

Seminar in International Commerce (006): Technical Barriers and Trade Disputes

Time: Thursday 14:00-18:00

Lecture Room:

Instructor: Dr. Minjung Kim
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Office Hour: By appointment

■ COURSE DESCRIPTION

This course is about technical barriers to trade (TBT), i.e. trade barriers arising from technical measures that typically include technical regulations, standards, and conformity assessment procedures. Since the technical measures pursue legitimate public policy objectives such as protection of human, animal and plant life or health, regulating them under the world trading system requires a careful balancing between state's regulatory sovereignty and expansion of free trade. In addition, their various forms and complexity often challenges general rules applied under the GATT/WTO system. The objective of the course is to introduce to students basic knowledge required to analyze non-tariff barriers in general and TBT in specific with multidisciplinary approaches.

The course is divided into two parts: it explores technical measures and their relevant trade rules. The first part is designed to help students understand nature and characteristics of technical barriers and covers concepts, theories and exemplary cases. The second part introduces TBT mechanisms under the GATT/WTO system and major FTAs, TBT dispute resolutions, and regional and national strategies to reduce the barriers. There is no pre-requisite; previous study of trade rules, public policy will be helpful.

■ TEXTBOOKS/ REFERENCE

No textbook is assigned. Most readings suggested are available online. Nevertheless, the following references can help students understand and prepare the course:

- WTO (2014), The WTO Agreements Series: Technical Barriers to Trade.
- WTO (2005), Trade, Standards, and the WTO, World Trade Report 05.
- OECD, Technical Barriers to Trade

■ EVALUATION

- Class participation (including attendants): 10%
- Technical regulation report: 20 %
- Dispute case report and presentation: 30%
- Final exam: 40%

COURSE OUTLINE & READING MATERIALS

PART I. MEASURES OF TECHNICAL BARRIERS TO TRADE

1. Introduction to Non-tariff barriers

- Trends and current issues

Readings:

- WTO, Trade and Public Policies: A Closer Look at Non-Tariff Measures in the 21st century, World Trade Report 2012.
- OECD, Looking Beyond Tariffs: the Role of Non-Tariff Barriers in World Trade

2. Standards: Concepts and Relevant Theories

- Concept and classification
- Functions and economic impacts
- Standard and trade

Readings:

- Knut Blind, The Economics of Standards: Theory, Evidence, Policy, 2004
- Victor Stango, The Economics of Standards War, Review of Network Economics Vol 3, Issue 1, 2004.

3. Technical Regulation(I): Import Safety in Globalized Markets

- Import product safety and governance
- Case: CE marking and import toy safety
- Case: European hazardous chemical controls

Readings:

- Lorna Zach, “Systems and governance in food import safety: A US perspective”, Food Control Vol 27 Issue 1, 2012.
- EU toy safety regulation: <<http://www.gov.uk/guidance/toy-manufacturers-and-their-responsibilities>>

4. Technical Regulation(II): Global Environment and Market-entry control

- Global environmental cooperation and technical regulations
- Case: deforestation control and technical barriers
- Case: Energy efficiency

Readings:

- Duncan Brack, Combating Illegal Logging: Interaction with WTO Rules, Chatham House Briefing Paper, 2013.
- Akiva Fishman, European Union Timber Regulation: Is It Legal?, Review of European Community and International Environmental Law(RECIEL) 23(2) 2014.

5. Certification and Labelling

- Conformity assessment procedures
- Mutual recognitions
- (International) Accreditation
- Case: food labelling
- Case: eco-labelling

Readings:

- Sherry Stephenson, Standards and Conformity Assessment as Nontariff Barriers to Trade, World Bank Policy Research Working Paper 1826, 1997.
- OECD, Analysis of Non-Tariff Measures: The Case of Labelling. TD/TC/WP(2002)40/Final.
- EU, The 'Blue Guide' on the Implementation of EU Product Rules 2016, OJ C272, 2016.

6. International Standardization and Global Trade

- International Standards Organization: ISO, IEC, ITU, Codex Alimentarius
- International harmonization
- Case: World Forum for Harmonization of Vehicle Regulations
- Case: Regional standardization and APEC TEL

Readings:

- Swann (2010), "International Standards and Trade: A Review of the Empirical Literature", OECD Trade Policy Working Papers, No. 97
- Johannes Moenius, "Information versus Product Adaptation: The Role of Standards in Trade", 2004. <http://dx.doi.org/10.2139/ssrn.608022>
- Alan Sykes, Product Standards for Internationally Integrated Goods Markets, 1995.

PART II. TRADE SYSTEM AND TBT DISPUTES

7. WTO TBT system

- TBT negotiations in the world trading system
- GATT and TBT/SPS Agreements
- Standards-barriers and other WTO Agreements

Readings:

- Alan O. Sykes, The (Limited) Role of Regulatory Harmonization in International Goods and Services Markets, JIEL 49-70, 1999.
- 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.
- Jan McDonald, Domestic regulation, international standards, and technical barriers to trade, WTR 4:2, 249-274, 2005.

8. FTA TBT system

- TBT chapters in NAFTA
- TBT mechanisms in KORUS FTA and Korea-EU FTA
- TBT chapters in Trans-Pacific Partnership(TPP)

Readings:

- Legal Text of Korea-US Free Trade Agreement
- Legal Text of Korea-EU Free Trade Agreement
- Legal Text of Trans-Pacific Agreement

9. TBT Issues in Trade Dispute Settlement

- Transparency
- WTO TBT Committee
- TBT dispute settlement mechanism

10. Theme I: Pollution Control and TBT disputes

- US-Standards for Reformulated and Conventional Gasoline (DS2)

Readings:

- Jefferey Waincymer, Commentary: Reformulated Gasoline Under Reformulated WTO Dispute Settlement Procedures: Pulling Pandora out of a Chapeau?, 18 Michigan Journal of International Law 141, 1996-1997.
- Robert Hudec, GATT/WTO Constraints on National Regulation: Requiem for an "Aim and Effects" Test, The International Lawyer Vol 32 No 3, 1998.

11. Theme II: Human Health and TBT disputes

- EC-Measures Affecting Asbestos and Products Containing Asbestos (DS135)
- US-Measures Affecting the Production and Sale of Clove Cigarettes (WT/DS406)

Readings:

- Henrik Horn and Joseph Weiler, EC-Asbestos, World Trade Review, Vol 2 Issue 1, 2003
- Tania Voon, The WTO Appellate Body Outlaws Discrimination in US Flavored Cigarette Ban, ASIL Insights, ASIL Insights, Vol 16 Issue 15, 2012
- Weihuan Zhou, 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, 8 Asian Journal of WTO and International Health Law and Policy 1, 2013.

12. Theme III: Consumer Information and TBT disputes

- EC-Trade Descriptions of Sardines (DS231)
- US-Certain Country of Origin Labelling (COOL) Requirements (DS384, 386)

Readings:

- Henrik Horn and Joseph Weiler, EC-Trade Description of Sardines: Textualism and Its Discontent, World Trade Review Vol 4 Issue 1, 2005
- Joshua Meltzer, The WTO Ruling on US Country of Origin Labelling(COOL), ASIL Insights, Vol 16 Issue 23, 2012.
- Petros Mavroidis and 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 Vol 13, Issue 2, 2014.

13. Theme IV: Biodiversity and TBT disputes

- US-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (DS381)
- EC-Measures Prohibiting the Importation and Marketing of Seal Products (DS369, 400, 401)

Readings:

- Enrico Partiti, The Appellate Body Report in US-Tuna II and Its Impact on Eco- Labelling and Standardization, 40 Legal Issues of Economic Integration 73, 2013.
- Luan and Chaisse, Preliminary Comments on the WTO Seal Products Dispute: Traditional Hunting, Public Morals and Technical Barriers to Trade, 22 Colombia Journal of Int'l Environmental Law & Policy 79, 2011.
- Philip Levy and Donald Regan, EC-Seal Products: Seals and Sensibilities (TBT Aspects of the Panel and AB Reports), World Trade Review Vol 14 Issue 2, 2015.

14. TBT and Development

- Sustainable development and standards
- TBT to developing countries
- Trade Development Facility (STDF)

Readings:

- John Wilson and Tsunehiro Otsuki, Standards and Technical Regulations and Firms in Developing Countries: New Evidence from a World Bank Technical Barriers to Trade Survey, World Bank Working Paper, 2004.
- Patrick Messerlin and James Zarrouk, "Trade Facilitation: Technical Regulations and Customs Procedures", The World Economy Vol 23 Issue 4, 2000.

15. Final Exam (December 26)

*The schedule and weekly topics are subject to change.