THE WORLD TRADE ORGANIZATION
KNOWLEDGE AGREEMENTS

The WTO intellectual property and services agreements (TRIPs and GATS) form the global legal framework within which governments now regulate trade in knowledge. This second edition analyses the provisions of the agreements and examines closely the thirteen years of implementation and revision. Gathering together the interpretations placed on the agreements by the WTO dispute settlement bodies, it reports on the initiatives taken by the members both to liberalise trade in knowledge and to shape international business regulation. Drawing on this experience, Christopher Arup assesses the future of the WTO as a global law-making institution. Three expanded case studies (legal services, genetic codes/essential medicines, and online media) illustrate the impact of the agreements and highlight the challenges faced by the WTO in reconciling free trade with social regulation.

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PREFACE AND ACKNOWLEDGEMENTS

This new edition of my 2000 book incorporates and evaluates the experience with the implementation and revision of the WTO agreements. I have decided to keep to the format of the original edition and integrate the new material. Because of the impasse in new trade negotiations, nothing radical has happened to the agreements recently. Yet there has been a huge amount of consolidation, refinement and reconsideration, so much so that it was quite daunting at times to encompass the field, and select the key aspects.

This experience means that the dispute settlement system now plays a bigger part in the construction of WTO law than it did when I was writing up the first edition in 1998. So it receives close examination here, but along with the other interesting experiments in WTO decision making such as the TRIPs system for trade in medicines under compulsory licence and the GATS work on disciplines for domestic regulation. It would have been easiest to stay with these institutional developments but I have also persisted with the three detailed case studies. The aim is to show, I hope, that the WTO still has challenges to face and choices to make if it is to accommodate alternative producer claims and support international business regulation.

Also regarding the format, I should note that I have retained quite a few of the 'old' references because they represent the formative context at the imaginative, innovative time the agreements were fashioned and the members embarked on implementation. All the same, I have added substantially more, not least because the WTO epistemic community is the biggest growth area since the first edition. The recent work of the secretariats, the government officials, the scholars and the activists is the source of many useful insights and constructive ideas. This edition has the benefit of the many excellent scholars who have been attracted to the WTO, but of course I have not been able to do them justice.

I have moved universities twice since I laboured on the first edition and I want to thank warmly those colleagues who have been supportive.
of me continuing (fitfully) my own work in the field, especially Michael Blakeney, Peter Drahos, Andrew Stewart, Justin Malbon, Pat O’Malley and Richard Mitchell, and my new university, Monash. Thanks also to Cambridge University Press and particularly to Finola O’Sullivan for continued faith in me. Last but not least I thank my family (Jenny, Tom and Henni Arup) for indulging such abstruse preoccupations.
LIST OF WTO DISPUTE RULINGS


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LIST OF INTERNATIONAL INSTRUMENTS

WORLD TRADE ORGANIZATION AGREEMENTS

Agreement Establishing the World Trade Organization
Agreement on Sanitary and Phytosanitary Measures
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Aspects of Intellectual Property Rights
Agreement on Trade-Related Investment Measures
General Agreement on Tariffs and Trade 1994 (1947)
General Agreement on Trade in Services
Second Protocol to the GATS (Financial Services)
Third Protocol to the GATS (Movement of Natural Persons)
Fourth Protocol to the GATS (Basic Telecommunications)
Fifth Protocol to the GATS (Financial Services)
Understanding on Commitments in Financial Services
Understanding on Rules and Procedures Governing the Settlement of Disputes

OTHER AGREEMENTS, CONVENTIONS AND TREATIES

Berne Convention for the Protection of Literary and Artistic Works
Convention on Biological Diversity
Doha Declaration on TRIPS and Public Health
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GATS Annex on Financial Services
GATS Annex on Movement of Natural Persons
GATS Annex on Telecommunications
International Convention for the Protection of New Varieties of Plants
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
Paris Convention for the Protection of Industrial Property
Treaty on Intellectual Property in respect of Integrated Circuits
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
Vienna Convention on the Law of Treaties
WIPO Copyright Treaty
WIPO Performances and Phonograms Treaty