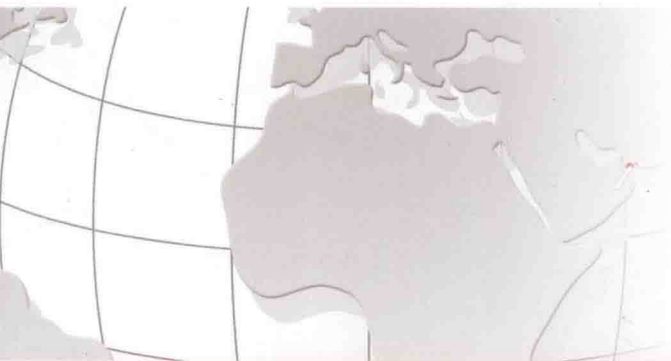


高等院校法学专业双语教材



International Economic Law

国际经济法

(英文版)

盛建明 编著



对外经济贸易大学出版社
University of International Business and Economics Press

高等院校法学专业双语教材

对外经济贸易大学“211工程”二期学术成果

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中国·北京

图书在版编目 (CIP) 数据

国际经济法: 英文 / 盛建明编著. —北京: 对外
经济贸易大学出版社, 2017. 4
高等院校法学专业双语教材
ISBN 978-7-5663-1752-0

I. ①国… II. ①盛… III. ①国际经济法-双语教学
-高等学校-教材-英文 IV. ①D996

中国版本图书馆 CIP 数据核字 (2017) 第 043700 号

© 2017 年 对外经济贸易大学出版社出版发行

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国际经济法 (英文版) International Economic Law

盛建明 编著

责任编辑: 王 煜 陈路林

对外经济贸易大学出版社

北京市朝阳区惠新东街 10 号 邮政编码: 100029

邮购电话: 010-64492338 发行部电话: 010-64492342

网址: <http://www.uibep.com> E-mail: uibep@126.com

北京华创印务有限公司印装 新华书店经销

成品尺寸: 185mm×260mm 33.5 印张 774 千字

2017 年 4 月北京第 1 版 2017 年 4 月第 1 次印刷

ISBN 978-7-5663-1752-0

印数: 0 001-3 000 册 定价: 69.00 元

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在华为工作期间，作者与中外团队成员一起，参与了华为技术有限公司全球贸易风险地图的编制，并负责对与华为全球或区域业务强相关的主要贸易协定的跟踪研究，从而为华为贸易合规体系的构建和完善以及华为贸易政策形象建设作出了重大贡献。

在对外经济贸易大学任教期间，主要讲授课程有：国际经济法、反倾销法、贸易管制法和国际税法等。2005 年荣获对外经济贸易大学首届青年教师基本功大奖赛冠军和最佳教案奖。

主要学术专著有：1994 年出版的《反倾销国际惯例》是我国关于介绍和研究反倾销法的最早的专著之一；2000 完成美国证券评级机构的法律责任的系统深入的研究，并通过博士论文答辩，于 2005 年以笔名盛世平出版《美国法上证券评级机构的法律责任》，该书研究成果若以完成时间算起，比西方学者由 2008 年全球金融海啸引发的对证券评级机构责任问题的研究成果要早 8 年，即便从出版日期算起，也要早发表 3 至 4 年，因此被我国法学界前辈沈达明教授誉为填补该领域世界学术空白之作。

此外，作者近年来在《中国法学》、《法学杂志》、《国际贸易问题》、《国际贸易》等刊物发表了关于国际经济法，特别是 WTO 法的一系列文章。

作者曾于 2003 年受商务部委托，完成了多哈回合贸易规则美国谈判立场的科研项目，并在此基础上为我国政府提交了两份代表我国政府在贸易规则谈判方面立场的两份英文提案草案，一份题为《关于反倾销调查中因果关系确定原则的澄清》，另一份题为《关于延长绿灯补贴之提案》。此外，在中国政府参加的第一起利用 WTO 争端解决机制保护我国贸易利益的案件，即美国 201 钢铁保障措施案件中，作者作为环中律师事务所律师负责起草的关于“中国应享有发展中国家待遇”的 2 万余字英文材料，体现了其深厚的贸易法功底，此案最后以包括中国在内的全体申诉方的胜诉而告终。

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前 言

在波澜壮阔的经济全球化进程中，以改革开放为基本国策的当今中国亟需大量的具有国际情怀和全球视野的高素质法律精英人才。这里的高素质的含义之一，就是指这些人才必须具有复合型人才的特质，即法律专业基础知识扎实、外经外贸业务技能过硬、至少一门外语本领高强。对外经济贸易大学法学院将这种复合型法律人才称为“三会”人才，并一直以培育此种法律精英为己任，多年以来可谓成绩斐然。

呈现在您眼前的这本书，正是本人任教多年的对外经济贸易大学法学院一贯倡导的“三会”人才培养理念感召和浸润的结晶，也是本人践行此种理念的有形载体之一。从大的背景上来说，这本探索型的英文教材是改革开放日益向纵深推进的当今中国渴求越来越多的国际化法律人才这一社会需要的产物。

从个人角度而言，呈现在您眼前的这本书，当然也是本人 26 年法律理论与实践、教学与科研的融合与提炼，是本人“路漫漫其修远兮”孜孜不倦探索国际经济法最佳教学实践的总结与概括，更是本人创新法学教材之雄心壮志在历经横跨两个世纪的两个十年之后如愿以偿的集中体现。

作为曾经在法学教育一线工作多年的一名普通教师，我个人一直认为，法学教材，尤其是国际经济法教材，应该与时俱进。在经济全球化进程不断加速和深入的今天，在改革开放不断深入和扩大的中国，在以培养国际经济法律高层次人才为己任的高等教育教学过程中，国际经济法这门课程的重要性更是显而易见。也正因如此，国际经济法已被教育部列为全国高等学校法学专业核心课程之一。然而，问题在于，现有的国际经济法教材，几乎全部将公法和私法内容混杂在一起；与此同时，相当多的高校的国际贸易专业或国际法专业已将国际经济法的私法部分开设成一门单独的课程（如国际商法等）。于是，这些院校的国际经济法教师在教材选用方面就面临一个难题，即一方面，学校由于本科教学评估等因素，要求教师选用统编教材；另一方面，统编教材无法满足教师和学生需求，后者很难买到一本与其国际商法教材内容不重复或重复内容较少，并且公法部分内容更为突出和更加充实的国际经济法教材。可以说，将国际经济法的公法部分单独编成教材，业已成为许多高等院校法学专业广大师生的共同的迫切愿望。因此，在本教材中，我尝试着在内容上更加突出强调各国政府管理或合作管理国际贸易、投资和金融活动的法律规则，从而使本教材在国际经贸投资和金融方面的国际公法和国内公法的内容更加丰满和充实，希望以此为国际经济法教材的不断发展和完善尽绵薄之力。

众所周知，国际经济法与国际商法之间最大的分野，在于其涵盖的法律问题和法律规则内涵的不同。国际经济法涵盖的法律问题，大多是与国际组织和各国政府对跨境经济交易活动的监管或规制相关的法律问题（regulation-related legal issues or regulatory

issues), 因此构成国际经济法主体部分的法律规则, 乃是具有纵向性质和规制导向的公法规则 (rules of public laws); 而国际商法涵盖的法律问题, 大多是与跨境经济交易活动本身相关的法律问题 (transaction-related legal issues or commercial issues), 因此构成国际商法主体部分的法律规则, 乃是具有横向性质和交易导向的国际商事交易的私法规则 (rules of private laws)。因此, 在国际经济法领域, 商事主体在因政府机构对跨境贸易、跨境投资和跨境金融活动的监管行为而引发纠纷时, 尽管也可以采用诉讼、仲裁等“打官司”的办法予以求解决, 但更多的还是采用公关游说、协商妥协等方法予以化解, 打官司乃是到了迫不得已的时候最后考虑采用的争议解决之道。这就与国际商法领域的跨境商事动辄付诸诉讼和仲裁等争议解决方法形成了鲜明的对比。华为政府事务部的工作经历告诉我, 国际经济法与国际商法的分野, 也是跨国公司在内部设立法务部之外, 还要设立政府事务部的原因。猎头公司之所以把本人从对外经济贸易大学挖到华为全球政府事务部而非华为法务部工作, 可能也与本人长期在国际经济法领域对于跨境经济活动监管性法律规则的专注研究工作和丰硕成果相关。

国际经济法的教学离不开实践的启发和提升。在 26 年的漫长教学生涯中, 本人一直十分注意将个人的实务经验融会贯通在授课过程中。比如, 本人多次代表国内产业成功申请反倾销调查并获得良好业绩的执业经历, 本人受政府委托, 亲身参加中国第一起利用 WTO 争端解决机制解决由美国 201 全球钢铁保障措施引发的贸易纠纷, 本人作为受商务部委托部分承担 WTO 多哈回合贸易规则谈判课题和担任反倾销调查案的法律专家的独特经验, 本人以对外经济贸易大学法学教授身份参加各种国际活动并为中国利益呐喊的有趣介绍, 均是学生在课堂上百听不厌、在离开学校后仍然受益无穷的精彩实务内容, 而这些正都是本书的精华之所在。

笔者一直认为, 对于任何学科的学生而言, 兴趣乃学有所成的最大动力, 法学更是如此。把课上得生动活泼、引人入胜, 让学生在流连忘返中领悟到所学内容的要旨, 并实现从必然王国到自由王国的过渡, 最终自觉自愿地去继续探索和学习, 应该是每个教师的终极追求。包括课堂语言、师生互动等要素在内的教师个人风格固然重要, 我自己也在不断完善这些方面, 但这一切毕竟仅为流于形式的表达, 其立身之“根本”则在于教师自身在教课准备方面的厚积薄发和不断创新, 其中教材的推陈出新显得尤为举足轻重。我个人在过去的 20 余载中为此目标所付出的坚持不懈的努力在本教材中的反映便是在比较完整的学术体系基础之上的体例、架构的独树一帜和内容、素材的新颖鲜活。

想当初加盟对外经济贸易大学法学院之际, 本人刚刚从南京大学毕业, 虽然风华正茂, 却终究才疏学浅。得益于法学院历任院长和知名专家的身教言传, 得益于 26 年来教学与研究生涯的甘苦启发, 得益于漫长理论实务工作中自身的刻苦努力, 我对法律世界的认识虽然谈不上彻悟, 却比原来深刻了许多、丰富了许多。于是决定在年已不惑、精力却仍然充沛的时刻, 依靠自己一个人的力量完成这部专著性教材。尽管笔耕的乐趣自在其中, 但苦思冥想、呕心沥血、独自伏案到天明的个中艰辛除自己之外, 恐怕只有朝夕相处多年的妻子才能领略得到。略感欣慰的是, 比起多人合作、

集思广益的著作而言,这本书尽管难免存在不足之处,却总有别开生面的“一家之言”的诸多好处。

我因为喜欢法律而攻读法学,因为热爱法律而从事法学教育二十六载,期间深感法学教材的刻板晦涩已成为法律教学的一大瓶颈,而流畅易读的教材则令师生爱不释手,教与学均可达到事半功倍的良好。因此就本教材的撰写而言,我力求文笔流畅又不失逻辑严谨,敢于创新却不失客观稳健,分析言简意赅却能力戒空洞。此外,在内容安排上本书力求将最新法律问题收录其中,比如人民币汇率与多哈回合等问题。在体例安排上,本书插入了经典案例及其评述。尽管由于内容的不同,有的编排在每一章的最后一节,有的编排在每一编的最后一章,甚至有的编排在练习题中,但是这些案例的插入,使本书具有更强的可读性。最后,本书每一章都安排了一些练习题目,这些练习题对于学生复习该章内容,应该具有很大的帮助。

本书的成功问世,得益于许多人的无私帮助。

其中尤其值得一提的是本人相濡以沫多年的夫人倪卫红女士的帮助。她是本人见识过的全世界最为出色的中英文同声传译译员之一。本书的四分之一的篇幅是由她在本人中文教育资料基础上执笔翻译而成的。不仅如此,她还校对全书相当一部分篇幅。可以说,没有她的帮助,就不会有本书的问世。不仅如此,她多年的扎实英文功底和流畅文笔,亦为本书不少章节增色不少。此外,她作为妻子对本人的悉心关怀和不断勉励,她奉行的“像王者一样思考,像禅者一样生活”的人生态度,不仅使作为丈夫的本人获益终身,也使本书的许多细节充满灵性和生机。在本书最终出版之际,对于她的无价帮助,本人要在此表示诚挚的感谢!

其次,本人要衷心感谢对外经济贸易大学出版社的王煜女士。作为曾经听过本人以双语讲授《国际经济法》课程的研究生,她首先提出了将本教材以英文出版的建议。当本人接受这一建议和挑战后,她又不断鼓励和督促本人在百忙之中抽出较为整段的时间专心于本书的写作。作为本书的责任编辑,她为本书的把关十分尽心,她一丝不苟的工作作风和雷厉风行的职业态度,使本人获益良多,没有她的帮助和鼓励,本人不可能在这么短的时间内及时交稿,本书的出版也不可能这么顺利。因此,在本书成功出版之际,本人要对王煜女士表示衷心的感谢!

本书的成功出版,还要感谢我母亲潘金妹在生活上对我的无微不至的照料,在我和夫人为工作奔波和本人为本书伏案疾书时,是母亲的无私帮助才使本人能够衣食无忧,心无旁骛地完成本书的写作,直到最终出版。

此外,本人指导的对外经济贸易大学硕士研究生陈玉娟、王梦、何爽等,以及非本人指导的研究生刘天峰和本科生任某某同学,也在本人指导下帮助本人收集、整理了本书的个别章节、案例或段落中的相关素材,对于这些学生的无私帮助,本人一并在此表示感谢!

书一问世,便有了自己的灵魂,其质量和效果自有读者评说。由于英语非作者母语,因此尽管作者及编辑数易其稿、极尽校对修改之努力,其中的谬误之处仍将在所难免,为此作者敬请各位不吝指教,批评意见可直接发往本人邮箱。本人只希望自己多年的辛

勤耕耘能给法学教育带来一缕别样的清风，希望读者、特别是学生能够在这缕清风的吹拂下领略到经济全球化背景下国际经济法的大气磅礴和壮美前景。

盛建明

2017年2月

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PART 1

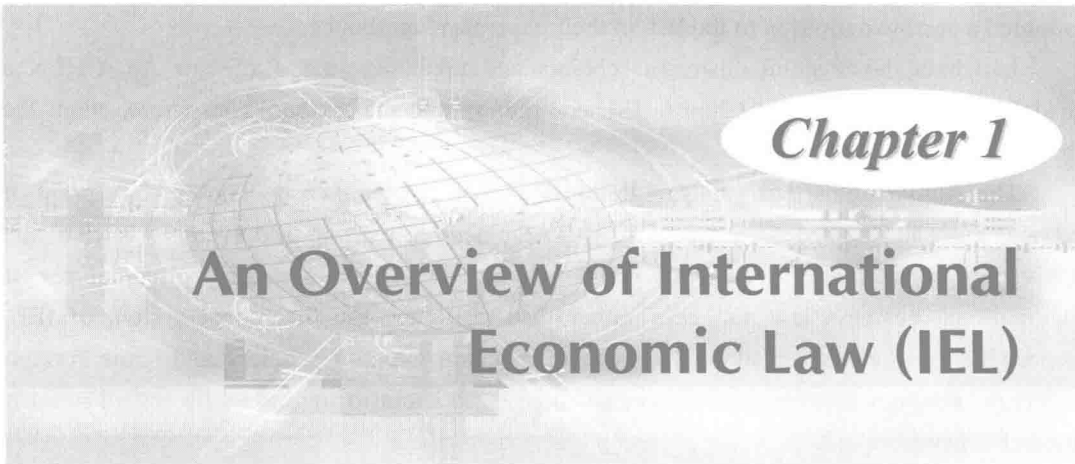
Introduction

- Chapter 1 An Overview of International Economic Law (IEL)
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【Foreword】

Today's world is an increasingly globalized world. In such a world, events that occur in a particular local place can have a powerful influence on the other side of the world. Although the exact meaning of the concept of globalization is sometimes very ambiguous, it is no wonder that this concept clearly connotes conditions of interdependence in world economic and political relationships, which means that events or circumstances in one part of the world can have remarkably large and often swift effects in other distant parts of the world. In such an increasingly globalized world, International economic law (IEL) has played a very important role and will play a much more important role in regulating the world economy.

This Part is an introduction and overview of IEL. Chapter 1 under this Part provides a narrowly-defined concept about the IEL, i.e., regulation-related IEL. It also identifies the scope or coverage and features of IEL. Chapter 2 under this Part is a brief analysis of the five features of world economy in its increasingly globalized context and reveals nine trends of IEL, such as the enhanced linkage and interaction between international economic laws and international laws in other areas, the integration of IEL with domestic economic laws of various countries or regions with the borders of these two bodies of law being increasingly blurred between the two bodies of legislations, and the remarkable emergence and development of "soft rules" as a new type of law which provides "governance without governments". On the basis of the above two Chapters, Chapter 3 under this Part summarizes the legal sources of IEL. Finally, Chapter 4 under this Part introduces and interprets the basic principle of IEL.



Chapter 1

An Overview of International Economic Law (IEL)

Section 1 An Conceptual Analysis of IEL

With regard to the theory of IEL, most Chinese legal scholars hold that a broad definition of IEL is appropriate. According to such a definition, the scope of IEL shall not only include regulation-related IEL, which is mainly consisted of the domestic economic administrative laws and regulations with foreign elements and public international laws in close connection with international regulation and governance of economic activities conducted by private (natural or legal) persons, but also include the transaction-specific IEL mainly consisted of domestic commercial law with foreign elements and international commercial laws.

The author holds that there are narrow and broad definitions of IEL. Under the broad definition, the scope of IEL shall not only include regulation-related IEL, which is mainly consisted of the domestic economic administrative laws and regulations with foreign elements and public international laws in close connection with international regulation and governance of economic activities conducted by private (natural or legal) persons, but also include transaction-specific IEL mainly consisted of the domestic commercial law with foreign elements and international commercial laws. Under the narrow definition, the scope of IEL shall only include regulation-related IEL, which is mainly consisted of the domestic economic administrative laws and regulations with foreign elements and public international laws in close connection with international regulation and governance of economic activities conducted by private (natural or legal) persons.

Most international scholars and textbooks, e.g. Professor John H. Jackson, a widely respected scholar in the community of international law in general and IEL in particular, have

adopted a narrow definition to the IEL in their papers and textbooks.

In China, however, mainstream scholars and textbooks, e.g. Professor An, CHEN a widely respected scholar in Chinese IEL community and the textbooks he wrote, adopt the broad definition of IEL.

The Author holds that a narrow definition to IEL is appropriate. The author's point of view is more for the benefit of teaching, or for the need of a group of universities such as the University of International Business and Economics (UIBE) to separately offer courses of international business law and IEL, rather than challenge the theoretical system of IEL, especially the the system adopted by the mainstream Chinese scholars and some foreign scholars, although this does not mean that there is no room to improve with regard to such theoretical system.

Section 2 The Scope and Coverage of IEL

Mainstream opinions of the Chinese academic community for IEL hold that IEL covers the following three components: (1) Legal relationships arising from cross-border economic transactions by subjects of private law; (2) Legal relationships arising from cross-border economic regulatory activities; (3) Legal relationships formed among states or international organizations regarding international cooperation and global governance in the economic area.

The author, however, always believe that, although the relationships in terms of rights and obligations between natural or legal persons and other economic entities of different states (regions) in relation to their cross-border business transactions can be placed under IEL in the broad sense, it is more appropriate to incorporate them into the international business law in consideration of the nature of such relationship.

In the author's opinion, IEL covers the latter, i.e., legal relationship arising from cross-border economic regulations, which can be further classified into two aspects: (1) relationships in terms of economic rights and obligations among states or regions (international organizations) regarding international economic transactions; (2) relationships in terms of rights and obligations among states or regions (international economic organizations) regarding economic administration or regulation and global governance. The former falls under public international law while the latter falls under domestic regulations on transnational activities conducted by foreign persons.

Graphically, the scope of coverage of IEL can be expressed as follows: