

attempted to set the price of oil for Canadian industry at 15 percent below the price in the United States, and EU complaints about low fixed natural gas prices in the United States. A year later [after I became head of Import Administration at the US Department of Commerce] Bob's observation became the 'specificity' rule now found in Article 2 of the WTO Subsidies Agreement.

## PROFESSOR HUDEC'S CONTRIBUTION TO WORLD ORDER

*Steve Charnovitz*

For over three decades, Professor Robert E. Hudec shaped the field of international trade law, and inspired students, colleagues, and policymakers around the world. His sudden death on 12 March saddened everyone who worked with him and learned from him. Bob Hudec was a spirited, witty, unassuming, kind, and honest man. He enjoyed having his ideas contested by others, and was willing to spend time to help colleagues and students think through their ideas.

In the first paper of the *Festschrift* volume prepared in Hudec's honor, Professor John H. Jackson remarked that Bob's 'enormous output of research, writing, and thinking has made a substantial contribution to world order and to the burgeoning new subject of international economic law.'<sup>19</sup> Readers of each of the 22 essays in that volume (including my own) will see the many ways in which Hudec's ideas influenced analysts of trade law and the political economy of trade policy.

Professor Hudec's first book, *The GATT Legal System and World Trade Diplomacy* (1975) explored the dialectic between legalism and diplomacy, and articulated the theme for which he is most well known. (An earlier article written while Bob taught at Yale Law School was entitled: *The GATT Legal System: A Diplomat's Jurisprudence*.) The book argued that in the community of the General Agreement on Tariffs and Trade (GATT), it would have to be the 'force of normative pressure' that leads to legal compliance. Although his analysis saw merit in the adoption of more rigorous dispute procedures, Hudec cautioned that 'flexibility' would continue to be needed. In the obituary published in the *New York Times*, the reporter quoted Professor Robert Howse as explaining that Hudec 'developed an approach

<sup>19</sup> John H. Jackson, 'Sovereignty, Subsidiarity, and Separation of Powers: The High-wire Balancing Act of Globalization', in Daniel L. M. Kennedy and James D. Southwick (eds), *The Political Economy of International Trade Law* 13 (Cambridge University Press, 2002).

that neither reduced international trade law to economic policy nor made the law into a kind of formal structure impermeable to politics and diplomacy. He gave both legalism and diplomacy their due.<sup>20</sup>

In his 28 years at the University of Minnesota Law School, Professor Hudec helped to transform the GATT into a more legalistic system. In *The GATT Legal System*, he opened a window into GATT case law by bringing each case to life for the reader so that the issues before the panel could be understood and the panel's reasoning and techniques appreciated. Each case study also discussed what happened *after* a panel ruling. By standardizing his approach to each GATT case, Hudec developed the first database for empirical research on the GATT dispute system. He continued the same approach in his subsequent major volume on the GATT published in 1993. Attention to the politics of GATT disputes and to implementation – alongside good analysis of specific legal issues – has been called the 'Hudec methodology', and is now a standard in good scholarship on trade cases. One can see it in many of the articles in the *Minnesota Journal of Global Trade*, the student journal initiated by Hudec in 1992 with the support of his colleague Professor Fred Morrison. Readers who want to plow deeper into Hudec's views about international trade litigation should start with his essay 'Transcending the Ostensible' originally published in 1987, and reprinted in a major collection of his articles entitled, *Essays on the Nature of International Trade Law*.

The *Essays* contain many gems from Hudec's meticulous scholarship on political economy, including topics as diverse as the infamous Section 301 of US trade law, Jan Tumlir's critique of protectionism as a Constitutional failure, the political morality of multilateral trade negotiations, and the demands for achieving 'fairness' in international trade law. Hudec's interest in this latter problem led to an innovative collaboration with Professor Jagdish Bhagwati during the early 1990s in organizing a multi-year, inter-disciplinary research project of lawyers and economists to examine the most challenging harmonization claims of that era including industrial and regulatory policy, environment, labor, tax, antitrust, and other issues. The project led to a two-volume set of essays that became an instant classic.

My own collaboration with Professor Hudec began in the early 1990s when he took an interest in my research on trade and the environment. He had some strong views about that linkage, and in numerous exchanges by fax, he convinced me of some errors in my analysis, and I tried to persuade him of one or two fault lines in his approach. Debating with Bob was always stimulating and satisfying, and if someone showed him a convincing opposite position, he was willing to change his opinion.

<sup>20</sup> Daniel Altman, 'Robert E. Hudec, 68, Expert on Global Trade Law, Dies', *New York Times* (31 March 2003), at F7.

Although illness had reduced his ability to attend conferences in the past couple of years, Bob Hudec remained active in teaching at the Fletcher School, in research, in editorial board work, and in wide-ranging correspondence with colleagues. In early 2003, I had been in correspondence with him about an essay he was writing for a new collection in honor of Justice Florentino Feliciano, the former chair of the Appellate Body. Hudec was planning an historical and reflective essay on the GATT negotiations in the mid-1960s regarding rules for disputes brought by developing countries, based on his own notes as an Assistant General Counsel in the Office of the US Special Trade Representative. Sadly, he was still a few months away from turning that tantalizing prospectus into a manuscript.

In an obituary in the *Financial Times*, Martin Wolf wrote that 'Breadth of vision, curiosity, originality and rigour marked all Hudec's work.'<sup>21</sup> We will remember those qualities in Bob, and we will miss his friendship.

## A SHORT TRIBUTE TO BOB HUDEC

*William J. Davey*

The recent passing of Bob Hudec is a milestone event in the history of international trade law. Bob was one of a very few pioneers in the academic study of the General Agreement on Tariffs and Trade (GATT), and, the first to analyze comprehensively its system of settling trade disputes between sovereign states. His first book, dating back more than a quarter of a century, set the standard of how to approach the evaluation of such a system. Consequently, Bob's work was truly indispensable. Indeed, for much of the GATT period, the only reliable sources of information about what actually happened in all but a handful of high-profile dispute settlement cases were his seminal books – *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System* and *The GATT Legal System and World Trade Diplomacy*. The vast detail on individual disputes contained in these volumes epitomized the care and thoroughness with which Bob approached his scholarly activities.

As someone interested in GATT/WTO dispute settlement, I always found Bob to be a fascinating person with whom to talk. His experience in respect of trade dispute settlement processes and procedures was truly encyclopedic as he spared no efforts to amass relevant data. Indeed, his detailed research on the outcomes of the various dispute settlement cases, which involved extensive interviews with participants in the process, meant that there was

<sup>21</sup> Martin Wolf, 'Trade Law Loses World Expert', *Financial Times* (24 March 2003), at 9.

## TRIBUTE TO ROBERT HUDEC

IN MEMORY OF PROFESSOR ROBERT HUDEC,  
A GREAT MIND AND A PASSION FOR TRUTH

*John H. Jackson*

Bob and I were never close and yet we were always close. Never were we formal colleagues of the same faculty or other professional positions, but always (it seems) we knew each other and knew each other's work because we had independently chosen and developed a passion for a fascinating subject matter area now broadly called international economic law, but often more specifically focused on international trade law. At a time when the GATT (General Agreement on Tariffs and Trade) was so little known that we would joke about the public perception being 'GATT – What's That?', we both were struggling to get our minds around a unique institution of international law. Here was an entity known as the most important treaty regarding international trade, and the most important international organization for the subject of international trade, yet technically (in some minds at least) the GATT was neither.

The GATT was not a treaty in the normal sense, because it was always 'provisional', applied by the Protocol of Provisional Application. It was not an organization as such, because the treaty language which created it ('provisionally') was never intended to establish an organization, but rather designed to create a massive group of treaty obligations under the supervision of an 'International Trade Organization – ITO' which was intended to be created by a thoroughly crafted charter, the 'Havana Charter' completed in 1948, but which never came into force.

So we two, mostly alone as legal academics at the start and then gradually joined by others, had to struggle with these paradoxes as well as with the intense intersection of law and economics on the international stage. What a journey it has been! Finally, by virtue of the Uruguay Round of trade negotiations completed in 1994, a true organization – the WTO (World Trade Organization) has been established with all the usual trimmings of an international legal entity, and with certain characteristics particularly relating to the most unique and probably most powerful international dispute settlement system and procedures ever known in world legal history. Bob and I both had small but professionally rewarding roles in that recent history.