

# Contents

|  |                  |
|--|------------------|
| <i>List of Figures and Tables</i>  | <i>page</i> viii |
| <i>List of Contributors</i>  | x                |
| <i>Acknowledgements</i>  | xvii             |
| <br>   |                  |
| <b>1 Introduction: The Use of Economics in International Trade and Investment Disputes: Complex, Contentious but Oh-So-Important for the Sustainability of Trade and Investment Treaties</b> | <b>1</b>         |
| <i>Marion Jansen, Joost Pauwelyn and Theresa Carpenter</i>   |                  |
| <br>   |                  |
| <b>PART I THE USE OF ECONOMICS IN INTERNATIONAL TRADE AND INVESTMENT DISPUTES: A PRACTITIONER'S VIEW</b>   | <b>13</b>        |
| <br>   |                  |
| <b>2 Integrating Economic Analysis into WTO Dispute Settlement Practice: A View from the Trenches</b>  | <b>15</b>        |
| <i>Robert Teh and Alan Yanovich</i>  |                  |
| <br>   |                  |
| <b>3 Present at the Creation: Economists and Accountants in International Trade Law Practice</b>   | <b>47</b>        |
| <i>Tom Graham</i>  |                  |
| <br>   |                  |
| <b>4 The Role of Economics in WTO Dispute Settlement and Choosing the Right Litigation Strategy – A Practitioner's View</b>  | <b>55</b>        |
| <i>Christian Lau and Simon Schropp</i>   |                  |
| <br>   |                  |
| <b>5 On Interpretation and Economic Analysis of Law</b>  | <b>76</b>        |
| <i>David Unterhalter</i>   |                  |
| <br>   |                  |
| <b>6 The Client's Perspective</b>  | <b>83</b>        |
| <i>James Flett</i>   |                  |

|   |  |     |
|---|--|-----|
| 7   | <b>The Use of Economics in Competition Law: What Works and What Doesn't Across National Jurisdictions?</b><br><i>Bruce Malashevich and Kathryn Kobe</i>  | 111 |
| <b>PART II THE USE OF ECONOMICS IN INTERNATIONAL TRADE DISPUTES: ECONOMIC VERSUS LEGAL THINKING</b> |  | 139 |
| 8   | <b>What to do if Economic Insights are Disputed: On the Challenge to Deal with Competing and Evolving Theories or Empirics in International Trade Disputes</b><br><i>Anne van Aaken</i>        | 141 |
| 9   | <b>Lost in Translation: Communication and Interpretation Challenges Related to Economic Evidence in Trade Disputes</b><br><i>Marios C. Iacovides and Marion Jansen</i>                         | 164 |
| 10  | <b>Land Rich and Cash Poor? The Reluctance of the WTO Dispute Settlement System to Entertain Economics Expertise: An Institutional Analysis</b><br><i>Petros C. Mavroidis and Damien Neven</i> | 192 |
| 11  | <b>The Economics of Actionable Subsidy Disputes</b><br><i>Jorge Miranda</i>  | 209 |
| 12  | <b>In Search of a "Genuine and Substantial" Cause: The Analysis of Causation in Serious Prejudice Claims</b><br><i>Pablo M. Bentes</i>   | 239 |
| 13  | <b>The Games We Play – Simulation Models in Merger Analysis and Their Potential Use in Trade Litigation</b><br><i>Amar Breckenridge</i>  | 261 |
| <b>PART III THE USE OF ECONOMICS IN INTERNATIONAL INVESTMENT DISPUTES: LIABILITY AND DAMAGES</b>    |  | 281 |
| 14  | <b>Aligning Loss and Liability – Toward an Integrated Assessment of Damages in Investment Arbitration</b><br><i>Wolfgang Alschner</i>  | 283 |
| 15  | <b>An Economic Assessment of Contracts, Requests for Contract Reform, and Damages in International Arbitration</b><br><i>Bastian Gottschling and Willis Geffert</i>                            | 319 |

|    |  |     |
|----|--|-----|
| 16 | Economics in Investor–State Arbitration beyond Quantum<br><i>Carla Chavich and Pablo López Zadicoff</i>  | 335 |
| 17 | Assessing Investor Damages Involving Publicly Traded<br>Companies – with Examples from the Yukos Cases<br><i>Manuel A. Abdala and Alan Rozenberg</i>   | 349 |
| 18 | From the Law of Valuation to Valuation of Law? On the<br>Interplay of International Law and Economics in Fair Market<br>Valuation<br><i>Fuad Zarbiyev</i>  | 370 |
|    | Conclusion: The Use of Economics in International Trade<br>and Investment Disputes: Summing Up and Looking Forward<br><i>Marion Jansen, Joost Pauwelyn and Theresa Carpenter</i>                     | 383 |
|    | Appendix to the Conclusion: Guidelines for submitting quantitative<br>evidence in WTO or investor-state dispute settlement proceedings<br><i>Marion Jansen, Joost Pauwelyn and Theresa Carpenter</i> | 394 |
|    | Index  | 397 |