

# The ITL course

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- The course's web-page
- The teachers
- Reading: Two alternative books, supplementary reading
- Treaty collection, Global and Regional Treaties
- The Fronter «room»
- As much discussion and interaction as possible
  - Work in groups
  - Prepare for next class
  - Each class: brief introduction to the topic and subsequent discussion – prepare cases, exercises and questions!
  - Mock exam

# The context of ITL: international economic law

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- The core of IEL: trade in goods, trade in services, foreign direct investment
- Bilateral -> multilateral, 1920-40
- UN: ECOSOC: Bretton Woods and Havana
- Five main lines of development
  1. Havana Charter (ITO) -> GATT -> WTO
  2. IMF and the World Bank (IBRD)
  3. Regional economic integration
  4. Bilateral trade treaties -> economic co-operation and multilateralism(?)
  5. Bilateral investment and tax treaties -> co-ordination through OECD and UNCTAD

# The developing nature of ITL

- Bilateral -> multilateral -> regional / bilateral?
  - Differentiated development
  - Do we see a set-back of multilateralism?
  - Mega-regionals: EU - US negotiations, TPP (US, NZ, NGO)
- Contractual->law-making->constitutional/contractual?
  - The purpose of ITL: WTO Preamble: trade interests -> human well-being, sustainable development, poverty reduction
  - Issues addressed: border measures -> domestic measures
  - Special treatment of categories of goods and states?
  - The emergence of "trade and ..." issues: globalization
  - Institutional development: enforcement and dispute settlement
  - Participation and distribution of benefits: global?
- Progressive development
  - The "bicycle hypothesis"?

# WTO preamble

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- **Recognizing** that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, **while** allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

# WTO Preamble 2

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- **Recognizing** further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,
- **Being desirous** of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

# WTO preamble 3

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- **Resolved**, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,
- **Determined** to preserve the basic principles and to further the objectives underlying this multilateral trading system,

# Functions of the WTO

- Art. III of the WTO Agreement
  - Implementation, negotiations, settlement of disputes, trade policy review
  - Coordinate economic policy with the IMF and World Bank
  - Coordinate with other IGOs (art. V)
- Rules concerning:
  - Goods, services, investment(?)
  - Public market intervention
    - Government regulation
    - Subsidies
    - Public procurement / state trading enterprises
    - Intellectual property rights
  - Private market intervention
    - Dumping
    - Competition
- Choice of topics for the course – what is left out?

# Basic substantive rules

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- Market access
  - Border measures (tariffs, import and export restrictions, border control)
- Non-discrimination
  - MFN and national treatment
- "Unfair trade"
  - Creating and maintaining a "level playing field" (subsidies, dumping, public procurement)
- Harmonisation of domestic measures
  - Trade facilitation (technical barriers to trade, facilitation of import / export procedures, IPR)
- "Trade and ..." rules



# Sources of law in the WTO

- Supremacy of the WTO Agreement (art. XVI:3)
- GATT 1947 and GATT 1994
  - The supremacy of the other agreements of Annex 1A over GATT – *lex specialis* (General interpretative note to Annex 1A)
  - "Interpretative Notes", "Understandings" and footnotes
- Vienna Convention on Treaties, basic concepts:
  - What is the "context" for the purpose of agreements under the WTO?
  - What is "agreement" and "subsequent practice" in the context of the WTO?
  - Relationship to other agreements of international law

# VCLT art. 31

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
  - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) ...
3. There shall be taken into account, together with the context:
  - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) any relevant rules of international law applicable in the relations between the parties.

# Institutions and procedure

- Main bodies of the WTO
  - Ministerial Council
  - General Council (also working as Dispute Settlement Body and Trade Policy Review Mechanism)
  - Councils for goods, services and IPR ++
  - Secretary General – Roles art. VI
- Decision-making
  - Tradition of consensus, but majority vote is available (art. IX-X of the WTO Agreement)
  - Amendments – art. X:1 – rounds of negotiation
  - Interpretation – art. IX:2
  - Waivers – art. IX:4
  - Use of “soft law”
- Implementation and dispute settlement
  - Notifications, trade policy review, alternative dispute resolution, dispute settlement with the possibility of appeal

# Membership of the WTO

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- 164 members and slowly increasing
  - The EU as a member
- How to become a member – accession
  - Lengthy accession negotiations!
  - Art. XII of the WTO Agreement
  - Working Party on Accession
  - WTO “acquis”
  - Algeria 29 years and counting! Russia 19 years
  - China’s “market economy” hurdle – to expire this year
- Only trade related obstacles?
- Observers
  - Non-members, IGOs and NGOs in the WTO – art. V

# WTO and domestic law

- Duty to ensure conformity with the WTO agreements, art. XVI:4
  - VCLT art. 27 vs. GATT art. XXIV:12
  - The issue "nullification or impairment of benefits", GATT art. XXIII
- The position of WTO law in domestic law
  - Depends on domestic law – dualism/monism
  - For dualist countries: The doctrine of "treaty-consistent interpretation"
  - For monist countries: Are provisions under the WTO "self-executing" (the issue of direct effect)?
    - Provisions denying self-executing status, e.g. the US
  - Provisions giving procedural rights to private parties, in particular subsidies and dumping