

## TRADE RULES AND DIGITAL STANDARDS

**Professor:** KIM, Minjung  
**Classroom:** 140/2-201  
**Class Hour:** Wednesday 9:00-1:00  
**Office Hour:** Wednesday 1:00-3:00 or by appointment  
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### COURSE DESCRIPTION

Creating seamless, interoperable, and reliable digital trade environment is a key objective in digital trade negotiations. In the world trading system, harmonization and regulatory cooperation to promote common rules and standards between countries are fundamental issues and the WTO Agreements and regional trade agreements adopt certain rules and procedures to prevent domestic regulations and standards from creating unnecessary barriers to international trade. What are the existing trade rules and global regulatory challenges for ‘Trade and Standards’ issues, and what implications do the incumbent trading system have for emerging digital trade rules and ongoing digital trade negotiations? This course mainly deals with those issues and questions.

The objective is to provide students with basic understanding of the WTO rules, dispute settlement mechanism, and recent developments in digital trade negotiations, especially focusing on how international trade rules are adopted, applied and re-negotiated. Students will learn legal and policy perspectives and are expected to acquire analytical capability after taking this course. The course will be supplemented by selected case studies.

There is no pre-requisite. A course with advanced topics on digital trade rules and agreements will be offered next semester.

Evaluation will be based on (i) a take-home final examination (40%), (ii) a group presentation and weekly case summaries (40%), and (iii) attendance and class participation (favorably considered up to 20%).

### COURSE OUTLINE

The following reading list is based on P. van den Bossche & Werner Zdouc, Law and Policy of the World Trade Organization (5th ed. 2021) and Tracey Epps and Michael J. Trebilcock, Research Handbook on the WTO and Technical Barriers to Trade (2013). Students with serious interest in a particular issue may want to refer to the reading materials listed in the recommended reading sections that will not be fully covered during the class. 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*, the “world trade” section in the Financial Times, The Economist, and BNA International Trade Reporter or Inside US Trade.

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

- John H. Jackson, *The World Trading System* (2<sup>nd</sup> ed. 1997)
- J. Jackson et al., *International Economic Relations* (5<sup>th</sup> ed. 2008)
- A. Guzman et al., *International Trade Law* (3rd ed. 2016).
- Matsushita et al., *The World Trade Organization* (3rd ed. 2015)
- Petros C. Mavroidis, *The Regulation of International Trade*, Vol. I & II (2016)
- Trebilcock, et. al, *The Regulation of International Trade* (4th ed. 2012)
- Raj Bhala, *International Trade Law* (5<sup>th</sup> ed. 2019)
- S. Lester and B. Mercurio, *World Trade Law* (2<sup>nd</sup> ed. 2012)

## 1. Introduction to the Study of International Trade Policy and Law

### REQUIRED

- Marci Hoffman, *Update to Guide to International Trade Law Resources on the Internet*, <<https://www.llrx.com/2000/01/features-update-to-guide-to-international-trade-law-resources-on-the-internet/>>.
- Jean M. Wenger, *The ASIL Guide to Electronic Resources for International Law*, *International Economic Law* < <http://www.asil.org/resources/electronic-resource-guide-erg>>.
- World Trade Organization, <[www.wto.org](http://www.wto.org)>.

### RECOMMENDED

- John H. Jackson, *International Economic Law: Reflections on the "Boilerroom" of International Relations*, *American University Journal of International Law and Policy*, Vol. 10, pp. 595-606 (Winter 1995).
- Alan O. Sykes, "International Trade", *Encyclopedia of Law and Economics*, <<http://encyclo.findlaw.com/lit/5910art.htm>>.
- Marci Hoffman, *Researching International Trade Law*, <<http://www.law.umn.edu/mhoffman.intlaw/intrade.htm>>.
- Jean M. Wenger, *Trade Winds Across the Plains: International Trade Resources in the Information Age*, <<http://www.marquette.edu/law/libfest/handouts/b1jmw.html>>.

## 2. Institutional Evolution of the GATT/WTO

### REQUIRED

- van den Bossche & Zdouc, *Law and Policy of the World Trade Organization*, Ch. 2.

### RECOMMENDED

- John Croome, *Reshaping the World Trading System: A History of the Uruguay Round* (2<sup>nd</sup> ed. 1999, Kluwer Law International).
- William Diebold, Jr., *The End of the ITO* (1952, Princeton Univ. Press).
- Douglas Irwin, Petros Mavroidis, Alan Sykes, *The Genesis of the GATT* (2009, Cambridge Univ. Press).

- John H. Jackson, Restructuring the GATT System (1990, The Royal Institute of International Affairs).
- Orin Kirshner ed., The Bretton Woods-GATT System: Retrospect and Prospect After Fifty Years (1996, M.E. Sharpe).
- Joost Pauwelyn, "The Transformation of World Trade", Michigan Law Review, 1-65 (2005).
- Benn Steil, The Battle of Bretton Woods: John Maynard Keynes, Harry Dexter White and the Making of a New World Order (2014, Princeton Univ. Press).
- Craig VanGrasstek, The History and Future of the World Trade Organization (2013).
- Thomas Zeiler, Free Trade, Free World: The Advent of GATT (1999, Univ of North Carolina Press).
- WTO, The Future of the WTO (2004).
- GATT, The WTO: A New Organization for a New Era (GATT/WTO News, GW/11, December 21, 1994).

### 3. Dispute Settlement System in GATT/WTO

#### REQUIRED

- van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 3.

#### RECOMMENDED

- Steve Charnovitz, Rethinking WTO Trade Sanctions, American Journal of International Law, Vol. 95, pp. 792-832 (Oct. 2001).
- Robert E. Hudec, The New WTO Dispute Settlement Procedure: An Overview of the First Three Years, Minnesota Journal of Global Trade, Vol. 8, pp. 1-53 (Winter 1999).
- Robert E. Hudec, Enforcing International Trade Law: The Evolution of the Modern GATT Legal System (1993, Butterworth Legal Publishers).
- John H. Jackson, The World Trade Organization: Constitution and Jurisprudence (1998, The Royal Institute of International Affairs).
- John H. Jackson, Dispute Settlement and the WTO: Emerging Problems, Journal of International Economic Law, Vol. 1, No. 3, pp. 329-351 (Sep. 1998).
- Gabrielle Marceau, A History of Law and Lawyers in the GATT/WTO (2015, Cambridge Univ. Press).
- David Palmeter & Petros C. Mavroidis, Dispute Settlement in the World Trade Organization: Practice and Procedure (2<sup>nd</sup> ed. 2004, Kluwer Law International).
- Ernst-Ulrich Petersmann, The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement (1997, Kluwer Law International).
- Ernst-Ulrich Petersmann ed., International Trade Law and the GATT/WTO Dispute Settlement System (1997, Kluwer Law International).
- J. Waincymer, WTO Litigation (2002, Cameron May).
- Symposium on the First Three Years of the WTO Dispute Settlement System, International Lawyer, Vol. 32, No. 3 (Fall 1998).
- Special Issue: WTO Dispute Settlement System, Journal of International Economic Law, Vol. 1, No. 2 (June 1998).
- WTO, The WTO Dispute Settlement Procedures: A Collection of the Legal Texts (1995).
- WTO, Handbook on the WTO Dispute Settlement System (2<sup>nd</sup> ed. 2017).
- <[https://www.wto.org/english/tratop\\_e/dispu\\_e/disp\\_settlement\\_cbt\\_e/signin\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/signin_e.htm)>
- WTO, WTO Dispute Settlement: One-Page Case Summaries (1995-2018) (2019).

#### 4. Tariffs and Information Technology Agreement

##### REQUIRED

- van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 6.
- WTO, *15 Years of the Information Technology Agreement: Trade, innovation and global production networks*, 2012.

##### RECOMMENDED

- WTO, *EC-Tariff Treatment of Certain Information Technology Products*, (WT/DS375, 376, 377/R)

#### 5. Most-Favored Nation (MFN) and National Treatment

##### REQUIRED

- van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 4 & 5.
- WTO, *Korea-Taxes on Alcoholic Beverages* (WT/DS75/R)
- WTO, *Korea-Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (WT/DS161, 169/R)

##### RECOMMENDED

- Warren F. Schwartz & Alan O. Sykes, *The Economics of the Most Favored Nation Clause*, pp.43-79 (Jagdeep S. Bhandari & Alan O. Sykes eds., Economic Dimensions in International Law: Comparative and Empirical Perspectives (1997, Cambridge University Press)).
- WTO, Analytical Index: Guide to GATT Law and Practice, Article I & III, pp. 23-61, 121-207 (6<sup>th</sup> ed., 1995).

#### 6. General and Security Exceptions

##### REQUIRED

- van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 8.
- WTO, *EC-Measures Affecting Asbestos and Products Containing Asbestos* (DS135)
- WTO, *EC-Measures Prohibiting the Importation and Marketing of Seal Products* (DS369, 400, 401)

##### RECOMMENDED

- Dukgeun Ahn, “*Environment Disputes in the GATT/WTO: Before and After US-Shrimp Case*”, Michigan Journal of International Law, Vol. 20, No. 4 (1999).
- Daniel C. Esty, Greening the GATT: Trade, Environment, and the Future (1994, Institute for International Economics).
- Ernst-Ulrich Petersmann, International and European Trade and Environmental Law After the Uruguay Round (1995, Kluwer Law International).
- Thomas J. Schoenbaum, *International Trade and Protection of the Environment: The Continuing Search for Reconciliation*, American Journal of International Law, Vol. 91, No. 2, pp. 268-313 (April 1997).
- Ji Yeong Yoo & Dukgeun Ahn, “*Security Exceptions in the WTO System: Bridge or Bottle-Neck for Trade and Security?*”, Journal of International Economic Law, Vol. 19, pp.417–444 (June 2016).
- Howse, Robert, and Elisabeth Tuerk. "The WTO impact on internal regulations-a case study of the

- Canada-EC asbestos dispute." *The EU and the WTO: Legal and constitutional issues* 283 (2001).
- Joost Pauwelyn (2002). Cross-agreement complaints before the Appellate Body: a case study of the EC–Asbestos dispute. *World Trade Review*, 1(1).
  - Levy, Philip I., and Donald H. Regan. "EC–Seal Products: Seals and Sensibilities (TBT Aspects of the Panel and Appellate Body Reports)." *World Trade Review* 14.2 (2015): 337-379.
  - Marín Durán, G. (2016). Measures with Multiple Competing Purposes after EC–Seal Products: Avoiding a Conflict between GATT Article XX-Chapeau and Article 2.1 TBT Agreement. *Journal of International Economic Law*, 19(2), 467-495.
  - Lowe, Erik R. "Technical regulations to prevent deceptive practices: can WTO Members protect consumers from [un] fair-trade coffee and [less-than] free-range chicken?." *Journal of World Trade* 48.3 (2014).
  - Munro, James. "Pushing the Boundaries of ‘Products’ and ‘Goods’ under GATT 1994: An Analysis of the Coverage of New and Unorthodox Articles of Commerce." *Journal of World Trade* 47.6 (2013).

## 7. Product Standards and TBT Agreement

### REQUIRED

- van den Bossche & Zdouc, *Law and Policy of the World Trade Organization*, Ch. 13.
- Tracey Epps & Michael Trebilcock, *Research Handbook on the WTO and TBT*, Ch. 2.
- WTO, *US-Measures Affecting the Production and Sale of Clove Cigarettes (WT/DS406)*
- WTO, *US-Certain Country of Origin Labelling (COOL) Requirements (DS384, 386)*

### RECOMMENDED

- Simon Lester & William Stemberg. "The GATT Origins of TBT Agreement Articles 2.1 and 2.2." *Journal of International Economic Law* 17.1 (2014).
- Gabrielle Marceau, Joel P. Trachtman, The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade: A Map of the World Trade Organization Law of Domestic Regulation of Goods, *JWT* 36(4), 811-881, 2002.
- Zhou, Weihuan. "US–clove cigarettes and US–Tuna II (Mexico): implications for the role of regulatory purpose under Article III: 4 of the GATT." *Journal of International Economic Law* 15.4 (2012).
- Gabrielle Marceau, "The new TBT jurisprudence in US-Clove cigarettes, WTO US-Tuna II, and US-COOL." *Asian Journal of WTO & Int'l Health L & Policy* 8 (2013): 1.
- Robert Howse & Philip Levy. "The TBT Panels: US–Cloves, US–Tuna, US–Cool." *World Trade Review* 12.2 (2013).
- Petros Mavroidis & Kamal Saggi. "What is not so Cool about US–COOL Regulations? A critical analysis of the Appellate Body's ruling on US–COOL." *World Trade Review* 13.2 (2014).
- Chad Bown & Rachel Brewster. "US–COOL Retaliation: The WTO's Article 22.6 Arbitration." *World Trade Review* 16.2 (2017).

## 8. Standards and International Harmonization

### REQUIRED

- Tracey Epps & Michael Trebilcock, Research Handbook on the WTO and TBT, Ch. 7, 14.
- WTO, *EC-Trade Descriptions of Sardines* (DS231)
- WTO, *US-Measures Concerning the Importation, Marketing and Sale of Tuna & Tuna Products* (DS381)

### RECOMMENDED

- Robert Howse. "The Sardines Panel and AB Rulings—Some Preliminary Reactions." *Legal Issues of Economic Integration* 29.3 (2002).
- Henrik Horn and Joseph Weiler. "European communities—trade description of sardines: Textualism and its discontent." *World Trade Review* 4.S1 (2005): 248-275.
- Jan McDonald. "Domestic regulation, international standards, and technical barriers to trade." *World Trade Review* 4.2 (2005).
- Humberto Schroder. "Definition of the concept 'International Standard' in the TBT Agreement." *Journal of World Trade* 43.6 (2009).
- Michael Du. "Reducing product standards heterogeneity through international standards in the WTO: how far across the river?" *Journal of World Trade* 44.2 (2010).
- Erik Wijkström & Devin McDaniels. "Improving regulatory governance: International standards and the WTO TBT Agreement." *Journal of World Trade* 47.5 (2013).
- Graham Mayeda. "Developing disharmony? The SPS and TBT agreements and the impact of harmonization on developing countries." *Journal of International Economic Law* 7.4 (2004).
- Alan Sykes. "The (limited) role of regulatory harmonization in international goods and services markets." *Journal of International Economic Law* 2.1 (1999).

## 9. Conformity Assessment and Trade Cooperation

### REQUIRED

- Tracey Epps & Michael Trebilcock, Research Handbook on the WTO and TBT, Ch. 3, 8, 9.
- WTO, *Russia-Measures affecting the importation of railway equipment and parts thereof* (DS499)

### RECOMMENDED

- OECD Trade Policy Working Paper No. 37, No. 78.
- WTO TBT Committee Triennial Review Reports.
- Maggie Chen & Aaditya Mattoo. "Regionalism in standards: good or bad for trade?." *Canadian Journal of Economics/Revue canadienne d'économique* 41.3 (2008).
- Joel Trachtman. "Toward open recognition? Standardization and regional integration under article XXIV of GATT." *Journal of International Economic Law* 6.2 (2003).
- Lorand Bartels. "The legality of the EC mutual recognition clause under WTO law." *Journal of International Economic Law* 8.3 (2005).

## 10. Digital Standards and Trade Rules

### REQUIRED

- Tracey Epps & Michael Trebilcock, Research Handbook on the WTO and TBT, Ch. 15.
- Standards rules in Digital Economy Agreements: DEPA, ASDEA, KSDPA

### RECOMMENDED

- Steven Bernstein & Erin Hannah. "Non-state global standard setting and the WTO: legitimacy and the need for regulatory space." *Journal of International Economic Law* 11.3 (2008).
- Petros Mavroidis & Robert Wolfe. "Private standards and the WTO: reclusive no more." *World Trade Review* 16.1 (2017): 1-24.
- Nathalie Devillier & Ted Gleason. "Consistent and Recurring Use of External Legal Norms: Examining Normative Integration of the FCTC post-Australia–Tobacco Plain Packaging." *Journal of World Trade* 53.4 (2019).
- Shin-yi Peng. "Autonomous Vehicle Standards under the TBT Agreement: Disrupting the Boundaries?." *Artificial Intelligence and International Economic Law: Disruption, Regulation, and Reconfiguration (Cambridge University Press, 2021) Chapter 6* (2021).
- Shin-yi Peng. "Private Cybersecurity Standards: Cyberspace Governance, Multistakeholderism, and the (Ir) Relevance of the TBT Regime." *Cornell Int'l Law Journal* 51 (2018).
- Han-Wei Liu. "Inside the black box: political economy of the Trans-Pacific Partnership's encryption clause." *Journal of World Trade* 51.2 (2017).
- Sun, Nan-xiang. "Piercing the Veil of National Security: Does China's Banking IT Security Regulation Violate the TBT Agreement." *Asian J. WTO & Int'l Health L & Pol'y* 11 (2016): 395.
- Han-Wei Liu & Shin-Yi Peng. "Managing Trade Conflicts in the ICT Industry: A Case Study of EU–Greater China Area." *Journal of International Economic Law* 19.3 (2016): 629-656.

## Course Schedule

- 9/7 1. Introduction to the Study of International Trade Policy and Law  
Studying internet search on trade laws
2. Institutional Evolution of the GATT/WTO  
How the WTO was evolved from GATT
- 9/14 3. Dispute Settlement System in GATT/WTO  
How trade disputes are resolved at the WTO
- 9/21 4. Tariffs and Information Technology Agreement  
*EC-Tariff Treatment of Certain Information Technology Products (DS 375, 376, 377)*
- 9/28 5. Most-Favored Nation (MFN) and National Treatment  
How to apply non-discrimination rules
- 10/5 5. Most-Favored Nation (MFN) and National Treatment  
*Korea-Taxes on Alcoholic Beverages (DS 75)*  
*Korea-Measures Affecting Imports of Fresh, Chilled and Frozen Beef (DS 161, 169)*
- 10/12 6. General and Security Exceptions: Article XX, Article XXI  
Interface between trade and protection, interface between trade and security
- 10/19 6. General and Security Exceptions: Article XX, Article XXI  
*EC-Measures Affecting Asbestos and Products Containing Asbestos (DS135)*  
*EC-Measures Prohibiting the Importation and Marketing of Seal Products (DS369, 400, 401)*
- 10/26 7. Product Standards and WTO TBT Agreement  
How to apply standards-related rules
- 11/2 7. Product Standards and WTO TBT Agreement  
*US-Measures Affecting the Production and Sale of Clove Cigarettes (WT/DS406)*  
*US-Certain Country of Origin Labelling (COOL) Requirements (DS384, 386)*
- 11/9 8. Standards and International Harmonization  
Trade-related standards and international harmonization, standards-bodies and private standards



- 11/16 8. Standards and International Harmonization  
*EC-Trade Descriptions of Sardines (DS231)*  
*US-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (DS381)*
- 11/23 9. Conformity Assessment and Trade Cooperation  
TBT Agreement Article 5, RTA rules for standards  
*Russia-Measures affecting the importation of railway equipment and parts thereof (DS499)*
- 11/30 10. Digital Standards and Trade Rules  
ICT product standards and cryptography issues  
Internet standards and international standardization issues
- 12/7 10. Digital Standards and Trade Rules  
Digital Trade(or Economy) Agreements: DEPA, ASDEA, KSDPA  
Digital standards and trade cooperation
- 12/14 Final Exam (Take-home exam) 9:00-17:00