

COURSE OUTLINE

INTERNATIONAL BUSINESS LAW PROGRAMME “INTERNATIONAL AND INTER-REGIONAL TRADE LAW”

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Course Structure

- Session 1 History of the International Trading System: From the GATT'47 to the WTO
- Session 2 Basic Principles of International Trade Law
- Session 3 Dynamics of Trade Liberalisation and Market Integration
- Session 4 & 5 Trade Linkage Debate: A Case Study: China AV Measures DS 363
- Session 10 Summary and Outlook

Course Description

On 1 January 2008 the multilateral trading system established first under the General Agreement on Tariffs and Trade (GATT 1947) and later under the World Trade Organization (WTO) had celebrated its sixtieth anniversary. During these past sixty years the world and with it the international trading environment has undergone drastic changes. The legal framework of the GATT 1947, which only covered trade in goods, also underwent such changes in the course of numerous multilateral negotiations rounds. With the creation of the World Trade Organization in 1994, the framework was extended to cover trade in services (GATS) as well as trade-related aspects of intellectual property rights (TRIPS). At the same time, a trend towards an increase in the negotiation and conclusion of regional free trade arrangements could be observed on each continent and even between countries of different continents. Despite the overall success in the initial goal of reducing tariffs and ending the discriminatory treatment of foreign vis-a-vis domestic goods (and services), the GATT and the WTO have also been faced with severe criticism and even protests by civil society. This criticism can also be explained by structural weaknesses inside and outside the WTO.

This course thus aims at casting some light on the evolution of the international trading regime under the GATT/WTO system. It shall provide the participant with a comprehensive overview of the central features and basic processes which will allow for a better understanding of the dynamics governing the regulation of international trade.

Legal Materials:

Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement)
General Agreement on Tariffs and Trade (GATT)
General Agreement on Trade in Services (GATS)
Dispute Settlement Understanding (DSU)
(UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions

Detailed Course Outline

Session 1: The Evolution of the International Trading System from the GATT 1947 to the WTO

This first session traces back the history and evolution of the GATT/WTO system from its beginnings in the first half of the 20th century until the creation of the WTO in 1994. The formal beginning can be dated with the entry into force of the GATT 1947 on 1.1.1948. However, the preparations and informal origins of the GATT system date back to first the practice of states in conducting their trade relations on a bilateral basis and second on the attempts to establish an International Trade Organization (ITO) based on the *Havana Charter*. Finally, this unit also takes into account the wider institutional context, such as notably the role of the United Nations Organization, on which the global legal order is built.

Reading materials:

Paul Demaret, "The Metamorphoses of the GATT: From the Havana Charter to the World Trade Organization" (1995) 34 Colum. J. Transnat'l L. 123.

Session 2: The Basic Foundations of International Trade Law

"As variety is the spice of life, so is it the spring of commerce." This quote reflects the basic rationale for states to engage in international trade which is reflected in David Ricardo's theory of comparative advantage. Comparative advantage means that international trade can still be mutually advantageous even if a country does not possess an absolute advantage over the rest of its trading partners.

This Session will look at the basic language and most important instruments used to implement the objective of free trade. In this language, National Treatment (NT) and the Most-Favoured Nation (MFN) Principle in combination with the prohibition of quantitative restrictions form the cornerstones of the GATT/WTO System designed to prevent discrimination and hence to secure fair conditions of trade between trading partners. However, the establishment of such "fair conditions" in practice is not an easy task since "discrimination" or discriminatory treatment as well as quantitative restrictions can take various forms: For instance, deviation from these principles may be openly discriminatory, legitimate for the pursuit of public policy goals or disguised as such but pursuing protectionist purposes.

Reading materials:

R. Bhala, *World Trade Law: The GATT/WTO System, Regional Arrangements and U.S. Law* (Lexis, 1998) at p. 59-77 and 90-111.

Session 3: The Dynamics of Trade Liberalisation and Market Integration

In his book *The Theory of Economic Integration*, Bela Balassa distinguishes five stages of economic integration: (1) international cooperation; (2) free trade area; (3) a customs union; (4) an economic and monetary union; and (5) political or complete integration. This distinction is useful in order to highlight the basic integration dynamics underlying trade liberalisation and market integration. Also known as the "bicycle theory of international trade", it means that economic integration must always proceed, since when coming to a halt, the process fails as "the biker falls".

This Session casts light on the dynamic processes underlying trade liberalisation and market integration which are expressed in the interplay between forces of negative integration and of positive integration as well as the expanding scope of the GATT/WTO system which has grown considerably during the past decades. This expansion has brought in particular the inclusion of services and trade-related aspects of intellectual property rights. Still the logic or dynamism inherent

in economic integration appears to require the further extension of the WTO administered agreements into fields such as global rules on competition or on investment. Ultimately, based on the *Canada Periodical Case*, it will also ask whether economic integration also bears potential consequences for areas other than core-areas of international trade, such as culture, labours standards, the environment etc.

Reading materials:

Bela Balassa, *The Theory of Economic Integration* (London: George Allen & Unwin Ltd, 1962) at 1-17.

**Session 4 & 5 The Trade Linkage Debate Exemplified in the “Cultural Trade Debate”:
Insights from China**

Sessions 4 and 5 will cover an important aspect of the ongoing global governance debate which addresses issues of how are we presently governed and how do we plan to be governed in the future. An important part of governance is the so-called “Trade Linkage Debate” which consists of several so-called “trade and ... problems”. The term “trade and ... problems” refers to several policy areas, such as human rights, environmental protection, national security, labour standards or culture etc., which are deemed to be incompatible with the values of trade liberalization.

In the past, regulatory techniques approached these questions from the perspective of their mutual exclusivity which is why these areas were generally exempted from the scope of international trade law. However, due to drastic and rapid changes in the process of manufacturing of goods and the provision of services, we must critically rethink the present regulatory techniques. This also implies the need for a rethinking of the architecture of the present international legal system and its common terminology.

These questions will be exemplified by way of the “culture and trade debate” which mainly pursues the quest for the best regulatory technique for the cultural industries, i.e. cultural activities, goods and services, which according to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions refers to “those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. In this matter, the WTO case of *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products* (DS 363) will be used for a detailed analysis of related questions and problems.

Reading materials:

David Kennedy, “The Mystery of Global Governance” (2008) 34 Ohio N.U.L. Rev. 827.

Rostam J. Neuwirth, “The “Culture and Trade Debate” Continues: The UNESCO Convention in Light of the WTO Reports in China – Publications and Audiovisual Products: Between Amnesia or Déjà Vu?”, (2010) 44 *Journal of World Trade* 1333.

Rostam J. Neuwirth, “The Cultural Industries and the Role of Article IV GATT: Reflections on Policy Options for Canada and the EU in the new WTO Round” (2002).

Andrew T. F. Lang, “Reflecting on ‘Linkage’: Cognitive and Institutional Change in the International Trading System”, (2007) 70 *Modern Law Review* 523.

WTO Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R (21.12.2009).

10. Session: Summary and Outlook

The last session will summarise the course content and allow for a critical survey of the present situation of the international legal regime. It is also the opportunity to ask questions and to clarify points which remained unclear.