

Contents

| | |
|--------------------------------------|--------------|
| list of figures | x <i>i</i> |
| <i>Preface to the first edition</i> | xiii |
| <i>Preface to the second edition</i> | xvii |
| <i>Table of cases</i> | x <i>i</i> x |
| <i>Table of agreements</i> | x <i>l</i> |

1 ECONOMIC GLOBALISATION AND THE LAW OF THE WTO 1

- 1.1. Introduction 1**
- 1.2. Economic globalisation and international trade 3**
 - 1.2.1. The emergence of the global economy 3
 - 1.2.2. Economic globalisation: a blessing or a curse? 9
 - 1.2.3. Trade liberalisation versus protectionism 15
 - 1.2.4. Globalisation and trade to the benefit of all? 25
- 1.3. International trade and the law of the WTO 32
 - 1.3.1. International rules for international trade 32
 - 1.3.2. Basic rules and principles of WTO law 37
- 1.4. Sources of WTO law 42
 - 1.4.1. The Marrakesh Agreement Establishing the World Trade Organization 42
 - 1.4.2. Other sources of WTO law 53
- 1.5. WTO law in context 59
 - 1.5.1. WTO law and international law 59
 - 1.5.2. WTO law and national law 63
- 1.6. Summary 71
- 1.7. Exercise: Globaphiles versus globaphobes 73

2 THE WORLD TRADE ORGANIZATION 75

- 2.1. Introduction 76
- 2.2. The origins of the WTO 77
 - 2.2.1. The General Agreement on Tariffs and Trade of 1947 78
 - 2.2.2. Uruguay Round of Multilateral Trade Negotiations 82
- 2.3. Mandate of the WTO 85



| | |
|--|------------|
| 2.3.1. Objectives of the WTO | 85 |
| 2.3.2. Functions of the WTO | 87 |
| 2.4. Membership of the WTO | 102 |
| 2.4.1. Current membership | 102 |
| 2.4.2. Accession | 108 |
| 2.4.3. Obligations of membership | 113 |
| 2.4.4. Withdrawal and expulsion | 116 |
| 2.5. Institutional structure of the WTO | 117 |
| 2.5.1. Basic structure | 117 |
| 2.5.2. Ministerial Conference | 119 |
| 2.5.3. General Council, DSB and TPRB | 121 |
| 2.5.4. Specialised councils, committees and working parties | 124 |
| 2.5.5. Trade Negotiations Committee | 127 |
| 2.5.6. Political bodies lacking in the WTO structure | 128 |
| 2.5.7. Quasi-judicial and other non-political bodies | 130 |
| 2.5.8. WTO Secretariat | 132 |
| 2.6. Decision-making in the WTO | 138 |
| 2.6.1. Normal procedure | 138 |
| 2.6.2. Special procedures | 141 |
| 2.6.3. WTO decision-making in practice | 145 |
| 2.6.4. Participation of developing-country Members | 148 |
| 2.6.5. Involvement of NGOs | 152 |
| 2.6.6. Form and legal basis of WTO decisions | 159 |
| 2.7. Other issues | 161 |
| 2.7.1. Status of the WTO | 161 |
| 2.7.2. The WTO budget | 161 |
| 2.8. Summary | 163 |
| 2.9. Exercise: To join or not to join? | 167 |
| | |
| 3 WTO DISPUTE SETTLEMENT | 168 |
| <hr/> | |
| 3.1. Introduction | 169 |
| 3.2. Principles of WTO dispute settlement | 171 |
| 3.2.1. Object and purpose of the WTO dispute settlement system | 171 |
| 3.2.2. Methods of WTO dispute settlement | 176 |
| 3.2.3. Jurisdiction of the WTO dispute settlement system | 178 |
| 3.2.4. Access to the WTO dispute settlement system | 181 |
| 3.2.5. The WTO dispute settlement process | 198 |
| 3.2.6. Rules of interpretation and burden of proof | 201 |
| 3.2.7. Confidentiality and Rules of Conduct | 212 |
| 3.2.8. Remedies for breach of WTO law | 218 |
| 3.2.9. Special rules and assistance for developing-country Members | 231 |
| 3.3. Institutions of WTO dispute settlement | 235 |
| 3.3.1. The Dispute Settlement Body | 235 |
| 3.3.2. WTO dispute settlement panels | 238 |

- 3.3.3. The Appellate Body 257
- 3.3.4. Other bodies and persons involved in WTO dispute settlement 268
- 3.4. WTO dispute settlement proceedings 269
 - 3.4.1. Consultations 269
 - 3.4.2. Panel proceedings 275
 - 3.4.3. Appellate review 288
 - 3.4.4. Implementation and enforcement 298
- 3.5. Main challenge to the WTO dispute settlement system 308
- 3.6. Summary 311
- 3.7. Exercise: Newland seeks justice 316

4 PRINCIPLES OF NON-DISCRIMINATION 320

- 4.1. Introduction 321
- 4.2. Most-favoured-nation treatment under the GATT1994 322
 - 4.2.1. Nature of the MFN treatment obligation of Article 1:1 of the GATT 1994 323
 - 4.2.2. MFN treatment test of Article 1:1 of the GATT 1994 325
- 4.3. Most-favoured-nation treatment under the GATS 334
 - 4.3.1. Nature of the MFN treatment obligation of Article 11:1 of the GATS 334
 - 4.3.2. MFN treatment test of Article 11:1 of the GATS 336
 - 4.3.3. Exemptions from the MFN treatment obligation under the GATS 342
- 4.4. National treatment under the GATT 1994 344
 - 4.4.1. Nature of the national treatment obligation of Article III of the GATT 1994 345
 - 4.4.2. National treatment test for internal taxation on like products 348
 - 4.4.3. National treatment test for internal taxation on directly competitive or substitutable products 358
 - 4.4.4. National treatment test for internal regulation 367
- 4.5. National treatment under the GATS 390
 - 4.5.1. Nature of the national treatment obligation of Article XVII of the GATS 391
 - 4.5.2. National treatment test of Article XVII of the GATS 392
- 4.6. Summary 396
- 4.7. Exercise: Beer in Newland 398

5 RULES ON MARKET ACCESS 401

- 5.1. Introduction 401
- 5.2. Tariff barriers to trade in goods 403

- 5.2.1. Customs duties or tariffs 403
- 5.2.2. Negotiations on tariff reductions 407
- 5.2.3. Tariff concessions and Schedules of Concessions 417
- 5.2.4. Protection of tariff concessions 422
- 5.2.5. Modification or withdrawal of tariff concessions 426
- 5.2.6. Imposition of customs duties 428
- 5.2.7. Other duties and charges 438
- 5.3. Non-tariff barriers to trade in goods 444
 - 5.3.1. Quantitative restrictions 444
 - 5.3.2. Rules on quantitative restrictions 447
 - 5.3.3. Administration of quantitative restrictions 454
 - 5.3.4. Other non-tariff barriers 460
- 5.4. Barriers to trade in services 476
 - 5.4.1. Market access barriers to trade in services 477
 - 5.4.2. Other barriers to trade in services 493
- 5.5. Summary 499
- 5.6. Exercise: Carlie® goes to Europe 504

6 RULES ON JINFAIR*TRADE 507

- 6.1. Introduction 507
- 6.2. Dumping and anti-dumping measures 508
 - 6.2.1. Basic elements of WTO law on dumping 511
 - 6.2.2. Determination of dumping 515
 - 6.2.3. Determination of injury 526
 - 6.2.4. Demonstration of a causal link 536
 - 6.2.5. Anti-dumping investigation 539
 - 6.2.6. Anti-dumping measures 546
 - 6.2.7. Special and differential treatment for developing-country Members 554
 - 6.2.8. Standard of review for WTO panels in anti-dumping disputes 556
- 6.3. Subsidies and countervailing measures 557
 - 6.3.1. Basic elements of WTO law on subsidies and subsidised trade 558
 - 6.3.2. Determination of subsidisation 562
 - 6.3.3. Prohibited subsidies 571
 - 6.3.4. Actionable subsidies 577
 - 6.3.5. Countervailing measures 585
 - 6.3.6. Agricultural subsidies 600
 - 6.3.7. Special and differential treatment for developing-country Members 604
- 6.4. Summary 605
- 6.5. Exercise: Dirty play, but by whom? 612



7 TRADE LIBERALISATION VERSUS OTHER SOCIETAL VALUES AND OTHER RIGHTS 614

- 7.1. Introduction 615
- 7.2. General exceptions under the GATT 1994 616
 - 7.2.1. The nature and function of Article XX of the GATT 1994 617
 - 7.2.2. The two-tier test under Article XX of the GATT 1994 620
 - 7.2.3. Specific exceptions under Article XX of the GATT 1994 621
 - 7.2.4. The chapeau of Article XX of the GATT 1994 641
 - 7.2.5. Scope for Members to protect other societal values 651
- 7.3. General exceptions under the GATS 652
 - 7.3.1. The two-tier test under Article XIV of the GATS 653
 - 7.3.2. Specific exceptions under Article XIV of the GATS 654
 - 7.3.3. The chapeau of Article XIV of the GATS 662
- 7.4. Security exceptions 664
 - 7.4.1. Article XXI of the GATT 1994 664
 - 7.4.2. Article XIV *bis* of the GATS 669
- 7.5. Economic emergency exceptions 670
 - 7.5.1. Article XIX of the GATT 1994 and the Agreement on Safeguards 672
 - 7.5.2. Requirements for the use of safeguard measures 674
 - 7.5.3. Domestic procedures and notification and consultation obligations 683
 - 7.5.4. Characteristics of safeguard measures 685
 - 7.5.5. Other safeguard measures 693
- 7.6. Regional integration exceptions 695
 - 7.6.1. Article XXIV of the GATT 1994 699
 - 7.6.2. Article V of the GATS 709
- 7.7. Balance-of-payments exceptions 714
 - 7.7.1. Articles XII and XV of the GATT 1994 715
 - 7.7.2. Article XII of the GATS 722
- 7.8. Economic development exceptions 723
 - 7.8.1. Infant-industry-protection exception 725
 - 7.8.2. Generalised System of Preferences exception 726
- 7.9. Summary 731
- 7.10. Exercise: Tetra-pack containers and glass producers in dire straits 738

8 TOWARDS HARMONISATION OF NATIONAL REGULATION 740

- 8.1. Introduction 741
- 8.2. The *TRIPS Agreement* 742
 - 8.2.1. The origins and objectives of the *TRIPS Agreement* 742
 - 8.2.2. Scope of application of the *TRIPS Agreement* 746

| | | |
|--------|--|-----|
| 8.2.3. | General provisions and basic principles of the TRIPS Agreement | 750 |
| 8.2.4. | Substantive protection of intellectual property rights | 762 |
| 8.2.5. | Enforcement of intellectual property rights | 793 |
| 8.2.6. | Acquisition and maintenance of intellectual property rights | 798 |
| 8.2.7. | Institutional and procedural provisions of the TRIPS Agreement | 798 |
| 8.2.8. | Special provisions for developing-country Members | 802 |
| 8.3. | The TBT Agreement | 805 |
| 8.3.1. | Scope of application of the TBT Agreement | 806 |
| 8.3.2. | Relationship with other WTO agreements | 815 |
| 8.3.3. | Basic substantive provisions of the TBT Agreement | 817 |
| 8.3.4. | Other substantive provisions | 823 |
| 8.3.5. | Institutional and procedural provisions of the TBT Agreement | 828 |
| 8.3.6. | Special provisions for developing-country Members | 830 |
| 8.4. | The SPS Agreement | 832 |
| 8.4.1. | Scope of application of the SPS Agreement | 834 |
| 8.4.2. | Relationship with other WTO agreements | 839 |
| 8.4.3. | Basic principles of the SPS Agreement | 841 |
| 8.4.4. | Risk analysis obligations | 852 |
| 8.4.5. | Other substantive provisions | 870 |
| 8.4.6. | Institutional and procedural provisions of the SPS Agreement | 878 |
| 8.4.7. | Special provisions for developing-country Members | 880 |
| 8.5. | Summary | 884 |
| 8.6. | Exercise: Tutti Frutti's exports to Utopia | 890 |
| | <i>Epilogue</i> | 892 |
| | Index | 894 |