Contents

Part I    Jurisprudence of Contemporary International Economic Law

1    On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline .......................................................... 3
  1.1 Narrow Interpretation: IEL as a Novel Branch of Public International Law.......................................................... 4
  1.2 Broad Interpretation: IEL as Marginal Synthesis of International Laws and National Laws That Adjust Cross-Border Economic Relations.................................................. 5
  1.3 Analysis Towards the Above Two Groups of Viewpoints............. 6
  1.4 Connection and Difference Between International Economic Law and Public International Law ................................. 17
  1.5 Connection and Difference Between International Economic Law and Private International Law .............................. 18
  1.6 Connections and Differences Between International Economic Law and Domestic Economic Law ..................... 20
  1.7 Connections and Differences Between International Economic Law and International Business Practices............. 24

Annex: Schematic Diagrams of the Mutual Relation as Between International Economic Law and Other Neighboring Legal Departments...... 27

  Integrated Diagram......................................................................................... 27
  Decomposed Diagrams .................................................................................. 28

References........................................................................................................... 28

2    On the Misunderstandings Relating to China’s Current Developments of International Economic Law Discipline .......................... 31
  2.1 So-Called Nonscientific or Nonnormative .............................................. 32
  2.2 So-Called Polyphagian or Avaricious ................................................. 35
  2.3 So-Called Fickle Fashion or Stirring Heat ............................................. 36
  2.4 So-Called Duplicating Version or Importing Goods ........................... 38

References........................................................................................................... 43
3 On the Source, Essence of “Yellow Peril” Doctrine and Its Latest Hegemony “Variant”—The “China Threat” Doctrine: From the Perspective of Historical Mainstream of Sino-foreign Economic Interactions and Their Inherent Jurisprudential Principles

3.1 Introduction: Is “China Threat Doctrine” History or Reality, Fabrication or Truth?

3.2 Origin and Essence of “Yellow Peril Doctrine”
   3.2.1 1870s Version of “Yellow Peril” and “China Threat” by Tsar Russia
   3.2.2 1890s Version of “Yellow Peril” and “China Threat” by the German Empire
   3.2.3 Primitive Version of “Yellow Peril” and “China Threat” by American Hegemonism from the Middle Nineteenth Century to the Late Twentieth Century
   3.2.4 Revised Version of “Yellow Peril” and “China Threat” by American Hegemonism Since the Twenty-First Century, with the Inheritance from and Development to Its Predecessors

3.3 Back to Historical Truth: The Long-Standing Mainstream of Sino-Foreign Economic Interactions and Their Inherent Jurisprudential Principles
   3.3.1 China’s Present National Policy of Opening Up Is the Flourish and Development of Its Fine Traditions in History
   3.3.2 Ancient China’s External Economic Interaction and Its Jurisprudential Principles
   3.3.3 Semicolonial and Semifeudal China’s External Economic Interaction and Its “Jurisprudential” Principles
   3.3.4 Socialist China’s External Economic Interaction and Its Jurisprudential Principles
   3.3.5 China’s Peaceful Rising and Its Long-Term Peaceful Foreign Policy Are Historically Inevitable

3.4 Concluding Remarks: Respecting Historical Truth and Reaching Consensus

References

Part II Great Debates on Contemporary Economic Sovereignty

4.3 Conflicts of Sovereignties in the Formation of the WTO System ........................................ 111
4.4 The Refraction of Such Conflicts in the United States:
“The Great 1994 Sovereignty Debate” ............................................................ 113
4.4.1 Away with the “S” Word: [Sovereignty of Other States] ........................................... 114
4.4.2 Never Away with the US “S” Word: [“Sovereignty (Hegemony) of the United States] ................................................................. 115
4.4.3 The “Contradiction” and Coordination Between “Spear” and “Shield” ................. 121
4.4.4 Some Discussions on “Double Standards,” etc ............................................... 122
4.5 “The Great 1994 Sovereignty Debate” and Section 301 ........................................ 125
4.6 The US–EU Economic Sovereignty Disputes Caused by Section 301: Origin and Prelude .......................................................... 128
4.6.1 US–Japan Auto Disputes ........................................................................... 129
4.6.2 US–E.C. Banana Disputes ......................................................................... 130
4.6.3 US–E.C. Section 301 Dispute ................................................................... 133
4.7 The US–EU Economic Sovereignty Disputes Caused by Section 301: Claims and Rebuttals .............................................................. 135
4.7.1 The Claims of the E.C. Representatives .................................................. 135
4.7.2 The Rebuttals of the United States .................................................................. 138
4.8 The WTO/DSB Panel Report on the Section 301 Case ........................................ 140
4.9 The Equivocal Law-Enforcing Image Concluded from the Panel Report .......................................................... 142
4.9.1 The Panel Creates a Limit for Its Own Duty, Is Overly Cautious, Dares Not to Transgress the “Mine Bounds,” and Is Irresponsible for Its Duties .................................................... 143
4.9.2 The Panel Hovers Between the “Two Powers” in Its Attempt to Ingratiate Itself with Both Sides ......................... 144
4.9.3 The Panel Leaves the Offender at Large, Criticizing Pettily While Doing It Great Favor .................................................. 146
4.9.4 The Panel Is Partial to and Pleading for Hegemony and Thus Leaves a Lot of Suspicions and Hidden Perils .................................................. 147
4.10 The Remaining Suspicions and Latent Perils Entailed by the Panel Report .......................................................... 148
4.10.1 The First Suspicion and Latent Peril .................................................................. 148
4.10.2 The Second Suspicion and Latent Peril ....................................................... 150
4.10.3 The Third Suspicion and Latent Peril .......................................................... 151
4.10.4 The Fourth Suspicion and Latent Peril ......................................................... 153
4.11 Conclusion............................................................................................................ 156
References................................................................................................................ 158

5 On the Implications for Developing Countries of “the Great 1994 Sovereignty Debate” and the EC–US Economic Sovereignty Disputes .......................................................... 159
Reference ................................................................................................................ 163
Part III  China’s Strategic Position on Contemporary International Economic Order Issues

6  What Should Be China’s Strategic Position in the Establishment of New International Economic Order? With Comments on Neoliberalistic Economic Order, Constitutional Order of the WTO, and Economic Nationalism’s Disturbance of Globalization ............................................... 167

6.1  Introduction: International Economic Order, International Economic Law, the Global South–North Contradiction, and China’s Strategic Position ......................................................... 168

6.2  China’s Self-Positioning in History ................................................. 170

6.2.1  Self-Positioning of Ancient China ....................................... 170

6.2.2  Self-Positioning of Modern China ....................................... 171

6.2.3  Mainstream National Consciousness Developed from Post-Opium War for More Than 160 Years and Its Influence on China’s Self-Positioning ...................... 172

6.3  China’s Self-Positioning in the Future: To Be One of the Driving Forces and Mainstays for the Establishment of the NIEO ...................................................................................... 174

6.4  Comprehensive and Accurate Understanding of Deng Xiaoping’s 28-Word Foreign Policy Is a Must for Scientifically Establishing China’s Position ........................................................... 176

6.5  Brief Comments on Theories of Contemporary International Economic Order and China’s Positioning ........................................ 190

6.5.1  Neoliberalistic Economic Order ........................................... 190

6.5.2  Constitutional Order of the WTO ........................................ 196

6.5.3  Economic Nationalism’s Disturbance of Globalization ...... 200

6.6  Conclusions ...................................................................................... 203

References................................................................................................. 204

7  A Reflection of the South–South Coalition in the Last Half Century from the Perspective of International Economic Lawmaking: From Bandung, Doha, and Cancún to Hong Kong ...... 207

7.1  Introduction ...................................................................................... 207

7.2  From Bandung to Hong Kong: The South–South Coalition Progresses Unevenly ............................................................. 209

7.2.1  The Bandung Conference Among the South–South Countries: The First Asian–African Conference .............. 209

7.2.2  The Group of 77 Among the South Countries ..................... 210

7.3  The Fresh Countenance and Forthcoming Obstacles of the South–South Coalition in the Doha–Cancún Process ............ 214

7.4  The Status Quo and Prospects for the South–South Coalition from Cancún to Hong Kong ......................................................... 218

7.4.1  The Multilateral Negotiations Are in Stagnation After the Cancún Deadlock .......................................................... 218
7.4.2 The Prospect of the South–North Multilateral Negotiation Grows Brighter ................................................. 219
7.4.3 The South–North Multilateral Negotiation Again Dims ..... 220
7.4.4 The Positive Fruits of the Hong Kong Conference with Heavy Negative Comments: Shown Up After Numerous Appeals but Still Half-Masked ........................................ 227
7.4.5 New Highlights in the South–North Conflict: Judicial Breakthrough in Recently Litigated WTO Agricultural Disputes ............................................................................... 232
7.5 Assessment of the Trend After the Hong Kong Conference in the Light of the Historical Track of the South–South Coalition During the Last 50 Years .................................................. 233
7.5.1 The Historical “6C” Track of South–North Conflicts and Its Characteristics .......................................................... 233
7.5.2 To Doha Round’s Success: No Way Except Through the Tenacious South–South Coalition .................................. 235
References ................................................................................................. 238

8 Some Jurisprudential Thoughts upon WTO’s Law-Governing, Law-Making, Law-Enforcing, Law-Abiding, and Law-Reforming ... 241
8.1 China’s Age in the WTO Having Reached Full 9 and Entered 10 ............................................................................... 242
8.2 WTO and Its Related International Economic Relationships Must Be Governed by Law .............................................................. 242
8.3 “6C Rule” Embedded in the Law-Making Process of IEL for the Past 60 Years ......................................................................... 243
8.4 Relationships Among Law-Making, Law-Abiding and Law-Reforming of the WTO and Its “Rules of Game” ................... 245
8.4.1 Should International Weak Groups Wholly Deny or Entirely Accept Existed WTO and Its “Rules of Game” at All? ......................................................... 246
8.4.2 Is Law-Reforming of the WTO and Its “Rules of Game” Nothing but a “Political Challenge”? .............................. 246
8.5 Is the WTO’s Law-Enforcing Body DSB “Bao Qingtian” in the Field of International Economy? ................................. 248
8.5.1 The “Congenital Deficiency” of the WTO’s Law-Enforcing Body DSB ................................................................. 249
8.5.2 The “Postnatal Imbalance” of the WTO’s Law-Enforcing Body DSB ........................................................................ 252
8.6 To Attain Goodness and Avoid Harmfulness in Law-Abiding and Law-Adapting, to Promote Law-Reforming and Strengthen Up Weak Through South–South Coalition ................................. 254
8.7 Rugged and Tough Path for Weak Groups to Promote Law-Reforming and Strengthen Themselves Up, yet a Bright Prospect Through Advancing with Time ........................................... 258
8.7.1 Rugged and Tough Path for Weak Groups to Promote Law-Reforming and Their Accumulated Achievements During 1947–2000 ............................................................... 258
8.7.2 Rugged and Tough Path for Weak Groups to Promote Law-Reforming During 2001: Present and Their Bright Future ...... 264
8.8 Brief Conclusions ........................................................................................................ 267
References .................................................................................................................... 268

Part IV Divergences on Contemporary Bilateral Investment Treaty

9 Should the Four “Great Safeguards” in Sino-foreign BITs Be Hastily Dismantled? Comments on Critical Provisions Concerning Dispute Settlement in Model US and Canadian BITs .... 273
9.1 The Provisions Concerning Dispute Settlement in the Chinese BITs and Their Correspondence with Relevant Provisions in the ICSID Convention ....................................................... 274
9.2 Essential Provisions Concerning Dispute Settlement in US and Canadian Model Bits ........................................................................................................ 279
9.3 China Should Not Hastily Accept the Above US and Canadian Provisions or Their Variations When Negotiating and/or Concluding BITs ........................................................................ 282
9.3.1 Such Provisions Deviate from the Rights Authorized to Host Countries by International Conventions ........................................................................ 282
9.3.2 Such Provisions Do Not Match China’s Current Circumstances ........................................................................................................ 288
9.3.3 Such Provisions Ignore the Bitter Lessons of Some Bits Harming Weak Countries: The Warning from Argentina’s Dilemma ........................................................................ 295
9.3.4 Such Provisions Ignore the Latest Legislative Track-Shift in Two Host Countries: Argentina and the United States ...... 298
9.4 Suggestions for Future Sino-foreign BIT Negotiations ........................................ 302
9.4.1 Strengthening Investigation and Research on Recent Developments in BIT Practice and Acting with High Caution ........................................................................ 302
9.4.2 Using Well the Authorizations of Relevant Conventions and Firmly Holding onto the Four Great Safeguards ........ 303
9.4.3 Insisting on “Never Repeat” and Timely “Mending the Fold After Some Sheep Have Been Lost” ............................ 304
References .................................................................................................................... 306

10 Distinguishing Two Types of Countries and Properly Granting Differential Reciprocity Treatment: Re-comments on the Four Safeguards in Sino-Foreign BITs Not to Be Hastily and Completely Dismantled ........................................................................ 309
10.1 Background ............................................................................................................ 310
10.2 Major Viewpoints in “The First Comments” ...................................................... 313
10.3 Some New Thoughts for Future Sino-Foreign BIT Negotiations

10.3.1 Strengthening Investigation and Research on Recent Internal and External Developments and Acting with High Caution

10.3.2 Using Well the Authorizations of the Relevant Conventions and Firmly Uphold the Four Great Safeguards

10.3.3 Distinguishing Two Kinds of Countries, Granting Differential Reciprocity, Excluding or Limiting the Application of MFN to International Dispute Settlement Procedures

10.4 The Theoretical Grounds and Practical Precedents for Adopting Differential Treatment Based on the Distinguishing Two Types of Countries

10.4.1 Differential Treatment Conforms to the Universal Philosophy of “Analyze Issues Under Their Concrete Situations”

10.4.2 Differential Treatment Conforms to the Basic Jurisprudence of “Equity and Mutual Benefit”

10.4.3 Differential Treatment Conforms to the Basic International Law Principle of Supremacy of State Sovereignty

10.4.4 Differential Treatment Conforms to the Evolution of the Principle of MFN Treatment

10.4.5 Differential Treatment and Exclusion or Limitation of the Application of MFN Treatment to the Dispute Settlement Procedures Conforms to the Latest Repeated Warnings from UNCTAD

10.4.6 Differential Treatment Conforms to the Current International Arbitration Practices

10.4.7 The Precedents of Granting Differential Treatment and Excluding or Limiting the Application of MFN Clause

10.5 Conclusion

References

11 Queries to the Recent ICSID Decision on Jurisdiction Upon the Case of Tza Yap Shum v. Republic of Peru: Should China–Peru BIT 1994 Be Applied to Hong Kong SAR Under the “One Country, Two Systems” Policy?

11.1 Introduction: Summary of the Dispute

11.2 Main Issues and Basic Academic Views

11.2.1 Main Issues

11.2.2 Basic Academic Views

11.2.3 Three Aspects of Queries
11.3 Queries upon Applicability of China–Foreign BITs to Chinese Nationals with the Right of Abode in Hong Kong

11.3.1 Historical Overview of Hong Kong Before and After Its Return to China

11.3.2 The China–British Joint Declaration

11.3.3 The Joint Liaison Group

11.3.4 The Basic Law of the Hong Kong Special Administrative Region

11.3.5 Applicability of the China–Peru BIT 1994 to Hong Kong Residents

11.4 Queries upon Scope of the Arbitration Provision in the China–Peru BIT 1994

11.4.1 Historical Overview of China’s Accession to the ICSID Convention

11.4.2 China’s Policy on the Resolution of Investment Treaty Disputes

11.4.3 Scope and Nature of the Dispute Resolution Provision in the China–Peru BIT 1994

11.5 Queries upon the Twisted Interpretation Against Articles 31 and 32 of the Vienna Convention of Laws of Treaties

11.5.1 How Did the Tribunal Twistingly Interpret Articles 31 and 32 of VCLT?

11.5.2 What Scientific Approaches Should Be Used to Find True and Correct Interpretation on Articles 31 and 32 of VCLT per se and the Peru–China BIT 1994?

11.5.3 With Respect to Key Instruments Such as Joint Declaration and Basic Law

11.5.4 With Respect to Rules of International Law Applicable in the Relations Between the Parties

11.5.5 With Respect to Specific Circumstances of the Conclusion of Peru–China BIT 1994

11.6 Conclusion: ICSID’s Decision on Case No. Arb/07/6 Is Incorrect, Unreasonable, and Unacceptable

12 Should “The Perspective of South–North Contradictions” Be Abandoned?: Focusing on 2012 Sino-Canada BIT

12.1 China’s Scientific Position: Still a Developing Country, Belonging to the South Camp

12.2 The Source and Stream of South–North Contradictions

12.2.1 The Essence of Modern BIT: A Product of South–North Contradiction

12.2.2 Conclusion of South–North BIT: A Process of Benefits Exchange and Mutual Compromise, Not Necessarily a Process in Pursuit of “Universal Values”
12.3 2012 Sino-Canada BIT as a Typical Example of South–North Benefits Exchange and Mutual Compromise: Focusing on the “Expropriation and Compensation Clause” .......................... 381
   12.3.1 South–North Divergence on “Compensation Standard” .................................................. 383
   12.3.2 South–North Divergence on “Compensation Evaluation” ............................................... 384
   12.3.3 A Recent South–North Compromise on Compensation for Expropriation and Its Valuation Criteria .............. 387
12.4 2012 Sino-Canada BIT as a Typical Example of South–North Benefits Exchange and Mutual Compromise: Focusing on the “Dispute Settlement Clause” ............................................. 388
   12.4.1 South–North Divergence and Compromise on MFN Treatment Exception .................................... 389
   12.4.2 South–North Divergence and Compromise on Financial and Prudential Carve-Out ......................... 391
   12.4.3 South–North Divergence and Compromise on Taxation Carve-Out ........................................... 392
   12.4.4 South–North Divergence and Compromise on the Exception of Exhaustion of Local Remedies .......... 394
   12.4.5 South–North Divergence and Compromise on the National Security Exception ........................... 396
12.5 Doha Round: Clear Evidence that Perspective of South–North Contradictions Should Not Be Abandoned in the Construction of International Economic Rules ........................................ 397
12.6 Concluding Remarks .................................................................................................................. 399
12.7 Annex: Interpretation of China–Canada Bilateral Investment Protection Agreement by an Official from the Department of Treaty and Law of MOFCOM ......................................................... 400
   12.7.1 What Are the Main Contents of the Agreement? ......... 400
   12.7.2 What Is the Significance of Signing the Agreement? ..... 402
References ........................................................................................................................................... 402

Part V Contemporary China’s Legislation on Sino-Foreign Economic Issues

13 To Open Wider or to Close Again: China’s Foreign Investment Policies and Laws ............................................. 407
13.1 The 1982 Constitution .................................................................................................................. 407
13.2 Current Policies ................................................................................................................................. 408
   13.2.1 Coordination with China’s Economic Aims ...................... 409
   13.2.2 Just Rights and Legal Profits ........................................... 410
   13.2.3 Full Decision-Making Power .......................................... 411
   13.2.4 Attraction of Foreign Investors ....................................... 412
13.3 Substantive Laws

13.3.1 Joint Venture Law
13.3.2 Law of Special Economic Zones
13.3.3 Economic Contract Law
13.3.4 Sino-Foreign Economic Contract Law
13.3.5 Trademark Law
13.3.6 Patent Law

13.4 Procedure Laws

13.4.1 Civil Procedure Law
13.4.2 Arbitration Rules

13.5 Conclusion

References

14 To Close Again or to Open Wider: The Sino-US Economic Interdependence and the Legal Environment for Foreign Investment in China After Tiananmen

14.1 Washington: Most Favored Nation ≠ Most Favorite Nation
14.2 Beijing: MFN-China, United States in the Same Boat
14.3 Quiet Swallows Sensitive to Climate
14.4 Six New Facets Added to the Legal

14.4.1 Joint Ventures Law Amended
14.4.2 Land-Tract Development Measures Promulgated
14.4.3 Pudong: A Heart-Side Area Widely Opened
14.4.4 Tax Law for Foreign Investors Being Unified and Made More Preferential
14.4.5 Administrative Procedure Law Enforced
14.4.6 ICSID System Accepted

14.5 The Baby and the Bath Water

15 Should an Absolute Immunity from Nationalization for Foreign Investment Be Enacted in China’s Economic Law?

15.1 Reasons for Raising the Question
15.2 Two Different Views
15.3 The Writer’s Personal Views

References

16 China’s Special Economic Zones and Coastal Port Cities: Their Development and Legal Framework

16.1 Theoretical Debates
16.2 Practical Development
16.3 Baby and Dirty Water: Maturation of the Policy

16.3.1 The Yang Yibang Case
16.3.2 The Zhou Zhirong Case
16.3.3 The Wang Zhong Case

16.4 Legal Framework

16.4.1 Preferential Tax Treatments in SEZs, ETEDEZs, COPOCIs, and CEOAs
16.4.2 Labor and Wages in SEZs, ETEDEZs, COPOCIs, and CEOAs ................................................................. 515
16.4.3 Land Use and Management in the SEZs, ETEDEZs, COPOCIs, and CEOAs ............................................ 518
16.4.4 Enterprise Registration in the SEZs, ETEDEZs, COPOCIs, and CEOAs .................................................... 521
16.4.5 Technology Imports into the SEZs, ETEDEZs, COPOCIs, and CEOAs .................................................... 525
16.4.6 Foreigners Entering and Leaving China’s SEZs .......... 528
16.4.7 Economic Combination Between the SEZs et al. and Inlands ................................................................. 529
16.5 Latest Incentives ................................................................................................................................. 531
16.5.1 Lower Taxes ..................................................................... 536
16.5.2 Lesser Fees .................................................................... 538
16.5.3 Cheaper Labor .................................................................. 539
16.5.4 More Preferences ............................................................. 540
16.5.5 Greater Autonomy ............................................................ 541
16.5.6 Simpler Formalities .......................................................... 542
References................................................................................................................................................. 546
17 Why Some Sino-foreign Economic Contracts Are Void and How Voidness Can Be Prevented .............................................. 547
17.1 Contracts Must Be Observed and Illegal Contracts Are Void ...... 547
17.2 The “Eel Fry” Incident: A Series of Illegal Contracts .......... 550
17.3 Contracts with Unqualified Parties Are Void .......................... 554
   17.3.1 A Noncorporate Body Cannot Be a Party to a Foreign Economic Contract ................................. 555
   17.3.2 A Corporation That Is Prohibited by Law Cannot Be a Party to a Foreign Economic Contract ......... 555
   17.3.3 A Corporation Cannot Be a Party to a Sino-foreign Economic Contract That Is Outside Its Registered Business Scope ......................................................... 556
   17.3.4 At Present, Chinese Citizens Cannot Generally Act in Their Individual Status as Parties to Sino-foreign Economic Contracts ................................................................. 558
17.4 Contracts with Illegal Contents Are Void ................................ 560
17.5 Two Contracts Involving Hong Kong ....................................... 568
17.6 Preventing the Formation of Invalid Contracts and Handling These Contracts ............................................ 575
References..................................................................................................................................................... 579
18 On the Supervision Mechanism of Chinese Foreign-Related Arbitration and Its Tally with International Practices ..................... 581
18.1 Introduction ........................................................................ 581
18.2 Promulgation of the Arbitration Law ........................................ 582
18.3 A Comparison Among China’s Trial Supervision, Domestic Arbitration Supervision and Foreign-Related Arbitration Supervision, and Some Pending Issues .......................... 584

18.4 A Discussion on the Reasonableness of China’s Separate Legislation for Domestic and Foreign-Related Arbitration Supervision ............................................. 591

18.4.1 The Issue on Tallying Provisions Concerning Foreign-Related Arbitration Supervision of Arbitration Law with Those of Civil Procedure Law .................. 592

18.4.2 The Issue on Tallying Provisions Concerning Foreign-Related Arbitration Supervision of Arbitration Law with Those of International Treaties ................. 596

18.4.3 The Issue on Tallying Provisions Concerning Foreign-Related Arbitration Supervision of Arbitration Law with Those of Advanced Practices in Current Arbitration Enactments of Other Countries .................. 600

18.4.4 The “Uniqueness” of China’s Foreign-Related Arbitration Supervision and the Necessity of Tallying Its Supervision Mechanism with International Treaties and Practices ........................................ 608

18.5 Some Ideas on How to Strengthen the Current Chinese Foreign-Related Arbitration Supervision Mechanism ................................................................. 618

References ............................................................................................................. 621

19 Is Enforcement of Foreign Arbitral Awards an Issue for Establishment and Improvement in China? ................................................................. 623


19.2 1979–1994 (15 Years): Domestic Legislation Established and International Conventions Acceded ................................................................. 624

19.2.1 Promulgating PRC’s Civil Procedure Law (For Trial Use) .......... 624

19.2.2 Acceding to the New York Convention of 1958 ................. 624

19.2.3 Acceding to the Washington Convention of 1965 ............... 625

19.2.4 Promulgating PRC’s Civil Procedure Law (Formal) ....... 625

19.2.5 Promulgating PRC’s Arbitration Law .................................. 626

19.3 1995–Present: Judicial Explanations Added ................................. 627

19.3.1 Obstacles from “Local Protectionism” ................................ 627

19.3.2 “Double Report System” Preliminary Established:
   To Overcome the “Local Protectionism” .................................. 628

19.3.3 “Double Report System” Strengthened: To Overcome the “Local Protectionism” ......................................................... 630

19.4 Domestic Legislations Need to Be Further Improved .......... 630
Part VI  Contemporary Chinese Practices on International Economic Disputes (Cases Analysis)

20  The Truth Among the Fogbound “Expropriation” Claim: Comments on British X Investment Co. Versus British Y Insurance Co. Case .............................................................. 635
  20.1 Summary of the Case ................................................................. 635
  20.2 Questions for Answers .............................................................. 637
  20.3 Expert’s Views and Opinions ....................................................... 638
      20.3.1 In the CJV Contract Dated on 25 December 1996, the Provisions of Article 15 on Distribution of Profit Were in Compliance with the Laws at That Time and Have Been in Compliance with the Laws .............. 638
      20.3.2 For the “Circular [1998] No. 31” of the State Council on Strengthening the Administration and Carrying on Check of the Foreign Exchange and Foreign Debt Issued in September 1998, Its Legal Force Is Not Complete........ 639
      20.3.3 The “Circular [1998] No. 31” Has No Legal Effect of Retroactivity................................................................. 641
      20.3.4 Actually, the Aforesaid Prohibitive Provisions in the “Circular [1998] No. 31” Have Been Amended Again and Again in 2002 and 2004................................. 643
      20.3.5 “Circular [2002] No. 43” Is Not an “Expropriation Decree”; New Agreements on 11 March 2003 Are Not “Behaviors of Expropriation”......................... 646
      20.3.6 Provisions in the Foreign Investment Regulations and “Bilateral Investment Agreement Between PRC and UK” Concerning the Expropriation of Foreign Investment ................................................................. 650
  20.4 Conclusion................................................................................. 652

21  The Approach of “Winning from Both Sides” Used in the “Expropriation” Claim: Re-comments on British X Investment Co. Versus British Y Insurance Co. Case ...................... 655
  21.1 [Q1] and [A1]................................................................................. 655
  21.2 [Q2] and [A2]................................................................................. 657
  21.3 [Q3] and [A3]................................................................................. 657
  21.4 [Q4] and [A4]................................................................................. 658
  21.5 [Q5] and [A5]................................................................................. 659
  21.6 [Q6] and [A6]................................................................................. 660
  21.7 [Q7] and [A7]................................................................................. 661
  21.8 [Q8] and [A8]................................................................................. 662
  21.9 [Q9] and [A9]................................................................................. 663
22 On the Serious Violation of Chinese Jus Cogens: Comments on the Case of Importing Toxic Brazilian Soybeans into China (Expert’s Legal Opinion on Zhonghe Versus Bunge Case) ........................................ 675
22.1 Brief CV of the Expert ................................................................. 676
22.2 Summary of the Case ................................................................. 677
22.3 Questions Consulted ................................................................ 679
22.4 Expert’s Views and Opinions ................................................... 680
22.5 Brief Conclusion ...................................................................... 689
Reference ........................................................................................ 690

23 Isn’t the Strict Prohibition on Importing Toxic Brazilian Soybeans into China “Illegal”?—A Rebuttal to Lawyer Song’s Allegation ..... 691
23.1 Procedural Unfairness ............................................................... 692
23.2 Partiality of Mr. Song ................................................................. 692
23.3 The Powers and Authority of AQSIQ ....................................... 693
23.4 Whether Professor CHEN Is Qualified to Deal with English Law ................................................................. 711

24 Three Aspects of Inquiry into a Judgment: Comments on the High Court Decision, 1993 No. A8176, in the Supreme Court of Hong Kong ................................................................................ 717
24.1 Introduction ............................................................................... 717
24.2 Brief Facts .............................................................................. 718
24.3 Query One to the Judgment: On the Jurisdiction of the Case .... 723
   24.3.1 The Judgment Detained and Left the Jurisdiction over the Case to the Court of Hong Kong, Obliterated the Close Connections Among Contract A158, Contract B, and Contract C, as Well as Those Between Contract A158 and Bill of Exchange 10732C. It Thus Thoroughly Violated the Legal Principles of “Autonomy of Will” and Pacta Sunt Servanda ............... 724
   24.3.2 The Judgment Detained and Left the Jurisdiction over the Dispute of the Bill of Exchange to the Court of Hong Kong and Refused to Stay the Proceedings of the Case, Thus Thoroughly Violating the Hong Kong Arbitration Ordinance ...................... 729
   24.3.3 The Judgment Detained and Left the Jurisdiction over the Dispute of the Bill of Exchange to the Court of Hong Kong and Refused to Stay the Proceedings of the Case, Thus Thoroughly Violating the International Treaty That Britain Has Acceded to and to Which Hong Kong Is Legally Bound ............................ 731
24.3.4 The Judgment Detained and Left the Jurisdiction over the Dispute of the Bill of Exchange to the Court of Hong Kong, Thus Thoroughly Violating Universally Acknowledged International Practice .......... 732

24.3.5 The Judgment That Detained and Left the Jurisdiction over the Dispute of the Bill of Exchange to the Court of Hong Kong Is a Lack of Due Respect for Chinese Laws and Regulations That Tally with International Practice ........................................ 734

24.4 Query Two to the Judgment: On the Recognition in Chinese Law of the “Autonomy” of the Bill of Exchange Dispute in This Case ................................................................. 739

24.4.1 There Does Not Exist in the Laws of China Such a Strange Expression of “The Autonomy of Bills of Exchange” and Absolute “Independence” of Bills of Exchange as Extremely Esteemed by Mr. Dicks .......... 740

24.4.2 Mr. Dicks’ Citations from the Procedures for Bank Settlements of China Are Garbled and Out of Context .... 741

24.4.3 When Citing Mr. Guo Feng’s Article, Mr. Dicks Has Emasculated Its Rerequisite and Garbled Its Original Meaning ................................................................. 743

24.4.4 Mr. Dicks’ Opinion Runs Counter to the Generally Accepted Viewpoints of Chinese Academic Works on Bill Laws, the Stipulations of Relevant International Convention, and the Bill Law of China ........................................ 745

24.4.5 Mr. Dicks Has Distorted the Original Text When Quoting the Civil Procedure Law of PRC as Evidence for the Said “Autonomy of Bills of Exchange” .............. 748

24.5 Query Three to the Judgment: On the Defendant’s Right of Defense in This Case ................................................................. 749

24.5.1 The Reason “It Was Too Late” Is Not Tenable .......... 750

24.5.2 Denying Equal Right of Defense to the Defendant Is Against the Principle of Equity and International Practice on Litigation Procedures ........................................ 751

24.6 Conclusion: The Judgment Based on the Presumptuously Fabricated Rules (Made by Mr. Kaplan and Mr. Dicks) Will Definitely Lose All Its Legal Binding Effect .......... 752

References ......................................................................................... 752

Annex ................................................................................................. 753

Index ................................................................................................. 781
The Voice from China
An CHEN on International Economic Law
CHEN, A.
2013, LXIII, 789 p. 9 illus., 6 illus. in color., Hardcover
ISBN: 978-3-642-40816-8