

## **SEMINAR IN INTERNATIONAL COMMERCE: DIGITAL TRADE RULES AND CHALLENGES (8751.518A)**

**Lecturer:** Professor KIM, Hyerim & AHN, Dukgeun  
**Classroom:** 140-101  
**Class Hour:** Wednesday 9:00~12:00  
**Office Hours:** Wednesday 13:00~13:50  
**E-mail:** hyerim0207@snu.ac.kr

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### **COURSE DESCRIPTION**

The aim of this course is to provide an understanding of international trade institutions, trade law, and trade policy. You will learn what trade policies are, how they are implemented by the United States and other countries, and how their use is constrained by international trade agreements. The course will cover the fundamental principles of international trade rules established by the World Trade Organization (WTO), including the principles of non-discrimination, trade remedy measures, SPS, TBT, and exceptions to trade obligations. In addition, we will explore newly emerging issues in trade, such as environmental concerns, digital trade and e-commerce, intellectual property rights, and trade in services. These topics will be supplemented by selected case studies and relevant reading materials.

The course will be conducted through a combination of online and in-person lectures. If you have any questions regarding the course materials or other related matters, please feel free to schedule a Zoom meeting during office hours.

The course will be a mix of lecture and discussion. For the lecture portion, I will prepare a PowerPoint slides that I will make it available before class on ETL. All classes will be recorded by Zoom.

The assessment for the course will be based on your case-study presentation (40%), final paper (45%), and class participation (15%).

### **COURSE OUTLINE**

The following reading list consists of two parts: required and recommended reading. The required textbook is P. van den Bossche & Werner Zdouc, Law and Policy of the World Trade Organization (5th ed. 2022). 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 informed 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, Financial Times and the Economist.

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)

John H. Jackson et al., *Legal Problems of International Economic Relations* (5<sup>th</sup>ed. 2002)

Petros C. Mavroidis, *The Regulation of International Trade*, Vol. I, II & III (2020)

Michael Trebilcock, et al., *The Regulation of International Trade* (4<sup>th</sup>ed. 2012)

## 1. Introduction to the International Trade Law: History, Structure, and New Challenges

### REQUIRED

- World Trade Organization, <<https://www.wto.org>>
- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 2.

### RECOMMENDED

- N. Lamp, 'How Should We Think about the Winners and Losers from Globalization? Three Narratives and their Implications for the Redesign of International Economic Agreements', *European Journal of International Law*, 2019, 30(4), 1359-1397.
- A. Roberts, H. C. Moraes, and V. Ferguson, 'Toward a Geoeconomic Order in International Trade and Investment', *Journal of International Economic Law*, 2019, 22(4), 655-676.
- Ernst-Ulrich Petersmann, 'Economic Disintegration? Political, Economic, and Legal Drivers and the Need for 'Greening Embedded Trade Liberalism'', *Journal of International Economic Law*, 2020, 23(2), 347-370.
- Bernard M. Hoekman & Petros C. Mavroidis, 'To AB or Not to AB? Dispute Settlement in WTO Reform,' *Journal of International Economic Law* 23, (2020): 703-722.
- 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.
- J. Bacchus and S. Lester, 'The Rule of Precedent and the Role of the Appellate Body,' *Journal of World Trade*, 2020, 54(2), 183-198.
- A.O. Sykes, 'Comparative advantage and the normative economics of international trade policy,' *Journal of International Economic Law*, 1998, 1(1), 49-82.
- D. Ciuriak et al., 'Firms in International Trade: Trade Policy and Implications of the New Trade Theory,' *Global Policy*, 2015, 6(20), 130-140.

## 2. Section 301 vs. WTO Dispute Settlement

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 3.
- CRS, Section 301 of the Trade Act of 1974 (January 29, 2024)
- WTO, *United States-Section 301-310 of the Trade Act of 1974* (WT/DS152/R).

### RECOMMENDED

- Scott Lincicome et. al., 'Unfair Trade or Unfair Protection? The Evolution and Abuse of Section 301,' Policy Analysis no. 930, Cato Institute, Washington, DC, (June 14, 2022).
- James Bacchus, 'Might Unmakes Right,' CIGI Paper No.173, (May 2018).
- 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).
- Shara L. Aranoff et. al., 'Section 301 Tariffs and Proceedings: Recent and Potential Developments,' *The Global Trade Law Journal*, 2(3), 2025.
- Yoshiko Naiki, 'The Mandatory/Discretionary Doctrine in WTO Law: The *US-Section 301* Case and Its Aftermath,' *Journal of International Economic Law*, Volume 7, Issue 1, March 2004, Pages 23-72.
- Christian Delev, 'A Moral Stretch? *US-Tariff Measures* and the Public Morals Exception in WTO Law,' *World Trade Review*, 21, 249-260, 2022.

### 3. National Treatment

#### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 4 &5.
- WTO, *Korea-Taxes on Alcoholic Beverages* (WT/DS75/R, WT/DS75/AB/R)

#### RECOMMENDED

- G. M. Grossman, H. Horn and P.C. Mavroidis, 'The Legal and Economic Principles of World Trade Law: National Treatment', IFN Working Paper No. 917 (2012).
- W. Zhou, 'The Role of Regulatory Purpose under Article III:2 and 4- Toward Consistency between Negotiating History and WTO Jurisprudence', *World Trade Review*, 2012, 11(1), 81-118.
- D. Neven and J. P. Trachtman, 'Philippines – Taxes on Distilled Spirits: Like Products and Market Definition', *World Trade Review*, 2013, 12(2), 297-326.
- J. Flett, 'WTO Space for National Regulation: Requiem for a Diagonal Vector Test', *Journal of International Economic Law*, 2013, 16(1), 37-90.
- G. Muller, 'National Treatment and the GATS: Lessons from Jurisprudence', *Journal of World Trade*, 2016, 50(5), 819-843.

### 4. Most-Favored Nation (MFN) vs. Free Trade Agreement (FTA)

#### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 4 &5.
- WTO, *Turkey-Restrictions on Imports of Textile and Clothing Products* (WT/DS34/R, WT/DS34/AB/R)

#### RECOMMENDED

- D. McRae, 'MFN in the GATT and the WTO,' *Asian Journal of WTO & International Health Law and Policy*, 2012, 7(1), 1-24.
- B. Hoekman & P. C. Mavroidis, 'MFN Clubs and Scheduling Additional Commitments in the GATT: Learning from the GATS', *European Journal of International Law*, 2017, 28(2), 387–407.
- Y. Rovnov, 'The Relationship between the MFN Principle and Anti-Dumping Norms of the WTO Law Revisited', *Journal of World Trade*, 2015, 49(1), 173-197.
- Mark Wu, 'The Proliferation of Regional Trade Agreements: (Re-)Shaping the Trade Landscape with Multilateralism on Pause', *Proceedings of the Annual Meeting (American Society of International Law)*, 2013, 107, 447–65.
- E. Trost, 'Reconciling Regional Trade Agreements with the Most Favored Nation Principle in WTO-GATT,' *Macquarie Journal of Business Law*, 2008, 5, 43-72.
- Thomas Cottier, 'Challenges of Regionalisation and Preferential Relations in World Trade Law and Policy,' *European Foreign Affairs Review*, 1996, 1, 149-168.
- Aly K. Abu-Akeel, 'The MFN as it Applies to Service Trade-New Problem for an Old Concept,' *Journal of World Trade*, 1999, 33(4), 103-129.

## 5. General Exception

### REQUIRED

- P. van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 8.
- WTO, [Rules and Environmental Policies: GATT Exceptions, World Trade Organisation](#)
- WTO, *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (WT/DS58/R & WT/DS58/AB/R).

### 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)
- S. Charnovitz, ‘Exploring the Environmental Exceptions in the GATT Article XX,’ *Journal of World Trade*, 1991, 25, 37-55.
- L. Bartels, ‘The Chapeau of the General Exceptions in the WTO GATT and GATS Agreement: A Reconstruction,’ *American Journal of International Law*, 2015, 109, 95-125.
- G. M. Duran, ‘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*, 2016, 0, 1-29.
- P. Conconi and T. Voon , ‘EC – Seal Products : The Tension between Public Morals and International Trade Agreements’, *World Trade Review*, 2016, 15, 211-34.
- K. Plouffe-Malette, ‘Public Morality Exception at the WTO: Much Ado About Nothing?’, *Journal of World Trade*, 2021, 55, 453-476.
- P. Delimatsis, ‘Protecting Public Morals in a Digital Age: Revisiting the WTO Rulings on US – Gambling and China – Publications and Audiovisual Products’, *Journal of International Economic Law*, 2011, 14, 257–293.
- C. Delev, ‘A Moral Stretch? US — Tariff Measures and the Public Morals Exception in WTO Law’, *World Trade Review*, 21, 249-260.

## 6. Security Exception

### REQUIRED

- P. van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 8.
- WTO, *Russia – Measures Concerning Traffic in Transit* (WT/DS512/R).

### RECOMMENDED

- CRS, Section 232 Investigations: Overview and Issues for Congress, May 18, 2021.
- P. V. Bossche and S. Akpofure, The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994, WTI Working Paper No. 03, 2020.
- K. Claussen, ‘Trade’s Security Exceptionalism’, *Stan. L. Rev.*, 2020, 72, 1097-1164.
- 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).
- A. Roberts, H. C. Moraes and V. Ferguson, ‘Toward a Geoeconomic Order in International Economic Trade and Investment,’ *Journal of International Economic Law*, 2019, 22(4), 655-676.
- J. B. Heath, ‘The New National Security Challenges to the Economic Order,’ *Yale Law Journal*, 2020, 129, 1020.
- M. Pinchis-Paulsen, ‘Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions,’ *Michigan Journal of International Law*, 2020, 41(1), 109-193.
- James Bacchus, “The Black Hole of National Security,” (CATO Policy Analysis No.936, Nov. 2022).

## 7. Trade Remedy Measures

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 9, 11, 12.
- WTO, *US – Countervailing and Anti-dumping Measures on Certain Products from China* (WT/DS449/R & WT/DS449/AB)
- WTO, *Argentina – Safeguard Measures on Imports of Footwear* (WT/DS121/R & WT/DS121/AB)

### RECOMMENDED

- Irwin, Douglas A., ‘The Rise of Anti-Dumping Activity in Historical Perspective,’ IMF Working Papers, 2005, 031, 1-25.
- J.M. Finger, ‘The Origins and Evolution of Antidumping Regulation,’ The World Bank Working Papers, 1991.
- Kyunghwa Kim & Dukgeun Ahn, ‘To be or Not to Be with Targeted Dumping,’ Journal of International Economic Law, 2018, 21(3), 567-598.
- D.P. Steger, ‘The Subsidies and Countervailing Measures Agreement: Ahead of its Time or Time for Reform,’ 2010, Journal of World Trade, 44(4), 779-796.
- A. Sykes, ‘The Safeguards Mess: A Critique of WTO Jurisprudence,’ World Trade Review, 2003, 2(3), 261-295.
- C. P Bown and J. A. Hillman, ‘WTO’ing a Resolution to the China Subsidy Problem,’ Journal of International Economic Law, 2019, 22(4), 557-578.
- A. Green, M. Trebilcock, ‘Enforcing WTO Obligations: What Can We Learn from Export Subsidies?’, Journal of International Economic Law, 2007, 10(3), 653-683.
- Hyerim Kim & Dukgeun Ahn, ‘Judicial Conflicts between Panels and Appellate Body in the WTO Safeguard Jurisprudence,’ Journal of World Trade, 2020, 54(6), 961-982.
- D. Ahn and J. Lee, ‘Countervailing Duty against China: Opening a Pandora's Box in the WTO System?’, Journal of International Economic Law, 2011, 14(2), 329-368.
- V. Crochet and V. Hegde, ‘China’s ‘Going Global’ Policy: Transnational Production Subsidies Under the WTO SCM Agreement’, Journal of International Economic Law, 2020, 23(4), 841-863.

## 8. Service Trade

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 7.
- WTO, *US – Measures Affecting Cross-Border Supply of Gambling and Betting Services* (WT/DS285/R & WT/DS285/AB/R).

### RECOMMENDED

- P. Sauve and M. Roy, Research Handbook on Trade in Services (2016, Edward Elgar: Cheltenham)
- P. C. Mavroidis, The Regulation of International Trade, Vol3: The General Agreement on Trade in Services (MIT Press, 2020)
- J. A. Marchetti and P. C. Mavroidis, ‘The Genesis of the GATS,’ The European Journal of International Law, 2011, 2(3), 689-721.
- E. H. Leroux, ‘The Eleven Years of GATS Case Law: What Have We Learned?’, Journal of International Economic Law, 2007, 10(4), 749-793.
- J. Pauwelyn, ‘Rien ne Va Plus? Distinguishing Domestic Regulation from Market Access in GATT and GATS,’ World Trade Review, 2005, 4(2), 131-170.

- P. Sauve and M. Soprana, “Disciplining Service Sector Subsidies: Where Do We Stand and Where Can We (Realistically) Go?”, *Journal of International Economic Law*, 2018, 21(3), 59-619.

## **9. Intellectual Property Protection**

### **REQUIRED**

- P. van den Bossche & W. Zdouc, *Law and Policy of the World Trade Organization*, Ch. 15.
- WTO, *Canada – Patent Protection of Pharmaceutical Products* (WT/DS114/R).

### **RECOMMENDED**

- *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).
- Tim Wu, “The World Trade Law of Censorship and Internet Filtering,” *Chicago Journal of International Law* 7, no.1, pp. 263-288 (2006).

## **10. SPS**

### **REQUIRED**

- P. van den Bossche & W. Zdouc, *Law and Policy of the World Trade Organization*, Ch. 14.
- WTO, *European Communities — Measures Concerning Meat and Meat Products (Hormones)* (WT/DS26,48/R, WT/DS26,48/AB/R).

### **RECOMMENDED**

- J. Scott, ‘The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary’ (Oxford University Press, 2009).’
- 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.
- R. Wolfrum, P. Stoll and A. Seibert-Fohr, ‘WTO-Technical Barriers and SPS Measures’, (Leiden, Boston: M. Nijhoff 2007).
- J. Pauwelyn, *The WTO Agreement on Sanitary and Phytosanitary (SPS) Measures as Applied in the First Three SPS disputes. EC - Hormones, Australia - Salmon and Japan - Varietals*, *Journal of International Economic Law*, 1999, 2(4), 641-664.

## **11. TBT**

### **REQUIRED**

- P. van den Bossche & W. Zdouc, *Law and Policy of the World Trade Organization*, Ch. 13.
- WTO, *EC – Trade Description of Sardines* (WT/DS231/R, WT/DS231/AB/R)

### **RECOMMENDED**

- UNCTAD, “Dispute Settlement: Technical Barriers to Trade”, 2003 < [https://unctad.org/system/files/official-document/edmmisc232add22\\_en.pdf](https://unctad.org/system/files/official-document/edmmisc232add22_en.pdf) >.

- S. Lester and W. Stenberg, 'The GATT Origins of TBT Agreement Articles 2.1 and 2.2', *Journal of International Economic Law*, 2014, 17(1), 215-32.
- P. C. Mavroidis, 'Last Mile for Tuna (to a Safe Harbour): What is the TBT Agreement All About?', *The European Journal of International Law*, 2019, 30(1), 279-301.
- M. Kim, 'The 'Standard' in the GATT/WTO TBT Agreements: Origin, Evolution and Application', *Journal of World Trade*, 2018, 52(5), 765-788.

## **12. Trade and Development**

### **REQUIRED**

- WTO, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, (WT/246/R & WT/246/AB).

### **RECOMMENDED**

- R. E. Hudec, *Developing Countries in the GATT Legal System*, (2010, Cambridge Univ. Press)
- P. C. Mavroidis and G.A. Bermann (eds.), *WTO Law and Developing Countries* (2010, Cambridge Univ. Press).
- J. Bacchus and I. Manak, *The Development Dimension, Special and Differential Treatment in Trade* (2021, Routledge).
- N. Lamp. "How Some Countries Became 'Special': Developing Countries and the Construction of Difference in Multilateral Trade Lawmaking," *Journal of International Economic Law*, 2015, 18(4), 743-771.
- G. Grossman and A. Sykes. "A Preference for Development: The Law and Economics of GSP." *World Trade Review*, 2005, 4(1), 41-67.

## Course Schedule

- 9/3 1. Introduction to the Study of International Trade Policy and Law **(Offline, In-person class)**  
Studying how to conduct research on trade laws  
Understanding newly emerging challenges to the WTO
- 9/10 2. Section 301 vs. WTO Dispute Settlement **(Offline, In-person class)**  
Balance between unilateralism vs multilateralism  
US Section 301 case
- 9/17 3. National Treatment **(Online)**  
How to apply non-discrimination rules  
*Korea – Taxes on Alcoholic Beverages*
- 9/24 4. MFN vs. FTA **(Online)**  
How to apply non-discrimination rules  
*Turkey – Textiles*
- 10/1 5. General Exception **(Online)**  
Rules for Public Moral and Environment  
*US – Shrimp*
- 10/15 6. Security Exception **(Online)**  
Rules for National Security  
Section 232, IEEPA  
*Russia – Measures Concerning Traffic in Transit*
- 10/22 7. Trade Remedy Measures **(Online)**  
Rules for Subsidies and Countervailing Duties  
Rules for Dumping and Anti-dumping Duties  
*US – CVD and AD on China*
- 10/29 8. Trade Remedy Measures **(Online)**  
Rules for Safeguards  
*Argentina – Safeguard Measures on Imports of Footwear*
- 11/5 9. Services **(Online)**  
What is trade in services  
Rules for services trade  
*US – Measures Affecting Cross Border Supply of Gambling and Betting Services*
- 11/12 10. Intellectual Property **(Offline, In-person class)**  
What are intellectual property rights  
Rules for TRIPS  
*Canada – Patent Protection of Pharmaceutical Products*



- 11/19    11. SPS **(Online)**  
Rules for SPS  
*EC – Hormones*
- 11/26    12. TBT **(Online)**  
Rules for TBT  
*EC – Sardines*
- 12/3     13. Trade and Development **(Offline, In-person class)**  
Rules for developing countries  
*EC – Tariff Preferences*
- 12/10    Final Examination (In Class/Bring your own laptop!)