

Technical Barriers to Trade in Pursuit of Sustainable Development

Semester:	Spring Semester- FS 2023
Root Number:	481932
ECTS:	3
Lecturer:	Arthur Appleton and Christian Häberli
Dates:	July 3 to July 7, 2023
Room:	This a hybrid course. The course will be held on-site at the World Trade Institute and online via Zoom.

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. 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 E. Appleton, JD, PhD

Adjunct Professor, Johns Hopkins University (SAIS – Europe)
and IE University (Madrid)

Partner, Appleton Luff – International Lawyers

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Arthur E Appleton is an Adjunct Professor of International Law at the Johns Hopkins School of Advanced International Studies in Bologna (SAIS-Europe) and SAIS Washington, DC, 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 17 May 2022 list as a potential Chairperson for Arbitrations and Trade and Sustainable Development (TSD) Expert Panel Proceedings involving EU FTAs.

Christian Häberli, PhD (Law)

Christian Häberli has been a Fellow of the World Trade Institute (WTI) since 2007 and works as a lecturer and a consultant for scientific research and outreach activities in Europe, Asia, Africa, and in the Americas. He has produced over 70 publications on trade and investment issues related to agriculture, food security and food safety, obesity and malnutrition, water and fish, climate change, employment, multilateral and regional trade, and development. In 1977 he earned a PhD with a thesis on African Investment Law (Basel University). He also has university degrees in Development Sciences from Geneva (1975) and in Theology from Bern (2009).



His professional career started in 1978 with the International Labour Organization (ILO) and with the Swiss Government, based in Madagascar, Thailand, Nepal, and Switzerland. Christian Häberli was a trade negotiator for Switzerland in the GATT and in the WTO, during the Uruguay and the Doha Rounds (1986 to 2007). He was Chair of the WTO Committee on Agriculture (Regular Session, 2005 – 07) and served as Chair (every other year) of the Joint Committee of the Agriculture Agreement Switzerland–EU (2002 to 2007). He also served as an Panellist in WTO and bilateral trade disputes, involving various TBT claims (1996 – 2020). (<https://www.wti.org/research/publications/?author=44>).

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.
- Analyse existing and prospective trade-related issues, such as animal welfare, labour and human rights concerns.
- Evaluate when sustainable development arguments are being made for legitimate objectives, protectionist purposes, or both.

Assessments, Presentations and Grading

- There will be a graded *Basic Knowledge Quiz* on Monday 3 July 2023 noon, worth **20%** of the final grade.
- *Active (meaningful) Participation*, will count for **20%** of the final grade.
- Both lecturers will provide a set of questions or topics for *Individual or Group Presentations*. These presentations are voluntary but may contribute to the active participation grade.
- A *Take Home Exam Assignment* worth **60%** of your grade will be made available on Thursday 6 July 2023, 17:00. This exam is “open book” but needs to be completed on individually. All texts must be submitted before 7 July 2023, 20:00 to masters@wti.org
- Participants not requiring ECTS points are free to participate in these knowledge assessments, but they will not receive grades.

Course Overview

Date	Day	Time	Topic / lecturer
3 July	Monday	10:00 12:00	Refresher GATT 1994 and TBT and Environmental implications Quiz / Arthur Appleton
		13:00 16:00	The TBT Agreement, NTMs and NTBs from the SDG perspective / Arthur Appleton
4 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
5 July	Wednesday	10:00 12:00	TBT Trade Concerns, and Cross-cutting Sustainability Issues / Christian Häberli
		13:00 16:00	Group exercises (preparations) / Christian Häberli
6 July	Thursday	10:00 12:00	Individual and Group Presentations / Christian Häberli
		13:00 16:00	Sustainability Issues and Summing Up / Christian Häberli
7 July	Friday	Due 20:00	Case study/exam (take-home assessment)

MONDAY, 3 JULY 2023**Lecturer: Arthur Appleton****Subject**

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

Topics

- Review of the SDGs
- Review of GATT Articles I, III and XX from an environmental perspective
- Application of the TBT Agreement within the context of the SDGs
- Oral presentation suggestions/topics (will affect 20% of your grade)
- Quiz (20% of your grade)

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):
[http://worldtradelaw.net/document.php?id=reports/wtoab/us-tunamexico\(ab\)\(21.5\).pdf](http://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, 4 JULY 2023

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, 5 JULY 2023**Lecturer: Christian Häberli****Subject:**

TBT and Sustainable Trade Concerns (and: preparation of presentations)

Topics: a reality check of the following issues through a TBT prism:

- Legal Developments: TBT/International Economic Law vs Public International Law and the Vienna Convention
- How does the WTO address “specific trade concerns”?
- Sustainability Issues vs TBT:
 - Climate Change Mitigation: Carbon Leakage (CBAM)
 - Palm Oil vs different SDGs (and CITES/pangolin)
 - Consumer Information labels and standards e.g. Front-of-package nutrition labelling, GlobalGap and Codex/OIE technical standards

Compulsory Reading Material

- See readings and cases for Days 1 and 2
- Look at WTO TBT Cases in a sustainability context: Relevant primary sources e.g. notifications, “trade concerns”, trade and project data (UN, ITC) are available on the **ePing” SPS & TBT Platform** (<https://epingalert.org/>)
- Boza, Sofia, Polanco, Rodrigo and Saco, Victor. “Front-of-package nutrition labelling in Latin America: review of the cases of Chile and Peru” (Open Access) in Boletim do Instituto de Saúde (BIS) Vol. 21 (1), pp. 141-150, published by Instituto de Saúde, Brazil (2021). @
<https://www.wti.org/research/publications/1322/front-of-package-nutrition-labelling-in-latin-america-review-of-the-cases-of-chile-and-peru-open-access/>

Optional Reading Material

- Delimatsis, Panagiotis. “Global Standard-Setting 2.0: How the WTO Spotlights ISO and Impacts the Transnational Standard-Setting Process” @
https://www.researchgate.net/publication/324642868_Global_Standard-Setting_20_How_the_WTO_Spotlights_ISO_and_Impacts_the_Transnational_Standard-Setting_Process
- Häberli, Christian, “Policy Brief on the Carbon Border Adjustment Mechanism (CBAM) vs WTO”, published by the Jean Monnet Network on Transatlantic Trade Politics (<https://carleton.ca/tradenetwork/research-publications/>)
- Häberli, Christian, “Seals and the Need for more Deference to Vienna by WTO Adjudicators”, (SIEL) Working Paper No 22 (8 July 2014):
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2563474

THURSDAY, 6 JULY 2023**Lecturer: Christian Häberli****Subject:**

Sustainable Trade Concerns (TBT), Cross-cutting and Regional Issues (and: individual and group presentations)

Topics (as per participants' choices and presentations)

- Deforestation and different COPs (climate, wetlands, biodiversity, Montreal)
- Organic Agriculture and MRA
- Child Labour and Chocolate (with ILO and Codex)
- Forced Labour and Shrimps
- Water and Avocados
- Regional issues and solutions (e.g. the EU's "Setting global standards in support of a resilient, green and digital EU single market" und various RTAs and EPAs)
- The WTO Fish Agreement

Compulsory Reading Material

- Santeramo, Fabio Gaetano, and Lamonaca, Emilia. "Standards and Regulatory Cooperation in Regional Trade Agreements: What the Effects On Trade?" Applied Economic Perspectives and Policy 1–20. @ <https://onlinelibrary.wiley.com/doi/10.1002/aepp.13276>
- Voon, Tania, Mitchell, Andrew D. and Gascoigne, Catherine. "Consumer Information, Consumer Preferences and Product Labels under the TBT Agreement" (November 24, 2012). Chapter in Michael J. Trebilcock and Tracey Epps (eds.), Research Handbook on the WTO and Technical Barriers to Trade (Edward Elgar Publishing, 2013), U of Melbourne Legal Studies Research Paper No. 632, Available at SSRN: <https://ssrn.com/abstract=2180107>

Optional Reading Material

- Häberli, Christian, "Food Crisis (Cont'd): What's Wrong with Trade and Investment Rules?" in the Journal Trade, Law and Development (<http://www.tradelawdevelopment.com/index.php/tld> Vol. 13, No. 2, published by the National Law University in Jodhpur/India): <http://www.tradelawdevelopment.com/index.php/tld/article/view/194/230>
- Häberli, Christian, "Sustainable Agriculture and Trade". in Panagiotis Delimatsis and Leonie Reins (Editors), Trade and Environmental Law Encyclopedia, Chapter 93, pp.692-703 by Edward Elgar Publishing Ltd (<https://www.elgar.com/shop/gbp/trade-and-environmental-law-9781783476978.html>)

FRIDAY, 7 JULY 2023

Take-home assessment due 20:00