

RECLAIMING DEVELOPMENT IN THE WORLD TRADING SYSTEM

Providing extensive coverage of international trade law from an economic development perspective, this second edition of *Reclaiming Development in the World Trading System* offers discussion of key principles of international trade law, trade measures, trade and development issues, and regulatory reform. Including such topics as the most-favored-nation principle, national treatment, and tariff binding, Yong-Shik Lee also offers insightful analysis into new areas pertaining to agriculture and textile, trade-related investment, intellectual property rights, and trade in services. Looking at trade and development issues in Asia, Africa, and Latin America, as well as microtrade, an innovative international trade system designed to relieve the absolute poverty of least-developed countries, this book is essential reading that gives context to development interests and advances specific regulatory and institutional reform proposals. Lee lends insight into these topics with case analysis exemplifying how our trading systems have been adopted by the developing world in order to foster their own economic development.

PROFESSOR YONG-SHIK LEE is a scholar in international trade law and economic development. He is currently Director and Professorial Fellow of the Law and Development Institute. He graduated in economics with academic distinction from the University of California at Berkeley and received law degrees from the University of Cambridge (BA, MA, PhD). He has over 70 academic publications in the areas of international economic law, law and development, and comparative law. He has taught international economic law at leading universities in US, UK, Australia, and South Korea.

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In support of economic development through
international trade

Dedicated to Dr. Sang Kook Lee, Emeritus Professor,
Seoul National University, my father
and loving mentor.

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PREFACE

This new edition is written for those who wish to study international trade law from the perspective of economic development. The first edition of this book, *Reclaiming Development in the World Trading System* (Cambridge University Press, 2006, 2009), presented arguments in support of reforming the world trading system to serve the development interest while maintaining the essential stability of the current system. Over the years, a need has arisen for a treatise which accounts for the development aspects of the world trading system to accommodate the current interest on trade and development issues and provides a more comprehensive coverage of international trade law for students, academics, lawyers, policy makers, and others broadly interested in the subject.

This new edition attempts to meet this need by expanding the coverage of pertinent international law rules with case analysis, particularly with respect to the core principles of international trade law such as the most-favored-nation principle, national treatment, tariffs and subsidies, and trade remedies. The new edition also introduces additional topics, including rules of origin, government procurement, technical barriers to trade, sanitary and phytosanitary measures, and the WTO dispute settlement mechanism. The second part, which is added to the new edition, covers regional trade and development issues in major regions, including Asia, Latin America, and Africa, as examples to show how the international trading system has been adopted by developing countries in these areas to foster economic development.

The following scholars have contributed to chapters in the second part: Dr. Xiaojie Lu, Associate Professor of Tsinghua University School of Law; Dr. Chilenye Nwapi, Banting Postdoctoral Fellow at the Canadian Institute of Resources Law, University of Calgary, and Senior Fellow at the Institute for Oil, Gas, Energy, Environment and Sustainability, Afe Babalola University (Nigeria); and Dr. Diana Tussie, Director of the International Relations Department, Facultad Latinoamericana de Ciencias Sociales (FLASCO), and Founding Director of the Latin American Trade Network

(LATN). Each scholar contributed an initial draft for Chapter 10 (the China Section of Trade and Development in Asia), Chapter 11 (Trade and Development in Africa), and Chapter 12 (Trade and Development in Latin America), respectively. Part of Chapter 10 (on trade and development in South Korea) also makes frequent references to the works of Professor Jai Sheen Mah. I have revised these scholars' drafts substantially, and I am responsible for the content of the edited parts. I hope that this book will assist readers in understanding international trade law and its implications for economic development.

ACKNOWLEDGMENTS

This book would not have been possible without the valuable assistance of so many individuals. I am grateful to my family, particularly my wife, Dr. Hye Seong Mun, for her enduring support for my academic endeavors. I am also indebted to Dr. Xiaojie Lu, Dr. Chilenye Nwapi, and Dr. Diana Tussie for their insightful contributions to the book and to Professor Jai Sheen Mah for his scholarship on trade and development in Korea which I reference in this book. I owe my academic colleagues gratitude for their invaluable comments which have improved this book significantly. I appreciate my assistants, Kelsey Spillers, Tianzhu Han, Roderick Blevins, Weiqiong Zhu, Jang Whan Cho, Carolina Goncalves, and Kari Bloom for their hard work and Emory University for generous research support. I am grateful to Cambridge University Press for deciding to publish this new edition and for its staff for working tirelessly to bring this book to light. I am also grateful to all the other individuals whose names could not be listed in this limited space but whose support and contribution have nevertheless been indispensable.

ACKNOWLEDGMENTS FROM THE FIRST EDITION

As I wrote this book, I was inspired by the work of Dr. Ha-Joon Chang, Cambridge economist and author of *Kicking Away the Ladder* (2002). This historical analysis of economic development has convinced me that there are substantial inconsistencies between the provisions of the current regulatory framework for international trade and the development needs of developing countries. This conviction has motivated me to write this book in an effort to identify those inconsistencies and propose alternative provisions that would allow developing countries to adopt effective development policies.

I am indebted to many excellent scholars and professionals for invaluable advice and guidance: Dr. Ha-Joon Chang, assistant director of Development Studies at the University of Cambridge; Don Wallace, professor of law at Georgetown University Law Center and president of the International Law Institute; Gary Horlick, former deputy secretary of commerce; Don Mayer, professor of management at Oakland University School of Business Administration and the editor-in-chief of the *International Business Law Review*; Petros Mavroidis, professor of law at Columbia University and associate editor of the *Journal of World Trade*; Mitsuo Matsushita, professor emeritus of law at the University of Tokyo and former member of the World Trade Organization Appellate Body; Jai Sheen Mah, professor of economics at Dankook University; and Junji Nakagawa, professor of international economic law at the University of Tokyo Institute of Social Science and associate editor of the *Journal of World Trade*.

I also thank the late Professor Robert E. Hudec for his insightful work on trade and development that has given immeasurable benefit to so many scholars, including me. Unfortunately, I did not have a chance to meet him. Professor Hudec taught at the University of Minnesota, but when I began to teach at a law school in the Minneapolis/St. Paul area, he had already passed away. Nonetheless, because of his great intellect and generosity toward others, he has become a great example to follow, even after his premature death. This book is in tribute to Professor Hudec.

ACKNOWLEDGMENTS FROM THE FIRST EDITION

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I express my gratitude to Professor Dani Rodrik of Harvard University for kindly sending me his excellent paper on industrial policy, which is cited extensively in this book. I am also thankful to Cambridge University Press and its staff for their efforts in bringing this book to the light of the day. I also appreciate Ms. Janice Sim for her kind assistance in preparing the paperback version of this book. I would like to thank all other individuals who could not be listed in this limited space but whose kind assistance has been nevertheless essential for completing this book. I remember them in my heart with much gratitude.

ABBREVIATIONS

ACWL	Advisory Centre on WTO Law
AD	Anti-dumping
ADF	Agreement on Development Facilitation
ADP Agreement	The Anti-Dumping Practices Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994)
AfDB	African Development Bank
AFTA	ASEAN (Association of Southeast Asian Nations) Free Trade Area
AMS	Aggregate Measurement of Support (in Agreement on Agriculture)
AMSI	African Mineral Skills Initiative
ANRC	African Natural Resources Centre
APEC	Asia-Pacific Economic Cooperation
ATC	Agreement on Textiles and Clothing
ATF	Agreement on Trade Facilitation
ATPC	African Trade Policy Centre
AU	African Union
BISD	Basic Instruments and Selected Documents (published by GATT)
BIT	Bilateral Investment Treaty
BOP	Balance-of-Payment
CACM	Central American Common Market
CARICOM	Caribbean Community and Common Market
CFTA	Continental Free Trade Area
COMESA	Common Market for Eastern and Southern Africa
CTD	Committee on Trade and Development
CTE	Committee on Trade and Environment
CVD	Countervailing Duty
DDA	Doha Development Agenda
DFQF	Duty-Free, Quota-Free
DFS	Development-Facilitation Subsidy

LIST OF ABBREVIATIONS

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DFT	Development-Facilitation Tariff
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EAC	East African Community
EBA Initiative	“Everything But Arms” Initiative (an initiative of the European Union providing preferential treatment to the trade of least-developed countries)
EC	European Communities
ECOWAS	Economic Community of West African States
EFZ	Export Free Zone
EIF	Export Insurance Fund
EPZ	Export Processing Zone
ESG	Emergency Safeguard Measure
EU	European Union
EUR	Euro
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
FTZ	Free Trade Zone
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
GNP	Gross National Product
GPA	Government Procurement Agreement
GSP	Generalized System of Preferences
GVC	Global Value Chain
HCI	Heavy and Chemical Industries
HS	Harmonized System
IGO	Inter-Governmental Organization
IIA	International Investment Agreement
ILO	International Labour Organization
IMF	International Monetary Fund
IPR	Intellectual Property Right
ITO	International Trade Organization
KCGF	Korea Credit Guarantee Fund
KEIC	Korea Export Insurance Corporation
KIBO	Korea Technology Finance Corporation
LCP	Local Content Policy
LDC	Least-Developed Country
LI	Light Industry

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LPP	Locally Produced Product
MAI	Multilateral Agreement on Investment
MDG	Millennium Development Goal
Member	Member State of the World Trade Organization
MERCOSUR	Mercado Comun der Sur (the Southern Common Market in Latin America)
MFA	Multifiber Arrangement
MFN Treatment	Most-Favored-Nation Treatment
NAFTA	North America Free Trade Agreement
NAMA	Non-Agricultural Market Access
NDE	New Development Economics
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
NIC	Newly Industrializing Country
NTB	Non-tariff Barrier
ODA	Official Development Assistance
ODCs	All Other Duties or Charges
OECD	Organisation for Economic Co-operation and Development
OMA	Orderly Marketing Arrangement
PPP	Purchasing Power Parity
RCEP	Regional Comprehensive Economic Partnership
R&D	Research and Development
REC	Regional Economic Community
RTA	Regional Trade Agreement
SA	Agreement on Safeguards
SACU	South African Customs Union
SADC	Southern African Development Community
SCM Agreement	Agreement on Subsidies and Countervailing Measures
S&D treatment	Special and Differential Treatment
SEM	Small and Medium-Sized Enterprise
SOE	State-Owned Enterprises
SPS Measure	Sanitary or Phytosanitary Measure
SSG	Special Safeguard Measures
TBT	Technical Barriers to Trade
TDAR	Trade-Related Development Assistance Report
TPP	Trans-Pacific Partnership
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff-Rate Quota
T-TIP	Transatlantic Trade and Investment Partnership
UBOP	Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994

LIST OF ABBREVIATIONS

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UN	United Nations
UNCTAD	United Nations Committee on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization
UR	Uruguay Round
UR agreement	See WTO agreement
US or U.S.	United States
USD	US Dollar
USTR	United States Trade Representative
VER	Voluntary Export Restraint
VRA	Voluntary Restraint Agreement
WIPO	World Intellectual Property Organization
World Bank	International Bank for Reconstruction and Development
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization
WTO agreement or UR agreement	An agreement included in the Annexes of the WTO Agreement