

*Kokusai Keizai Ho* [International Economic Law]

By Mitsuo MATSUSHITA and Kazumochi KOMETANI

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This is a new textbook on International Economic Law (IEL) written in Japanese. *Mitsuo Matsushita*, the first author, served on the Appellate Body of the World Trade Organization (WTO) from 1995 to 2000 and is currently Professor Emeritus at Seikei University in Japan. *Kazumochi Kometani*, the second author, worked at the Legal Affairs Division of the WTO from 1998 to 2002 and is currently appointed as the General Counsel for International Legal Affairs at the Ministry of Economy, Trade and Industry (METI) in Japan. Both are international law practitioners with decades of experience in the WTO. In this book they attempt to describe the dynamics of IEL from the perspective of a practitioner.

This is an 850-page volume, composed of 19 Chapters, which are divided broadly into three main sections. The first two chapters (Ch.1 History and Policy of IEL; Ch.2 Structure Governing IEL) devote almost 180 pages to a detailed explanation of the theoretical basis of the book. From Chapters 3 to 13, as explained below, the authors identify the “policy rationale” for different types of governmental measures before conducting an analysis of the related disciplines by referring to the WTO Agreement and International Investment Agreements (IIAs). Each chapter deals with pertinent legal issues as follows: Ch.3 Ordinary Customs Duty; Ch.4 Safeguard and Modification of Schedules; Ch.5 Security Export Control and Investment Regulation; Ch.6 Customs and Quarantine Procedures; Ch.7 Other Trade and Investment Restrictions; Ch.8 Taxes, Charges, and Social Insurance Premiums; Ch.9 National

Regulations; Ch.10 Standards and Certifications; Ch.11 Subsidies and Government Procurement; Ch.12 Anti-Dumping and Countervailing Duties; and Ch.13 State-Owned Enterprises and Division of Functions between Public and Private Sectors. Finally, Chapters 14 to 19 include an analysis of areas beyond the traditional coverage of the WTO and IIAs, such as medical and educational services, the human rights of immigrants in relation to the movement of natural persons, and technology policy. Specifically: Ch.14 International Economic Activities and Competition Policy; Ch.15 Balance of Payments, Financial Supervision, and Fiscal/Monetary Policies; Ch.16 Economic and Social Rules of Agriculture and Other Specific Industries; Ch.17 Trade in Services; Ch.18 Intellectual Property Right and Technology Trade; and Ch.19 Free Trade Agreement and Preferential Tariff for Developing Countries.

What makes this book so unique is not only its broad coverage of IEL but also its analytical framework. The authors rely on the well-known distinction between the “International Law of Coexistence” and the “International Law of Cooperation” advocated by *Wolfgang Friedmann* in *The Changing Structure of International Law* (New York: Colombia University Press, 1964). Friedman characterizes international law as a multilayered system consisting of these two different areas of law. The former is a traditional type of international law that aims to circumvent or coordinate conflicts of state jurisdictions or subjective interests to ensure the peaceful coexistence of sovereign states. However, the latter type of international law reflects a modern need for international cooperation to bring to fruition the universal or common interests of mankind in new and emerging fields. Thus, an IEL such as the General Agreement on Tariffs and Trade (GATT) is generally categorized as an international law of cooperation that aims to achieve a common goal such as trade liberalization and in the case of IIA, the protection of investment.

However, since the establishment of the WTO has widely expanded the regulatory scope of the GATT, it has long been disputed whether sufficient policy space is available for a member state to pursue its public interests (e.g., public health) in relation to the requirement of trade liberalization. Moreover, there has been an increasing overlap or conflict between the WTO and other aspects of international law (e.g., environmental treaties), which has led to the “fragmentation” of international law. Thus, the authors propose two different views to grasp these structural changes occurring in IEL on the basis of *Friedmann*’s work.

The authors note that trade liberalization, investment protection, and other policy rationales inevitably conflict and that they cannot be compatible as each sovereign state sets its own preference and order of priority and refers to IEL to maximize its subjective interests. Thus, sovereign states understand IEL as a product of compromise, through which they have managed to agree on the hierarchical relationship between trade liberalization, investment protection, and other policy rationales. To this extent, IEL can be characterized as an agreement between states that aims to coordinate their subjective interests. The authors call this approach the “coexistence model (international competition theory)” and argue that IEL should be interpreted strictly on the basis of the legal text that states have carefully negotiated.

However, the authors contend that trade liberalization and investment protection could be compatible theoretically through integration with other policy rationales under common and higher-level goals, such as maintaining “sustainability” in a society, assuming that all states share this view. In other words, the authors suppose an ideal world where the existing fragmentation in international law could be resolved. In this case, each state optimizes its own economy by referring to IEL as a tool to guide its specialization in industries that have a comparative advantage. Also, states understand that IEL contains no agreement on the

relationship between trade liberalization and other policy rationales. In contrast to the view above, IEL is considered to be a tool to guide the “total optimization” of various policy rationales. The authors call this assumption the “cooperation model (comparative advantage theory)” and propose that IEL be interpreted with reference to the common goal of total optimization. In sum, the authors attempt to present a possible approach to IEL during an era of fragmentation.

A textbook on IEL tends to be descriptive. Thus, it is difficult to find a textbook, whether in English or not, that performs a consistent analysis of IEL based on solid theory. In this sense, the present textbook is unique and irreplaceable. It provides readers with a clear insight into how IEL ought to be interpreted by referring to an analytical framework that is familiar to English speakers worldwide. The reviewer expects this book to be published in English soon to ensure that it is accessible to as many non-Japanese speakers as possible.

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