 111
- Public Citizen v. USTR*, 5 F.3d 549, 303 U.S.App.D.C. 297 (D.C.Cir.1993), 82
- Queen v. ——— (see opposing party)**
- Regan v. Wald*, 468 U.S. 222, 104 S.Ct. 3026, 82 L.Ed.2d 171 (1984), 80
- Reid v. Covert*, 354 U.S. 1, 77 S.Ct. 1222, 1 L.Ed.2d 1148 (1957), 111
- R.J. Reynolds Tobacco Co. v. Durham County, North Carolina**, 479 U.S. 130, 107 S.Ct. 499, 93 L.Ed.2d 449 (1986), 139
- Robel, United States v.*, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967), 77
- Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), 196
- SA CNL-SUCAL NV v. HAG GF AG*, Case C-10/89, [1990] ECR I-3711, p. 196
- Satellite Broadcasting and Communications Ass'n of America v. Oman*, 17-F.3d 344 (11th Cir.1994), 119
- Schieving-Nijstad v. Groeneveld*, Case C-89-99, [2001] ECR I-5851, p. 167
- Schmidt Pritchard & Co, United States v.**, 47 C.C.P.A. 152 (Cust. & Pat.App. 1960), 81
- Secretary of State for Transport ex parte Factortame Ltd., Queen v.*, Case C-213/89, [1990] ECR I-2433, p. 154
- Sei Fujii v. State*, 38 Cal.2d 718, 242 P.2d 617 (Cal.1952), 105
- Skandalis v. Rowe*, 14 F.3d 173 (2nd Cir. 1994), 119
- South-Central Timber Development, Inc. v. Wunnicke**, 467 U.S. 82, 104 S.Ct. 2237, 81 L.Ed.2d 71 (1984), 140
- Stainless Steel and Alloy Tool Steel (U.S.Intern.Trade Com'n 1976)*, 708

- Star Industries, Inc., United States v., 59 C.C.P.A. 159, 462 F.2d 557 (Cust. & Pat.App.1972), 389
- State of (see name of state)**
- Stewart-Warner Corp. v. United States, 748 F.2d 663 (Fed.Cir.1984), 404
- Superior Wire v. United States**, 11 C.I.T. 608, 669 F.Supp. 472 (CIT 1987), 414
- Suramerica de Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660 (Fed.Cir. 1992), 249
- Swearingen v. United States, 565 F.Supp. 1019 (D.Colo.1983), 110
- Sweet Home Chapter of Communities for a Great Oregon v. Babbitt, 17 F.3d 1463, 305 U.S.App.D.C. 110 (D.C.Cir.1994), 119
- Territory of Hawaii v. Ho**, 41 Hawai'i 565 (Hawai'i Terr.1957), 249, 584
- The Over the Top, 5 F.2d 838 (D.Conn. 1925), 107
- Trojan Technologies, Inc. v. Pennsylvania**, 916 F.2d 903 (3rd Cir.1990), 140
- Tupman Thurlow Company v. Moss**, 252 F.Supp. 641 (M.D.Tenn.1966), 136
- United Kingdom (Marks of Origin), Commission v., Case 207/83, [1985] ECR 1201, p. 585
- United Mexican States v. Metalclad Corp., 2001 WL 449916 (B.C. S.C.2001), 1143
- United States v. _____ (see opposing party)**
- Van Duyn v. Home Office, Case 41/74, [1974] ECR 1337, p. 154
- Van Gend & Loos v. Nederlandse Administratie der Belastingen (26/62)**, 1963 WL 20500 (ECJ 1963), 151
- Xerox Corp. v. Harris County, Texas**, 459 U.S. 145, 103 S.Ct. 523, 74 L.Ed.2d 323 (1982), 139
- Yoshida Intern., Inc., United States v.**, 63 C.C.P.A. 15, 526 F.2d 560 (Cust. & Pat.App.1975), 81, 249
- Youngstown Sheet & Tube Co. v. Sawyer**, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952), 71
- Zenith Radio Corp. v. United States**, 437 U.S. 443, 98 S.Ct. 2441, 57 L.Ed.2d 337 (1978), 81

Table of WTO Decisions

(with Short Names and Full Cites)

(Principal cases are in bold)

Note: For the complete WTO document identifier, add to the document number “/R” for the panel report and “/AB/R” for the Appellate Body report. For compliance reports, add “W” to the foregoing for the first compliance reports and “W2” for the second.

Short Name	Full Case Title and Citation	Pages
Argentina—Footwear (EC)	Argentina—Safeguard Measures on Imports of Footwear , WT/DS121, adopted 12 January 2000	705, 718, 722
Argentina—Hides and Leather	Argentina—Measures Affecting the Export of Bovine Hides and Import of Finished Leather, WT/DS155 and Corr.1, adopted 16 February 2001	463
Argentina—Poultry Anti-Dumping Duties	Argentina—Definitive Anti-Dumping Duties on Poultry from Brazil, WT/DS241, adopted 19 May 2003	517
Australia—Automotive Leather II (Article 21.5—US)	Australia—Subsidies Provided to Producers and Exporters of Automotive Leather—Recourse to Article 21.5 of the DSU by the United States, WT/DS126, adopted 11 February 2000	906
Australia—Salmon	Australia—Measures Affecting Importation of Salmon, WT/DS18, adopted 6 November 1998	284, 332, 667
Brazil—Aircraft	Brazil—Export Financing Programme for Aircraft , WT/DS46, adopted 20 August 1999	284, 365, 888
Brazil—Aircraft (Article 21.5—Canada) I & II	Brazil—Export Financing Programme for Aircraft—Recourse by Canada to Article 21.5 of the DSU, WT/DS46, adopted 4 August 2000 and 23 August 2001	894
Brazil—Retreaded Tyres	Brazil—Measures Affecting Imports of Retreaded Tyres, WT/DS332, adopted 17 December 2007	599, 627, 643
Canada—Aircraft	Canada—Measures Affecting the Export of Civilian Aircraft , WT/DS70, adopted 20 August 1999	284, 365, 858
Canada—Aircraft (Article 21.5—Brazil)	Canada—Measures Affecting the Export of Civilian Aircraft—Recourse by Brazil to Article 21.5 of the DSU , WT/DS70, adopted 4 August 2000	305, 884, 894
Canada—Aircraft Credits and Guarantees	Canada—Export Credits and Loan Guarantees for Regional Aircraft, WT/DS222, adopted 19 February 2002	894
Canada—Aircraft Credits and Guarantees (Article 22.6—Canada)	Decision by the Arbitrators, Canada—Export Credits and Loan Guarantees for Regional Aircraft, WT/DS222/ARB, 17 February 2003	365
Canada—Autos	Canada—Certain Measures Affecting the Automotive Industry , WT/DS139, adopted 19 June 2000	483, 489, 515, 904, 959
Canada—Dairy	Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products, WT/DS103, adopted 27 October 1999	284, 384, 442, 907
Canada—Patent Term	Canada—Term of Patent Protection, WT/DS170, adopted 12 October 2000	1007
Canada—Periodicals	Canada—Certain Measures Concerning Periodicals , WT/DS31, adopted 30 July 1997	320, 966
Canada—Pharmaceutical Patents	Canada—Patent Protection of Pharmaceutical Products , WT/DS114, adopted 7 April 2000	1107, 1034
Canada—Wheat Board	Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain , WT/DS276, adopted 27 September 2004	449
Chile—Alcoholic Beverages	Chile—Taxes on Alcoholic Beverages, WT/DS87, adopted 12 January 2000	561
Chile—Price Band System	Chile—Price Band System and Safeguard Measures Relating to Certain Agricultural Products , WT/DS207, adopted 23 October 2002	284, 436
Dominican Republic—Import and Sale of Cigarettes	Dominican Republic—Measures Affecting the Importation and Internal Sale of Cigarettes, WT/DS302, adopted 19 May 2005	583, 605
EC—Approval and Marketing of Biotech Products	European Communities—Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291, adopted 21 November 2006	668

Short Name	Full Case Title and Citation	Pages
EC—Asbestos	European Communities—Measures Affecting Asbestos and Asbestos-Containing Products , WT/DS135, adopted 5 April 2001	298, 325, 335, 565, 583, 593, 643, 688
EC—Bananas (III)	European Communities—Regime for the Importation, Sale and Distribution of Bananas , WT/DS27, adopted 25 September 1997	279, 280, 281, 284, 320, 328, 349, 386, 476, 963
EC—Bananas III (Ecuador) (Article 22.6—EC)	Decision by the Arbitrators, European Communities—Regime for the Importation, Sale and Distribution of Bananas (Ecuador) , WT/DS27/ARB/ECU, 24 March 2000	366
EC—Bananas III (US) (Article 22.6—EC)	Decision by the Arbitrators, European Communities—Regime for the Importation, Sale and Distribution of Bananas (US) , WT/DS27/ARB, 9 April 1999	349, 365
EC—Bed Linen	European Communities—Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India , WT/DS141, adopted 12 March 2001	824
EC—Chicken Cuts	European Communities—Customs Classification of Frozen Boneless Chicken Cuts , WT/DS269, adopted 27 September 2005	307
EC—Commercial Vessels	European Communities—Measures Affecting Trade in Commercial Vessels , WT/DS301, adopted 20 June 2005	341
EC—Computer Equipment	European Communities—Customs Classification of Certain Computer Equipment , WT/DS62, adopted 22 June 1998	384
EC—Hormones	EC Measures Concerning Meat and Meat Products (Hormones) , WT/DS26, adopted 13 February 1998	271, 279, 280, 281, 284, 323, 324, 350, 598, 654
EC—Hormones (US) (Article 22.6—EC)	Decision by the Arbitrators, European Communities—Measures Concerning Meat and Meat Products (Hormones) , WT/DS26/ARB, 12 July 1999	365
EC—Salmon (Norway)	European Communities—Anti-Dumping Measure on Farmed Salmon from Norway , WT/DS337, adopted 15 January 2008	789
EC—Sardines	European Communities—Trade Description of Sardines , WT/DS231, adopted 23 October 2002	670
EC—Selected Customs Matters	European Communities—Selected Customs Matters , WT/DS315/AB/R, adopted 11 December 2006	459
EC—Sugar	European Communities—Export Subsidies on Sugar , WT/DS265, adopted 19 May 2005	321, 443
EC—Tariff Preferences	European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries , WT/DS246, adopted 20 April 2004	1160, 1163
EC—Trademarks and Geographical Indications	Panel Report, European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Food-stuffs , WT/DS290/R, adopted 20 April 2005	1035
Egypt—Steel Rebar	Egypt—Definitive Anti-Dumping Measures on Steel Rebar from Turkey , WT/DS211, adopted 1 October 2002	842
Guatemala—Cement II	Guatemala—Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico , WT/DS156, adopted 17 November 2000	789, 824
India—Patents (US)	India—Patent Protection for Pharmaceutical and Agricultural Chemical Products , WT/DS50, adopted 16 January 1998	1007
India—Quantitative Restrictions	India—Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products , WT/DS90, adopted 22 September 1999	279, 281, 429, 1103
Indonesia—Autos	Indonesia—Certain Measures Affecting the Automobile Industry , WT/DS54, adopted 23 July 1998	320, 488, 908, 1112
Japan—Agricultural Products II	Japan—Measures Affecting Agricultural Products , WT/DS76, adopted 19 March 1999	459, 666
Japan—Alcoholic Beverages II	Japan—Taxes on Alcoholic Beverages , WT/DS8, adopted 1 November 1996	552, 578
Japan—Apples	Japan—Measures Affecting the Importation of Apples , WT/DS245, adopted 10 December 2003	284
Japan—Film	Japan—Measures Affecting Consumer Photographic Film and Paper , WT/DS44, adopted 22 April 1998	279, 291, 306, 585
Korea—Alcoholic Beverages	Korea—Taxes on Alcoholic Beverages , WT/DS75, adopted 17 February 1999	561
Korea—Beef	Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef , WT/DS161, adopted 10 January 2001	579, 601
Korea—Procurement	Korea—Measures Affecting Government Procurement , WT/DS163, adopted 19 June 2000	297, 589
Mexico—Taxes on Soft Drinks	Mexico—Tax Measures on Soft Drinks and Other Beverages , WT/DS308, adopted 24 March 2006	517, 605

TABLE OF WTO DECISIONS

xliii

Short Name	Full Case Title and Citation	Pages
Mexico—Telecoms	Mexico—Measures Affecting Telecommunications Services, WT/DS204, adopted 1 June 2004	970
Thailand—H-Beams	Thailand—Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland, WT/DS122, adopted 5 April 2001	824
Turkey—Rice	Turkey—Measures Affecting the Importation of Rice, WT/DS334, adopted 22 October 2007	443
Turkey—Textiles	Turkey—Restrictions on Imports of Textile and Clothing Products , WT/DS34, adopted 19 November 1999	279, 281, 506 , 746
US—1916 Act	United States—Anti-Dumping Act of 1916, WT/DS136, adopted 26 September 2000	284, 365, 804
US—Carbon Steel	United States—Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany, WT/DS213, adopted 19 December 2002	779
US—Certain EC Products	United States—Import Measures on Certain Products from the European Communities, WT/DS165, adopted 10 January 2001	350
US—Continued Suspension	United States—Continued Suspension of Obligations in the EC—Hormones Dispute, WT/DS320 (on appeal as of June 2008)	669
US—Copyright	United States—Section 110(5) of the US Copyright Act , WT/DS160, adopted 27 July 2000	284, 1031
US—Cotton	United States—Subsidies on Upland Cotton, WT/DS267, adopted 21 March 2005	321, 442, 907, 921
US—Cotton (Article 21.5—Brazil)	United States—Subsidies on Upland Cotton—Recourse to Article 21.5 of the DSU by Brazil, WT/DS267, adopted [24 June 2008]	907
US—Countervailing Measures on Certain EC Products	United States—Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212, adopted 8 January 2003	284
US—Export Restraints	United States—Measures Treating Exports Restraints as Subsidies, WT/DS194, adopted 23 August 2001	862
US—FSC	United States—Tax Treatment for “Foreign Sales Corporations” , WT/DS108, adopted 20 March 2000	279, 280, 281, 284, 895
US—FSC (Article 21.5—EC) I & II	United States—Tax Treatment for “Foreign Sales Corporations”—Recourse to Article 21.5 of the DSU by the European Communities, WT/DS108, adopted 29 January 2002 and 14 March 2006	903, 904
US—FSC (Article 22.6—US)	Decision by the Arbitrator, United States—Tax Treatment for “Foreign Sales Corporations”, WT/DS108/ARB, 30 August 2002	365
US—Gambling	United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services , WT/DS285, adopted 20 April 2005	365, 366, 592, 599, 636, 972
US—Gambling (Article 21.5—Antigua and Barbuda)	United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services—Recourse to Article 21.5 of the DSU by Antigua and Barbuda, WT/DS285, adopted 22 May 2007	990
US—Gambling (Article 22.6—US)	Decision by the Arbitrator, United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services , WT/DS285/ARB, 21 December 2007	350 , 991
US—Gasoline	United States—Standards for Reformulated and Conventional Gasoline , WT/DS2, adopted 20 May 1996	280, 281, 315, 592, 606 , 626, 643
US—Helms Burton	United States—The Cuban Liberty and Democratic Solidarity Act, WT/DS39 (settled)	279
US—Hot-Rolled Steel	United States—Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184, adopted 23 August 2001	463, 778, 840
US—Lamb	United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia , WT/DS177, adopted 16 May 2001	325, 700 , 712 , 720, 727 , 742
US—Lead and Bismuth II	United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom , WT/DS138, adopted 7 June 2000	335, 862
US—OCTG Sunset Reviews	United States—Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268, adopted 17 December 2004	789
US—Offset Act (Byrd Amendment)	United States—Continued Dumping and Subsidy Offset Act of 2000 , WT/DS217, adopted 27 January 2003	284, 365, 804
US—Procurement	United States—Measure Affecting Government Procurement, WT/DS88 (settled)	589
US—Section 211 Appropriations Act	United States—Section 211 Omnibus Appropriations Act of 1998, WT/DS176, adopted 1 February 2002	1035
US—Section 301 Trade Act	United States—Sections 301–310 of the Trade Act of 1974, WT/DS152, adopted 27 January 2000	279, 304, 341
US—Shrimp	United States—Import Prohibition of Certain Shrimp and Shrimp Products , WT/DS58, adopted 6 November 1998	279, 281, 315, 335, 462, 592,

Short Name	Full Case Title and Citation	Pages
		612, 613, 614 , 638, 643
US—Shrimp (Article 21.5—Malaysia)	United States—Import Prohibition of Certain Shrimp and Shrimp Products—Recourse to Article 21.5 of the DSU by Malaysia , WT/DS58, adopted 21 November 2001	625
US—Softwood Lumber IV	United States—Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada , WT/DS257, adopted 17 February 2004	868
US—Stainless Steel	United States—Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179, adopted 1 February 2001	462
US—Stainless Steel (Mexico)	United States—Final Anti-Dumping Measures on Stainless Steel from Mexico , WT/DS344, adopted 20 May 2008	315
US—Steel Safeguards	United States—Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DS248, adopted 10 December 2003	704
US—Underwear	United States—Restrictions on Imports of Cotton and Man-made Fibre Underwear, WT/DS24, adopted 25 February 1997	458
US—Wheat Gluten	United States—Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities , WT/DS166, adopted 19 January 2001	515, 720, 743
US—Zeroing (Japan)	United States—Measures Relating to Zeroing and Sunset Reviews , WT/DS322, adopted 23 January 2007	301 , 318, 319, 790

Table of GATT, NAFTA and CUSFTA Decisions

(Principal cases are in bold)

GATT DECISIONS

Australian Subsidy on Ammonium Sulphate, 299

Belgian Family Allowances, 578

Canada—Administration of the Foreign Investment Review Act, 429, 431, 454, 1112, 1120

Canada—Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Authorities, 454, 455

Canada—Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Authorities, 454, 455

DISC—United States Tax Legislation, 277, 903

EEC—Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil, 789

EEC—Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins, 298

EEC—Regulation on Imports of Parts and Components, 785

Greek Increase in Bound Duty, 385

Hatters' Fur Case, 737, 742

Italian Discrimination Against Imported Agricultural Machinery, 540, 550, 565, 883

Japan—Tariff on Import of Spruce-Pine-Fir (SPF) Dimension Lumber, 385, 477, 481, 552

Japan—Restrictions on Imports of Certain Agricultural Products, 455

Japan—Trade in Semi-conductors, 306, 424, 432, 586

New Zealand—Imports of Electrical Transformers from Finland, 369

Norway—Procurement of Toll Collection Equipment for the City of Trondheim, 367, 588

Spain—Tariff Treatment of Unroasted Coffee, 385, 479, 481, 552

Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes, 550, 598

Treatment by Germany of Imports of Sardines, 299, 385, 481

United States—Customs User Fee, 386, 391

United States—Denial of Most-Favoured-Nation Treatment as to Non-Rubber Footwear from Brazil, 489

United States—Imports of Certain Automotive Springs Assemblies, 550

United States—Imports of Sugar from Nicaragua, 1081

United States—Imposition of Anti-Dumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway, 789

United States—Measures Affecting Alcoholic and Malt Beverages, 550, 560, 564

United States—Measures Affecting the Importation, Internal Sale and Use of Tobacco, 303

United States—Restrictions on Imports of Sugar, 386

United States—Restrictions on Imports of Tuna (EC), 614, 638

United States—Restrictions on Imports of Tuna (Mexico), 614, 638

United States—Section 337 of the Tariff Act of 1930, p. 543, 565

United States—Taxes on Automobiles, 560, 563

United States—Taxes on Petroleum and Certain Imported Substances, 287, 563

United States Trade Embargo Against Nicaragua, 1081

Uruguayan Recourse to Article XXIII, 286, 336

NAFTA AND RELATED DECISIONS

Azinian v. United Mexican States, 1121

Cross-Border Trucking Services, Matter of, 956