

WORLD TRADE ORGANIZATION AND MULTILATERAL TRADE AGREEMENT

Professor: AHN Dukgeun
Classroom: Building 140-2/R202
Class Hour: Wednesday 9:00-12:00
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COURSE DESCRIPTION

As a sequel course to “Understanding International Trade Law”, this class deals with more advanced and applied topics in the international trade system. Despite the current difficulty of the WTO system due to the conflict between US and China, most countries, even non-WTO member, are still complying with the WTO rules for their international economic policies. This course shows how those rules have been applied and implemented in various areas with selected WTO dispute case studies.

The final assessment for the course will be based on a take-home examination. Class participation and presentation will be favorably considered in your final grade up to 40%.

COURSE OUTLINE

The following reading list consists of two parts: required reading and recommended reading. The required textbook is P. van den Bossche & Werner Zdouc, “Law and Policy of the World Trade Organization” (5th ed. 2021). Students with serious interest in a particular issue may want to refer to the reading materials listed in the recommended reading sections. Occasional handouts will also supplement reading assignments to keep abreast of new developments that occur almost daily.

Students in this course are also advised to regularly keep up current developments in international trade area. Useful sources include, *inter alia*, Inside US Trade (Site Licensed), Financial Times, and The Economist.

Recently, many other textbooks for international trade law are available. You may also refer to the following books for your research and studies:

- J. Jackson, W. Davey & A. Sykes., Legal Problems of International Economic Relations (7th ed. 2021).
- Petros C. Mavroidis, The Regulation of International Trade, Vol. I, II & III (2020).
- Raj Bhala, International Trade Law, Vol. I, II, III & IV (5th ed. 2019).
- A. Guzman & J. Pauwelyn, International Trade Law (3rd ed. 2016)
- M. Matsushita, T. Schoenbaum & P. Mavroidis, The World Trade Organization (3rd ed. 2015).
- S. Lester, B. Mercurio & A. Davis, World Trade Law (3rd ed. 2018).
- Trebilcock, Howse & Eliason, The Regulation of International Trade (4th ed. 2012)

1. WTO Dispute Settlement System: Current System and Problems

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 3.

RECOMMENDED

- USTR, “Report on the Appellate Body of the World Trade Organization” (Feb. 2020).
- Jennifer Hillman, “Three Approaches to Fixing the World Trade Organization’s Appellate Body: the Good, the Bad and the Ugly?” (Dec. 2018).
- Joost Pauwelyn & Krzysztof Pelc, “Who Writes the Rulings of the World Trade Organization? A Critical Assessment of the Role of the Secretariat in WTO Dispute Settlement” (<https://ssrn.com/abstract=3458872>)
- Simon Lester, “Can Interim Appeal Arbitration Preserve the WTO Dispute System?”, CATO Institute (Sep. 2020).
- C. Bown & B. Hoekman, “WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector”, *Journal of International Economic Law*, 8:4, 861-890 (2005)
- Cartland, Michel, Depayre, Gerard & Woznowski, Jan, “Is Something Going Wrong in the WTO Dispute Settlement?”, *Journal of World Trade* 46, no. 5 (2012): 979-1016.
- William J. Davey, ‘Reforming WTO Dispute Settlement’, in Mitsuo Matsushita and Dukgeun Ahn (eds), *WTO & East Asia* (2004).
- William J. Davey, “The WTO Dispute Settlement System: The First Ten Years”, *Journal of Int’l Economic Law* 2005 8: 17-50.
- Johannesson, Louise & C. Mavroidis, Petros, “Black Cat, White Cat: The Identity of the WTO Judges”, *Journal of World Trade* 49, no. 4 (2015): 685-698.
- David Palmeter & Petros C. Mavroidis, Dispute Settlement in the World Trade Organization: Pactice and Procedure (2004, 2nd ed., Cambridge Univ. Press).
- Jeff Waincymyer, *WTO Litigation* (2002, Cameron May Publisher).
- Steve Charnovitz, “Rethinking WTO Trade Sanctions”, *American Journal of International Law*, Vol. 95, No.4, 792-832 (2001).
- Joost Pauwelyn, “Enforcement and Countermeasures in the WTO: Rules are Rules – Toward a More Collective Approach”, *American Journal of International Law*, Vol. 94, No.2, 335-347 (2000).

2. Retaliation under Section 301

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 3.
- WTO, *United States-Sections 301-310 of the Trade Act of 1974* (DS152).

RECOMMENDED

- USTR, “Findings of the Investigation into China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974” (March 22, 2018)
- Raj Bhala, International Trade Law: Cases and Materials, Chapter 11 (1996, Michie Law Publishers).
- Kenneth W. Abbott, *Defensive Unfairness: The Normative Structure of Section 301*, pp. 415-471 (Jagdish N. Bhagwati & Robert E. Hudec eds., Fair Trade and Harmonization: Prerequisites for Free Trade? Vol.2: Legal Analysis, 1996, MIT Press).
- Thomas O. Bayard & Kimberly Ann Elliott, Reciprocity and Retaliation in U.S. Trade Policy

- (1994, Institute for International Economics).
- Jagdish Bhagwati, *The U.S.-Japan Car Dispute: A Monumental Mistake*, International Affairs, Vol. 72, pp. 261 (1996).
 - Jagdish Bhagwati & Hugh T. Patrick eds., Aggressive Unilateralism: America's 301 Trade Policy and the World Trading System (1990, University of Michigan Press).
 - I.M. Destler, American Trade Politics (3rd ed., 1995).
 - Matthew Schaefer, *Section 301 and the World Trade Organization: A Largely Peaceful Coexistence to Date*, Journal of International Economic Law, Vol. 1, No. 1, pp. 156-160 (March 1998).

3. Agreement on Agriculture

REQUIRED

- Michael J. Trebilcock & Robert Howse, The Regulation of International Trade, Ch. 12.
- EC – *Measures Affecting the Importation of Certain Poultry Products* (DS69).
- EC – *Export Subsidies on Sugar* (DS265).

RECOMMENDED

- WTO, The WTO Agreements Series 3: Agriculture (2000).
- Dukgeun Ahn & David Orden, “China – Domestic Support for Agricultural Producers: One Policy, Multiple Parameters Imply Modest Discipline”, World Trade Review, Vol.20, 389-404 (2021).
- Sanoussi Bilal & Pavlos Pazaros, Negotiating the Future of Agricultural Policies: Agricultural Trade and the Millennium WTO Round (Kluwer Law Int'l, 2000).
- Joseph McMahon, *The WTO Agreement on Agriculture: A Commentary* (Oxford Univ. Press, 2007)
- J. McMahon & M. Desta, *Research Handbook on the WTO Agriculture Agreement: New and Emerging Issues in International Agricultural Trade Law* (Edward Elgar, 2013).

4. TBT Agreement

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 13.
- WTO, EC – *Trade Description of Sardines* (DS231).
- WTO, *US-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381)

RECOMMENDED

- R. Wolfrum, et al., *WTO Technical Barriers and SPS Measures* (Brill, 2007).
- Minjung Kim, “The ‘Standard’ in the GATT/WTO TBT Agreements: Origin, Evolution and Application”, Journal of World Trade, Vol.52:5, 765-788 (2018).
- Raj Bhala & Kevin Kennedy, World Trade Law, 123-132 (1998, Lexus Publishing).
- Dukgeun Ahn, “Comparative Analysis of WTO SPS and TBT Agreements”, International Trade Law & Regulation, Vol.8, Issue 3 (2002).
- National Research Council, *Standards, Conformity Assessment and Trade into the 21st Century* (National Academy Press, 1995).

5. SPS Agreement

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 14.
- WTO, *EC-Measures Concerning Meat and Meat Products* (DS26, 48).
- WTO, *Korea-Import Bans, and Testing and Certification Requirements for Radionuclides* (DS495).

RECOMMENDED

- WTO, The WTO Agreements Series 4: Sanitary & Phytosanitary Measures (1998).
- R. Wolfrum, et al., *WTO Technical Barriers and SPS Measures* (Brill, 2007).
- David S. Johanson, Commentary on the Agreement on the Application of Sanitary and Phytosanitary Measures, in Law & Practice of the World Trade Organization (Joseph F. Dennin ed.).
- Marsha A. Echols, Sanitary and Phytosanitary Measures, in The World Trade Organization (Terence Stewart ed., 1996).
- Joanne Scott, *The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary* (Oxford Univ. Press, 2007).
- Dukgeun Ahn, "Comparative Analysis of WTO SPS and TBT Agreements" (*International Trade Law & Regulation*, 2002).

6. General Agreement on Trade in Services (GATS)

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 7.
- WTO, *Mexico-Measures Affecting Telecommunications Services* (DS204).
- WTO, *US – Measures Affecting Cross-Border Supply of Gambling and Betting Services* (DS285).

RECOMMENDED

- WTO, Guide to the GATS (1999).
- Bernard Hoekman, *Assessing the General Agreement on Trade in Services*, in The Uruguay Round and Developing Countries (L. Martin & A. Winters, eds. 1996, Cambridge Univ. Press).
- ITC, Business Guide to the General Agreement on Trade in Services (1999).
- Jagdish Bhawati, *Trade in Services and the Multilateral Trade Negotiations* 282-306, in Political Economy and International Economics (1991, MIT Press).
- Pierre Sauve, Trade Rules Behind Borders (2003, Cameron May).
- Pierre Sauve & Robert Stern, GATS 2000 (2000, Univ of Michigan Press).
- Aaditya Mattoo, A Handbook of International Trade in Services (2007).

7. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 15.
- WTO, *Canada – Patent Protection of Pharmaceutical Products* (DS114).

RECOMMENDED

- Frederick M. Abbott, *WTO Dispute Settlement and the Agreement on Trade-Related Aspects of*

Intellectual Property Rights, pp. 413-437 (Ernst-Ulrich Petersmann ed., International Trade Law and the GATT/WTO Dispute Settlement System (1997, Kluwer Law International)).

- Frederick M. Abbott, Thomas Cottier, Francis Gurry, The International Intellectual Property System: Commentary and Materials (Kluwer Law Int'l, 1999).

- Anthony D'Amato & Doris Estelle Long, eds., International Intellectual Property Anthology (1996, Anderson Publishing Co.).

- Carlos M. Correa & Abdulqawi A. Yusuf, eds., Intellectual Property and International Trade (1998, Kluwer Law International).

- Carlos M. Correa, Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options (Third World Network, 2000).

- Keith Maskus, Intellectual Property Rights in the Global Economy (IIE, 2000).

- Keith E. Maskus & J. Reichman, eds., International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime (2005).

- *Special Issue: Trade-Related Aspects of Intellectual Property Rights*, Journal of International Economic Law, Vol.1, No.4 (December 1998).

- UNCTAD-ICTSD, Resource Book on TRIPS and Development (2005).

8. Government Procurement Agreement

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 7.

- WTO, *Korea-Measures Affecting Government Procurement* (DS163)

RECOMMENDED

- Raj Bhala & Kevin Kennedy, World Trade Law, 1311-1329 (1998, Lexus Publishing).

- Bernard M. Hoekamm & Petros C. Mavroidis, eds., Law and Policy in Public Purchasing: The WTO Agreement on Government Procurement (1997, Univ. of Michigan Press).

- Arie Reich ed., International Public Procurement Law: The Evolution of International Regimes on Public Purchasing (Kluwer Law International, 1998).

9. Special and Differential Treatment for Developing Countries

REQUIRED

- van den Bossche & Werner Zdouc, Ch. 10.

- WTO, *EC-Conditions for the Granting of Tariff Preferences to Developing Countries* (DS246)

RECOMMENDED

- G. Bermann & P. Mavroidis, eds., WTO Law and Developing Countries (2007).

- Will Martin & Alan L. Winters, eds., The Uruguay Round and the Developing Countries (1997, Cambridge Univ. Press).

- The WTO/World Bank Conference on Developing Countries' in a Millennium Round (1999).

- Peter Gallagher, Guide to the WTO and Developing Countries (2000).

10. Digital Trade Agreement

REQUIRED

- Agreement between the US and Japan Concerning Digital Trade

RECOMMENDED

- CRS, Digital Trade and U.S. Trade Policy (R44565, 21 May 2019).
- Dan Ciuriak, “Digital Trade Is Data Treaty-Ready?”, CIGI Papers No.162 (Feb. 2018).
- ECIPE (European Centre for International Political Economy), “Digital Trade Estimates Project.” <http://ecipe.org/dte/>, (2017).
- Wu, Mark, Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System. (E15 Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2017).

SUGGESTED CLASS SCHEDULE

- 3/2 1. Introduction to the Study of International Trade Policy and Law
Studying internet search on trade laws
2. Current Situation of the WTO System
- 3/9 3. State of the Play of the WTO Dispute Settlement System
Understanding how trade disputes are dealt with at the WTO DS system
- 3/16. Cancelled
- 3/23 4. Retaliation under Section 301
Balance between unilateralism versus multilateralism
[1] WTO, *United States-Sections 301-310 of the Trade Act of 1974*
- 3/30 5. Agreement on Agriculture
How agriculture differs from other industries
WTO rules on agricultural policies and trade
- 4/6 6. Agreement on Agriculture
[2] EC – *Measures Affecting the Importation of Certain Poultry Products*
[3] EC – *Export Subsidies on Sugar*
- 4/13 7. TBT Agreement
Technical barriers to trade
Labelling issues
- 4/20 8. TBT Agreement
[4] EC – *Trade Description of Sardines*
[5] US – *Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*
- 4/27 9. SPS Agreement
Interplay between public health and trade
Rules for SPS measures
GMO products
[6] *Korea-Import Bans, and Testing and Certification Requirements for Radionuclides*

- 5/4 10. General Agreement on Trade in Services (GATS)
What is trade in services
Rules for services trade
Rules for Financial Services
Rules for Telecommunications Services
- 5/11 11. General Agreement on Trade in Services (GATS)
[7] *US – Measures Affecting Cross Border Supply of Gambling and Betting Services*
[8] *Mexico-Telecommunications*
- 5/18 13. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
Understanding intellectual property rights
Rules for TRIPS
[9] *Canada – Patent Protection of Pharmaceutical Products*
- 5/25 14. Special and Differential Treatment for Developing Countries
Preferential treatment for developing countries
Aid for trade and development assistance
[10] *EC-Conditions for the Granting of Tariff Preferences to Developing Countries*
- 6/1 15. Digital Trade Agreement
E-commerce and digital trade
Data free flow and data protection issues
Digital standard issues
- 6/8 16. Take-home Exam (Begin at 9:00 am on 6/8 – Due at 05:00 pm on 6/8)