

Contents

Part I: Introduction to the Legal and Economic Aspects of World Trade Regulation

1. Introduction to World Trade Law	3
I. Increased Trade and Deeper Integration: Globalisation!	4
(a) Increased Trade and Increased Importance of Trade	5
(b) What is Traded?	7
(c) Who Trades?	10
II. Why Trade?	13
(a) Economics	13
(b) Peace	15
III. The Economics of Trade	20
(a) Comparative Advantage	21
(b) Weighing the Harms to Some against the Benefits to Others	24
(c) Trade between Countries at Different Income Levels	25
(d) Free Trade and Development	25
(e) Industrial Policy	26
(f) Conclusions on the Free Trade versus Protection Debate	27
(g) The Economics of the 'New' Issues	28
IV. Free Trade vs Protectionism	28
V. Structure of the Book	50

Part II: History, Institutional Aspects and the Relationship between World Trade Law, International Law and Domestic Law

2. The History and Institutions of the Multilateral Trading System	53
I. Introduction	53
II. The GATT as an Institution	53
(a) The Origins of the GATT	54
(b) GATT Negotiating Rounds	57
III. The WTO as an Institution	58
(a) WTO Objectives, Scope and Functions	62
(b) Basic Structure of the WTO	70
(c) Decision-Making in the WTO	74
(d) Membership	84
(e) Accession and Withdrawal	85
IV. Questions	89

3. World Trade Law and International Law	91
I. Introduction.....	91
II. World Trade Law and International Law: Differing Viewpoints	91
III. Questions	109
4. World Trade Law and Domestic Law	111
I. Introduction.....	111
II. United States.....	117
(a) Direct Effect	117
(b) Indirect Effect/Consistent Interpretation	119
(c) Summary of the US Law Position	129
III. European Union.....	129
(a) Direct Effect	129
(b) Indirect Effect/Consistent Interpretation and Beyond.....	136
(c) Summary of the EU Law Position.....	137
IV. Other Jurisdictions	138
V. General Observations on Other Jurisdictions	143
VI. Questions	144

Part III: Dispute Settlement in the WTO

5. The Settlement of Disputes in the GATT/WTO	149
I. Introduction.....	149
II. Dispute Settlement in the GATT.....	150
III. Dispute Settlement in the WTO: Introduction	153
IV. Basic Overview of the DSU Process	154
(a) Consultations.....	154
(b) Panels.....	155
(c) Appellate Review	156
(d) Implementation.....	157
(e) Compliance Review.....	158
(f) Compensation and the Suspension of Concessions or other Obligations	160
(g) The Sequencing Debate.....	167
V. Alternatives to Disputes: Mediation and Arbitration.....	169
VI. Interaction of the DSU Rules with other WTO Agreements	170
VII. Important Procedural and Systemic Issues.....	171
(a) The Complaint.....	171
(b) Participation by WTO Members and other Interested Groups	181
(c) Panel and Appellate Body Decision-making.....	190
(d) Multilateralism versus Unilateralism	210
VIII. Questions	213

Part IV: Traditional GATT Obligations

6. Border Measures: Tariffs and Quotas.....	219
I. Introduction.....	219
II. Tariffs.....	220

(a)	GATT/WTO Tariff Negotiations	220
(b)	GATT Rules on Bound Tariffs	221
(c)	Domestic Tariff Administration	236
III.	Quotas	243
IV.	Tariff Quotas.....	249
V.	Export Quotas and Export Tariffs	249
(a)	Export Quotas	249
(b)	Export Tariffs	257
VI.	Questions.....	257
7.	Non-Discrimination: MFN and National Treatment	259
I.	Overview of Non-Discrimination	259
(a)	What is Discrimination? The Role of Intent, Effect and Comparisons.....	259
(b)	<i>De Facto</i> versus <i>De Jure</i> Discrimination	263
II.	National Treatment: Domestic Taxes and Regulations.....	263
(a)	Introduction.....	263
(b)	The National Treatment Provisions of GATT Article III	265
(c)	Article III:2: Tax Measures	266
(d)	Article III:4: Regulatory Measures	285
(e)	Internal Measures vs Border Measures.....	305
(f)	Article III: Conclusions and General Observations	308
III.	Questions.....	310
IV.	The Most Favoured Nation Principle	311
(a)	Introduction.....	311
(b)	Elements of the Most Favoured Nation Principle: ‘Likeness’ and Non-Discrimination.....	315
(c)	Unconditional MFN	324
(d)	Conclusions on the MFN Obligation	327
V.	Questions.....	328
Part V: GATT Exceptions		
8.	Bilateral/Regional Trade Agreements	331
I.	Introduction.....	331
II.	History of PTAs.....	332
III.	The Development of Regionalism: Why (or why not) PTAs?.....	334
IV.	Gatt Article XXIV and GATS Article V	339
(a)	The Obligation to Notify to the CRTA.....	340
(b)	External Trade Requirement	344
(c)	Internal Trade Requirement	348
V.	PTAs and Dispute Settlement in the WTO	351
(a)	<i>Turkey—Textiles</i>	352
(b)	<i>United States—Line Pipe Safeguards</i>	356
(c)	<i>Peru—Agricultural Products</i>	357
VI.	Recent Trends: The Future of PTAs in the WTO	364
VII.	Questions.....	372

9. The Article XX ‘General Exceptions’: Health, the Environment, Compliance Measures, Public Morals and More	373
I. Introduction	373
II. General Interpretive Issues.....	374
(a) Applicability of Article XX to Claims under the GATT and under Instruments Other than the GATT	374
(b) Burden of Proof.....	378
(c) Structure of the Article XX Analysis: Sub-paragraphs First, Chapeau Second.....	378
(d) ‘Necessary’ versus ‘Relating to’	379
(e) Relationship of Article XX Chapeau Discrimination to Article I and Article III Discrimination.....	384
(f) Scope of Article XX.....	385
(g) The Consideration of Extraterritorial Measures	385
III. The Major Listed Exceptions	386
(a) Article XX(a): Public Morals.....	386
(b) Article XX(b): Human, Animal or Plant Life or Health	397
(c) Article XX(d): Compliance Measures	403
(d) Article XX(g): Conservation of Exhaustible Natural Resources.....	410
(e) Article XX(j): Acquisition or Distribution of Products in Short Supply	425
IV. The Chapeau.....	427
(a) <i>US—Gasoline</i>	427
(b) <i>US—Shrimp</i>	432
(c) <i>Brazil—Tyres</i>	434
(d) <i>EC—Seal Products</i>	440
V. Conclusions	443
VI. Questions.....	443
 Part VI: Remedies for Fair and Unfair Trade	
10. Subsidies and Countervailing Measures	449
I. Introduction	449
II. Identification of Subsidies that are Subject to the SCM Agreement.....	451
(a) The Definition of ‘Subsidy’.....	451
(b) Specificity	467
III. Regulation of Specific Subsidies Under the SCM Agreement.....	471
(a) Prohibited Subsidies.....	471
(b) Actionable Subsidies.....	485
(c) Non-actionable Subsidies.....	494
IV. Dispute Settlement and Remedies.....	494
V. Subsidies Provisions in other WTO Agreements	497
(a) Agriculture Agreement	497
(b) GATT	498
(c) TRIMs Agreement	499
VI. Countervailing Measures	499
VII. Questions.....	509

11. Dumping and Anti-dumping Measures	513
I. Introduction	513
II. Anti-dumping: A Basic Overview	516
(a) Domestic Anti-dumping Rules	516
(b) History of GATT/WTO Rules on Dumping	518
III. Anti-dumping Investigations	519
(a) Initiation	519
(b) Evidence Used in the Investigation	520
(c) Key Substantive Issues: Dumping, Injury and Causation	521
IV. Anti-dumping Measures	555
(a) Provisional Measures	555
(b) Price Undertakings	556
(c) Imposition and Collection of Duties	556
(d) Duration and Review of Duties	557
(e) The Use of Anti-dumping Measures Other than Tariff Duties	558
V. Challenging Anti-dumping Measures in WTO Dispute Settlement	566
(a) Standard of Review	566
(b) The Measures to be Challenged	567
(c) Good Faith, Even-handedness, Impartiality	567
VI. 'Double Remedies' in Relation to Concurrent Anti-dumping and Countervailing Duties	568
(a) Domestic/Export Subsidies and Lower Export Prices	569
(b) Adjustments in the Dumping Calculation Which Take Subsidies into Account: The NME Calculation	571
VII. Questions	575
12. Safeguards	579
I. Introduction	579
II. Procedural Requirements	581
III. Conditions to be Satisfied in Order to Apply Safeguard Measures	583
(a) Increased Imports	584
(b) Unforeseen Developments	586
(c) Serious Injury or Threat Thereof	589
(d) Causation and Non-attribution	592
IV. Standard of Review	599
V. Application of Safeguard Measures	600
(a) The Extent of Safeguard Measures	600
(b) Parallelism	602
(c) Measures in the Form of Quantitative Restrictions	608
(d) Excluding Developing Country Members	608
(e) Duration of Safeguard Measures	609
(f) Provisional Safeguard Measures	610
VI. Maintaining an Equivalent Level of Concessions	610
VII. Questions	612

**Part VII: Beyond Trade in Goods: Domestic Regulation, Services, Investment,
Procurement and Intellectual Property**

13. The SPS and TBT Agreements	617
I. Introduction	617
II. The SPS Agreement	618
(a) Basic Rights and Obligations	619
(b) Harmonisation	621
(c) Equivalence	621
(d) Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection	623
(e) Regional Conditions	641
(f) Standard of Review under the SPS Agreement	644
(g) Summary of the SPS Agreement's Provisions	647
III. The TBT Agreement	648
(a) TBT Agreement Article 2.1—National Treatment and Most Favoured Nation Treatment	649
(b) TBT Agreement Article 2.2—More Trade-Restrictive than Necessary	662
(c) TBT Agreement Article 2.4—International Standards	675
IV. Closing Thoughts: The Object and Purpose of the SPS and TBT Agreements	684
V. Questions	685
14. Trade in Services	689
I. Introduction	689
II. The Nature of Services	690
III. The Scope of the GATS	692
(a) What Services are Covered?	692
(b) How are Services Traded?	693
(c) The Relationship of Trade in Goods (the GATT) with Trade in Services (the GATS)	695
IV. General Obligations and Disciplines	695
(a) Most-Favoured Nation Treatment (MFN)	695
(b) Transparency	696
(c) Domestic Regulation	696
(d) Exceptions	698
V. Specific Commitments	706
(a) Market Access	708
(b) National Treatment	719
(c) Additional Commitments	720
(d) Withdrawal of Commitments	720
VI. Additional Issues	721
VII. Questions	724
15. Trade and Investment	727
I. Introduction	727
II. Investment in the GATT/WTO	727

(a)	The TRIMs Agreement Negotiations.....	728
(b)	The TRIMs Agreement	729
(c)	Dispute Settlement.....	731
III.	International Investment Regulation Outside the WTO Context	738
(a)	Bilateral Investment Treaties and Investment Provisions of Free Trade Agreements.....	738
(b)	A Multilateral Agreement on Investment?.....	745
IV.	Investment, the Doha Round and beyond.....	750
V.	Questions.....	753
16.	Government Procurement	755
I.	Introduction	755
II.	The GPA's Objectives	760
III.	Issues Relating to Contract Coverage	763
(a)	The Definition of Covered Procurement.....	764
(b)	Coverage from the Developing Country Perspective.....	771
IV.	The United States 'Stimulus Package' Buy American Provisions and the GPA.....	772
(a)	Section 1605(d)—Legislative History	773
(b)	Section 1605(d)—Operation.....	774
(c)	Section 1605(b)—the Waiver.....	775
V.	Rules Applying to Covered Contracts	776
(a)	General Principles of Non-discrimination	777
(b)	Methods of Procurement.....	779
(c)	Advertisement of Procurement Opportunities—Notices	780
(d)	Conditions for Participation.....	782
(e)	Time Limits for Award Procedures	783
(f)	Awarding of Contracts	785
VI.	The Exceptions Provision.....	788
VII.	Domestic Review Procedures for Supplier Challenges.....	789
(a)	The Identity and Attributes of the Review Body	793
(b)	Remedies.....	794
VIII.	The GATT Article III:8(a) Procurement Derogation	795
IX.	Discussions Towards Multilateral Procurement Disciplines	797
X.	Questions.....	800
17.	Trade and Intellectual Property: The TRIPS Agreement.....	803
I.	Introduction	803
II.	Historical Treatment of Intellectual Property.....	803
III.	The Framework of the TRIPS Agreement: General Provisions and Principles.....	805
(a)	Overview.....	805
(b)	General Structure	806
(c)	National Treatment and Most Favoured Nation Treatment.....	807
(d)	Exhaustion	810
(e)	Objectives and Principles.....	812
IV.	The Scope and Coverage of the TRIPS Agreement	813
(a)	Copyright and Related Rights.....	814

(b) Patents	829
(c) Enforcement and Remedies.....	855
(d) Acquisition and Maintenance of Intellectual Property Rights and Related <i>Inter Partes</i> Procedures	859
(e) Dispute Prevention and Settlement	859
(f) Transitional Arrangements	864
(g) Criticisms of the Agreement.....	865
V. Intellectual Property and Preferential Trade Agreements.....	869
VI. Questions	874
 Part VIII: Social Policy Issues	
18. Developing Countries in the Multilateral Trading System	877
I. Introduction.....	877
II. Classification of WTO Members as 'Developing' or 'Least Developed'.....	877
III. The Role of Developing Countries in the WTO: Negotiations, Disputes, and Special and Differential Treatment	880
(a) The Negotiating Process.....	882
(b) Dispute Settlement	884
(c) Special and Differential versus Equal Treatment	886
IV. Are the WTO's goals Appropriate for Developing Countries?	910
V. Questions	911
19. Linkages between Trade and Social Policies	913
I. Environment.....	914
II. Culture	924
III. Labour Standards	932
IV. Human Rights	944
V. Health and Safety.....	952
VI. Questions	960
 <i>Index</i>	 963