

Table of Contents

<i>Preface</i>	V
<i>Summary of Contents</i>	VII
<i>Table of Contents</i>	IX
<i>Abbreviations</i>	XXIII

PART ONE
FOUNDATIONS OF INTERNATIONAL TRADE REGULATION

Chapter I
Scope and Evolution

A. Introductory Note	2
1. The Notion and Scope of International Trade Regulation	2
2. Dilemmas and Challenges of International Trade Regulation	3
3. International and Domestic Market Regulation	6
4. Methodology	8
B. History and Evolution of International Trade Regulation	9
1. The Rise and Fall of 19th Century Free Trade	9
2. From Bilateralism to Multilateralism	19
3. The Impact of Technological Developments and the Process of Globalisation	23
4. Regional Developments	27
5. Global Trade Flows	30
C. Theories of International Trade Regulation	33
1. Economic Theory	33
2. Legal Theory	44
3. Political Economy of Trade Policy	50
D. Overview of Domestic Trade Barriers	54
1. Motives and Rationales for Protectionism	54
2. Instruments and Generations of Trade Barriers	56
E. Sources of Law in International Trade Regulation	62
1. The Structure of International Trade Regulation	62
2. International Law	63
3. Domestic and Regional Law	65

Chapter II

Structure and Operation of the WTO

A. Introductory Note	68
B. From GATT 1947 to the WTO	68
1. General Agreement on Tariffs and Trade	68
a) Protocol of Provisional Application	69
b) Protocols of Accession	71
2. Eight Rounds of Multilateral Trade Negotiations	72
C. Subjects and Scope of WTO Law	77
1. Subjects of WTO Law	77
a) Membership	78
b) Status of Observers	81
c) Status of Private Companies and NGOs	82
2. Scope of WTO Law	83
D. Structure and Instruments of the WTO	88
1. The WTO Agreements	88
2. Relationship between the Agreements	90
3. Organs	97
4. Decision-Making	100
a) Consensus and Voting	100
b) Democratic Legitimacy and the Balance of Powers	105
E. Sources and Interpretation of WTO Law	108
1. Sources of Law	109
a) Covered Agreements	110
b) Decisions, Procedures and Customary Practices under the GATT 1947/WTO	110
c) Teachings of the Most Highly Qualified Publicists	112
d) General Principles of Law and Customary Rules of Law	112
e) Related Agreements	113
f) Other International Organisations and Standard Setting Bodies	117
g) Resolutions and Interpretations	118
2. Rules of Interpretation	118
F. Legal Nature of Rights and Obligations	125
1. Introductory Note	125
2. Nullification and Impairment of Benefits	126
a) Violation Complaints	126
b) Non-Violation Complaints	127
3. The Principle of Good Faith and Legitimate Expectations	136
G. Dispute Resolution in the WTO	143
1. Introductory Note	143
2. Initiation of a WTO Dispute Settlement Proceeding	144
a) EC Law	145
b) Swiss Law	151

3. Consultations, Panel and Appellate Body Proceedings	151
a) Overview	151
b) Procedural Issues	158
(1) Specificity Requirements	158
(2) Burden of Proof	161
(3) Standard of Review	163
4. Third Party Rights and None-State Actors	169
5. Reform Prospects	176
H. Implementation of DSB Decisions	182
1. The Nature of DSB Decisions	182
2. Recommendations	185
3. Compensation and Suspension of Concessions	188
I. General Mechanisms of Surveillance	194
1. Periodical Trade Policy Review	194
2. Notification and Review within Subsidiary Bodies	196

Chapter III

Domestic Impact of WTO Law

A. Introductory Note	197
B. The Prerogative of WTO Law	197
1. The Perspective of WTO Law	198
2. EC Law	199
3. Swiss Law	200
C. The Principle of Consistent Interpretation	206
1. The Significance of Consistent Interpretation	206
2. EC Law	207
3. Swiss Law	208
D. The Issue of Direct Effect	209
1. WTO Law	210
2. EC Law	218
3. Swiss Law	223
4. Domestic Implementation of DSB Decisions	227

Chapter IV

External Trade Regulation in the EC

A. Introductory Note	233
B. Economic Significance	235
C. The Allocation of Powers between the EC and the Member States	237
1. Explicit and Exclusive Powers	238
2. Shared Powers	239
3. Implied Powers	251
4. Mixed Agreements	258

D. The Allocation of Powers between the Institutions of the EC	260
1. In General	260
2. The Commission and the Council	262
a) The Negotiation of International Agreements	262
b) The Adoption of Trade Policy Instruments	265
3. The European Parliament	266
4. The European Court of Justice	268
E. Trade Policy Instruments in Legislation	273

Chapter V

External Trade Regulation in Switzerland

A. Introductory Note	275
B. Economic Significance	276
C. The Allocation of Powers between the Federal Government and the Cantons	283
1. The Federal Powers	283
2. The Demise of Clear Cut Allocation of Powers	286
D. The Allocation of Powers within the Federal Government	288
1. The Executive Branch	288
2. The Parliament	293
3. The People and the Cantons (Initiative and Referendum)	297
4. The Federal Supreme Court	301
E. Trade Policy Instruments	305
1. The Federal Constitution	305
2. Legislation	308
F. The Customs Union with Liechtenstein	311

Chapter VI

Switzerland and European Integration

A. Introductory Note	313
B. The European Free Trade Association (EFTA)	315
C. The Free Trade Agreement of 1972	320
D. The European Economic Area	324
E. The Bilateral Agreements of 1999	330
1. Scope and Significance	330
2. Institutional and Legal Aspects	334
F. The Bilateral Agreements of 2004	338
G. Future Developments and Prospects	340

PART TWO

CONSTITUTIONAL PRINCIPLES OF THE WTO

Chapter VII

Most-Favoured-Nation Treatment

A. Introductory Note	346
B. The Principle of Most-Favoured-Nation Treatment	347
1. Unconditional and Conditional MFN Treatment	347
2. The Scope of MFN Treatment	350
a) GATT 1994	350
b) GATS	355
c) TRIPs Agreement	357
3. The Concept of Like Product	360
a) GATT 1994	361
b) GATS	364
4. The Policy of Reciprocity	367
C. Exceptions to Most-Favoured-Nation Treatment	368
1. Introductory Note	368
2. Regional Integration	370
a) WTO Rules and Procedures	370
b) Justiciability of Regional Trade Agreements	373
c) Excursus: the Bilateral Agreements of 1999	380

Chapter VIII

National Treatment

A. Introductory Note	382
B. The Scope of National Treatment	382
1. GATT 1994	382
2. GATS	385
3. TRIPs Agreement	385
C. The Concept of Like Product	389
1. Like Products and Trade in Goods	389
a) Border Tax Adjustment Criteria	390
b) Additional Criteria	401
c) 'Aims-and-Effect' Test	403
2. Like Services and Service Suppliers	407
D. Process and Production Methods	412
E. State Trading Enterprises and Monopolies	419

Chapter IX

Explicit Protection of Other Legitimate Policy Goals

A. Introductory Note	428
B. General Exceptions	428
1. A Three-Step Examination	429
2. The Paragraphs of Article XX of the GATT 1994	432
a) The Protection of Health and the Environment	432
b) The Protection of Other Policy Goals	446
3. The Chapeau of Article XX of the GATT 1994	451
4. In Particular: Extraterritorial Application	463
C. Restrictions to Safeguard the Balance of Payments	466
D. National Security Exceptions and UN Sanctions	468
1. WTO Law	469
a) Unilateral Measures	469
b) Multilateral Measures	472
2. EC Law	473
3. Swiss Law	481
E. Safeguard Measures	486
1. GATT 1994 and the Agreement on Safeguards	486
2. Special Safeguard Clauses	496
a) Agreement on Textiles and Clothing	496
b) Agreement on Agriculture	498
3. Safeguards and Trade in Services	499
4. EC Law	501
5. Swiss Law	503
6. Bilateral Relations and EFTA	505
F. Waivers	508

Chapter X

Relationship between the WTO and Other Areas of Public International Law

A. Introductory Note	513
B. The Issue of Jurisdiction	513
C. WTO Law and Multilateral Environmental Agreements	517
D. WTO Law and Human Rights	520
1. Introductory Note	520
2. The Relationship between WTO Law and Human Rights	523
3. In Particular: Labour Standards	529
E. From Contractual to Constitutional Law	532

Chapter XI
The Rule of Law

A. Introductory Note	543
B. The Principles of Good Governance and Transparency	543
C. Domestic Legal Remedies	551

Chapter XII
Special and Differential Treatment
for Developing Countries

A. Introductory Note	552
B. The Principle of Special and Differential Treatment for Developing Countries	554
C. The Generalised System of Preferences	562
1. WTO Law	562
2. EC Law	568
3. Swiss Law	569
D. The Global System of Trade Preferences	574

PART THREE
REGULATION OF MARKET ACCESS

Chapter XIII
Market Access and Conditions of Competition: Survey

Chapter XIV
The Law and Policy of Tariffs

A. Introductory Note	577
B. The Nature and Function of Tariffs	577
1. The Definition of Tariffs	577
2. The Function and Political Economy of Tariffs	581
3. Average Levels of Tariffs	587
C. Protection and Reduction of Tariffs in the WTO	590
1. The Process of Tariff Reduction	590
2. Methods and Approaches to Tariff Reduction	593
3. Tariff Schedules	595
a) Article II of the GATT 1994	595
b) The Harmonised System	596
c) Examples: the Schedules of the EC and Switzerland	598
d) The Interpretation of Tariff Schedules	602

4. Consolidation and Deconsolidation of Tariff Bindings	605
a) Bound and Unbound Tariffs	605
b) Deconsolidation of Tariffs	605
D. Customs Valuation	607
1. WTO Law	607
2. EC Law	609
3. Swiss Law	611
E. Rules of Origin	611
1. The Function and Determination of Origin	612
2. The GATT 1947 and the Kyoto Convention	615
3. WTO Law	616
4. Domestic Rules	622
a) EC Law	623
b) Swiss Law	626
5. Preferential Rules and Cumulation	628
a) In General	628
b) Bilateral Relations and EFTA	629
F. Tariff Regulation in the EC	635
G. Tariff Regulation in Switzerland	642
H. Bilateral Relations and EFTA	650

Chapter XV

Quantitative Import and Export Restrictions

A. Introductory Note	660
B. WTO Law	661
1. The Prohibition of Quantitative Restrictions	661
2. Voluntary Export Restraints	667
3. Allocation of Tariff Quotas and Licensing	670
a) WTO Law	670
b) EC Law	675
c) Swiss Law	676
C. Quantitative Restrictions in Other Multilateral Agreements	680
1. Multilateral Environmental Agreements	680
2. Examples: the Basel Convention, CITES and the Cartagena Protocol	684
D. EC Law	692
1. Environmental Law	693
2. Trade in Arms and Dual-Use Products	694
E. Swiss Law	698
1. Environmental Law	698
2. Trade in Arms and Dual-Use Products	700
F. Bilateral Relations and EFTA	707

Chapter XVI Sectoral Agreements

A. Agriculture	
1. Introductory Note	712
2. Market Access	712
a) Tariffication of Quantitative Restrictions	714
b) Access Commitments and Tariff Rate Quotas	717
c) Special Safeguard Mechanism	719
3. Agricultural Support Measures	719
a) Domestic Support Measures	721
b) Export Subsidies	724
c) The 'Peace Clause' and the SCM Agreement	725
4. The Quantification of Agricultural Support	727
5. The Impact of the Agreement and Ongoing Negotiations	729
6. From Multifunctional to Sustainable Agriculture	731
7. EC Law	734
8. Swiss Law	738
9. Bilateral Relations and EFTA	
B. Textiles and Clothing	
1. Introductory Note	742
2. The Integration of Textiles and Clothing into the WTO	742
3. Remaining Tariff Barriers and Tariff Escalation	743
4. EC Law	746
5. Swiss Law	748
6. Bilateral Relations and EFTA	748

Chapter XVII Technical Barriers to Trade

A. Introductory Note	
B. WTO Law	750
1. Substantive and Procedural Principles	750
2. International Standards	751
3. The Principle of Proportionality	756
4. Process and Production Methods	760
5. Relationship to the GATT 1994	762
6. The Principle of Mutual Recognition	762
C. EC Law	763
D. Swiss Law	764
E. Bilateral Relations and EFTA	765
	769

Chapter XVIII

Sanitary and Phytosanitary Measures

A. Introductory Note	778
B. WTO Law	779
1. In General	779
2. Substantive and Procedural Principles	780
a) International Standards	781
b) Risk Assessment	782
c) Risk Management	787
d) Consistent and Non-Discriminatory Application	787
3. The Precautionary Principle	792
4. Issues of Burden of Proof and Standard of Review	792
5. Genetically Modified Organisms and Genetic Engineering	796
C. EC Law	799
D. Swiss Law	807
E. Bilateral Relations and EFTA	810

PART FOUR

REGULATION OF CONDITIONS OF COMPETITION

Chapter XIX

Trade in Services

A. Introductory Note	816
B. WTO Law	817
1. The Scope of the GATS	820
2. The Modes of Supply	827
3. General Obligations and Specific Commitments	828
4. The Principle of MFN Treatment	829
5. Market Access and the Principle of National Treatment	830
6. Transparency and Domestic Regulation	832
7. Schedules of Commitments and Progressive Liberalisation	833
C. EC Law	835
D. Swiss Law	840
E. Bilateral Relations and EFTA	843
F. Sectoral Issues	856
1. Financial Services	856
a) WTO Law	859
b) EC Law	862
c) Swiss Law	867
d) Bilateral Relations and EFTA	872

2. Telecommunications Services	875
a) WTO Law	876
(1) Annex on Telecommunications	877
(2) Fourth Protocol and Reference Paper	880
b) EC Law	886
c) Swiss Law	888
d) Bilateral Relations and EFTA	893
3. Audiovisual Services	894
a) WTO Law	895
b) EC Law	900
c) Swiss Law	906
(1) Movies	906
(2) Radio and Television	911
d) Bilateral Relations and EFTA	914

Chapter XX

Protection of Intellectual Property Rights

A. Introductory Note	916
B. WTO Law	921
1. Multilateral Harmonisation and the TRIPs Agreement	921
2. The TRIPs Council and the Relationship to WIPO	922
3. Covered Fields	923
4. Restrictions of Rights	931
5. The Issue of Exhaustion of Rights and Parallel Trade	936
6. Enforcement and Acquisition / Maintenance	939
7. Open Questions and Further Developments	940
C. EC Law	945
1. In General	945
2. The Issue of Exhaustion of Rights	948
D. Swiss Law	952
1. In General	952
2. The Issue of Exhaustion of Rights	953
E. Bilateral Relations and EFTA	958

Chapter XXI

Protection of Foreign Direct Investment

A. Introductory Note	965
1. The Scope and Significance of FDI	965
2. National Policies and FDI	967
3. The Legal Framework	969
4. FDI and Development	970
B. WTO Law	973
1. Various WTO Agreements	973
2. The TRIMs Agreement	975

C. EC Law	980
D. Swiss Law	981
1. Bilateral Investment Treaties	981
2. Domestic Law	984
E. Bilateral Relations and EFTA	987

Chapter XXII

Subsidies and Countervailing Measures

A. Introductory Note	990
B. WTO Law	990
1. GATT 1994 and the SCM Agreement	990
2. The Definition of Subsidies	993
3. Countervailing Measures	998
4. Export Credits	1000
5. Subsidies and Trade in Services	1001
C. EC Law	1002
1. External Regulations	1002
2. Internal Regulations	1002
D. Swiss Law	1007
1. External Regulations	1007
2. Internal Regulations	1008
E. Bilateral Relations and EFTA	1011

Chapter XXIII

Dumping and Anti-Dumping Measures

A. Introductory Note	1013
B. WTO Law	1016
1. GATT 1994 and the AD Agreement	1016
2. Dumping and Trade in Services	1027
3. New Approaches in the Regulation of Unfair Competition	1028
C. EC Law	1030
1. External Regulations	1030
2. Internal Regulations	1034
D. Swiss Law	1034
E. Bilateral Relations and EFTA	1035

Chapter XXIV

Government Procurement

A. Introductory Note	1036
B. WTO Law	1036
1. GATT 1994 and the Agreement on Government Procurement	1036
2. Government Procurement and Social Policy Objectives	1042
C. EC Law	1048
1. External Regulations	1048
2. Internal Regulations	1048
D. Swiss Law	1049
1. External Regulations	1049
2. Internal Regulations	1050
E. Bilateral Relations and EFTA	1056
<i>Index</i>	1061