The Law and Policy of the World Trade Organization

As the leading student text in the field, this title provides both a detailed examination of the law of the World Trade Organization and a clear introduction to the basic principles and underlying logic of the world trading system. It explores the institutional aspects of the WTO together with the substantive law. New to this edition are examinations of the WTO rules on the protection of intellectual property rights and the rules on technical barriers to trade and sanitary and phytosanitary measures. Assignments are integrated throughout to allow students to assess their understanding, while chapter summaries reinforce learning. In addition, exercises have been included to draw on primary sources and real-life trade scenarios, enabling students to hone their practical and analytical skills. The title is an essential tool for any student of the WTO, either at undergraduate or at postgraduate level. Practising lawyers and policy-makers who are looking for an introduction to WTO law will also find this title invaluable.

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Since the entry into force of the WTO Agreement in January 1995, international trade law has developed from a technical backwater of international law to one of its most vibrant fields. Before 1995, international trade law was taught at few universities and was only of interest to a relatively small group of legal practitioners. Over the past decade, however, interest in this field of international law has increased dramatically. Students, academics, legal practitioners, advisers of businesses and NGOs, and officials of national governments and international organisations have woken up to its importance. Now, most universities give much attention to trade law in international law courses or offer specialised courses on WTO law.

Concrete plans for this book were first made on the eve of my departure from the WTO and return to academia at the end of 2001. For five years, I had the privilege to serve, during the seminal early days of the WTO and its law, as a senior legal advisor to the Appellate Body of the WTO.

This book is primarily a textbook for graduate and senior undergraduate students of law. However, it was also written with practising lawyers and policymakers, looking for an introduction to WTO law, in mind. The book covers both the institutional and the substantive law of the WTO. Chapter 1 is an introduction on whether economic globalisation and international trade are a bane or a blessing, on the need for WTO law, and on the main principles and sources of this law. Chapter 2 discusses the WTO as the prime intergovernmental organisation for international trade, and deals with its origins, objectives, functions, membership, institutional structure and decision-making procedures. Chapter 3 concerns the WTO’s all-important and unique dispute settlement system and explores the origins, principles, institutions and proceedings of WTO dispute settlement. Chapter 4 discusses the fundamental WTO principles of non-discrimination, the most-favoured-nation treatment obligation and the national treatment obligation as they apply to trade in goods and trade in services. Chapter 5 deals with market access for goods, services and service suppliers and discusses, inter alia, the WTO rules on tariff and non-tariff barriers to trade in goods and barriers to trade in services. Chapter 6 concerns the WTO rules on unfair trade and, in particular, the rules on dumping and subsidised trade. Chapter 7 deals with the inevitable conflict between trade liberalisation and other societal values and interests. It discusses the many situations in which WTO law allows Members to deviate from the basic rules and let other societal values and interests prevail over trade liberalisation. The concluding chapter 8
briefly sets out two major challenges for the future of the WTO, namely, the integration of developing countries in the multilateral trading system and the further expansion of the scope of WTO law. While the treatment of the law is often quite detailed, the prime aim of this textbook is to make clear the basic principles and underlying logic of WTO law and the world trading system.

Special attention was given to the focus, approach and structure of this book. Each section contains questions and assignments, to allow students to assess their understanding and to develop useful practical skills. At the end of each chapter, there is a helpful summary as well as an exercise on specific true-to-life international trade problems encountered by the Kingdom of Richland, a developed-country Member, and the Republic of Newland, a developing-country Member. These exercises are ideally intended to be dealt with in tutorials, but are equally suitable for individual study. While challenging, these exercises can be done on the basis of the knowledge acquired in the chapter they conclude. It was a deliberate choice to refer sparingly to the vast academic literature on many of the topics addressed in this book. The focus is clearly on the provisions of the WTO agreements themselves, the case law of panels and the Appellate Body and official policy documents. For advanced courses on WTO law, this book can be usefully supplemented by academic articles from the *Journal of International Economic Law*, the *Journal of World Trade*, the *World Trade Review* and other specialised or general law journals. The reader can find suggestions on recent academic articles and case law, organised according to the chapters of this book, at www.egge.org.

In writing this book I owe much to many. I am particularly indebted to Gabrielle Marceau and Denise Prévost who supported and encouraged me from the beginning and commented on all chapters. I am similarly indebted to Edwin Vermulst and Folkert Graafsma who also read through the whole manuscript and made many useful comments, and to Julie Soloway, who made a very important contribution to the section on dumping and anti-dumping measures. I am grateful to Marco Bronckers, Stephanie Cartier, Bill Davey, Piet Eeckhout, Barbara Eggers, Lothar Ehring, Mary Footer, Susan Hainsworth, Valerie Hughes, Pieter-Jan Kuijper, Bernard Kuiten, Hoe Lim, Jim Mathis, Marielle Matthee, Elisabetta Montaguti, Joost Pauwelyn, Roberto Rios Herrera, Jochem Wiers, Jan Wouters and Werner Zdouc, who all read, and commented on, specific chapters, or contributed otherwise to this book. I would like to pay tribute to John Jackson, my first mentor and guide in the land of international trade. I would also like to acknowledge my profound and lasting debt towards the Members of the original Appellate Body, and, in particular, James Bacchus, Claus-Dieter Ehlermann, Florentino Feliciano and Julio Lacarte, whom I had the privilege to serve for five years and from whom I learned so much. I address a special word of thanks to Debra Steger, the first director of the Appellate Body Secretariat and ‘sister-in-arms’ during the fascinating but very demanding first years of the Appellate Body. I am grateful to Finola O’Sullivan, publisher at Cambridge University Press, and her staff, Jane O’Regan, Mary Leighton, Martin Gleeson, Eva Huehne and Jennie Rubio, for their confidence and excellent support. I am equally grateful to the Faculty of Law of Maastricht University, for facilitating the work on
this book. My special thanks to Paul Adriaans, Sophie Janssen and Roger Snijder. Finally, this book would never have been finished without the untiring help and capable assistance of, in particular, Adeshola Odusanya, Katalin Fritz and Carol Ni Ghiollarnáth, my research assistants, and also Iveta Alexovičová, Natalya Bayurova, Kasper Hermans, Stelios Katevatis, Sergey Ripinsky, Eva Schöfer, Nikolaos Skoutaris, Damian Smith and Ruta Zarnauskaite, all graduate or undergraduate students at Maastricht University in the period 2002–4. Of course, none of those mentioned above bears any responsibility for any error or omission in this book. In recognition of the support I received from so many colleagues and students in the writing of this book, all royalties go to Maastricht University to set up a scholarship and research fund for students and scholars from developing countries.

Peter Van den Bossche
Maastricht, September 2004
Preface to the second edition

In the three years that have passed since I completed work on the first edition of this book, the interest in the world trading system has continued to grow. Ever more universities offer courses on international economic law in general and WTO law in particular. While unsubstantiated and misinformed criticism of the WTO is still the rave and bon ton in many circles, the WTO seems to be doing a better job at selling itself and slowly enlarging its base of support. This is all the more amazing since opposition to economic globalisation is not weakening and the Doha Development Round has thus far mainly produced disappointment. Perhaps there is a growing realisation, or in some circles reluctant acceptance, that the WTO and its law – while obviously wanting in many respects – make an effective contribution to managing economic globalisation and international trade. The WTO, and in particular its dispute settlement system applying and interpreting WTO law, have done a good job in balancing trade liberalisation with other societal values and interests, such as the protection of public health, the environment and economic development of developing countries. However, undoubtedly, the road is still long and the journey hazardous.

Braced by encouragement and inspired by comments of readers from Lesotho to India, many of them students but also many government officials and legal practitioners, I started in early 2007 on the second edition of *The Law and Policy of the World Trade Organization*. This second edition not only updates and revises the 2005 edition, it also considerably expands the text by including a new chapter, entitled 'Towards harmonisation of national regulation', discussing in some detail the rules of the *TRIPS Agreement* on the protection of intellectual property rights, the *TBT Agreement* on technical barriers to trade, and the *SPS Agreement* on sanitary and phytosanitary measures.

The writing of this second edition has been a much larger task than I had initially envisaged. Fortunately, as with the first edition, I had much help. To many of those I thanked in the Preface of the first edition, I owe once again my thanks for their support and advice. I appreciate the continued support of Gabrielle Marceau. Chapter 6 has greatly benefited from the comments of Edwin Vermulst and Katalin Fritz. The section on the *TRIPS Agreement* of chapter 8 owes much to the comments of Anselm Kamperman Sanders. I am particularly indebted to Denise Prévost, my senior research associate at Maastricht University. Without her commitment, knowledge of WTO law and eye for detail this second edition would not have been. She is the principal author of large parts of the new chapter 8. I am also indebted to Marieke van Overveld, a former Maastricht student and...
graduate of the World Trade Institute, who diligently and with great stamina selected and prepared materials for the second edition. My heartfelt thanks go Iveta Alexovičová, Nina Buttgen, Anke Dahrendorf, Ana Maria Daza Vargas, Lennard Duijvestijn, Vydyanathan Lakshmanan, Elissavet Malathouni, Angeliki Mavridou, Bas Megens, Lorin van Nuland, Gustavo Ferreira Ribeiro, Mark Seitter and Wen Shuying, my researchers and research assistants, at Maastricht University and elsewhere, whose untiring help and capable assistance made work on this second edition definitely lighter. Of course, none of those mentioned above bear any responsibility for any error or omission in this book. I am grateful to Finola O'Sullivan, Editorial Director, Law, at Cambridge University Press and her staff, in particular Sinéad Moloney, Richard Woodham and Diane Ilott, for their continued confidence and unfailing support. I am equally grateful to the Faculty of Law of Maastricht University for facilitating the work on the second edition of this book. My special thanks go to Marijn Blok, my secretary at the Maastricht Faculty of Law. With the royalties from the first edition of this book, the Maastricht University Fund for Education and Research in International Economic Law (MUFERIEL) was established. This Fund, which is now managed by the Institute for Globalisation and International Regulation at Maastricht University (www.igir.org), has been used to give financial assistance to students and scholars from developing countries. I intend to use the royalties of the second edition for the same purpose. Finally, I would like to dedicate this second edition to Patricia Murillo Montesdeoca, my wife, for her patience and unwavering support.

Peter Van den Bossche
Maastricht, December 2007
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