# THE WORLD TRADE ORGANIZATION

LAW, PRACTICE, AND POLICY

MITSUO MATSUSHITA THOMAS J. SCHOENBAUM & PETROS C. MAVROIDIS

# THE WORLD TRADE ORGANIZATION

# Law, Practice, and Policy

Mitsuo Matsushita Thomas J. Schoenbaum and Petros C. Mavroidis



# OXFORD

Great Claredon Street, Oxford 0x26DP

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide in

Oxford New York

Auckland Bangkok Buenos Aires Cape Town Chennai Dar es Salaam Delhi Hong Kong Istanbul Karachi Kolkata Kuala Lumpur Madrid Melbourne Mexico City Mumbai Nairobi São Paulo Shanghai Taipei Tokyo Toronto

Oxford is a registered trade mark of Oxford University Press in the UK and in certain other countries

> Published in the United States by Oxford University Press Inc., New York

© M Matsushita, T Schoenbaum, and P Mavroidis 2003

The moral rights of the authors have been asserted Database right Oxford University Press (maker)

First published 2003

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Oxford University Press, or as expressly permitted by law, or under terms agreed with the appropriate reprographics rights organization. Enquiries concerning reproduction outside the scope of the above should be sent to the Rights Department, Oxford University Press, at the address above

You must not circulate this book in any other binding or cover and you must impose this same condition on any acquirer

British Library Cataloguing in Publication Data

Data available

Library of Congress Cataloging in Publication Data

Data available

ISBN 0-19-876472-3

57910864

Typeset by Kolam Information Services Pvt. Ltd.,
Pondicherry, India
Printed in Great Britain
on acid-free paper by
Biddles Ltd. Guildford and Kings Lynn

#### **PREFACE**

This book combines the thinking and scholarship of three academicians, one from Japan, one from North America, and the third from Europe. All three have worked in the field for many years and have extensive experience in developing countries. We have pitched the levels of analysis to appeal not only to specialists in law, political science and economics, but also to intelligent laypersons interested in the phenomenon of "globalism". We believe that this book will contribute to a better understanding of the important and far-reaching work of one of the most controversial institutions of our time, the World Trade Organization.

The authors would like to acknowledge Sylvia A. Rhodes, Esq. of Bryan Cave, LLP, Washington D.C. for the special part she played in the creation of this book. For over a year, Sylvia was able to join us as co-author. The book was strengthened immeasurably by her input. She bears no responsibility, of course, for any errors or omissions.

Mitsuo Matsushita Thomas J. Schoenbaum Petros C. Mavroidis October, 2002

### CONTENTS — SUMMARY

1.	The World Trade Organization	1
2.	Dispute Settlement	17
3.	Sources of Law	53
4.	Remedies	77
5.	WTO Law and Domestic Law	97
6.	Tariffs, Quotas, and Other Barriers to Market Access	111
7.	The Most-Favoured-Nation Principle	143
8.	The National Treatment Principle	155
9.	Safeguards	181
10.	Export Controls and National Security	217
11.	Trade in Services	227
12.	Subsidies and Countervailing Duties	259
13.	Antidumping	301
14.	Regional Trade Agreements	341
15.	Developing Countries	373
16.	Intellectual Property	395
17.	Environmental Protection and Trade	439
18.	Technical Barriers, Standards, Trade and Health	485
19.	Trade and Investment	521
20.	Competition Policy and Trade	539
21.	Future Challenges	589

## CONTENTS

Table of WTO and GATT Agreements, Treaties, and other International Instruments							
	Tables of National Laws and Regulations						
Ta	bles	of WTO and GATT Decisions	lxv				
Ta	bles	of Court and Administrative Decisions	lxxxix				
$O\iota$	vervi	ew	ci				
1.	TI	ne World Trade Organization	1				
	1.	Bretton Woods and the failure of the International					
		Trade Organization	1				
	2.	The GATT becomes an international organization	2				
	3. A summary of GATT obligations						
	4.	The GATT tariff negotiating rounds	5				
	5.	The creation of the WTO	6				
	6.	The WTO: functions and structure	9				
		6.1 Membership, accession, and withdrawal	11				
		6.2 Decision-making	12				
		6.2.1 General-decision making	12				
		6.2.2 Interpretations	12				
		6.2.3 Waivers	13				
		6.2.4 Amendments	13				
		6.3 The WTO as an international organization	14				
	7.	Suggestions for improving the WTO	14				
2.	D	ispute Settlement	17				
	1.	Introduction	18				

	2.	Disp	Dispute settlement in the GATT				
	3.	WT	O dispute settlement	21			
		3.1	General considerations	22			
		3.2	Institutions	22			
		3.3	Scope of application	23			
		3.4	The legal effect of panel and Appellate Body reports	25			
		3.5	Dispute resolution procedures	25			
			3.5.1 Objectives	25			
			3.5.2 Initiation: request for consultations	26			
			3.5.3 Standing to bring claims	26			
			3.5.4 Good offices, conciliation, and mediation	27			
			3.5.5 Arbitration	28			
		3.6	The panel process	28			
		3.7	The appeal process	29			
		3.8	Implementation	30			
			3.8.1 Reasonable period for implementation	30			
			3.8.2 Compliance and the "sequencing" problem	30			
		3.9	Compensation for failure to comply and retaliation	32			
		3.10	Special dispute resolution procedures	33			
			3.10.1 Non-violation complaints	34			
			3.10.2 Situation complaints	35			
		3.11	Adverse inference	35			
		3.12	Amicus curiae	36			
		3.13	Burden of proof	38			
		3.14	Judicial economy	39			
		3.15	Standard of review	40			
		3.16	Critique of the DSU	43			
	4.	Trad	e retaliation under national laws	44			
		4.1	The European Union	45			
		4.2	Japan	46			
			The United States	46			
		4.4	Critique of trade retaliation under national laws	50			
_							
3.	So	urces	of Law	53			
	1.	Intro	duction	53			
	2.	Source	ces of law	55			
		2.1	Covered agreements	55			
		2.2	Reports of prior panels and the Appellate Body	56			
			2.2.1 Adopted and unadopted panel reports	56			
			<del>-</del>				

2.4 Teachings of the most highly qualified publicists 2.5 General principles of law 2.6 Other International Instruments 2.6.1 Agreements referred to in the WTO agreements 2.6.2 Agreements between the parties 3. Conflicts of norms 4. Conclusions 4. Remedies 1. The pre-WTO phase 1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution 2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies 5. WTO Law and Domestic Law 1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law 3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	64
2.6 Other International Instruments 2.6.1 Agreements referred to in the WTO agreements 2.6.2 Agreements between the parties  3. Conflicts of norms 4. Conclusions  4. Remedies 1. The pre-WTO phase 1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution  2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law 3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	65
2.6.1 Agreements referred to in the WTO agreements 2.6.2 Agreements between the parties  3. Conflicts of norms  4. Conclusions  4. Remedies  1. The pre-WTO phase 1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution  2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective?  3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law 3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	66
2.6.2 Agreements between the parties  3. Conflicts of norms  4. Conclusions  4. Remedies  1. The pre-WTO phase 1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution  2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective?  3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction  2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	67
<ol> <li>Conflicts of norms</li> <li>Conclusions</li> <li>Remedies</li> <li>The pre-WTO phase         <ol> <li>The usual GATT remedy</li> <li>An alternative remedy: reimbursement and restitution</li> </ol> </li> <li>Remedies under the Dispute Settlement Understanding         <ol> <li>Violation complaints</li> <li>Recommendations and suggestions</li> <li>Prospective and retrospective remedies</li> </ol> </li> <li>Non-violation and situation complaints         <ol> <li>Compensation for failure to comply and retaliation</li> <li>Measuring countermeasures</li> <li>Measuring countermeasures</li> <li>The function of countermeasures</li> <li>Analysis of the function of countermeasures</li> </ol> </li> <li>The function of countermeasures</li> <li>Analysis of the function of countermeasures</li> </ol> <li>The case for re-negotiating remedies</li> <li>WTO Law and Domestic Law         <ol> <li>Introduction</li> <li>The United States</li> <li>Overview of U.S. law</li> <li>Coverview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> </ol> </li> <li>The European Community</li> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li>	67 69
<ol> <li>4. Remedies         <ol> <li>The pre-WTO phase</li> <li>The usual GATT remedy</li> <li>An alternative remedy: reimbursement and restitution</li> </ol> </li> <li>2. Remedies under the Dispute Settlement Understanding         <ol> <li>Violation complaints</li> <li>Recommendations and suggestions</li> <li>Prospective and retrospective remedies</li> <li>Non-violation and situation complaints</li> <li>Compensation for failure to comply and retaliation</li> <li>Measuring countermeasures</li> <li>Measuring countermeasures: WTO practice</li> <li>And an interpretation of countermeasures</li> <li>An interpretation of proof</li> <li>An interpretation of review</li> <li>Countermeasures: how effective?</li> <li>The case for re-negotiating remedies</li> <li>WTO Law and Domestic Law</li> <li>Introduction</li> <li>The United States</li> <li>Overview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li> <li>The relationship between WTO law and</li> <li>The relationship between WTO law and</li> </ol> </li> </ol>	
<ol> <li>Remedies         <ol> <li>The pre-WTO phase                 <ol> <li>The usual GATT remedy</li> <li>An alternative remedy: reimbursement and restitution</li> </ol> </li> <li>Remedies under the Dispute Settlement Understanding         <ol> <li>Violation complaints</li> <li>Recommendations and suggestions</li> <li>Prospective and retrospective remedies</li> </ol> </li> <li>Non-violation and situation complaints</li> <li>Compensation for failure to comply and retaliation                       <ol></ol></li></ol></li></ol>	74
1. The pre-WTO phase 1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution  2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies  2.2 Non-violation and situation complaints  2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review  2.4 Countermeasures: how effective?  3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction  2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	75
1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution  2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	77
1.1 The usual GATT remedy 1.2 An alternative remedy: reimbursement and restitution  2. Remedies under the Dispute Settlement Understanding 2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	77
<ol> <li>Remedies under the Dispute Settlement Understanding         <ol> <li>Violation complaints</li> <li>2.1.1 Recommendations and suggestions</li> <li>2.1.2 Prospective and retrospective remedies</li> <li>2.2 Non-violation and situation complaints</li> <li>2.3 Compensation for failure to comply and retaliation</li> <li>2.3.1 Overview</li> <li>2.3.2 Measuring countermeasures</li> <li>2.3.3 Measuring countermeasures: WTO practice</li> <li>2.3.3.1 The function of countermeasures</li> <li>2.3.3.2 The burden of proof</li> <li>2.3.3.3 The standard of review</li> </ol> </li> <li>Countermeasures: how effective?</li> </ol> <li>The case for re-negotiating remedies</li> <li>WTO Law and Domestic Law</li> <li>Introduction</li> <li>The United States</li> <li>Overview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> <li>The European Community</li> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li>	78
2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law 1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law 3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	78
2.1 Violation complaints 2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies 2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law 1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law 3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	79
2.1.1 Recommendations and suggestions 2.1.2 Prospective and retrospective remedies  2.2 Non-violation and situation complaints  2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective?  3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction  2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	80
2.1.2 Prospective and retrospective remedies  2.2 Non-violation and situation complaints  2.3 Compensation for failure to comply and retaliation  2.3.1 Overview  2.3.2 Measuring countermeasures  2.3.3 Measuring countermeasures: WTO practice  2.3.3.1 The function of countermeasures  2.3.3.2 The burden of proof  2.3.3.3 The standard of review  2.4 Countermeasures: how effective?  3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction  2. The United States  2.1 Overview of U.S. law  2.2 The relationship between WTO law and U.S. law  3. The European Community  3.1 External relations and the EU/EC  3.2 The relationship between WTO law and	80
2.2 Non-violation and situation complaints 2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	82
2.3 Compensation for failure to comply and retaliation 2.3.1 Overview 2.3.2 Measuring countermeasures: WTO practice 2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law 1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law 3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	84
2.3.2 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	86
2.3.3 Measuring countermeasures: WTO practice 2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	86
2.3.3.1 The function of countermeasures 2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	87
2.3.3.2 The burden of proof 2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction 2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	88
2.3.3.3 The standard of review 2.4 Countermeasures: how effective? 3. The case for re-negotiating remedies  5. WTO Law and Domestic Law  1. Introduction  2. The United States 2.1 Overview of U.S. law 2.2 The relationship between WTO law and U.S. law  3. The European Community 3.1 External relations and the EU/EC 3.2 The relationship between WTO law and	90
<ol> <li>2.4 Countermeasures: how effective?</li> <li>3. The case for re-negotiating remedies</li> <li>WTO Law and Domestic Law</li> <li>1. Introduction</li> <li>2. The United States         <ul> <li>2.1 Overview of U.S. law</li> <li>2.2 The relationship between WTO law and U.S. law</li> </ul> </li> <li>3. The European Community         <ul> <li>3.1 External relations and the EU/EC</li> <li>3.2 The relationship between WTO law and</li> </ul> </li> </ol>	90
<ol> <li>The case for re-negotiating remedies</li> <li>WTO Law and Domestic Law</li> <li>Introduction</li> <li>The United States         <ul> <li>Overview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> </ul> </li> <li>The European Community         <ul> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li> </ul> </li> </ol>	91
<ol> <li>WTO Law and Domestic Law</li> <li>Introduction</li> <li>The United States         <ul> <li>Overview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> </ul> </li> <li>The European Community         <ul> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li> </ul> </li> </ol>	92
<ol> <li>Introduction</li> <li>The United States         <ul> <li>Overview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> </ul> </li> <li>The European Community         <ul> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li> </ul> </li> </ol>	94
<ol> <li>The United States         <ul> <li>Overview of U.S. law</li> <li>The relationship between WTO law and U.S. law</li> </ul> </li> <li>The European Community         <ul> <li>External relations and the EU/EC</li> <li>The relationship between WTO law and</li> </ul> </li> </ol>	97
<ul> <li>2.1 Overview of U.S. law</li> <li>2.2 The relationship between WTO law and U.S. law</li> <li>3. The European Community</li> <li>3.1 External relations and the EU/EC</li> <li>3.2 The relationship between WTO law and</li> </ul>	97
<ul> <li>2.2 The relationship between WTO law and U.S. law</li> <li>3. The European Community</li> <li>3.1 External relations and the EU/EC</li> <li>3.2 The relationship between WTO law and</li> </ul>	99
<ul> <li>2.2 The relationship between WTO law and U.S. law</li> <li>3. The European Community</li> <li>3.1 External relations and the EU/EC</li> <li>3.2 The relationship between WTO law and</li> </ul>	99
<ul><li>3.1 External relations and the EU/EC</li><li>3.2 The relationship between WTO law and</li></ul>	100
<ul><li>3.1 External relations and the EU/EC</li><li>3.2 The relationship between WTO law and</li></ul>	103
3.2 The relationship between WTO law and	103
1	
the laws of the EC and its Member States	105

	4.	Japan 4.1 Overview of Japanese law	107 107			
		4.1 Overview of Japanese law	10/			
6.	Ta	ariffs, Quotas, and Other Barriers to Market Access	111			
	1.	Introduction	112			
	2.	Tariffs and customs rules	113			
		2.1 The nature of a tariff	113			
		2.2 Welfare effects of tariffs	113			
		2.3 Tariff modifications	115			
		2.4 Reclassification	116			
		2.5 Valuation	117			
		2.6 Rules of origin	119			
		2.7 Customs laws and procedures	121			
		2.8 Customs fees and formalities	122			
		2.9 Preshipment inspection (PSI)	122			
	3.	Quotas	123			
		3.1 The nature of a quota	123			
		3.2 Welfare effects of quotas	124			
		3.3 Prohibition on quotas and other measures				
		that restrain trade	124			
		3.4 Exceptions to the prohibition on quotas and				
		other measures	126			
		3.5 Licensing	128			
	4.	State-trading enterprises	129			
	5.	Technical barriers to trade				
	6.					
	7.	Sectoral market access agreements	135			
		7.1 Agriculture	135			
		7.1.1 Basic obligations	135			
		7.1.2 Tariffication	137			
		7.1.3 Subsidies	138			
		7.1.4 The Doha Agenda	140			
		7.2 Textiles and clothing	141			
		7.3 Information technology	141			
		7.4 Electronic commerce	142			

7.	TI	ne Most-Favoured-Nation Principle	143
	1.	What is the most-favoured-nation principle?	143
	2.	Policy basis	144
	3.	The MFN principle in customary international law	146
	4.	MFN treatment in the WTO	146
		4.1 The MFN obligation under the GATT	147
		4.2 Types of "advantage" covered by the MFN obligation	149
		4.3 Like products	150
		4.4 Conditional "advantage"	151
		4.5 Discrimination between firms	153
	5.	Exceptions to the MFN obligations	154
8.	Tl	ne National Treatment Principle	155
	1.	What is the national treatment principle?	156
	2.	National treatment: some key issues	158
		2.1 "Like" products	158
		2.1.1 Article III:2, first sentence	159
		2.1.2 Article III:2, second sentence	159
		2.1.3 Article III:4	160
		2.1.4 The aim and effects test	161
		2.2 The product-process distinction	162
		2.3 Technical regulations and sanitary and	
		phytosanitary measures	163
		2.4 Application of Article III to state-trading monopolies	164
		2.5 Application of Article III national treatment	1.65
		obligations to sub-federal units of WTO Members	165
		2.6 The relationship between Article III and Article XI of the GATT	166
			166
	3.	Taxes	167
		3.1 Scope	168
		3.2 Border tax adjustment	168
	,	3.3 The non-discrimination principle	169
	4.	Government regulations	171
	5.	De Facto discrimination	173

	6.	Artic	le XX ex	cceptions		176	
	7.	Gove	ernment	procure	ment	177	
9.	Sa	feguai	rds			181	
	1.	Introduction					
	2.	The	legal and	l policy f	ramework for safeguards in		
			_	VTO reg		183	
	3.	GAT	T Artic	le XIX ar	nd the Agreement on Safeguards	184	
		3.1	GATT	Article XI	X	184	
		3.2		eguards A		184	
		3.3		_	between GATT Article XIX		
				_	ls Agreement	185	
		3.4	Investig	_	Č	186	
		3.5	_	nal applic	cation	187	
		3.6			increased imports	187	
		3.7		een devel		187	
		3.8	Determ	ination of	injury	189	
			3.8.1	Serious	injury or threat of serious injury	189	
				3.8.1.1	Serious injury	190	
				3.8.1.2	Threat of serious injury	190	
				3.8.1.3	Factors to be considered when		
					determining injury or threat thereof	191	
				3.8.1.4	Domestic industry	192	
			3.8.2	Causatio	on	192	
		3.9	Limits of		plication of safeguard measures	194	
			3.9.1			194	
					of safeguards	197	
				Selectivi		198	
			3.9.4	Develop	ing countries	198	
					Article XIII	199	
					n and review	199	
					l consultation	200	
			Comp			200	
		3.12			review for safeguard disputes	202	
	4.	_			or balance-of-payment reasons	202	
		4.1	The G			202	
		4.2	The W	TO		206	

5.	Safeguard measures in textile and clothing trade	208	
6.	Prohibition on voluntary export restraints	209	
0.	6.1 Prohibition in the Safeguards Agreement	209	
	6.2 Tension between voluntary export restraints	20)	
	and competition policy	211	
	6.2.1 The automobile VER case	211	
	6.2.2 The steel VER case	214	
	6.2.3 Analysis of the conflict between trade policy		
	and competition policy	215	
10. I	Export Controls and National Security	217	
1.	Introduction	217	
2.	Export restraints	218	
3.	Export taxes	219	
4.	Security exceptions		
5.	Extraterritorial application of export controls	224	
6.	Conclusions	226	
11. 7	Trade in Services	227	
1.	Introduction	228	
2.	Overview of the General Agreement on Trade in Services	229	
3.	The relationship between GATT and GATS	232	
4.	The WTO model for liberalization of trade in services	234	
	4.1 When to negotiate in the context of GATS	234	
	4.2 The concept of "services"	235	
	4.3 Modes of supply	236	
	4.4 Measures "affecting trade in services"	237	
	4.5 When are GATS commitments binding?	239	
	4.6 General obligations and specific commitments	239	
	4.7 Institutional issues	239	
5.	General obligations under the GATS	240	
	5.1 The GATS "positive list" approach	240	
	5.2 The MFN clause	240	
	5.3 Transparency	242	
	5.4 Domestic regulation and mutual recognition	243	

	5.5 Anticom	petitive practices	245
	5.6 Subsidies		245
	5.7 Safeguar	ds	245
	5.8 Develop	ing countries	246
	5.9 Exceptio	ns	246
6.	Specific comm	nitments	246
	6.1 The limi	ts of general obligations	246
	6.2 Market a	access (Article XVI)	247
	6.3 The nation	onal treatment obligation (Article XVII)	247
	6.4 The relat	tionship between Article XVI and Article XVII	250
		al commitments	251
	6.6 Modifica	ation of schedules	251
7.	Financial serv	rices, telecommunications, and	
	maritime tran	sport	252
	7.1 What is	so special about these agreements?	252
	7.2 The Agre	eement on Financial Services	252
	_	eement on Telecommunications	254
	7.4 The Agre	eement on Maritime Transport	257
8.	Conclusions		258
12. §	ubsidies and C	Countervailing Duties	259
1.	Introduction		260
2.	The legal fran	nework	263
	2.1 Articles 2	XVI and VI of GATT 1994	263
	2.2 The SCN	M Agreement	264
	2.3 The SCN	M Agreement and agricultural subsidies	265
	2.4 Institution	ons and notifications	265
	2.5 Developi	ing countries	266
3.	The regulation	n of subsidies	266
	3.1 Definition	on of subsidy	266
	3.1.1	The financial contribution by a government	
		nust confer a benefit to the recipient	269
	3.1.2	The subsidy must be specific	271
	3.1.3	Subsidies are defined by reference to	
	C	lomestic law	271
	3.2 The class	sification of subsidies	272
	3.2.1	Гhe "traffic light" approach	272

		3.2.2		ed subsidies	272		
			3.2.2.1	Who determines whether a subsidy	252		
			2222	is a prohibited one?	273		
			3.2.2.2	0 1	274		
			3.2.2.3	WTO jurisprudence on prohibited	27/		
				subsidies	274		
				3.2.2.3.1 Punitive damages in the WTO? 3.2.2.3.2 Retroactivity	276		
		3.2.3	Actional	3.2.2.3.2 Retroactivity ole subsidies	277 278		
		3.2.4		ionable subsidies	282		
		J.2. <del>1</del>	3.2.4.1		282		
				Regional subsidies	283		
				Environmental subsidies	284		
				Who determines whether a subsidy	204		
			3.2.1.1	is a non-actionable one?	285		
			3,2,4,5	Can non-actionable subsidies	20)		
			5.2.1.5	become actionable?	286		
4.	The	regulat	ion of co	untervailing duties	286		
	4.1			cedural and substantive obligations	286		
	4.2	Investi		C	287		
		4.2.1	Initiating	g an investigation	287		
		4.2.2	Evidenti	ary issues	288		
		4.2.3	The duti	les of the investigating authority	289		
	4.3	Provisi	onal appli	cation	290		
	4.4	Detern	nination o	f subsidy	291		
	4.5	Detern	nination o	f injury	291		
		4.5.1	Domesti	c industry	293		
			Causatio	n	293		
	4.6	The in	position o	of definitive countervailing duties	294		
	4.7	Durati	on and rev	view	295		
	4.8	-	l review		295		
	4.9		_	spension of countervailing duty			
		•	gations)		296		
	4.10	Retroa	•		297		
	4.11						
		counte	rvailing dı	ities disputes	297		
5.	Con	clusions	6		298		

13.	Aı	rtidu	mping		301
	1.	Wh	at is du	mping?	302
		1.1		oing as sales below cost	303
		1.2	_	oing as international price discrimination	304
		1.3		-	305
		1.4	Cost a	nalysis	305
		1.5	Welfar	re effects	306
		1.6	Measu	ires to counteract dumping	306
	2.	The	regulat	tion of antidumping duties	307
		2.1	The le	gal framework of antidumping in the	
			GATT	C/WTO regime	307
			2.1.1	GATT Article VI	308
			2.1.2	The Antidumping Agreement	308
			2.1.3	Institutions and notifications	309
			2.1.4	Developing countries	309
		2.2	Investi	gation	309
			2.2.1	Initiating an investigation	309
				Evidentiary issues	310
			2.2.3	The duties of the investigating authority	312
		2.3		nination of dumping	312
			2.3.1	Like product	313
			2.3.2	Comparison of third-country prices	315
			2.3.3	Constructed value	315
			2.3.4	Arm's-length transactions and transactions	
				between affiliated parties	317
			2.3.5	Sales below cost	318
			2.3.6	Fair price comparisons	319
			2.3.7	Averaging	320
			2.3.8	Zeroing	321
		2.4	Detern	nination of injury	323
			2.4.1	Material injury or threat of material injury	323
			2.4.2	Factors to be considered when	
				determining injury	324
			2.4.3	Factors to be considered when	
				determining threat	324
				Cumulation of injuries	325
			2.4.5	Causation	325
		2.5	Domes	stic industry	327
		2.6	The im	position of antidumping measures	328

		2.6.1 Provisional measures	328
		2.6.2 Definitive measures	328
		2.6.3 Retroactivity	329
		2.6.4 Duration and review	329
	2.7	Price undertakings (suspension of antidumping	
		duty investigations)	329
	2.8	Anti-circumvention	330
	2.9	Dispute settlement	331
3.	Crin	ninal penalties and private remedies	333
	3.1	The U.S. 1916 Antidumping Act	333
	3.2	Future implications of the panel and the Appellate	
		Report on the 1916 Act case	335
4.	Con	clusions	336
14. I	Region	nal Trade Agreements	341
1.	Intro	oduction	342
2.	Mus	st preferential trade agreements (PTAs) cover bo	th
		ds and services in the WTO era?	345
3.			347
٥.	3.1	The GATT test	347
	3.2	The obligation to notify	348
	•	3.2.1 From GATT working parties to the Comm	
		on Regional Trade Agreements (CRTA):	
		just a cosmetic change?	348
		3.2.2 The timing of the notification	349
		3.2.3 The powers of the CRTA	350
		3.2.4 The CRTA in the context of the GATS	351
	3.3	The external trade requirement	351
		3.3.1 Free-trade areas	351
		3.3.2 Customs unions	352
		3.3.3 PTAs in the GATS context	356
	3.4	The internal trade requirement	356
		3.4.1 Substantially all the trade	356
		3.4.1.1 The ordinary meaning of the terr	ns 357
		3.4.1.2 The context	357
		3.4.1.3 The object and purpose of the	
		agreement	358
		3.4.1.4 Subsequent decisions	358

		3.4.1.5 Subsequent practice	250
		3.4.1.5 Subsequent practice 3.4.1.6 Preparatory work	359 360
		3.4.1.7 Conclusion	360
		3.4.2 "Other restrictive regulations of commerce"	360
		3.4.2.1 The context	361
		3.4.2.2 Subsequent practice	361
		3.4.2.3 Preparatory work	363
		3.4.2.4 Conclusion	363
	4.	The GATS regime	364
	5.	The WTO: less tolerance for PTAs?	365
		5.1 Dispute settlement	365
		5.2 How will PTAs fare in the WTO?	369
15.	D	eveloping Countries	373
	1.	The developing world	373
	2.	A bit of history	375
	3.	GATT Article XX(h)	380
	4.	GATT Article XVIII	380
	5.	Part IV of the GATT	382
	6.	The generalized system of preferences	383
	7.	The Global System of Trade Preferences	385
	8.	Special and differential treatment provisions	
		for developing countries in the Uruguay Round	385
	9.	Trade and economic development	388
	10.	Trade and the right to development	389
	11.	Enhancing market access	390
	12.	New initiatives	391
16.	In	tellectual Property	395
	1.	Introduction	396
	2.	Types of intellectual property rights addressed in the	
		TRIPS Agreement	399
	3.	Overview of the TRIPS Agreement	404