

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

Biblioteca de la Corte Suprema	
Nº de Orden	121.265
Ubicación	G2389

AMERICAN CASEBOOK SERIES®

THOMSON
—★—™
WEST

Table of Contents ✓

	Page
PREFACE ✓	iii
ACKNOWLEDGMENTS.....	vii
TABLE OF CASES ✓.....	xxxvii
TABLE OF WTO DECISIONS ✓.....	xli
TABLE OF GATT, NAFTA AND CUSFTA DECISIONS ✓.....	xlv
TABLE OF U.S. ADMINISTRATIVE DECISIONS ✓.....	xlvii
A NOTE ON STYLE AND ABBREVIATIONS ✓.....	xlix

Chapter 1. The Policies Underlying International Economic Relations

Sec.

1.1	Interdependence, Globalization, and the Changing Fundamentals of the Bretton Woods System.....	1
1.2	Overview, Purpose and Structure of the Book: Regulatory Approach.....	2
1.3	Growth and Importance of International Trade.....	4
1.4	Challenges and Policy Tensions of Changing Fundamentals of International Law and Economic Relations	7

Chapter 2. An Introduction to the Economics of International Trade

2.1	Comparative Advantage and Gains From Trade	15
	Charles P. Kindleberger, <i>International Economics</i> 17–21, 27, 33 (5th ed. 1973)	15
	<i>Notes</i>	19
2.2	Interference With Free Trade.....	21
	(A) Efficiency vs. Distribution	21
	(B) The Efficiency Case for Free Trade and the Consequences of Tariffs and Quotas.....	22
	Peter B. Kenen, <i>The International Economy</i> 17–19, 175–77 (1985)	23
	<i>Notes</i>	27
	(C) Common Arguments for Trade Restrictions	28
	(1) Some Popular But Dubious Arguments.....	29
	Alan O. Sykes, <i>Comparative Advantage and the Normative Economics of International Trade Policy</i>	29
	(2) Trade Restrictions to Address Domestic Distortions ..	31

Sec.	Page
2.2 Interference With Free Trade—Continued	
Alan V. Deardorff & Robert M. Stern, Current Issues in U.S. Trade Policies: An Overview.....	31
(3) The “Optimal Tariff” Argument.....	32
Alan V. Deardorff & Robert M. Stern, Current Issues in U.S. Trade Policies: An Overview.....	33
Notes and Questions	34
(4) Strategic Trade Policy and Its Extensions	34
Paul R. Krugman, Is Free Trade Passé?.....	34
Laura D’Andrea Tyson, Who’s Bashing Whom? Trade Conflict in High Technology Industries 10– 11, 13 (1992).....	39
Notes and Questions	41
(5) Distributional Considerations Again.....	41
Dani Rodrik, Has Globalization Gone Too Far? 4–7 (1997).....	41
Joseph E. Stiglitz, Making Globalization Work 7–9....	44
Notes and Questions	46
Robert Z. Lawrence, The Globalization Paradox: More Trade Less Inequality	46
2.3 The Political Economy of Trade Policy.....	48
(A) An Early Account: The Conservative Social Welfare Function	48
W.M. Corden, Trade Policy and Economic Welfare 107– 08 (1974)	48
Notes and Questions	49
(B) Public Choice Theory and Its Implications	49
(C) Elaborating the Public Choice Perspective: Modern Theo- ries of Trade Agreements	51
(1) The Terms of Trade Theory	51
(2) The Domestic Political Commitment Theory	52
(3) Imperfect Competition	53
(4) Alternative “Political” Theories	54
Notes and Questions	55
2.4 Foreign Policy Goals and International Trade Policy.....	56
(A) War and Peace.....	56
Richard N. Cooper, Trade Policy and Foreign Policy	56
Douglas A. Irwin, Petros C. Mavroidis & Alan O. Sykes, The Genesis of the GATT.....	57
(B) Other Foreign Policy Goals.....	59
 Chapter 3. The United States Constitution and Regulation of International Economic Affairs	
3.1 Introduction to Chapters 3 and 4	60
John H. Jackson, Jean-Victor Louis & Mitsuo Matsushita, Law and World Economic Interdependence.....	61
Constitution of the United States of America	63

Sec.	Page
3.2 The United States Constitution and International Economic Relations	65
(A) Introduction	65
(B) The President’s Inherent Foreign Affairs Powers	67
<i>United States v. Curtiss-Wright Export Corp.</i>	67
Notes	71
<i>Consumers Union of U.S., Inc. v. Kissinger</i>	74
Notes and Questions	76
3.3 Trade Legislation in the United States: President and Con- gress Accommodate.....	76
(A) Introduction	76
(B) Congress and Control of International Economic Rela- tions.....	77
(1) The Constitution and Delegation of Authority by Congress	77
Note	78
(2) Constitutional Limitations on Congressional Supervi- sion of Delegated Powers	78
(C) The President and Delegated International Economic Powers	79
(1) The President’s Emergency Powers	79
(2) The President’s Specific Delegated Powers.....	80
(3) Judicial Control of Delegated Authorities.....	80
(4) Note: Statutes Governing the Administrative Process as It Relates to International Economic Relations	81
(D) The United States Trade Acts and the Reciprocal Trade Agreements Program	82
(1) History of US Tariff Legislation	82
(2) The Reciprocal Trade Agreements Act of 1934	83
(3) The Trade Act of 1974.....	84
(4) The 1974 Trade Act and the Fast Track.....	85
(5) The Trade Agreements Act of 1979	86
John H. Jackson, United States Law and Implemen- tation of the Tokyo Round Negotiation	86
(6) The 1988 Trade Act and Fast Track	90
(7) Fast Track and the Uruguay Round Implementing Legislation	90
(8) Fast Track after 1995	92
Notes and Questions	93
(E) The Structure of US Government for Conduct of Foreign Economic Relations	93
3.4 International Agreements and U.S. Law.....	95
(A) Introduction—The Relevant Questions.....	95
(B) Power to Enter Into International Agreements—Execu- tive Agreements and the President’s Power	97
U.S. Dept. of State, Foreign Affairs Manual, Volume 11, Political Affairs, Circular No. 175 on the Negotiation and Conclusion of Treaties and Other International Agreements (2006)	99

Sec.		Page
3.4	International Agreements and U.S. Law—Continued	
	<i>Notes and Questions</i>	101
(C)	Domestic Legal Effect and Implementation of International Agreements in U.S. Law	102
	John H. Jackson, Status of Treaties in Domestic Legal Systems	103
(1)	Self-Executing International Agreements	105
	Detlev F. Vagts, The United States and Its Treaties: Observance and Breach	106
	Carlos Manuel Vázquez, The Four Doctrines of Self-Executing Treaties	107
(2)	An Individual's Right to Invoke International Agreements; Standing	109
(3)	Hierarchy of Norms: Which Rules Take Precedence?	110
	(a) The Treaty Power and Domestic Legal Effect	111
	(b) Executive Agreements and Domestic Legal Effect	111
	<i>Note</i>	112
3.5	The Courts and Foreign Relations	112
(A)	Introduction	112
(B)	Judicial Review and Foreign Affairs	114
	<i>Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.</i>	114
	<i>Notes and Questions</i>	116
(C)	Judicial Review of Administrative Action: The Problem of Standard of Review	118
	Stephen P. Croley & John H. Jackson, WTO Dispute Procedures, Standard of Review, and Deference to National Governments	118
	<i>Note</i>	119
(D)	Federal Court Review of Administrative Trade Actions	120
	(1) The Court of International Trade	120
	(2) Judicial Review in International Trade Cases	121
	(3) Costs of Judicial Review	123
	(4) Scope of International "Judicial" Review	123
3.6	Federal-State Relations and International Economic Regulation	123
(A)	Introduction	123
(B)	Federal Constraints on Federal Powers to Regulate and Make Treaties Concerning International Economic Relations	124
	John H. Jackson, United States Law and Implementation of the Tokyo Round Negotiation	124
	<i>Notes and Questions</i>	125
(C)	State Regulation and Foreign Commerce	126
	(1) Introduction	126
	(2) Federal Action and Federal Rules that Clash With State Rules	126
	<i>Notes and Questions</i>	126
	<i>Crosby v. National Foreign Trade Council</i>	127

Sec.		Page
3.6	Federal-State Relations and International Economic Regulation—Continued	
	<i>Notes</i>	130
	(3) When the Federal Government Has Not Acted or Almost Not Acted (Dormant Commerce Clause)	136
	<i>Tupman Thurlow Company v. Moss</i>	136
	<i>Note</i>	138
(D)	Illustrative U.S. Court Cases	139
	<i>Question</i>	140
(E)	State Cooperation and Consultation in U.S. International Economic Affairs	140
	Matthew Schaefer, Note on State Involvement in Trade Negotiations, the Development of Trade Agreement Implementing Legislation, and the Administration of Trade Agreements (January 18, 1994)	141
	<i>Notes and Questions</i>	143
Chapter 4. International Economic Regulation in the European Union		
4.1	Introduction	144
4.2	Introduction to the European Union	145
4.3	The Force of EU Law in the Member States	151
	<i>Van Gend & Loos v. Nederlandse Administratie Der Belastingen</i>	151
	<i>Amministrazione Delle Finanze Dello Stato v. Simmenthal S.P.A.</i>	152
	<i>Notes and Questions</i>	153
4.4	The Union's Power in External Commercial Relations	155
(A)	Scope and Exclusivity of the Common Commercial Policy	156
	<i>Opinion 1/94</i>	156
	<i>Notes and Questions</i>	163
(B)	Implementation of the Common Commercial Policy	163
	<i>Notes and Questions</i>	164
(C)	Internal Legal Effect of International Agreements Under EU Law	164
	<i>Notes and Questions</i>	166
4.5	The Future Economic and Political Integration of Europe	167
	William J. Davey, European Integration: Reflections on Its Limits and Effects	168
Chapter 5. International Law and International Economic Relations		
5.1	Introduction: What Is International Law and Why Do Nations Utilize It?	171
(A)	International Law and International Economic Law	171
(B)	International Law	171
(C)	Basic Theory of International Obligations and Policies Supporting a "Rule Based" System	173

Sec.		Page
5.1	Introduction: What Is International Law and Why Do Nations Utilize It?—Continued	
	Louis Henkin, <i>How Nations Behave, Law and Foreign Policy</i> 47 (2d. 1979)	173
	Oscar Schachter, <i>Towards a Theory of International Obligations</i>	173
	John H. Jackson, <i>World Trade and the Law of GATT</i> 757, 760, 763 (1969)	177
	Statement of GATT Director-General Arthur Dunkel	179
	John H. Jackson, <i>Sovereignty, the WTO, and Changing Fundamentals of International Law</i>	179
5.2	Certain Fundamentals of International Law	180
	(A) Sources: Custom or Treaties?	180
	John H. Jackson, <i>The World Trading System</i> 26–27 (2nd Ed. 1997)	181
	(B) Customary Norms of International Law: What Are They?	181
	American Law Institute, <i>Restatement of the Law (Third), Foreign Relations Law of the United States, § 102 Comment B</i> (1987)	181
	Ian Brownlie, <i>Principles of Public International Law</i> (5th Ed. 1998)	183
	(C) Treaties	183
	Mark E. Villiger, <i>Customary International Law and Treaties</i> 57–58 (2nd Ed. 1997)	183
	John H. Jackson, <i>Sovereignty, the WTO, and Changing Fundamentals of International Law</i>	183
	Vienna Convention on the Law of Treaties	185
	John H. Jackson, <i>Sovereignty, the WTO, and Changing Fundamentals of International Law</i>	187
	(D) Sovereignty, Sovereign Equality and the Problem of Voting	188
	Ian Brownlie, <i>Principles of Public International Law</i> 289 (5th Ed. 1998) (6th Ed. at 287)	188
	Louis Henkin, <i>The Mythology of Sovereignty</i>	189
	Stephen D. Krasner, <i>Sovereignty: Organized Hypocrisy</i>	190
	John H. Jackson, <i>Sovereignty, the WTO, and Changing Fundamentals of International Law</i>	191
	<i>Question</i>	191
	Robert A. Klein, <i>Sovereign Equality Among States: The History of an Idea</i>	192
	<i>Questions</i>	193
	Henry G. Schermers & Niels Blokker, <i>International Institutional Law: Unity Within Diversity</i> §§ 795–797 (3rd Rev. Ed. 1995)	193
	(E) Role of Precedent	194
	Statute of the International Court of Justice (1945)	194
	Ian Brownlie, <i>Principles of Public International Law</i> 21 (5th Ed. 1998)	194
	John H. Jackson, <i>Sovereignty, the WTO, and Changing Fundamentals of International Law</i>	194
	(F) State Responsibility	198

Sec.		Page
5.2	Certain Fundamentals of International Law—Continued	
	James Crawford, <i>The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries</i> (2002)	198
	Henry J. Steiner, Detlev F. Vagts & Harold H. Koh, <i>Transnational Legal Problems: Materials and Text</i> 338 (4th Ed. 1994)	198
	William W. Bishop Jr., <i>International Law: Cases and Materials</i> 742 (3rd Ed. 1971)	198
	(G) The Individual and International Law	199
	Ian Brownlie, <i>Principles of Public International Law</i> 584–585 (5th Ed. 1998)	199
	North American Free Trade Agreement, Chapter Eleven: Investment	199
	(H) Effectiveness and Sanctions	200
	Henry G. Schermers & Niels Blokker, <i>International Institutional Law</i> §§ 1451–1517, 1549–1550 (3rd Rev. Ed. 1995)	200
	<i>Note</i>	202
5.3	International Economic Law	202
	(A) Introduction	202
	John H. Jackson, <i>The World Trading System</i> 25–26 (2d Ed. 1997)	202
	(B) International Customary Law and Economic Behavior	203
	Georg Schawzenberger, <i>The Principles and Standards of International Economic Law</i>	203
	Georg Schwarzenberger, <i>Equality and Discrimination in International Economic Law</i>	204
	(C) Economic Treaties	205
	Eric V. Youngquist, <i>United States Commercial Treaties: Their Role in Foreign Economic Policy</i>	205
	Kenneth J. Vandeveld, <i>U.S. Bilateral Investment Treaties: The Second Wave</i>	206
	<i>Note</i>	208
5.4	The Bretton Woods System and World Economic Relations	208
	Gerald M. Meier, <i>The Bretton Woods Agreement—25 Years After</i>	209
	Bretton Woods Agreement Act	210
Chapter 6. The Legal Structure of the WTO/GATT System		
6.1	Introduction: The New World Trading System	214
6.2	GATT and Its Troubled History	217
	(A) GATT's Origins and "Birth Defects"	217
	(B) The GATT Legal Structure	222
	Protocol of Provisional Application of the General Agreement on Tariffs and Trade	223
6.3	The World Trade Organization	224
	(A) Origins of the New Charter	224
	(B) The Structure of the WTO	225

Sec.		Page
6.3	The World Trade Organization—Continued	
	(C) Governing Structure.....	227
	(D) Legal Continuity and Effects.....	227
	(E) Appraising the New Charter.....	228
	John H. Jackson, Testimony Before the Senate Finance Committee, March 23, 1994.....	228
	The Sutherland Report (2004).....	229
6.4	Decision-Making in GATT and the WTO.....	230
	The Sutherland Report (2004).....	234
6.5	Trade Negotiating Rounds.....	234
	(A) Overview.....	234
	(B) Tokyo Round (1973–1979).....	235
	John H. Jackson, Restructuring the GATT System 26–29 (1990).....	235
	(C) Uruguay Round (1986–1994).....	237
	Statement of GATT Director-General Peter Sutherland.....	237
	(D) Negotiations Under the WTO.....	238
6.6	Accession and Membership.....	239
	(A) Introduction and GATT History.....	239
	(B) Membership and Accession to the WTO.....	241
	(C) Non-Application.....	243
	(D) China's Accession to the WTO.....	244
6.7	Effect of the WTO/GATT Agreements on Domestic Law.....	246
	(A) The General Agreement in U.S. Law.....	246
	John H. Jackson, The General Agreement on Tariffs and Trade in United States Domestic Law.....	247
	Questions.....	250
	(B) The General Agreement and State Laws.....	250
	John H. Jackson, The General Agreement on Tariffs and Trade in United States Domestic Law.....	250
	(C) Implementation of the Uruguay Round.....	252
	David W. Leebron, Implementation of the Uruguay Round Results in the United States.....	252
	<i>Note on U.S. Participation in the WTO</i>	253

Chapter 7. Dispute Settlement

7.1	Introduction.....	255
	(A) Introduction.....	255
	(B) Goals and Methods.....	255
	William J. Davey, Dispute Settlement in GATT.....	256
	John H. Jackson, The World Trading System 109–111 (2d ed. 1997).....	261
	<i>Notes and Questions</i>	263
7.2	Dispute Settlement in the GATT System.....	266
7.3	The WTO Dispute Settlement Understanding.....	267
	(A) The DSU Procedures.....	269
	(1) Consultations.....	269
	(2) Panel Process.....	269

Sec.		Page
7.3	The WTO Dispute Settlement Understanding—Continued	
	(a) Setting up the panel.....	270
	(b) The task of panels.....	271
	(c) Panel procedures.....	272
	(d) Consideration and adoption of panel reports.....	273
	(3) The Appellate Body.....	274
	(4) Implementation and Suspension of Concessions.....	275
	(5) Research and Citation of WTO Reports.....	276
	<i>Notes and Questions</i>	277
	(B) The Operation of the WTO Dispute Settlement System: 1995–2007.....	279
	William J. Davey, The WTO Dispute Settlement System: The First Ten Years.....	279
	<i>Notes and Questions</i>	284
7.4	Critical Issues in WTO Dispute Settlement.....	285
	(A) GATT Article XXIII and the Concept of Nullification and Impairment.....	285
	(1) Nullification or Impairment in Violation Cases.....	287
	United States—Taxes on Petroleum and Certain Im- ported Substances.....	287
	<i>Notes and Questions</i>	289
	(2) Nullification or Impairment in Nonviolation Cases....	290
	Japan—Measures Affecting Consumer Photographic Film and Paper.....	291
	<i>Notes and Questions</i>	297
	(B) What Measures May Be Challenged?.....	300
	United States—Measures Relating to Zeroing and Sunset Reviews.....	301
	<i>Notes and Questions</i>	303
	(C) Interpretation of WTO Agreements.....	306
	(1) The Vienna Convention on the Law of Treaties.....	306
	Vienna Convention on the Law of Treaties.....	306
	European Communities—Customs Classification of Frozen Boneless Chicken Cuts.....	307
	<i>Notes and Questions</i>	315
	(2) The Role of Precedent.....	315
	United States—Final Anti-Dumping Measures on Stainless Steel From Mexico.....	315
	<i>Notes and Questions</i>	317
	(3) Conflicts of Norms.....	319
	<i>Notes and Questions</i>	320
	(D) Balancing Political and Judicial Power: Standards of Review and Techniques of Judicial Restraint.....	321
	(1) WTO Rules on Standard of Review.....	321
	<i>Notes and Questions</i>	324
	(2) Techniques of Judicial Restraint.....	327
	William J. Davey, Has the WTO Dispute Settlement System Exceeded Its Authority?.....	327
	<i>Notes and Questions</i>	333

Sec.		Page
7.4	Critical Issues in WTO Dispute Settlement—Continued	
(E)	Transparency and Participation	334
(1)	Transparency	334
(2)	Participation of Non-members	335
	<i>Notes and Questions</i>	335
(3)	Participation of Developing Country Members	336
	<i>Notes and Questions</i>	337
(F)	Unilateralism and the DSU	338
(1)	A Short Note on the History of Section 301	338
(2)	Unilateralism and DSU Article 23	340
	European Communities—Measures Affecting Trade in Commercial Vessels	341
	<i>Notes and Questions</i>	348
7.5	Implementation and Retaliation Procedures and Remedies	348
(A)	Ambiguities in DSU Articles 21 and 22	348
	<i>Notes and Questions</i>	350
(B)	Setting the Level of Retaliation	350
	United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services	350
	<i>Notes and Questions</i>	364
(C)	Improving WTO Remedies	367
	Norway—Procurement of Toll Collection Equipment for the City of Trondheim	367
	<i>Notes and Questions</i>	369
	William J. Davey, Remedies in WTO Dispute Settlement (2001 Updated)	370
	<i>Notes and Questions</i>	372
Chapter 8. Border Measures I: Tariffs and Customs Rules		
8.1	Introduction	373
(A)	Regulatory Principles and Import Restraints: The Core of the System	373
(B)	Introduction to Chapters 8 and 9	374
8.2	GATT Tariff Commitments: The Bindings	376
(A)	GATT Tariff Negotiations	376
(1)	The Early Years (1947–1961)	376
(2)	The Kennedy Round (1963–1967)	378
(3)	The Tokyo Round Tariff Negotiations	378
(4)	The Uruguay Round Tariff Negotiations (1986–1994)	380
(5)	Tariff Negotiations in the WTO	381
(6)	Problems of Tariff Negotiations	381
(B)	The Obligation to Limit Tariffs	382
	<i>Notes and Questions</i>	384
(C)	Renegotiation of Tariff Bindings	386
8.3	Customs Law	390
(A)	Introduction	390
(B)	Classification	392
(1)	International Rules: The Harmonized System	392

Sec.		Page
8.3	Customs Law—Continued	
	<i>Notes and Questions</i>	393
(2)	Classification Under U.S. Law	394
	Harmonized Tariff Schedule of the United States (2008)(Rev. 1)	396
	<i>Conair Corp. v. U.S.</i>	398
	<i>Notes and Questions</i>	401
(C)	Valuation	404
(1)	The GATT Customs Valuation Code	404
	Senate Report 96–249	405
	<i>Notes and Questions</i>	407
(2)	U.S. Valuation Rules	407
	<i>Generra Sportswear Co. v. United States</i>	408
	<i>Notes and Questions</i>	410
(D)	Rules of Origin	412
(1)	The International Rules on Origin	413
(2)	The Application of Origin Rules	414
	<i>Superior Wire v. United States</i>	414
	<i>Notes and Questions</i>	417
(E)	Other Customs Issues	420
(1)	Export Promotion: Foreign Trade Zones and Draw- back	420
(2)	Customs Law Enforcement	421
Chapter 9. Border Measures II: Quotas, Non-Tariff Barriers and Transparency		
9.1	Introduction	423
9.2	Article XI	423
	Japan—Trade in Semi-Conductors	424
	<i>Notes and Questions</i>	429
	<i>A Note on Export Controls</i>	431
9.3	Exceptions to Article XI	433
(A)	Agricultural Products	434
	Chile—Price Band System and Safeguard Measures Re- lating to Certain Agricultural Products	436
	<i>Notes and Questions</i>	442
(B)	Clothing and Textile Products	443
9.4	State Trading	444
(A)	The Interface Problem	444
(B)	GATT Regulation of State Trading	446
(1)	State Trading Enterprises Defined	446
	Illustrative List of Relationships Between Govern- ments and State Trading Enterprises and the Kinds of Activities Engaged in by These Enterpris- es	446
	<i>Notes and Questions</i>	448
(2)	Article XVII	449
	Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain	449

Sec.	Page
9.4 State Trading—Continued	
<i>Notes and Questions</i>	453
(3) Article II:4	455
<i>Notes and Questions</i>	456
9.5 Transparency and Proper Administration	456
(A) Transparency	456
(1) In General	456
(2) WTO Transparency Rules	457
(3) WTO Transparency Rules in Dispute Settlement	458
(B) Proper Administration	459
European Communities—Selected Customs Matters	459
<i>Notes and Questions</i>	462
<i>Review Problems for Chapters 8 and 9</i>	464
Chapter 10. Nondiscrimination and the Most-Favored-Nation Clause	
10.1 Introduction	467
(A) The Policies Underlying the MFN Principle	467
John H. Jackson, <i>The World Trading System</i> 160–62 (2d ed. 1997)	469
(B) The History of MFN	471
The Most-Favored-Nation Provision, Executive Branch GATT Studies, No. 9, 133–35 (1973)	471
John H. Jackson, <i>World Trade and the Law of GATT</i> 250–251 (1969)	473
(C) The Nondiscrimination Obligation in Customary International Law	474
10.2 The Most Favored Nation Obligation in GATT	475
(A) Introduction	475
(B) The Scope of the MFN Obligation	476
(1) The Concept of Like Product for Tariff Purposes	477
Japan—Tariff on Import of Spruce–Pine–Fir (SPF) Dimension Lumber	477
Spain—Tariff Treatment of Unroasted Coffee	479
<i>Notes and Questions</i>	480
Treatment by Germany of Imports of Sardines	481
<i>Notes and Questions</i>	483
(2) The Breadth of the MFN Obligation	483
Canada—Certain Measures Affecting the Automotive Industry	483
<i>Notes and Questions</i>	488
(C) GATT and the MFN Exceptions	490
(D) Problems	491
10.3 The Most Favored Nation Obligation in United States Law	492
(A) The Trade Act of 1974	492
(B) U.S. Implementation of the Tokyo and Uruguay Round Agreements and MFN	493
<i>Notes and Questions</i>	493
(C) The United States and Communist Countries	494

Sec.	Page
10.3 The Most Favored Nation Obligation in United States Law—Continued	
<i>Notes and Questions</i>	496
Chapter 11. Free Trade Areas and Customs Unions	
11.1 Introduction	497
(A) The Growth of Preferential Trade Arrangements	497
(B) The Consequences of Preferential Trade Arrangements	498
Paul R. Krugman, <i>Is Bilateralism Bad?</i>	498
Robert Z. Lawrence, <i>Emerging Regional Arrangements: Building Blocks or Stumbling Blocks?</i>	500
<i>Notes and Questions</i>	502
11.2 The Article XXIV Exception	503
(A) History of Article XXIV	503
John H. Jackson, <i>World Trade and the Law of GATT</i> 576–77 (1969)	503
(B) The Requirements of Article XXIV	504
Turkey—Restrictions on Imports of Textile and Clothing Products	506
<i>Notes and Questions</i>	514
11.3 Overlapping Obligations in WTO and PTA Law	516
Mexico—Tax Measures on Soft Drinks and Other Beverages	517
<i>Notes and Questions</i>	524
11.4 U.S. Participation in Regional Arrangements	525
(A) History Prior to NAFTA	525
(B) The North American Free Trade Agreement (NAFTA)	527
(C) Recent Developments	531
(D) Selected Issues in NAFTA Dispute Resolution	531
(1) Use of the Dispute Resolution Process	532
(2) Constitutional Concerns	532
(3) Extraordinary Challenges and the Standard of Review	533
In re Live Swine From Canada	534
<i>Notes and Questions</i>	536
Chapter 12. The National Treatment Clause	
12.1 Introduction	537
12.2 The National Treatment Obligation: The Basic Rule	540
Italian Discrimination Against Imported Agricultural Machinery	540
United States—Section 337 of the Tariff Act of 1930	543
<i>Notes and Questions</i>	550
12.3 Discriminatory Taxes: Article III:2	551
Japan—Taxes on Alcoholic Beverages	552
<i>Notes and Questions</i>	560
<i>Review Problems</i>	564
12.4 Discriminatory Regulations: Article III:4	565
(A) Like Products	565

Sec.	Page
12.4 Discriminatory Regulations: Article III:4—Continued	
European Communities—Measures Affecting Asbestos and Asbestos-Containing Products	565
<i>Notes and Questions</i>	578
(B) Less Favorable Treatment	579
Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef	579
<i>Notes and Questions</i>	583
(C) Laws, Regulations and Requirements	585
12.5 Government Purchases	586
(A) The 1994 Agreement on Government Procurement	586
<i>Notes and Questions</i>	588
(B) Sub-Federal Government Procurement Preferences	589
Chapter 13. Article XX: The General Exceptions	
13.1 Introduction	591
13.2 Article XX(b)—Health Measures	593
European Communities—Measures Affecting Asbestos and Asbestos-Containing Products	593
<i>Notes and Questions</i>	598
13.3 Article XX(d)—Enforcement Measures	600
Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef	601
<i>Notes and Questions</i>	605
13.4 Article XX(g)—Conservation Measures	605
United States—Standards for Reformulated and Conventional Gasoline	606
<i>Notes and Questions</i>	611
13.5 The Chapeau to Article XX	614
United States—Import Prohibition of Certain Shrimp and Shrimp Products	614
<i>Notes and Questions</i>	625
United States—Import Prohibition of Certain Shrimp and Shrimp Products (Recourse to Article 21.5 by Malaysia)	628
<i>Notes and Questions</i>	636
13.6 Should Article XX Be Expanded to Cover Environmental Measures Generally?	637
(A) Trade and Environment: From Dolphins to Turtles	638
(B) The Effect of Expanded International Trade on Environmental Quality	639
Hakan Nordstrom & Scott Vaughan, WTO Secretariat Special Studies No. 4, Trade and Environment 1-7 (1999)	639
(C) Tensions Between International Trade Rules and Environmental Measures: Is a New Exception Needed?	643

Sec.	Page
Chapter 14. Technical Barriers to Trade: The SPS and TBT Agreements	
14.1 Introduction	647
Alan O. Sykes, Product Standards for Internationally Integrated Goods Markets 1-9 (1995)	647
Alan O. Sykes, Regulatory Protectionism and the Law of International Trade	650
<i>Notes and Questions</i>	652
14.2 The SPS Agreement	653
EC Measures Concerning Meat and Meat Products (Hormones)	654
<i>Notes and Questions</i>	665
14.3 The TBT Agreement	669
European Communities—Trade Description of Sardines	670
<i>Notes and Questions</i>	684
Chapter 15. Safeguard Measures (the “Escape Clause”) and Adjustment Policies	
15.1 Introduction	691
(A) Scope of the Chapter	691
(B) The Policies of Safeguards	692
(1) Compensation and Adjustment Costs	692
(2) Restoring Competitiveness	693
(3) The Safety Valve Hypothesis	693
(4) The Public Choice/Contractarian Perspective	693
15.2 Rules and Procedures for Safeguards Cases	694
(A) WTO Rules	694
(B) Safeguard Measures Under U.S. Law	697
<i>Notes and Questions</i>	699
15.3 Critical Issues in Safeguards Cases	700
(A) Unforeseen Developments	700
United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat From New Zealand and Australia	700
<i>Notes and Questions</i>	704
(B) Increased Imports	705
Argentina—Safeguard Measures on Imports of Footwear	705
<i>Notes and Questions</i>	708
(C) Industry Definition	711
United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat From New Zealand and Australia	712
<i>Notes and Questions</i>	714
(D) Serious Injury	717
Argentina—Safeguard Measures on Imports of Footwear	718
<i>Notes and Questions</i>	720
(E) Causation	721
Argentina—Safeguard Measures on Imports of Footwear	722
<i>Notes and Questions</i>	724

Sec.	Page
15.3 Critical Issues in Safeguards Cases—Continued	
United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat From New Zealand and Australia.....	727
Notes and Questions	735
(F) Remedial Issues	743
United States—Definitive Safeguard Measures on Imports of Wheat Gluten From the European Communities.....	743
Notes and Questions	746
15.4 Adjustment Assistance.....	747
U.S. Commission on International Trade and Investment Policy (the Williams Commission), Report 47–49 (1971) <i>Former Employees of Computer Sciences Corporation v. United States Secretary of Labor</i>	747
Notes and Questions	748
Notes and Questions	751
Chapter 16. The Regulation of Dumping	
16.1 Introduction.....	752
(A) Responses to Unfair Acts in International Trade	752
(B) The Interface Theory of Economic Relations	754
(C) The Problem of Legalization	756
16.2 Antidumping Laws: The Underlying Policy Issues	756
(A) Introduction	756
(B) The Policy Debate Over Antidumping Laws	758
Alan O. Sykes, <i>International Law</i>	758
Notes and Questions	760
16.3 United States Antidumping Law	763
(A) Procedural Aspects of US Antidumping Law	764
John H. Jackson & William J. Davey, <i>Reform of the Administrative Procedures Used in US Antidumping and Countervailing Duty Cases</i>	764
Notes and Questions	768
(B) The Substantive Rules: Determinations of Dumping	770
(1) Calculating the Dumping Margin	771
Certain Hot-Rolled Carbon Steel Flat Products From India	771
Notes and Questions	777
Problems	782
(2) Nonmarket Economies and Antidumping Rules	783
Notes and Questions	783
(C) Anticircumvention Measures	784
16.4 The WTO Rules on Dumping.....	786
(A) The Evolution of the International Obligations.....	786
(B) The WTO Rules on Dumping	787
(C) The WTO Case Law on Dumping	789
(1) The Zeroing Controversy	789
United States—Measures Relating to Zeroing and Sunset Reviews	790

Sec.	Page
16.4 The WTO Rules on Dumping—Continued	
Notes and Questions	802
(2) The Byrd Amendment.....	804
United States—Continued Dumping and Subsidy Offset Act of 2000 (“Byrd Amendment”)	804
Notes and Questions	812
Chapter 17. Injury Analysis in Antidumping and Countervailing Duty Cases	
17.1 Introduction.....	813
(A) WTO Rules: An Overview	813
(B) U.S. Law	814
Notes and Questions	816
17.2 Industry Definition	817
Certain Orange Juice From Brazil.....	817
Notes and Questions	822
17.3 Material Injury or Threat by Reason of Unfairly Traded Imports	823
Fresh Cut Roses From Colombia and Ecuador.....	824
Notes and Questions	829
Certain Orange Juice From Brazil.....	831
Notes and Questions	839
<i>Gerald Metals, Inc. v. United States</i>	842
Notes and Questions	847
Chapter 18. Subsidies and Countervailing Duties	
18.1 Introduction.....	848
(A) International Disciplines on Subsidies and Countervailing Measures	848
(B) Policy Considerations.....	852
Gary C. Hufbauer & Joanna Shelton Erb, <i>Subsidies in International Trade 5–6 (1984)</i>	853
Warren F. Schwartz & Eugene W. Harper, Jr., <i>The Regulation of Subsidies Affecting International Trade</i>	854
Alan O. Sykes, <i>Countervailing Duty Law: An Economic Critique</i>	855
John H. Jackson, <i>The World Trading System 282 (2d ed. 1997)</i>	856
Notes and Questions	857
18.2 WTO Rules	857
(A) “Financial Contribution” and “Benefit”	857
Canada—Measures Affecting the Export of Civilian Aircraft	858
Notes and Questions	861
United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom	862
Notes and Questions	867

Sec.	Page
18.2 WTO Rules—Continued	
United States—Final Countervailing Duty Determination With Respect to Certain Softwood Lumber From Canada (Softwood IV)	868
<i>Notes and Questions</i>	878
(B) Specificity	880
Oil Country Tubular Goods From Austria	881
<i>Notes and Questions</i>	883
(C) Prohibited (Export and Import Substitution) Subsidies ...	884
Canada—Measures Affecting the Export of Civilian Air- craft—Recourse by Brazil to Article 21.5 of the DSU	884
Brazil—Export Financing Programme for Aircraft	888
<i>Notes and Questions</i>	894
United States—Tax Treatment for “Foreign Sales Corpo- rations”	895
<i>Notes and Questions</i>	903
(D) A Note on Agricultural Subsidies	906
(E) Actionable Subsidies and “Serious Prejudice”	907
Indonesia—Certain Measures Affecting the Automobile Industry	908
<i>Notes and Questions</i>	921
18.3 United States Countervailing Duty Law	921
<i>British Steel Corp. v. United States</i>	924
<i>Notes and Questions</i>	926
Chapter 19. International Trade in Services	
19.1 Introduction	928
Geza Feketekuty, Trade in Professional Services: An Over- view	930
Jagdish Bhagwati, Economic Perspective on Trade in Profes- sional Services	930
U.S. National Study on Trade in Services, a Submission by the United States Government to the General Agreement on Tariffs and Trade 37-39 (1982)	934
<i>Notes and Questions</i>	938
19.2 Structure and Documents of the GATS System for Services ...	939
(A) Key GATS Documents	939
(B) An Overview of the GATS Structure	940
Bernard Hoekman, The General Agreement on Trade in Services	942
<i>Notes and Questions</i>	951
Disciplines on Domestic Regulation in the Accountancy Sector	952
<i>Note on Accounting and Legal Services</i>	955
<i>Note About Services in NAFTA</i>	956
In the Matter of Cross-Border Trucking Services	956
<i>Notes and Questions Regarding Trucking Case</i>	958
19.3 Overview of WTO Case Law on Services	959
Canada—Certain Measures Affecting the Automotive Indus- try	959

Sec.	Page
19.3 Overview of WTO Case Law on Services—Continued	
European Communities—Regime for the Importation, Sale and Distribution of Bananas	963
<i>Notes and Questions</i>	965
Canada—Certain Measures Concerning Periodicals	966
<i>Notes and Questions</i>	970
<i>Note on Mexico—Measures Affecting Telecommunication Ser- vices, WT/DS204/R, Panel Report, adopted June 1, 2004</i>	970
19.4 <i>U.S. Gambling</i>	972
(A) Introduction	972
United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services	973
<i>Note Regarding Post Appellate Procedures in the Gam- bling Case</i>	989
<i>Additional Contextual Note on the Gambling Case</i>	991
Chapter 20. Trade Related Aspects of Intellectual Property Rights	
20.1 Introduction	993
(A) Intellectual Property Rights and Policies	993
(B) The International Dimension	997
20.2 TRIPS and WTO Developments	999
(A) History	999
(B) The Uruguay Round Negotiations	1000
(C) Overview of the TRIPS Agreement	1003
(D) Cases Arising Under the TRIPS Agreement	1007
Canada—Patent Protection of Pharmaceutical Products ..	1007
<i>Notes and Questions</i>	1030
United States—Section 110(5) of the US Copyright Act ...	1031
<i>Notes and Questions</i>	1034
(E) The TRIPS Agreement and Public Health: Access to Essential Medicines	1036
<i>Notes and Questions</i>	1038
20.3 Infringing Imports	1039
(A) The Gray Market Problem	1039
<i>K-Mart Corp. v. Cartier, Inc.</i>	1039
<i>Notes and Questions</i>	1047
(B) Infringing Imports: The Administrative Remedy	1048
Certain Battery-Powered Ride-on Toy Vehicles and Components Thereof	1050
Certain Plastic Encapsulated Integrated Circuits	1054
<i>Notes and Questions</i>	1056
Chapter 21. Linkages Between International Trade Policy and Human Rights, Labor Standards and National Security	
21.1 Introduction	1058
(A) Overview	1058
(B) Historical Use of Economic Sanctions	1059

Sec.	Page
21.1 Introduction—Continued	
<i>Notes and Questions</i>	1060
21.2 Human Rights and International Trade Policy: Tension of Conflicting Goals	1060
(A) International Human Rights Defined	1061
<i>Notes and Questions</i>	1063
(B) Linking Trade and Human Rights: The Jackson-Vanik Amendment	1063
<i>Notes and Questions</i>	1065
21.3 Labor Standards and International Trade Policy	1067
(A) Labor Standards and the WTO	1067
<i>Notes and Questions</i>	1068
(B) Labor Standards and the US GSP Scheme	1070
Generalized System of Preferences Subcommittee of the Trade Policy Staff Committee, 1992 GSP Annual Re- view—Worker Rights Review Summary—Indonesia (Case 007-CP-92, July 1993)	1071
<i>Notes and Questions</i>	1078
21.4 Trade Controls for National Security and Political Purposes ..	1079
(A) Introduction	1079
(B) The GATT Exception for National Security Trade Con- trols	1080
<i>Notes and Questions</i>	1083
(C) The Use of Economic Sanctions for Political Purposes Under International Law	1083
<i>Notes and Questions</i>	1084
(D) U.S. National Security and Foreign Policy Controls	1085
(1) National Security Controls Under Section 232	1085
(2) Trade and Other Controls Under IEEPA	1085
(3) Foreign Use of Trade Controls: U.S. Antiboycott Rules	1086
Chapter 22. Monetary Affairs and Trade Policy	
22.1 Introduction	1088
(A) The Role of Foreign Exchange in Trade	1088
(B) Exchange Rate Determination	1089
(C) The Balance of Payments Account and the “Deficit”	1091
(D) Exchange Rate Fluctuations and Their Effects on Trade ..	1092
C. Fred Bergsten & John Williamson, Exchange Rates and Trade Policy	1092
<i>Notes and Questions</i>	1094
22.2 The Trade/Exchange Rate Relationship Under International Law	1095
(A) IMF Surveillance	1095
(B) Trade Measures as a Response to “Manipulation”	1097
<i>Notes and Questions</i>	1098

Sec.	Page
22.3 Trade Measures for Balance of Payments Reasons	1098
(A) GATT and Trade Restrictions for Balance of Payments Reasons	1099
(1) Legal Background: The Original GATT Agreement ...	1099
(2) The Use of Payments Measures Under GATT: Policy and Practice	1100
Isaiah Frank, Import Quotas, The Balance of Pay- ments and the GATT	1100
India—Quantitative Restrictions on Imports of Agri- cultural, Textile and Industrial Products	1103
<i>Notes and Questions</i>	1107
(3) Tariff Surcharges and the Uruguay Round Agree- ment	1107
(B) GATT Obligations Relating to Currency Par Values and Exchange Controls	1109
Chapter 23. Trade and Investment	
23.1 Introduction	1110
23.2 WTO and TRIMs	1112
Indonesia—Certain Measures Affecting the Automobile Indus- try	1112
<i>Notes and Questions</i>	1120
23.3 Investor Rights Under NAFTA	1121
<i>Azinian v. United Mexican States</i>	1121
<i>Notes and Questions</i>	1127
<i>Metalclad Corp. v. United Mexican States</i>	1128
<i>Notes and Questions</i>	1139
<i>In re Arbitration Between International Thunderbird Gaming Corporation v. United Mexican States</i>	1140
<i>Notes and Questions</i>	1142
Chapter 24. Developing Countries and the WTO System	
24.1 Introduction	1144
The Uruguay Round and Beyond: The Final Report From the Ford Foundation Supported Project on Developing Coun- tries and the Global Trading System (Coordinated by John Whalley, 1989)	1145
24.2 The Evolution of WTO/GATT Rules for Developing Countries	1149
(A) GATT Article XVIII	1150
(B) Part IV of GATT	1151
(C) The Tokyo Round and the Enabling Clause	1151
GATT Contracting Parties, Decision of November 28, 1979 on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries	1152
1982 Report by the Secretary-General of UNCTAD, As- sessment of the Results of the Multilateral Trade Ne- gotiations	1154

Sec.	Page
24.2 The Evolution of WTO/GATT Rules for Developing Countries—Continued	
<i>Notes and Questions</i>	1154
(D) The Uruguay Round and Rules Providing Special and Differential Treatment.....	1155
(E) Developing Countries in the WTO: The Doha Development Agenda	1156
(1) In General.....	1156
(2) The Doha Development Agenda.....	1157
24.3 The Generalized System of Preferences (GSP)	1158
(A) History	1158
Report by the Secretary-General of the OECD, The Generalized System of Preferences: Review of the First Decade 9–12, 90–91 (1983)	1159
<i>Notes and Questions</i>	1160
(B) The U.S. GSP Scheme	1160
(1) Criteria for Inclusion of Countries	1161
(2) Criteria for Product Coverage	1162
(3) Criteria for Excluding Products from Coverage.....	1162
(4) Criteria for Excluding or Graduating Countries	1162
<i>Notes and Questions</i>	1163
(C) WTO Case Law	1163
European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries.....	1163
<i>Notes and Questions</i>	1171
24.4 The New International Economic Order and the Charter of Economic Rights and Duties of States	1172
Chapter 25. Perspectives and Conclusions: A Challenging Future	
25.1 Introduction.....	1174
25.2 Legal Rules or Government Discretion? Which Is Best?.....	1175
(A) Introduction	1175
(B) The United States and Legal Procedures: Costs and Benefits Appraised	1175
John H. Jackson, Perspectives on the Jurisprudence of International Trade: Costs and Benefits of Legal Procedures in the United States	1175
25.3 The WTO's "Constitution" and Its Weaknesses	1181
John H. Jackson, The WTO "Constitution" and Proposed Reforms: Seven "Mantras" Revisited.....	1181
25.4 Reflections on the Future of the Trading System.....	1188
William J. Davey, The Future of International Economic Law	1188
John H. Jackson, Sovereignty, the WTO, and Changing Fundamentals of International Law	1191
INDEX	1195