



SOUTH ASIAN UNIVERSITY

Faculty of Legal Studies

LLM

2023–2025

Winter Semester (Second Semester)

Course Information

Part I

Course Title	International Trade Law
Course Code	LW008
Course Instructor	Prof. Ravindra Pratap and Dr Prabhash Ranjan
Course Duration	One semester
Course Units	4
Medium of Instruction	English
Prerequisites	Nil
Precursors	Nil
Equivalent Courses	N/A

Part II

Course Overview

International trade law has become more important today due to unprecedented developments in international trade relations in the last few decades. Initially, the General Agreement on Tariffs and Trade (GATT), 1947, provided the necessary norms and institutional setting for the restoration of order in international trade relations after the end of the Second World War. The GATT system significantly evolved and changed overtime, although its basic norms remained intact. Some of these basic norms include the Most-Favoured-Nation Treatment (MFN), National Treatment (NT), safeguard measures, anti-dumping measures, general prohibition of quantitative restrictions, subsidies and trade issues concerning developing countries, and settlement of trade disputes. The GATT system remained confined to trade in goods and largely ineffective in implementing the “special and differential treatment” to developing countries.

The Uruguay Round of trade negotiations, the eight and last round of GATT trade negotiations, brought about major changes in the international trading system and led to the establishment of the World Trade Organization (WTO). Conclusion of the Uruguay Round added several new issues, particularly trade-related aspects of intellectual property

rights and trade in services. Rapid developments in technology, the environment, and trade patterns and linkages further transformed the nature and functioning of the international trading system. The range of topics and techniques used in its dispute settlement system has significantly increased the relevance and reach of the WTO. The advancing process of globalization also created the conditions for assumption of a dominant by the WTO. Further, the increasing membership of the WTO also underscores its growing importance in the international trading system. The majority membership of the WTO now consists of developing and least-developed countries. The implementation of the WTO obligations of these countries has been presenting added difficulties as these obligations, it is argued, have shrunk the policy space for these countries. It is therefore important for the student to understand both the legal and institutional framework of the WTO.

Part III

Course Aims

Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka are WTO Members. The only remaining South Asian country, Bhutan, is already a WTO Observer and is in the process of becoming a WTO Member. Implementation issues under several covered agreements, including the Agriculture, Subsidies, TRIPS and GATS Agreements have assumed particular importance for South Asian Countries. The WTO obligations of South Asian countries will therefore have special reference. The South Asian Free Trade Area (SAFTA) and the SAARC Agreement on Trade in Services (SATIS) are in place with varying nature and degrees of success and constraints. Some of these regional trade issues will also be discussed. As international trade law remains part of international law, the applicability of the latter in the functioning, interpretation and evolution of the former will also form part of the discourse. The focus of the course will thus be to familiarize the student with international trade law with specific reference to South Asia.

Part IV

Evaluation criteria

FLS has adopted a three level evaluation process: mid-semester and end-semester examination and a term paper.

Part V

Course structure

WEEK 1: INTRODUCTION AND INSTITUTIONS (RP)

1.1 Introduction to international trade law: International trade theories, policies and debates; assessment.

Required Reading

Joost H B Pauwelyn et al (2016) *International Trade Law* (The Hague: Kluwer) Chapter 2/Michael Trebilcock et al (2012) *The Regulation of International Trade* (London: Routledge) Chapter 1.

Supplementary Readings

Treaty of Amity, Commerce and Navigation, 1794, Articles III and XIII.

Paul Krugman et al (2017) *International Economics: Theory and Policy* (New York: Pearson) Chapter 1/A K Dixit and V Norman (1980) *Theory of International Trade* (Cambridge: CUP) 1–28.

Further Readings

United States Tariff Act of 1930 (Smoot-Hawley Act of June 17, 1930).

Jagdish N Bhagwati (ed) (1988) *Protectionism* (Cambridge: MIT) Chapter 3.

Joseph E Stiglitz and Andrew Charlton (eds) (2005) *Fair Trade For All* (New York: OUP) 11–86.

1.2 Institutions of the international trading system: GATT and WTO: Evolution; objectives, principles, structure, functions and decision-making; perspectives.

Required Reading

Marrakesh Agreement Establishing the World Trade Organization, 1994 (WTO Agreement) Preamble, Articles II–IV, IX, XVI.

Supplementary Readings

General Agreement on Tariffs and Trade, 1947, Preamble.

United States – Sections 301–310 of the Trade Act of 1974, Report of the WTO Panel, WT/DS152/R (22 December 1999).

Mitsuo Matsushita et al. (2015) *The World Trade Organization: Law, Practice and Policy* (London: OUP) Chapter 1.

Further Readings

Final Act of the United Nations Conference on Trade and Employment, 1948 (Havana Charter) Purpose and Objectives.

India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, Report of the WTO Appellate Body, WT/DS50/AB/R (19 December 1997).

John H Jackson, ‘The Puzzle of GATT: Legal Aspects of a Surprising Institution’ (2000) in Jackson, *The Jurisprudence of GATT and the WTO* (Cambridge: CUP) 17.

B S Chimni, 'Law and Organization of Dunkel Proposals' (1992) 13 *World Focus* 13.
Sungjoon Cho (2017) *The Social Foundations of World Trade: Norms, Community and Constitution* (Cambridge: CUP) Chapter 3.

WEEK 2: DISPUTE SETTLEMENT AND NON-DISCRIMINATION (RP)

2.1 WTO Dispute Settlement: Evolution; salient features; working; assessment.

Required Reading

WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994 (DSU) Articles 2, 3, 4, 6, 8, 11, 17, 21, 22, 23.

Supplementary Readings

Rules of Conduct under the DSU (1996).

United States – Transitional Safeguards Measures on Combed Cotton Yarn from Pakistan, Report of the WTO Appellate Body, WT/DS192/AB/R (8 October 2001).

Mitsuo Matsushita et al (2015) *The World Trade Organization: Law, Practice and Policy* (London: OUP) Chapter 4.

Further Readings

Working Procedures for Appellate Review (2010).

United States – Import Measures on Certain Products from the European Communities, Report of the WTO Appellate Body, WT/DS165/AB/R (11 December 2000).

Deborah Z Cass, 'The "Constitutionalization" of International Trade Law: Judicial Norm-Generation as the Engine of Constitutional Development in International Trade' (2001) 12 *EJIL* 39.

Ravindra Pratap, 'Dispute Settlement in the WTO and South Asia' (2005) in *Trade and Development Report 2005* (New Delhi: Centad) 354.

2.2 The principle of non-discrimination: Most-Favoured-Nation and National Treatment, "less favourable treatment", "like product"; assessment.

Required Reading

GATT Articles I and III.

Supplementary Readings

GATT Articles XX and XXIV.

European Communities – Conditions for the Granting of Tariff Preferences to the Developing Countries, WT/DS246/AB/R, Report of the WTO Appellate Body (7 April 2004).

Simon Lester et al (eds) (2018) *World Trade Law: Text, Materials and Commentary* (London: Hart) Chapter 7.

Further Readings

GATT Decision of the Contracting Parties of 28 November 1979, Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, 28 November 1979.

Agreement on Trade-Related Investment Measures, 1994, Annex.

India – Certain Measures Relating to Solar Cells and Solar Products, Report of the WTO Appellate Body, WT/DS456/AB/R (16 September 2016).

T N Srinivasan, 'Non-discrimination in GATT/WTO: Was There Anything to Begin with and is There Anything Left' (2005) 4 *World Trade Review* 69.

WEEK 3: TARIFF, QUOTAS AND GENERAL EXCEPTIONS (RP)

3.1 Tariff, quantitative restrictions and other barriers to trade: Reciprocity; balance of payments; developmental policy; assessment.

Required Reading

GATT Articles II, XI, XIII, XVIII, XVIII**bis**.

Supplementary Readings

WTO Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade, 1994.

India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, Report of the WTO Appellate Body, WT/DS90/AB/R (23 August 1999).

Mitsuo Matsushita et al (2015) *The World Trade Organization: Law, Practice and Policy* (London: OUP) Chapter 8.

Further Readings

Negotiating Group on Market Access, Minutes of the Meeting, 21 July 2017.

India – Measures Affecting Automotive Sector, Report of the WTO Appellate Body, WT/DS146/AB/R (19 March 2002).

Mustafizur Rahman and Mohammad A Razzaque, 'Non-tariff Barriers in South Asia: Nature and Modalities to Address the Attendant Issues' (2014) in Mohammad A Razzaque

and Yurendra Basnett (eds) *Regional Integration in South Asia: Trends, Challenges and Prospects* (London: Commonwealth Secretariat) Chapter 6.

3.2 General exceptions: Domestic policies; “necessity”; non-discrimination; non-arbitrariness; proportionality; assessment.

Required Readings

GATT Article XX.

United States – Import Prohibition of Certain Shrimp and Shrimp Products, Report of the WTO Appellate Body, WT/DS58/AB/R (12 October 1998).

Supplementary Readings

India – Certain Measures Relating to Solar Cells and Solar Products, Report of the WTO Appellate Body, WT/DS456/AB/R (16 September 2016).

Joost H B Pauwelyn et al (2016) *International Trade Law* (London: Aspen) Chapters 13–14.

Further Readings

Brazil – Measures Affecting Imports of Retreaded Tyres, Report of the WTO Appellate Body, WT/DS332/AB/R (3 December 2007).

European Communities – Measures Prohibiting Importation and Marketing of Seal Products, Report of the WTO Appellate Body, WT/DS400/AB/R (22 May 2014).

Asif H Qureshi, ‘Interpreting exceptions in the WTO Agreement’ (2015) in Qureshi, *Interpreting WTO Agreements* (Cambridge: CUP) Chapter 4.

WEEK 4: AGRICULTURE AND SUBSIDIES (RP)

4.1 Agriculture: Domestic support, market access, export subsidy; developing and least-developed countries; food security; assessment.

Required Reading

Agreement on Agriculture, 1994, Articles 1, 4-6, 7, 9, 13, 15, 16, Annex 2.

Supplementary Readings

Public Stockholding for Food Security Purposes, Ministerial Decision of 19 December 2015.

United States – Subsidies in Upland Cotton, Report of the WTO Appellate Body, WT/DS267/AB/R (3 March 2005).

Mitsuo Matsushita et al (2015) *The World Trade Organization: Law, Practice and Policy* (London: OUP) Chapter 9.

Further Readings

Special Safeguards Mechanism for Developing Country Members, Ministerial Decision of 19 December 2015.

Chile – Price Band System and Safeguards Measures Relating to Certain Agricultural Products, Report of the WTO Appellate Body, WT/DS69/AB/R (23 September 2002).

Ramesh Chand and Seema Bathla, 'WTO Agriculture Negotiations and South Asian Countries: Concerns, Viewpoints and Consensus' (2005) 6 *South Asia Economic Journal* 1.

4.2 Subsidies and countervailing measures: Introductory, prohibited subsidies, actionable subsidies, special and differential treatment, countervailing measures.

Required Reading

Agreement on Subsidies and Countervailing Measures, 1994, 1–3, 5–8, 11–12, 15–16.

Supplementary Readings

LDC Group Fisheries Subsidies Text Proposal, Submission by Cambodia on Behalf of the LDC Group, 17 July 2017.

United States – Tax Treatment for “Foreign Sales Corporations”, Recourse to Article 21.5 of the DSU by Japan, Report of the WTO Appellate Body, WT/DS108/AB/R/W (18 August 2009).

Peter Van den Bossche and Werner Zdouc (2017) *The Law and Policy of The World Trade Organization: Text, Cases and Materials* (Cambridge: CUP) Chapter 12.

Further Readings

New and Full Notification by India to WTO, Supplement, 5 September 2017.

European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft, Report of the WTO Appellate Body, WT/DS316/AB/R (18 May 2011).

Dominic Coppens, 'How special is the Special and Differential Treatment under the SCM Agreement? A legal and normative analysis of WTO subsidy disciplines on developing countries' (2013) 12 *World Trade Review* 79.

WEEK 5: SERVICES AND TRADE-RELATED INTELLECTUAL PROPERTY (RP)

5.1 Trade in services: Introductory: market access, national treatment, domestic regulation; South Asian countries; evaluation.

Required Reading

General Agreement on Trade in Services, 1994, Articles I, II, IV-VI, XII, XVI-XIX, XXIV.

Supplementary Readings

SARRC Agreement on Trade in Services (SATIS), 2010.

Argentina – Measures Relating to Trade in Goods and Services, Report of the WTO Appellate Body, WT/DS453/AB/R (14 April 2016).

Mitsuo Matsushita et al (2015) *The World Trade Organization: Law, Practice and Policy* (London: OUP) Chapter 16.

Further Readings

Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing LDC Participation in Services Trade, Ministerial Declaration of 19 December 2015.

China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, Report of the WTO Appellate Body, WT/DS363/AB/R (21 December 2009).

Saman Kelegama (eds) 2009 *Trade in Services in South Asia: Opportunities and Risks of Liberalization* (New Delhi: Sage).

5.2 Trade-related intellectual property: Introductory: History, objectives, principles, exceptions, least-developed countries.

Required Reading

Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, Preamble, Articles 1, 7, 8, 30, 31, 61, 63, 64, 66.

Supplementary Readings

Amendment of the TRIPS Agreement, Decision of 30 November 2017.

Australia – Certain Measures Concerning Trademarks and Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging, Reports of the Panel, WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R (28 June 2018).

Michael Trebilcock et al (2012) *The Regulation of International Trade* (London: Routledge) Chapter 14.

Further Readings

Doha Declaration on the TRIPS Agreement and Public Health, 14 November 2001.

Canada – Patent Protection of Pharmaceutical Products, Report of WTO Panel, WT/DS114/R, adopted 7 April 2000.

Suman Sahai, 'GATT/WTO and the TRIPS Agreement: A South Asian Perspective' (2000) 1 South Asia Economic Journal 25.

WEEK 6: DEVELOPMENT AND LINKAGES (RP)

6.1 Developing and Least-Developed Countries: Special and differential treatment, trade preferences; assessment.

Required Reading

GATT Decision of the Contracting Parties of 28 November 1979, Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, 28 November 1979.

Supplementary Readings

Preferential Rules of Origin for Least Developed Countries, Ministerial Decision of 15 December 2015.

Raj Bhala (2015) *International Trade Law* (LexisNexis) Chapter 98 (S&D Treatment)/Pallavi Kishore, 'Special and Differential Treatment in the Multilateral Trading System' (2014) 13 Chinese Journal of International Law 1.

Further Readings

European Communities – Conditions for the Granting of Tariff Preferences to the Developing Countries, WT/DS246/AB/R, Report of the WTO Appellate Body (7 April 2004).

Asian-African Legal Consultative Organization, *Background Paper on Special and Differential Treatment under the WTO*, 2003.

Amrita Narlikar (2003) *International Trade and Developing Countries* (London: Routledge) Chapter 1.

Jayatileke Bandara, 'Trade and Poverty: Theory, Evidence and Policy Issues' (2011) in Bandara et al (eds) *Trade Liberalization and South Asia* (London: Routledge) 17.

Surya P Subedi, 'The Road from Doha: The Issues for the Development Round of the WTO and the Future of International Trade' (2003) 52 ICLQ 425.

6.2 Linkages

Required Readings

Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017.

Decision on Trade and Environment, 15 April 1994.

Supplementary Readings

Canada – Certain Measures Affecting the Renewable Energy Generation Sector; Canada—Measures Relating to the Feed-in Tariff Program, Report of the WTO Appellate Body, WT/DS412/AB/R, WT/DS426/AB/R (6 May 6 2013).

Kishor Sharma, 'Labor Standards and WTO Rules: Survey of the Issues with Reference to Child Labour in South Asia' (2009) 43 *Journal of Economic Issues* 29.

Veena Jha (ed) (2003) *Trade, Globalization and Gender: Evidence from South Asia* (New Delhi: UNIFEN and United Nations).

Further Readings

Havana Charter, 1948, Article 7.

José E Alvarez, 'The Boundaries of the WTO: Foreword' (2002) 96 *AJIL* 1.

Andrew Lang, 'Reflecting on Linkage: Cognitive and Institutional Change in the International Trading System' (2007) 70 *Modern Law Review* 523.

Gregory Messenger (2016) *The Development of the World Trade Organization Law: Examining Change in International Law* (London: OUP) 1–10.

WEEKS 7 & 8 [PR]

Plurilateral Trade Agreements (PTAs) (Article XXIV of GATT)

- What are PTAs and Customs Union (Article XXIV of GATT)
- What conditions have to be satisfied for a PTA to be consistent with Article XXIV of GATT (internal and external trade requirements)
- Notification and Transparency mechanism for PTAs
- SAFTA

Compulsory Readings:

- S Lester, B Mercurio et al (2012), 'World Trade Law: Text, Materials and Commentary (Hart Publishing: Oxford), 327-415.
- Peter Van den Bossche and Werner Zduoc (2013), 'The Law and Policy of the World Trade Organization' (CUP: Cambridge), 648-663

Key Cases:

- Argentina – Safeguard Measures on imports of Footwear, Appellate Body Report, WT/DS121/AB/R, adopted on 12 January 2000
- Turkey – Restrictions on Imports of Textile and Clothing Products, Appellate Body Report, WT/DS34/AB/R, adopted on 19 November 1999.

WEEKS 9 &10 [PR]

Imposition of Anti Dumping Duties under the Anti Dumping Agreement

- Dumping and Anti dumping Measures;
- Challenging anti dumping measures;
- Concept of Zeroing in anti dumping investigations;
- Determination of Injury and demonstration of a causal link
- Standard of review in the Anti Dumping Agreement.

Compulsory Readings

- Peter Van den Bossche and Werner Zduoc (2013), ‘The Law and Policy of the World Trade Organization’ (CUP: Cambridge), 674-711 and 734-737
- Simon Lester, B Mercurio et al (2012), ‘World Trade Law: Text, Materials and Commentary (Hart Publishing: Oxford), 473-534.

Key Cases:

- United States – Continued Dumping and Subsidy Offset Act of 2000, Appellate Body Report, WT/DS217/AB/R adopted 27 January 2003
- United States – Anti Dumping Act of 1916, Appellate Body Report, WT/DS136/AB/R, adopted 26 September 2000.
- European Communities – Anti Dumping Duties on Imports of Cotton Type Bed Linen from India, Appellate Body Report, WT/DS141/AB/R, adopted 12 March 2001.
- United States – Measures Relating to Zeroing and Sunset Reviews, Appellate Body Report, WT/DS322/AB/R, adopted 23 January 2007.

WEEKS 11 & 12 [PR]

Imposition of Safeguard measures under the Agreement on Safeguard Measures (Week 11)

- Relationship Between Article XIX of GATT and the Agreement on Safeguards
- Conditions to be satisfied for imposition of Safeguard Measures
- Injury requirement in safeguard measures
- Causation requirement
- Parallelism in imposition of safeguard measures
- Characteristics of Safeguard measures

Compulsory Readings

- S Lester, B Mercurio et al (2012), 'World Trade Law: Text, Materials and Commentary (Hart Publishing: Oxford), 537-569
- Peter Van den Bossche and Werner Zduoc (2013), 'The Law and Policy of the World Trade Organization' (CUP: Cambridge), 606-631.

Key Cases:

- Argentina – Safeguard Measures on imports of Footwear, Appellate Body Report, WT/DS121/AB/R, adopted on 12 January 2000
- United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, WT/DS166/AB/R, adopted 19 January 2001.
- United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea, WT/DS202/AB/R, adopted on 8 March 2002.
- United States – Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DS248/AB/R, adopted 10 December 2003.

WEEK 13 [PR]

Imposition of Technical Barriers to Trade

- What standards of the TBT Agreement a country has to satisfy while imposing technical requirements on trade?
- TBT Agreement Article 2.1 – National Treatment and Most Favoured Nation (meaning of ‘treatment no less favourable’)
- TBT Agreement Article 2.2 – More Trade Restrictive than Necessary
- Obligation to base technical barriers to trade on international standards

Compulsory Readings:

- S Lester, B Mercurio et al (2012), ‘World Trade Law: Text, Materials and Commentary (Hart Publishing: Oxford), 600-630
- Peter Van den Bossche and Werner Zduoc (2013), ‘The Law and Policy of the World Trade Organization’ (CUP: Cambridge), 850-878.

Key Cases:

- European Measures – Measures Affecting Asbestos and Asbestos Containing Products, Appellate Body Report, WT/DS135/AB/R, adopted 5 April 2001
- United States – Measures Affecting the Production and Sale of Clove Cigarettes, Appellate Body Report, WT/DS406/AB/R, adopted 24 April 2012.
- United States – Certain Country of Origin Labelling (COOL) Requirements, Appellate Body Report, WT/DS384/AB/R/WT/DS386/AB/R, adopted 23 July 2012.

Readings:

1. S Lester, B Mercurio et al (2012), ‘World Trade Law: Text, Materials and Commentary (Hart Publishing: Oxford)
2. Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, *The World Trade Organization: Law, Practice and Policy* (Oxford University Press:2006).
3. Michael Trebilcock, Robert Howse, Antonia Eliason, *The Regulation of International Trade*, 4th edition (Routledge:2012)

4. Peter Van den Bossche and Werner Zduoc (2013), 'The Law and Policy of the World Trade Organization' (CUP: Cambridge),
5. Bernard Hoekman and Michel Kostecki, *The Political Economy of the World Trading System* (Oxford: Oxford University Press, 2005)
6. John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, 2d edition (Cambridge: MIT Press, 1997).
7. Kenneth W. Dam, *The GATT: Law and International Economic Organization* (Chicago: University of Chicago Press, 1970).
8. Christper Arup, *The New World Trade Organisation Agreements* (Cambridge University Press:2000).
9. Robert E. Hudec, *The GATT Legal System and World Trade Diplomacy* (Salem, New Hampshire: Butterworth, 2d edition, 1990).
10. UNCTAD, *The Outcome of the Uruguay Round: An Initial Assessment* (Geneva: UNCTAD, 1994), 41-105, 205-219
11. www.wto.org (for all GATT/WTO cases and other primary documents)
12. www.unctad.org (for the perspective of developing countries)
13. www.southcentre.org (for the perspective of developing countries)

Selected GATT/WTO Case Law

Australia-Salmon, Brazil-Tyres, Canada-Aircraft, Canada-Dairy, Canada-Autos, Canada-Lumber, Canada-Periodicals, Dram Chips Case, EC-Asbestos, EC-Bananas, EC-Bed Linen, EC-Hormones, EC-Sardines, EC-Tariff Preferences, Guatemala-Cement, Japan-Alcohol, Korea-Beef, India-Quantitative Restrictions, Thailand-Cigarettes, Thailand-H Beans, Tuna-Dolphin (1991), Tuna-Dolphin (1994), Turkey-Textiles, US-FSC, US-Gambling Services, US-Gasoline, US-Hot Rolled Steel from Japan, US-Section 337, US-Shrimp, US-Soft Lumber, US-Subsidies on Up Land Cotton, US-Wool shirts,