

Technical Barriers to Trade in Pursuit of Sustainable Development

Semester:	Spring Semester- FS 2024
Root Number:	481932
ECTS:	3
Lecturer:	Arthur Appleton, Frank van Tongeren, Tetyana Payosova and Narmin Khalilova (guest lecturer)
Dates:	July 8 to July 12, 2024
Room:	This a hybrid course. The course will be held on-site at the Silva Casa Auditorium WTI and online via Zoom. Hallerstrasse 6, 3012 Bern.

Audience:

- Government officials; Embassy staff; people working for international organizations and NGOs, industry, and in legal practice
- Master of Advanced Studies of International Law and Economics (MILE) Students
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe
- Students from different universities across Switzerland and beyond

Course Description

This course will explore how to harness the international trade system to advance sustainable development. The course will cover legal and economic aspects of the WTO Agreement on Technical Barriers to Trade (TBT) as it relates to sustainable development. We will look at what is now permitted under the WTO Agreement on Technical Barriers to Trade (TBT) and what should be permitted were the international regulatory architecture

to be revised to better meet the UN sustainable development goals (SDGs). First, the legal foundation of GATT Articles III and XX and the TBT Agreement will be discussed from the perspective of the SDGs; then we will explore whether existing international trade rules are adequate to meet environmental, governmental, labour and human rights challenges. Our thesis is that international trade rules and standards and regulations must evolve to meet the SDGs in general, and climate change in particular. Our case studies will draw upon the Climate Change agreements, the EU's Carbon Border Adjustment Mechanism (CBAM), and over-exploitation of palm oil in environmentally sensitive tropical regions.

Lecturers

Arthur Appleton, JD, PhD

Adjunct Professor, Johns Hopkins University (SAIS – Europe)
a Founding Partner, Appleton Luff – International Lawyers
Appleton@appletonluff.com



Arthur is an Adjunct Professor of International Law at the Johns Hopkins School of Advanced International Studies in Bologna (SAIS-Europe) where he teaches International Trade and Investment Law. Arthur is also on the visiting faculty and the Advisory Board of the World Trade Institute (University of Bern). He has published widely in the field of international trade law and international arbitration (4 books and more than 50 articles). He sits on the Editorial Advisory Board of *Legal Issues of Economic Integration* (Journal of the Europa Institute and the Amsterdam Center for International Law), and the Advisory Committee of *The Latin American Journal of International Trade Law*.

Arthur is also a founding partner of [Appleton Luff – International Lawyers](#), an international law firm with offices worldwide. He has more than 30 years of experience in international trade law working with international businesses, sovereign States, and international and regional organizations. He has worked throughout Europe, the Middle East, Africa, Asia, and Latin America, and has appeared before the WTO Appellate Body. Arthur has served as a consultant for many organizations including the World Bank, the IFC, the WTO, the ADB, the IDB, UNCTAD, UNITAR, the ITC, CLDP and the EU. He is on the general 17 May 2022 list as a potential Chairperson for Arbitrations and Trade and Sustainable Development (TSD) Expert Panel Proceedings involving EU FTAs, and is also listed as a potential Chairperson for TSD disputes involving six specific EU FTAs.

Frank van Tongeren, PhD

Frank van Tongeren is an economist specialised in trade-related policy analysis. He has held various positions at the Organisation for Economic Cooperation and Development, the [OECD](#), most recently as Senior Counsellor and Head of the Analysis, Data and Modelling Division in the Trade and Agriculture Directorate. His broad work experience at OECD includes non-tariff measures and trade-related international regulatory co-operation, trade in raw materials, agricultural policy design and -monitoring as well as the OECD's METRO model of international trade. He has held senior management and -research positions at the Dutch Agriculture Economic Research Institute (LEI, now called Wageningen Economic Research). He has worked with government officials, international organisations, and academic institutions on five continents. He earned a PhD in economics from Erasmus University Rotterdam, where he also held a position as assistant professor. Frank is a long-standing member of the advisory board of the Global Trade Analysis Project (GTAP) and has published widely in professional journals.



Tetyana Payosova, LL.M., PhD

Senior Associate, Van Bael & Bellis
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Tetyana Payosova is a senior associate in the international trade practice of Van Bael & Bellis. She advises governments, corporate clients and NGOs on the international trade law, with a particular emphasis on WTO law and preferential trade agreements, WTO and FTA negotiations and dispute resolution, as well as EU regulatory and trade matters. Tetyana has extensive experience in trade and sustainability matters. Her practice focuses particularly on environmental, climate change and energy-related issues, including carbon pricing, border carbon adjustments, renewable energy regulations and other measures under the EU Green Deal. She is on the roster of arbitrators under the Free Trade and Strategic Partnership Agreement between Ukraine and the UK.



Previously, Tetyana also gained experience in international and EU law as a legal adviser at the International Rail Transport Committee (CIT), an international association of railway and shipping companies, and as a research fellow at the Institute for European and International Economic Law of the University of Bern.

Tetyana Payosova has taught and published widely in the area of international economic law as well as trade and sustainability issues.

Narmin Khalilova, MILE 8

Programme Management Officer, UNCTAD

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Narmin Khalilova is a Programme Management Officer at the United Nations Conference on Trade and Development (UNCTAD) in the Division on International Trade and Commodities, where she is managing projects on market access issues, Non-tariff measures (NTMs) covering TBT and SPS and Dispute Settlement Mechanism (DSM). Narmin has more than 15 years of experience in international trade and development field working at international organizations such as UNCTAD, International Trade Centre (ITC), Food and Agriculture Organization (FAO), as well as government institutions engaged in trade policy. She extensively worked and contributed to the development of the International Taxonomy of NTMs and the related global database and delivered numerous training courses on the subject. She has teaching experience on Theories of International Relations at the University of Azerbaijan.

Narmin holds postgraduate degrees in International Relations from the University of Essex (2004) and International Law and Economics from the World Trade Institute in Bern (2008). She is the author and co-author of several papers on international trade and NTMs, Regional Trade Agreements and contributed to numerous UN publications.

Learning Objectives

At the end of the course, participants should be able to:

- Better understand the implications for sustainable development, and the sustainable development goals (SDGs) under the TBT Agreement, and GATT Articles I, III and XX.
- Comprehend which sustainable development issues may be addressed under the TBT and GATT Agreements, and which issues fall within national policy space.
- Better appreciate the national and private sector policy space available under the TBT and GATT Agreements, in particular opportunities arising from the Trilogy cases (Tuna, Cloves, and COOL), such as labelling schemes.
- Identify gaps in the TBT and GATT Agreement that undermine fulfilment of the SDGs.
- Better understand economic and trade aspects of non-tariff measures addressing environmental objectives.
- Analyse existing and prospective trade-related issues, such as environmental sustainability, labour and human rights concerns.
- Evaluate when sustainable development arguments are being made for legitimate objectives, protectionist purposes, or both.
- Be familiar with NTBs and NTMs, the International classification of NTMs, and UNCTAD's TRAINS database, and specific trade concerns

Grading

- A *Take Home Exam Assignment* will be made available on 12 July 2024 at 17:00. This exam is “open book” but must be completed individually. All exams must be submitted before 13 July 2024, 17:00 to masters@wti.org.

Course Overview

Date	Day	Time	Topic / lecturer
8 July	Monday	10:00 12:00	Refresher GATT 1994 and the TBT Agreement
		13:00 16:00	The TBT Agreement, NTMs and NTBs from the SDG perspective / Arthur Appleton
9 July	Tuesday	10:00 12:00	The TBT Agreement and the Sustainable Development Goals / Arthur Appleton
		13:00 16:00	The TBT Agreement, Policy Space, Gaps, and Cross-cutting Issues / Arthur Appleton
10 July	Wednesday	10:00 12:00	Economic Implications of Environmental NTMs / Frank van Tongeren
		13:00 16:00	Economic Implications of Environmental NTMs / Frank van Tongeren
11 July	Thursday	10:00 12:00	Sustainable development, NTBs and WTO law in practice / Tetyana Payosova
		13:00 16:00	Sustainable development, NTBs and WTO law in practice / Tetyana Payosova
			Quiz / Tetyana Payosova
12 July	Friday	10:00 12:00	International classification of NTMs and UNCTAD's TRAINS database / Narmin Khalilova NTBs and specific trade concerns / Tetyana Payosova
		13:00 16:00	Group exercises Wrap-up / Tetyana Payosova
13 July	Saturday	17:00	Take Home Assessment

MONDAY, 8 JULY 2024**Lecturer: Arthur Appleton****Subject**

The Legal Framework: The SDGs, GATT Articles I, III and XX, and the TBT Agreement.

Topics

- Review of the SDGs
- Review of GATT Articles I, III and XX from an SDG perspective
- Application of the TBT Agreement within the context of the SDGs
- Gaps in the treatment of the SDGs in the TBT Agreement.

Compulsory Reading Material for Monday and Tuesday (Read before coming to class on Monday)

- Review the sustainable development goals: <https://sdgs.un.org/goals>
- Review Articles I, III and XX of GATT 1994 and study the TBT Agreement provision by provision: https://www.wto.org/english/docs_e/legal_e/legal_e.htm
- Read Pages 964 -1017 on the **TBT Agreement** in Peter VAN DEN BOSSCHE and Werner ZDOUC, *The Law and Policy of the World Trade Organization*, (Cambridge University Press, Fifth Edition, 2022).
- Arthur Appleton, "PIL and IEL: Will Seal Deaths Resurrect the Dream of International Legal Coherence?" (online journal) <http://www.qil-qdi.org/pil-iel-will-seal-deaths-resurrect-dream-international-legal-coherence/>, QIL - Questions of International Law, Zoom-in 9 (2014) 5-18, 24 November 2014.

Suggested Readings

- *Business Guide to Trade and Investment*, Volume 1 – International Trade (Appleton and, ICC, 2017), pages 87-116 (covers both TBT and SPS).
- You may want to take a look at WTI's TBT course: <http://www.ilias.unibe.ch>

For those participants who want to go deep into the subject, the following case excerpts are worth skimming:

- *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400, 401/AB/R, (22 May 2014) at ¶¶ 5.8-5.60 (technical regulations), ¶¶ 5.169, 5.200-5.201, 5.214-5.215, 5.261, 5.276-5.280, 5.291-5.292, 5.296-5.306, 5.310-5.313, 5.317-5.339, : [http://www.worldtradelaw.net/reports/wtoab/ec-sealproducts\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/ec-sealproducts(ab).pdf)
- *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R (24 April 2012) at ¶¶ 88-96 (preamble), ¶ 100 (interpreting Article 2.1 ¶¶ 108-117, 120, 137-145 and 156 (likeness), ¶¶ 171-182, 190-200, 234-236 (discrimination): [http://www.worldtradelaw.net/reports/wtoab/us-clovecigarettes\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-clovecigarettes(ab).pdf)

- *United States – Measures Concerning The Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R (13 June 2012) at ¶¶ 12- 18, 138, 154-155, 188-199 (technical regulation), ¶¶ 212-215 225-240,241, 244, 248-251, 266-270, 284-299 (discrimination), ¶¶ 315-322 (legitimate objective/necessity), ¶¶ 343-364, 368-378, 401 (international standards), and ¶405:
[http://www.worldtradelaw.net/reports/wtoab/us-tunamexico\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-tunamexico(ab).pdf)
- *United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Recourse to Article 21.5 of the DSU by Mexico*, (WT/DS381/AB/RW) (3 Dec. 2015):
[https://worldtradelaw.net/document.php?id=reports/wtoab/us-tunamexico\(ab\)\(21.5\).pdf](https://worldtradelaw.net/document.php?id=reports/wtoab/us-tunamexico(ab)(21.5).pdf)
- *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, WT/DS386/AB/R (23 July 2012) at ¶¶ 265-292, 341-349 (discrimination – treatment less favourable), ¶¶ 373-379, and 461- 469 (legitimate objective), ¶¶ 470-491 (necessity):
[http://www.worldtradelaw.net/reports/wtoab/us-cool\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-cool(ab).pdf)
- *Certain Country of Origin Labelling (COOL) Requirements, Recourse to Article 21.5 of the DSU by Canada and Mexico*, WT/DS384,386/AB/RW (29 May 2015), ¶¶ 5.341-5.357 (GATT Article IX Marks of Origin):
[http://www.worldtradelaw.net/reports/wtoab/us-cool\(ab\)\(21.5\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-cool(ab)(21.5).pdf)

TUESDAY, 9 JULY 2024**Lecturer: Arthur Appleton****Subject**

Policy space and policy gaps under the TBT and GATT Agreements: Implications for fulfilment of the SDGs.

Topics

- NTBs: Protectionism versus legitimate objectives
- SDGs; national policy space, and private sector initiatives
- Gaps in the TBT and GATT Agreement: What effect on SDG fulfilment?
- The TBT and GATT Agreements: Animal welfare, labour and human rights concerns.

WEDNESDAY, 10 JULY 2024**Lecturer: Frank van Tongeren****Subject:** Economic implications of non-tariff measures**Topics:**

- How is the economics of NTMs different from tariffs?
- What is their impact on consumers, producers and international trade?
- How can NTMs and their economic impacts be quantified?
- How can trade costs associated with NTMs be reduced?

Compulsory Reading Material

- Beghin, John, Anne-Célia Disdier, Stéphan Marette, Frank Van Tongeren (2012) Welfare costs and benefits of non-tariff measures in trade: a conceptual framework and application, *World Trade Review* (2012), 11: 3, 356–375
- OECD (2017), *International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264275942-en>.
- Gourdon, J., S. Stone and F. van Tongeren (2020-11-20), "Non-tariff measures in agriculture", *OECD Food, Agriculture and Fisheries Papers*, No. 147, OECD Publishing, Paris. <http://dx.doi.org/10.1787/81933f03-en>

Optional Reading Material

- Arriola, C., et al. (2020), "The trade impact of the UK's exit from the EU Single Market", *OECD Economics Department Working Papers*, No. 1631, OECD Publishing, Paris, <https://doi.org/10.1787/682c2995-en>.
- Disdier, Anne Célia, Susan Stone, Frank van Tongeren (2019), *Trade and Economic Effects of IRC: Further Empirical Evidence from SPS and TBT Provisions*, *OECD Trade Policy Papers*, No. 224, OECD Publishing, Paris. <https://doi.org/10.1787/8648b6ca-en>
- Francois, J. and B. Hoekman (eds.), *Behind-the-border policies: Assessing and addressing non-tariff measures*, Cambridge University Press, 2019

THURSDAY, 11 JULY 2024**Lecturer: Tetyana Payosova****Subject:** Sustainable development, NTBs and WTO law in practice**Topics:**

- Evolving sustainability NTMs:
 - Climate change mitigation measures (e.g. the EU CBAM)
 - Deforestation-related measures (e.g. the EU Deforestation Regulation)
 - Consumer information requirements on environmental and social sustainability
- The role of the TBT Agreement and the GATT 1994 in addressing sustainability-related NTBs
- Sustainability-related NTBs and the role of international standards

Compulsory Reading Material for Thursday and Friday

- Beatens, Freya, Hoekman, Bernard M., and Mavroidis, Petros C. "Production Requirements and WTO Rules: The Case of Environmental and Labor Standards", Report prepared for the Ministry of Foreign Affairs, Netherlands (<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2022/04/18/rapport-productiestandaarden-en-wto-regels-arbeid-en-milieu/rapport-productiestandaarden-en-wto-regels-arbeid-en-milieu.pdf>)
- The European Green Deal (https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en and <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal>)
- European Union Regulation on Supply Chains Free From Deforestation and Forest Degradation, Communication from Argentina, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay, and Peru, WT/GC/W/912, 4 December 2023 (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W912.pdf&Open=True>)
- WTO Trade Report 2023: Re-Globalization to Promote Environmental Sustainability, pp. 88-109 (https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_ch5_e.pdf)

Suggested Readings

- Cosbey, Aaron, Baršauskaitė, Ieva. Border Carbon Adjustments: Pivotal Design Choices for Policy Makers, August 2023 (<https://www.iisd.org/system/files/2023-08/border-carbon-adjustments-policy-makers.pdf>)
- Delimatsis, Panagiotis "Relevant international standards" and "recognised standardisation bodies" under the TBT Agreement, in Panagiotis Delimatsis (ed.), The Law, Economics and Politics of International Standardisation (CUP, 2015), pp.

104-136 (<https://www.cambridge.org/core/books/abs/law-economics-and-politics-of-international-standardisation/relevant-international-standards-and-recognised-standardisation-bodies-under-the-tbt-agreement/F97BE962E39F11B51C3E02B1FA790005>).

- Case excerpts from the Panel Reports, *EU – Palm Oil (Indonesia)* and *EU and Certain Member States – Palm Oil (Malaysia)*.

FRIDAY, 12 JULY 2024**Lecturers: Tetyana Payosova & Narmin Khalilova****Subject:**Lecture 1: International classification of NTMs and UNCTAD's TRAINS database (**Narmin Khalilova**)Lecture 2: NTMs and specific trade concerns (**Tetyana Payosova**)**Topics**

- The international taxonomy and coverage of NTMs
- NTMs vs NTBs
- NTMs and their relationship with international standards and sustainable development
- UNCTAD TRAINS database on NTMs
- "Specific trade concerns" and their role in tackling NTBs

Compulsory Reading Material*Please see readings for Thursday.***Suggested Readings**

- International Classification of Non-tariff Measures, available at: <https://unctad.org/publication/international-classification-non-tariff-measures-2019-version>.
- Asia-Pacific Trade and Investment Report: navigating Non-tariff Measures towards Sustainable Development, 2019, Chapter 3, available at <https://www.unescap.org/publications/APTIR2019>.
- WTO databases for specific trade concerns, available at: <https://epingalert.org/en/Search/TradeConcerns> and <https://tradeconcerns.wto.org/en>.
- Holzer, Kateryna, "Addressing Tensions and Avoiding Disputes: Specific Trade Concerns in the TBT Committee", available at: https://www.wto.org/english/res_e/reser_e/ersd201811_e.htm.

FRIDAY NIGHT 12 JULY AND SATURDAY, 13 JULY 2024

Take-home assessment due 17:00 on Saturday 13 July 2024.