

Contents

<i>Foreword</i>	xiii
<i>List of Abbreviations</i>	xvii

PART I THE GATT/WTO DISPUTE SETTLEMENT LAW AND PROCEDURES

1	International Trade Law and the GATT/WTO Dispute Settlement System 1948–1996: An Introduction	3
	<i>Ernst-Ulrich Petersmann</i>	
I.	Introduction: International Trade Law and the GATT/WTO Legal System: A Model for Reforming the International Order?	5
II.	The GATT Dispute Settlement System 1948–1995: An Overview	30
III.	The New Dispute Settlement System of the 1994 WTO Agreement	54
IV.	The Future of the GATT/WTO Dispute Settlement System: First Experiences and Remaining Problems	76
 2	 The Concept of Nullification and Impairment in the Legal System of the World Trade Organization	 123
	<i>Frieder Roessler</i>	
I.	Introduction	125
II.	The Origin of the Concept of Nullification and Impairment	126
III.	Nullification and Impairment in the Case of a Failure to Carry Out Obligations	127
IV.	Nullification or Impairment as a Result of the Application of a Legal Measure	130
V.	Nullification or Impairment as the Result of a Situation	139
VI.	Summary and Conclusions	141
 3	 Non-Violation Complaints in WTO/GATT Dispute Settlement: Past, Present and Future	 143
	<i>Thomas Cottier and Krista Nadakavukaren Schefer</i>	
I.	Introduction	145
II.	The Evolution of Non-Violation Complaints in Bilateral and Multilateral Trade Agreements	149
III.	The Case Law: The Containment of Non-Violation	158
IV.	International Law, Equity and Non-Violation Complaints in WTO	163
V.	Operational Principles of Good Faith in WTO Law	171
VI.	Conclusion: What Future Negotiations Should Do	181

CONTENTS

4	WTO Dispute Panel Deference to National Government Decisions. The Misplaced Analogy to the U.S. Chevron Standard-Of-Review Doctrine	185
	<i>Steven P. Croley and John H. Jackson</i>	
I.	Introduction	187
II.	Background: Illustrative GATT Panel Jurisprudence	190
III.	The Law and Negotiating Context of the WTO	193
IV.	The US Jurisprudence: A Valid Source of Analogy?	197
V.	Policy Considerations: The Limits of the Chevron Analogy	203
VI.	Conclusion: Sovereignty and Standard of Review in International Law	208
5	Some Aspects of Third Party Intervention in GATT/WTO Dispute Settlement Proceedings	211
	<i>Mary E. Footer</i>	
I.	Introduction	213
II.	Objectives	214
III.	Evolution of Third Party Participation in GATT Practice	216
IV.	Summary and Conclusions	244
6	Appeal and Judicial Review in International Arbitration and Adjudication: The Case of the WTO Appellate Review	245
	<i>Giorgio Sacerdoti</i>	
I.	Judicial Review in International Law Generally	247
II.	Review Procedures in International Dispute Settlement Mechanisms	254
III.	Appellate Review in the WTO	270
 PART II INTERNATIONAL TRADE LAW AND GATT/WTO DISPUTE SETTLEMENT PRACTICE		
7	GATT/WTO Dispute Settlement Practice in the Field of Anti-dumping Law	283
	<i>Jacques H. J. Bourgeois</i>	
I.	Introduction	285
II.	Standing	286
III.	Consultation and Conciliation as Preliminary Steps	288
IV.	The International Exhaustion of Local Remedies Rule – Claims not Raised in National Proceedings	290
V.	Terms of Reference	294
VI.	Scope and Standard of Review	297
VII.	Sources and Methods of Interpretation	301
VIII.	The “Lacunae” Problem	302
IX.	Procedural Rights and Obligations	304
X.	Remedies	306
XI.	The Effect of Dispute Settlement Decisions in National Proceedings	308
XII.	Some Tentative Conclusions	309

CONTENTS

8	Standards for Panels Reviewing Anti-dumping Determinations under the GATT and WTO	313
	<i>Gary N. Horlick and Peggy A. Clarke</i>	
I.	Introduction	315
II.	Standard of Review	317
III.	Recent Panel Decisions on Selected Issues	321
IV.	Conclusion	324
9	Trade, Environment and the WTO: The Dispute Settlement Practice Relating to Article XX of GATT	325
	<i>Aaditya Mattoo and Petros C. Mavroidis</i>	
I.	Introduction	327
II.	Extrajurisdictionality, Extraterritoriality and the GATT Case Law	329
III.	Trade Rules and the MEAs	332
IV.	The Necessity Test in Article XX	334
V.	Conclusions	343
10	Developing Countries and GATT/WTO Dispute Settlement: A Profile of Enforcement in Agriculture and Textiles	345
	<i>Beatrice Chaytor</i>	
I.	Introduction	347
II.	Agriculture in the GATT	347
III.	New Rights and Obligations in Agriculture	349
IV.	Textiles – A Last Stand Against Discrimination	351
V.	Conclusion	355
11	Restrictive Business Practices and the WTO/GATT Dispute Settlement Process	357
	<i>Mitsuo Matsushita</i>	
I.	Introduction	359
II.	The WTO/GATT and Competition Policy	360
III.	Restrictive Business Practices and International Trade Disputes	362
IV.	Are Restrictive Business Practices Subject-Matters of the Dispute Settlement Procedure of the WTO/GATT?	367
V.	Types of Restrictive Business Practices Covered by the WTO/GATT Dispute Settlement Procedure	371
VI.	Conclusion	373
12	WTO Dispute Settlement in Services: Procedural and Substantive Aspects	375
	<i>Peter K. Morrison</i>	
I.	Introduction	377
II.	Procedural Issues Arising in Services Disputes	378
III.	Substantive Issues Arising in Services Disputes	384
IV.	Conclusion	393

CONTENTS

13	The Settlement of Commercial Aviation Disputes under the General Agreement on Trade in Services and the ICAO Council – A Comparative Analysis	395
	<i>R. I. R Abeyratne</i>	
I.	Introduction	397
II.	GATS Principles	398
III.	Law Making Powers of the ICAO Council	404
IV.	Dispute Resolution Powers of the ICAO Council	408
V.	Conclusion	411
14	WTO Dispute Settlement and the Agreement on Trade-Related Aspects of Intellectual Property Rights	413
	<i>Frederick M. Abbott</i>	
I.	Introduction	415
II.	Composition of the Panel	416
III.	Interpretation of the TRIPS Agreement	418
IV.	Enforcement	427
V.	Presumptions	431
VI.	Non-Compliance with DSB Recommendations and Rulings, and the Suspension of Concessions	432
VII.	Issues Ahead	433
15	Dispute Settlement under the “Plurilateral Trade Agreements”: The Case of the Agreement on Government Procurement	439
	<i>Friedl Weiss</i>	
I.	Introduction	441
II.	From <i>Ancien</i> to <i>Nouveau Regime</i>	443
III.	Panel Reports and EC Procurement Case Law	448
IV.	The Issue of Remedies	460
V.	Concluding Remarks	464
PART III SETTLEMENT OF INTERNATIONAL TRADE DISPUTES IN REGIONAL FREE TRADE AGREEMENTS AND DOMESTIC COURTS		
16	Dispute Settlement in the EC: Lessons for the GATT/WTO Dispute Settlement System?	467
	<i>Thomas Oppermann and José Christian Cascante</i>	
I.	Introduction	469
II.	EC and WTO: Institutional Structure, Decision Making	470
III.	The EC as a Community of Law – A Prerequisite for Judicial Dispute Settlement in the EC	470
IV.	Dispute Settlement in the EC	472
V.	Jurisprudence of the European Court of Justice in the Domain of International Trade – The Standards of Review	474
VI.	Lessons for the GATT/WTO Dispute Settlement System?	478
VII.	Conclusion	486

CONTENTS

17	The Dispute Settlement Rules of the North American Free Trade Agreement: A Thematic Comparison with the Dispute Settlement Rules of the World Trade Organization	487
	<i>Gabrielle Marceau</i>	
I.	Introduction	489
II.	The Purposes of the GATT/WTO and the FTA/NAFTA Agreements	491
III.	The Various NAFTA Dispute Settlement Mechanisms	495
IV.	Some Features of the Dispute Resolution Mechanism of the NAFTA and the WTO	503
V.	The Dispute Resolution Process	515
VI.	Adoption of and Recourse Against Panel Reports	527
VII.	Implementation of Panel Reports and Retaliation	530
VIII.	Relationship between the NAFTA and WTO Dispute Settlement Processes	533
IX.	Conclusion	541
18	Settlement of Disputes in the South American Common Market (Mercosur)	543
	<i>Raúl Aníbal Etcheverry</i>	
I.	South American Integration	545
II.	Regulations for Settlement of Disputes	547
III.	Legal Regulations of the Brasilia Protocol for the Settlement of Disputes	549
IV.	Procedure for Claims Before the Mercosur Trade Commission	552
19	From Dispute Settlement to Jurisdiction? Perspectives for the Mercosur	553
	<i>Paulo Borba Casella</i>	
20	The Role of National Courts in International Trade Relations	559
	<i>Meinhard Hilf</i>	
I.	Introduction	561
II.	Recent Trends in Judicial Review	562
III.	The Two-Levels Approach of Judicial Review and Methods of Linkage	566
IV.	The Role of National Courts Within the WTO	571
V.	Outlook and Proposals Concerning the Role of National Courts in Relation to WTO Law	579
Annexes		
Annex A	Table of Panel Reports issued under Article XXIII of the GATT 1947	587
Annex B	Table of Panel Reports issued under the Tokyo Round Agreements of 1979	611

CONTENTS

Annex C	Dispute Settlement Procedures Initiated Pursuant to the DSU of the WTO	625
Annex D	The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) in the 1994 Agreement Establishing the WTO	643
Annex E	The Working Procedures adopted by the Appellate Body of the WTO	671
<i>Index</i>		691