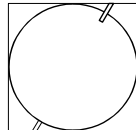


GLOBEFIELD PRESS

INTERNATIONAL TRADE REGULATION

EDMOND McGOVERN



EXETER
GLOBEFIELD PRESS

GLOBEFIELD PRESS

Globefield Press, Globefield, Exeter EX3 0NA, England

Copyright Edmond McGovern

*Made and printed in Great Britain by
Hobbs the Printers, Totton, Hampshire*

OUTLINE TABLE OF CONTENTS

Part A	Foundations
Chapter 1	World Trade Organization
Chapter 2	WTO Dispute Resolution, Notification, Surveillance
Chapter 3	Other International Organizations
Part B	Trade in Goods
Chapter 4	Basic Elements of Trade Regulation
Chapter 5	Tariffs and Quantitative Restrictions
Chapter 6	Non-Tariff Barriers I
Chapter 7	Non-Tariff Barriers II
Chapter 8	Discrimination
Chapter 9	Developing Countries
Chapter 10	Safeguard Measures
Chapter 11	Subsidies
Chapter 12	Anti-Dumping and Countervailing Measures
Chapter 13	General and Security Exceptions
Chapter 14	Agriculture
Chapter 15	Commodities and Sectors
Part C	Intellectual Property
Chapter 21	Intellectual Property
Part D	Trade in Services
Chapter 31	Services
Tables	
Documents	

TABLE OF CONTENTS

Foreword

Preface

Abbreviations

Table of Contents

Index

Table of Agreements

Table of Cases

PART A FOUNDATIONS

CHAPTER 1 — WORLD TRADE ORGANIZATION

§1.1 Function and legal structure

§1.11 Historical introduction

§1.12 Legal basis and principles

§1.121 Sources of law

§1.1211 WTO treaties

§1.1211(a) Introduction

§1.1211(b) GATT 1994

§1.1211(c) Conflicting texts — priorities

§1.1211(d) Conflicting texts — exceptions

§1.1211(e) Conflicting texts — overlaps

§1.1211(f) Boundaries of WTO rules

§1.1212 Legal principles

§1.1212(a) Articles 31 and 32 of the Vienna Convention on the Law of Treaties

§1.1212(b) Other rules of interpretation

§1.1213 Precedent

§1.1214 General

§1.122 Preamble

§1.123 Functions

§1.13 Specific legal issues

§1.131 Grandfather clause

§1.132 Rule-making strategies, negotiations

§1.1321 Rule making

§1.1322 Negotiations

§1.133 Character of WTO rules; Scope of Members' responsibility

§1.1331 General

§1.1332 'Measures'

§1.1333 Government agencies

§1.134 Mandatory/discretionary legislation; threats

§1.1341 General

§1.1342 Present scope of principle

§1.1343 Conclusion

- §1.135 National enforcement
- §1.2 Constitutional issues
 - §1.21 Institutions and powers
 - §1.211 Ministerial Conference
 - §1.212 Councils
 - §1.213 Subsidiary bodies
 - §1.214 Decisions
 - §1.22 Voting, consensus, interpretations
 - §1.23 Waivers
 - §1.24 Amendment
 - §1.25 General
 - §1.251 Relations with other organizations
 - §1.252 Secretariat
 - §1.253 Budget, etc.
 - §1.254 Status of WTO, officials, and Members' representatives
- §1.3 Membership issues
 - §1.31 Membership of WTO
 - §1.311 Original Members of WTO
 - §1.312 Accession to WTO and Plurilateral Trade Agreements
 - §1.32 General questions
 - §1.321 Non-application between Members
 - §1.322 Local and regional governments
 - §1.323 Particular countries

CHAPTER 2 — WTO DISPUTE RESOLUTION, NOTIFICATION,
SURVEILLANCE

- §2.1 Introduction
 - §2.11 Dispute settlement clauses
 - §2.12 Other procedures for resolving disputes
- §2.2 The Dispute Settlement Understanding
 - §2.21 Introduction
 - §2.22 Principles
 - §2.221 GATT principles
 - §2.222 General principles
 - §2.23 Procedures
 - §2.231 Consultation, good offices, conciliation and mediation
 - §2.2311 Consultation
 - §2.2312 Good offices, conciliation and mediation
 - §2.232 Panel proceedings
 - §2.2321 Establishment
 - §2.2321(a) Introduction
 - §2.2321(b) Panelists

- §2.2321(c) Multiple and parallel complainants
- §2.2321(d) Third parties
- §2.2321(e) General
- §2.2322 Terms of reference, scope of determination
 - §2.2322(a) Introduction
 - §2.2322(b) Scope of the dispute — general
 - §2.2322(c) Scope of the dispute — measures
 - §2.2322(d) Scope of the dispute — WTO provision
 - §2.2322(e) Discretion; judicial economy
- §2.2323 Procedure
 - §2.2323(a) General
 - §2.2323(b) Stages
 - §2.2323(c) Report
 - §2.2323(d) Confidentiality
 - §2.2323(e) Adoption
- §2.2324 Jurisdiction — general
- §2.2325 Jurisdiction — review
 - §2.2325(a) Introduction
 - §2.2325(b) Scope and application of the standard of review
 - §2.2325(c) Relevance of the record
 - §2.2325(d) Consequences of inconsistency finding
- §2.2326 Evidence
 - §2.2326(a) Evidence and admissibility
 - §2.2326(b) Investigative powers
 - §2.2326(c) National law
- §2.2327 Proof
 - §2.2327(a) Introduction
 - §2.2327(b) Burden of proof — general
 - §2.2327(c) Burden of proof — shifting
 - §2.2327(d) Standard of proof
- §2.233 Appellate review
 - §2.2331 Appellate Body
 - §2.2332 Appeal procedure
 - §2.2333 Scope of appeals
 - §2.2334 Outcome of appeals
- §2.234 Recommendations and rulings
 - §2.2341 Nullification or impairment
 - §2.2342 Recommendations
 - §2.2343 Suggestions
 - §2.2344 Implementing recommendations
 - §2.2345 Reparation for past wrongs
 - §2.2346 Flexibility
- §2.235 Legal principles

- §2.24 Implementation and surveillance
 - §2.241 Reasonable period
 - §2.242 Compliance proceedings
 - §2.2421 Introduction
 - §2.2422 Procedures
 - §2.2423 Measures taken to comply
 - §2.2424 Remedies
 - §2.243 DSB surveillance
- §2.25 Compensation and countermeasures
 - §2.251 Introduction
 - §2.252 Choice of sector
 - §2.253 Arbitration
 - §2.254 Level of countermeasures
 - §2.255 General
- §2.26 General issues
 - §2.261 Unilateral action
 - §2.262 Least-developed countries
 - §2.263 Arbitration
 - §2.264 Secretariat
- §2.27 Non-violation complaints
 - §2.271 Introduction
 - §2.272 Expectations arising from concessions and commitments
 - §2.273 Measure resulting in competitive disadvantage
 - §2.274 General issues
 - §2.275 Procedure
- §2.3 Particular dispute settlement rules
 - §2.31 General
 - §2.32 GATT 1994
- §2.4 Notification and surveillance
 - §2.41 Notification
 - §2.42 Trade Policy Review Mechanism

CHAPTER 3 — OTHER INTERNATIONAL ORGANIZATIONS

- §3.1 General
 - §3.11 Customs Co-operation Council / World Customs Organization
 - §3.111 General
 - §3.112 Kyoto Convention
 - §3.12 Other organizations
 - §3.121 International Monetary Fund (IMF)
 - §3.122 Organisation for Economic Co-operation and Development (OECD)
 - §3.123 International Union for the Publication of Customs Tariffs
 - §3.124 Pledges, undertakings and resolutions

- §3.2 United Nations bodies
- §3.21 United Nations Conference on Trade and Development (UNCTAD)
- §3.22 Other United Nations bodies
- §3.221 Economic Commission for Europe (UNECE)
- §3.222 Food and Agricultural Organization (FAO)
- §3.223 United Nations charter

PART B TRADE IN GOODS

CHAPTER 4 — BASIC ELEMENTS OF TRADE REGULATION

- §4.1 Customs territory
- §4.11 WTO rules
- §4.2 Nomenclature and classification
- §4.21 Introduction
- §4.22 Harmonized Commodity Description and Coding System
- §4.221 General
- §4.222 Interpretative rules
- §4.3 Valuation
- §4.31 GATT Article VII
- §4.32 Customs Valuation Agreement
- §4.321 Introduction
- §4.322 Transaction value of the goods
- §4.323 Transaction value of identical or similar goods
- §4.324 Deductive and computed values
- §4.325 Reasonable means
- §4.326 General
- §4.4 Origin rules
- §4.41 Kyoto Convention
- §4.42 WTO Agreement on Rules of Origin
- §4.421 Introduction
- §4.422 Transition provisions
- §4.423 Permanent rules
- §4.424 Harmonization process
- §4.425 Institutions and dispute settlement

CHAPTER 5 — TARIFFS AND QUANTITATIVE RESTRICTIONS

- §5.1 Tariffs and Schedules
- §5.11 Schedules and bindings
- §5.111 Introduction
- §5.112 Basic obligations
- §5.113 Other duties or charges

- §5.114 Protecting bindings
 - §5.1141 Introduction
 - §5.1142 Monopolies
 - §5.1143 General
- §5.12 Negotiations
- §5.13 Modification and withdrawal of Schedules; Rectification
 - §5.131 Modification and withdrawal — GATT Article XXVIII
 - §5.132 Procedures
 - §5.133 Rectifications and certifications
- §5.2 Quantitative restrictions
 - §5.21 The general rule
 - §5.211 Scope
 - §5.212 TRIMs
 - §5.213 Exceptions
 - §5.214 General
 - §5.22 Non-discrimination — GATT Article XIII
 - §5.221 General
 - §5.222 Distribution of trade
 - §5.223 Reference period
 - §5.23 Licensing procedures
 - §5.231 Introduction
 - §5.232 General requirements
 - §5.233 Automatic licensing
 - §5.234 Non-automatic licensing
 - §5.24 Export restrictions

CHAPTER 6 — NON-TARIFF BARRIERS I

- §6.1 State trading
 - §6.11 State-trading countries
 - §6.12 Government control of trading enterprises
 - §6.121 Introduction
 - §6.122 Scope of Article XVII
 - §6.123 Obligations
 - §6.124 Notification
- §6.2 Government procurement
 - §6.21 Introduction
 - §6.22 Agreement on Government Procurement
 - §6.221 Introduction
 - §6.2211 General
 - §6.2212 Scope
 - §6.2213 Thresholds
 - §6.2214 Non-discrimination

§6.222 Tendering

§6.223 General

§6.3 Preshipment inspection

§6.31 User Members' obligations

§6.32 General

§6.4 Competition policy

§6.41 General

CHAPTER 7 — NON-TARIFF BARRIERS II

§7.1 Exchange control

§7.11 General

§7.12 IMF rules

§7.13 Role of the WTO

§7.2 National technical regulations and standards

§7.21 Introduction

§7.211 Technical regulations, standards and conformity assessment

§7.212 Barriers to trade

§7.22 GATT obligations

§7.23 International harmonization and integration

§7.24 Agreement on Technical Barriers to Trade

§7.241 Introduction

§7.242 Preparation, adoption and application of technical regulations

§7.2421 Central government — general obligations

§7.2422 Central government — adopting international standards

§7.2423 Local government and non-governmental bodies

§7.243 Preparation, adoption and application of standards

§7.244 Conformity assessment

§7.245 Information and assistance

§7.246 Institutions and procedures

§7.3 Customs procedures

§7.31 Fees, formalities and other customs requirements

§7.32 Other customs rules

§7.321 Certificates of origin

§7.322 Publication of trade regulations

§7.323 Standards for administration of trade rules; adjudication

CHAPTER 8 — DISCRIMINATION

§8.1 Introduction

§8.11 General

§8.12 Like cases and products

- §8.121 Introduction
- §8.122 Criteria for determining likeness
- §8.123 Degree of similarity
- §8.13 Grounds of discrimination

- §8.2 National treatment
- §8.21 GATT Article III
- §8.211 Introduction
- §8.212 Border measures and internal measures
- §8.213 Injury
- §8.214 General
- §8.22 Internal taxes and charges — Article III:2
- §8.221 Introduction
- §8.222 Article III:2, first sentence
- §8.2221 Like product
- §8.2222 Excess taxation
- §8.223 Article III:2, second sentence
- §8.2231 Directly competitive or substitutable products
- §8.2232 Not similarly taxed
- §8.2233 Affords protection
- §8.23 Internal regulations
- §8.231 Article III:4 — scope
- §8.232 Article III:4 — discrimination
- §8.233 Internal quantitative regulations
- §8.24 Trade-Related Investment Measures (TRIMs)
- §8.25 Limitations on Article III
- §8.26 Other national treatment issues
- §8.261 Cinematograph films
- §8.262 Other national treatment requirements

- §8.3 Most-favoured-nation treatment
- §8.31 MFN treatment in general
- §8.32 GATT Article I
- §8.321 Introduction
- §8.322 Areas of application
- §8.323 Scope of the obligation
- §8.324 Like products
- §8.33 Other GATT and GATT-related MFN requirements

- §8.4 MFN exceptions — regional trade agreements
- §8.41 Introduction
- §8.42 Customs unions and free-trade areas
- §8.43 Implementation
- §8.44 General

§8.5 Other exceptions to the MFN principle

§8.51 Articles I and XXIV:3

§8.6 Other prohibitions on discrimination

§8.61 WTO prohibitions

§8.611 GATT Article V — freedom of transit

§8.612 Other GATT rules

§8.613 Other WTO agreements

CHAPTER 9 — DEVELOPING COUNTRIES

§9.1 Introduction

§9.11 Background

§9.2 Special and differential treatment

§9.21 Basic rules

§9.211 GATT Article XVIII

§9.212 GATT Part IV

§9.213 The Enabling Clause

§9.214 WTO decisions

§9.22 Generalized System of Preferences

§9.221 UNCTAD

§9.222 WTO

§9.23 Non-reciprocity in tariff negotiations

§9.24 Preferences between developing countries

CHAPTER 10 — SAFEGUARD MEASURES

§10.1 Safeguard measures for balance-of-payments purposes

§10.11 Introduction

§10.12 Conditions and measures

§10.13 Consultations

§10.14 Non-discrimination

§10.2 Sectoral safeguard measures

§10.21 Article XIX and the Safeguards Agreement

§10.211 Introduction

§10.212 Conditions

§10.2121 Injury to a domestic industry

§10.2122 Causation

§10.213 Measures

§10.214 Procedure

§10.215 Compensation and retaliation

§10.216 Institutional issues

§10.22 Safeguard action for development purposes — Article XVIII

§10.23 Voluntary restraint

CHAPTER 11 — SUBSIDIES

§11.1 Introduction

§11.11 Control of unfair trade practices

§11.2 OECD Arrangement on export credits

§11.21 Introduction

§11.22 Forms of official support

§11.23 Financial terms and conditions

§11.231 Amount of financing

§11.232 Payments and repayments

§11.233 Interest and premium rates

§11.234 Matching

§11.24 Sector understandings

§11.241 Ships

§11.242 Nuclear power plant

§11.243 Civil aircraft

§11.244 Renewable energies and water projects

§11.25 Tied aid

§11.3 WTO restrictions on subsidies

§11.31 GATT Article XVI and the Subsidies Agreement

§11.311 Introduction

§11.312 Institutions and procedures

§11.313 Definition of subsidy

§11.3131 Introduction

§11.3132 Financial contribution by government

§11.3132(a) Introduction

§11.3132(b) Forms of contribution

§11.3132(c) Forms of contribution — direct transfer of funds

§11.3132(d) Forms of contribution — revenue foregone or not collected

§11.3132(e) Forms of contribution — providing goods or services

§11.3132(f) Role of government or public body

§11.3132(g) Income or price support

§11.3133 Benefit

§11.3134 Level of subsidy

§11.3134(a) Introduction

§11.3134(b) What is being measured?

§11.3134(c) Particular financial transactions

§11.3135 Specificity

§11.32 Prohibited subsidies

§11.321 Definition

§11.322 Illustrative List of Export Subsidies

§11.323 Remedies

§11.3231 General

- §11.3232 Withdrawal without delay
- §11.3233 Noncompliance
- §11.33 Actionable subsidies
- §11.331 Adverse effects
- §11.332 Serious prejudice
- §11.333 Remedies
- §11.3331 General
- §11.3332 Annex V procedure
- §11.34 Non-actionable subsidies
- §11.35 Notification and surveillance
- §11.36 Developing countries; transitional measures
- §11.361 Developing countries
- §11.362 Transitional arrangements
- §11.37 GATT Article XVI

CHAPTER 12 — ANTI-DUMPING AND COUNTERVAILING MEASURES

- §12.1 Introduction
- §12.11 General
- §12.111 Basis of rules
- §12.112 Purpose
- §12.12 Status and interpretation of rules
- §12.121 Status of rules
- §12.122 Interpretation of rules — "exceptional" measures
- §12.13 Institutions
- §12.14 Consultation and dispute settlement
- §12.141 Anti-dumping measures
- §12.1411 Introduction
- §12.1412 Measures subject to review
- §12.1413 Matters open to review
- §12.1414 Standard of review — general
- §12.1415 Standard of review — permissible interpretations
- §12.142 Countervailing measures
- §12.2 Dumping
- §12.21 Introduction
- §12.22 Export price
- §12.23 Normal value
- §12.231 General
- §12.232 Non-use of sales prices
- §12.2321 Introduction
- §12.2322 Sales below cost
- §12.233 Alternatives to sales price
- §12.2331 Introduction

- §12.2332 Constructed price
- §12.234 Special cases
- §12.24 Making comparison
- §12.241 Introduction
- §12.242 Establishing comparability
- §12.243 Making adjustments — general
- §12.244 Making adjustments — currency conversion
- §12.245 Making adjustments — constructed export prices
- §12.246 Calculating the dumping margin — basic rules
- §12.247 Calculating the dumping margin — special rules

- §12.3 Subsidy
- §12.31 Countervailable subsidies
- §12.311 Introduction
- §12.312 Margin of subsidisation
- §12.313 Particular rules
- §12.314 Guidelines on benefit

- §12.4 Injury
- §12.41 Causing injury
- §12.411 Positive evidence / objective examination
- §12.412 Volume and price factors
- §12.413 Cumulation
- §12.414 Impact on industry
- §12.415 General causation standard
- §12.416 Threat of injury, material retardation, etc.
- §12.42 Domestic industry, like products
- §12.421 General
- §12.422 Like product
- §12.423 Producers
- §12.424 Isolated markets

- §12.5 Procedures and remedies
- §12.51 Investigations and provisional measures
- §12.511 Initiation
- §12.5111 Application
- §12.5112 Sufficient evidence
- §12.5113 Support
- §12.5114 Publicity
- §12.5115 Consultation
- §12.5116 Self-initiation
- §12.512 Investigation
- §12.5121 Introduction
- §12.5122 Commencement

- §12.5123 Transparency, confidentiality
- §12.5124 Evidence in general
- §12.5125 Non-cooperation and facts available
- §12.5126 Particular rules of evidence and procedure
- §12.5127 Scope of measure
- §12.5128 Public notice
- §12.513 Undertakings
- §12.514 Provisional measures
- §12.52 Imposition of duties, collection, reviews, etc.
- §12.521 General
 - §12.5211 Introduction
 - §12.5212 Lesser duty
 - §12.5213 Non-discrimination
 - §12.5214 Time limits; refunds
 - §12.5215 Non-examined exporters
- §12.522 Anti-circumvention
- §12.523 Developing countries
- §12.524 Retroactivity
- §12.525 Review
 - §12.5251 Interim reviews
 - §12.5252 Expiry reviews
 - §12.5253 Newcomer reviews
 - §12.5254 Judicial review

CHAPTER 13 — GENERAL AND SECURITY EXCEPTIONS

- §13.1 General exceptions — GATT Article XX
 - §13.11 Introduction
 - §13.111 Status and structure of Article XX
 - §13.1111 General
 - §13.1112 Structure
 - §13.112 Chapeau
 - §13.1121 Introduction
 - §13.1122 Arbitrary or unjustifiable discrimination, disguised restrictions
 - §13.1123 Least inconsistent measure — principle
 - §13.1124 Least inconsistent measure — practice
 - §13.113 General considerations
 - §13.1131 Proportionality
 - §13.1132 Implications of the SPS Agreement
 - §13.1133 Coercion
 - §13.12 Public morals
 - §13.13 Protection of human, animal and plant life and health
 - §13.131 GATT Article XX(b)
 - §13.132 Food and drugs, etc.

- §13.133 Environment
 - §13.1331 General
 - §13.1332 Conservation
 - §13.1333 Dangerous substances
 - §13.134 Labour standards
- §13.14 Patents, deceptive practices etc.
 - §13.141 GATT Article XX(d)
 - §13.142 Marks of origin
- §13.15 Other exceptions
 - §13.151 Gold and silver
 - §13.152 Products of prison labour
 - §13.153 Protection of national treasures
 - §13.154 Exhaustible resources
 - §13.155 International commodity agreements
 - §13.156 Price control and export restrictions
 - §13.157 Products in general or local short supply
- §13.2 Security exceptions
 - §13.21 National security
 - §13.211 GATT Article XXI
 - §13.212 Export controls
 - §13.22 UN sanctions
 - §13.23 Nuclear materials

CHAPTER 14 — AGRICULTURE

- §14.1 Introduction
 - §14.11 Special features of agricultural trade regulation
- §14.2 Agriculture Agreement
 - §14.21 Introduction
 - §14.22 Market access
 - §14.221 Introduction
 - §14.222 Special Safeguards
 - §14.2221 Import volume
 - §14.2222 Import price
 - §14.2223 General
 - §14.223 Special treatment — non-trade concerns
 - §14.224 Special treatment — developing countries
 - §14.23 Domestic support
 - §14.231 Introduction
 - §14.232 Exemptions
 - §14.233 Calculation of AMS
 - §14.234 Calculation of EMS
 - §14.24 Export subsidies

