

WTO LAW ON TECHNICAL BARRIERS TO TRADE & SANITARY AND PHYTOSANITARY MEASURES

Course Description

This course builds on basic knowledge regarding GATT obligations and applies this knowledge to trade-related regulatory issues that affect operators along the value chain and are of interest to civil society. The classroom activities will focus on the policy space that Members have under the WTO Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) to regulate trade in goods, including the social and environmental implications. Based on participant interest, we will discuss trade and investment-related issues arising under the WTO and regional trade agreements (RTAs) including climate change mitigation, pandemic and public health, food safety, consumer protection, child and forced labour, public morals, the protection of the environment, and similar issues. Particular attention will also be given to the needs of the business community – businesses thrive when government regulations are legitimate, transparent, and stable.

WTO rules allow Members to develop regulatory policies to further their legitimate objectives, and limit a Member's use of trade policy for protectionist purposes. This module will help participants determine where the line is between licit and illicit trade measures, and where Members have room to regulate.

This module examines three important WTO Agreements affecting a Member's ability to apply regulatory policies. It reviews Articles I, III, XI and XX of the General Agreement on Tariffs and Trade (GATT 1994), then focuses on the Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS). The objective is to enable participants to better understand the policy space that Members enjoy, and the limits that these Agreements impose on a Member's regulatory power, thereby allowing policy makers to craft WTO-consistent national legislation that achieves their trade-related health, safety, environmental, business, and trade policy objectives.

Readings, lectures, class discussions, and group presentations will focus on the implementation of the GATT, TBT and SPS Agreements, and the types of regulatory practices and governance failures that might violate these agreements. Participants will

gain a solid understanding of the operation of these Agreements, the relevant WTO “case law” applying these Agreements, and how WTO Members may use taxation schemes, technical regulations, health-related import prohibitions, standards and testing, and certification and labelling programmes as a means to further their objectives. Special attention will be given to the WTO compatibility of pandemic-related health and other trade measures.

Learning Objectives

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

- Understand the scope, legal operation and limitations imposed on Members of GATT 1994 – in particular the non-discrimination principle
- Be familiar with the distinction between a “non-tariff measure” (NTM) and a “non-tariff barrier” (NTB)
- Distinguish between GATT, TBT and SPS, measures and understand which agreement or agreements apply with respect to particular trade measures
- Demonstrate familiarity with the core legal principles and obligations in the TBT and SPS Agreements and relevant TBT and SPS jurisprudence
- Apply the GATT, SPS and TBT Agreements to trade-related health, environmental, social, and consumer issues; understand the limits imposed by the GATT, TBT and SPS Agreements on a Member's national policy space; and distinguish between measures based on legitimate regulatory objectives and protectionist restrictions on trade
- Discuss the relevance and adequacy of the WTO rules in the light of today's regulatory challenges, as well as of public international law, the sustainable development goals, the Paris Agreement, and the Vienna Convention on the Law of Treaties
- Understand the TBT and SPS terms “non-discrimination”, “technical regulation”, “standard”, “conformity assessment procedure”, “risk assessment”, “appropriate level of protection”, “precaution”, “science”, “international standards”, “harmonization”, “mutual recognition”, “equivalence”, and “transparency”
- Appreciate the importance of international standards, the difference between the US and EU approaches to standardization, including in some of their Regional Trade Agreements, and the benefits for WTO Members inherent in the TBT Code of Good Practice (Annex 3)
- Explain the special challenges faced by developing countries seeking to meet the obligations of the TBT and SPS Agreements in their trade relations