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Robert E. Hudec

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## DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM

In this reissued edition of *Developing Countries in the GATT Legal System*, the seminal impact of the late Robert E. Hudec's work on the situation of developing countries within the international trade system is once again available. Robert Hudec is regarded as one of the most prominent commentators on the evolution of the current international trade regime. This book offers his analysis of the dynamics playing out between developed and developing nations. This analysis, insightful when the book was first published, continues to serve as a thoughtful guide to how future trade policy must consider the demands of the developing world.

This edition includes a new introduction by J. Michael Finger that reviews Hudec's work to understand how the General Agreement on Tariffs and Trade (GATT) got into its current historical-institutional predicament. It also examines the lasting impact of Hudec's work on current research on international trade systems.

The late Robert E. Hudec was the Melvin E. Steen Professor of Law at the University of Minnesota. He was a leading authority on trade law and the GATT. During the early stages of the Kennedy Round of multilateral trade negotiations, conducted under the auspices of the GATT, he was Assistant General Counsel to the Special Representative for Trade Negotiations (STR) in the Executive Office of the President of the United States (1963–65), later known as the Executive Office of the President. Professor Hudec wrote many articles in professional journals on the law of international economic affairs. He was the author of *Adjudication of International Trade Disputes* (1977) and *The GATT Legal System and World Trade Diplomacy* (1975).

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**ROBERT E. HUDEC**

With an Introduction by

J. Michael Finger



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*In memory of Jan Tumlir*

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## Foreword

RELATIONS between developed and developing countries in the international trading system, whose norms, rules and procedures are set out in the General Agreement on Tariffs and Trade (GATT), have been reaching an *impasse*. For a quarter of a century, the developed countries have been allowing, or encouraging, the developing countries to become contracting parties to the GATT without requiring them to abide by the more important obligations of membership. What is more, they have acquiesced in the formal derogation from the principle of non-discrimination, which is the keystone of the GATT, to permit the Generalized System of Preferences (GSP) in favor of developing countries to be established and maintained.

At the same time, developing countries – especially the more advanced ones – have been faced with discriminatory protection against them whenever their exports have been uncomfortably successful in the markets of developed countries, with such protection often taking the form of export-restraint arrangements negotiated “outside” the framework of GATT norms, rules and procedures.

The costs to developing countries of limitations on their access to the markets of developed countries are not so much offset as multiplied by their more or less complete freedom to establish and maintain trade regimes which are highly protectionist and Byzantine in their complexity.

By the early 1980s, it was clear that the role of developing countries in the international trading system was bound to attract increasing attention, especially if a new “round” of multilateral trade negotiations under GATT auspices was to be undertaken. Accordingly, the Trade Policy Research Centre, with the help of a grant from the Leverhulme Trust in London, embarked in 1983 on a major program of studies on the Participation of Developing Countries in the International Trading System, supervised by Martin Wolf, the Centre’s Director of Studies.

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The purpose of the program has been to clarify, for public discussion and policy formation, the underlying reasons for the current difficulties in relations between developed and developing countries in the GATT system. The program focuses on both economic and legal issues in the GATT system *per se* and on impediments to trade liberalization in individual developing countries. The emphasis on the latter derived from the perception that the GATT framework of norms, rules and procedures can be no more than the “handmaiden” of trade liberalization. Liberalization will not be brought about, however, unless there is a consensus in the countries concerned on both its feasibility and its value in promoting their economic growth and development. The domestic impediments to trade liberalization have to be understood if they are to be overcome.

It is true for all countries that multilateral negotiations are a means more of achieving the trade liberalization that is already widely understood to be in each country’s own interests than of liberalizing when no such benefit is seen. In other words, reciprocal bargaining is a way of overcoming domestic resistance to the trade liberalization that is strongly desired by prevailing forces in each country, both in government and in society at large. A desire to liberalize, almost irrespective of what happens elsewhere, is particularly significant in small countries. The smaller the country, the less effective is its international bargaining power and, therefore, the less persuasive is the argument that improved access to markets abroad depends on the liberalization of access to its own market. For this reason, smaller countries usually liberalize only if there is a strong domestic consensus that such liberalization is in their own interests, such a consensus having been long established in countries like Sweden, Switzerland and Singapore.

In developing the program of studies it was clear that both the trade policies of developing countries and the role of those countries in the international trading system reflect economic ideas that have found legal expression in the GATT and associated codes. In particular, developing countries have consistently denied the relevance to themselves of the twin GATT concepts of “equal treatment” and reciprocal trade liberalization. Arguing that “equal treatment of unequals is unfair”, developing countries have demanded discrimination in their favor under the general rubric of “special and differential treatment” or, more recently, “differential and more favorable treatment”. Arguing that reliance on the market thwarts economic development, developing countries have insisted on their need to introduce protection at home while receiving market access and preferential treatment abroad.

Drafts of the papers arising from the Centre’s program of studies were presented at a three-day research meeting at Wiston House, near Steyning, in

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the United Kingdom, attended by those engaged on the program and a number of other scholars and officials. The meeting was immediately preceded by a two-day meeting, also at Wiston House, of a study group which is drawing together the conclusions of the program of studies. This meeting, too, was attended by a number of officials. The two international meetings were funded by a grant from the Ford Foundation in New York. As mentioned earlier, the program of studies, as a whole, has been funded by the Leverhulme Trust in London.

As usual, it has to be stressed that the views expressed in this book do not necessarily represent those of members of the Council or those of the staff and associates of the Trade Policy Research Centre which, having general terms of reference, does not represent a consensus of opinion on any particular issue. The purpose of the Centre is to promote independent analysis and public discussion of international economic policy issues.

HUGH CORBET

*Director**Trade Policy Research Centre**London**May 1987*

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## Acknowledgments

THE IDEA for this study was conceived by Martin Wolf, Director of Studies at the Trade Policy Research Centre, as part of a program of studies on the Participation of Developing Countries in the International Trading System. An early draft of the study, along with drafts of other studies in the program, was presented at an international conference of scholars and senior officials which the Centre held at Wiston House, near Steyning, West Sussex, England, in October 1984. During the two years it took to bring the study from its Wiston House version to the more ambitious first edition form, Martin functioned as principal editor, critic and motivation coach. With all this assistance came a completely free hand to pursue the issues as I saw fit. To say that I am grateful to Martin and to the Centre would be to state the obvious.

Colleagues who read and commented on earlier typescripts include J. Michael Finger and Robert E. Baldwin at the Wiston House conference, Frieder Roessler and Richard Blackhurst at the GATT Secretariat, and Dan Farber and Dan Gifford at the Minnesota Law School. I am indebted to each of them.

I owe a very special debt to the late Jan Tumlr, the former Director of Economic Research and Analysis of the GATT Secretariat. For almost a decade, Jan was a teacher, a friend and a model of what it means to have integrity in this business. His last words to me were about this study – a typically gruff complaint that I was avoiding several hard issues, coupled with an expression of his personal conviction that I would have something worthwhile to say about them. This study is dedicated to Jan's memory.

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