Syllabus (2015–2)

<table>
<thead>
<tr>
<th>Course Title</th>
<th>International Trade Law</th>
<th>Course No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department/ Major</td>
<td>Law</td>
<td>Credit</td>
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<table>
<thead>
<tr>
<th>Class Time/ Classroom</th>
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<table>
<thead>
<tr>
<th>Instructor</th>
<th>Name</th>
<th>Won-mog Choi</th>
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<tbody>
<tr>
<td>Department</td>
<td>Law</td>
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</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:wmchoi@ewha.ac.kr">wmchoi@ewha.ac.kr</a></td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td>010-6656-8218</td>
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<table>
<thead>
<tr>
<th>Office Hours/ Office Location</th>
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<tr>
<td>Thursday, right after class &amp; Friday, 13:45 – 14:30/ at School Office (Law New Building #332)</td>
</tr>
</tbody>
</table>

International Trade Law (Multilateral Rules on Trade of WTO)

I. Course Overview

Such terms as tariff, tax, quota, dumping, subsidy, FTA, trade negotiations, WTO, Uruguay Round, prohibition of agricultural products because of sanitary reasons, Genetically Modified Organisms (GMO), TRIPS and GATS are already familiar to everyone, who is living in this era of proliferating international trade and mass media. However, few of us understand what those terms truly mean and what kinds of implications they bring to international relations, our businesses, and private lives, although those terms have had great impact on our daily lives. In order to understand all of these terms and mechanisms behind them, this course covers the one of the most important areas in the international law and relations: the World Trade Organization (WTO) and multilateral trade rules and their policy implications.

The focus of the course will be given to main principles of the law and policies of international economic relations and their implications on trading systems. The basic objective of this course is to give students a comprehensive overview of the international trade law and multilateral trade policies, which rapidly expands its regulatory influence over the entire international economic relations. The course encourages an understanding of the subject through the study of the text books and reference materials, the analysis of important judicial decisions in a
systematic way and the WTO Panel simulation, designed for students who may practice in the subject area (either in law firms, multinational corporations, legal positions in national governments including judiciaries or international organizations), or for students who would like to have a comprehensive understanding of the subject for scholarly reasons. In order to take this course, **no previous experience or studies are needed.**

II. Course Schedule

This course will consist basically of three parts:

The first part (weeks 1 - 2) will focus on the division of jurisdiction among international organizations in dealing with various international affairs, and on the economic and institutional foundation of the world trade order, as well as introduction to the WTO dispute settlement procedure and decisions by GATT/WTO panels.

The second part (weeks 3 - 11) of the course will be devoted to studies on substantive rules of the WTO jurisprudence (focused on trade in goods) and their policy backgrounds, including non-discrimination, open market, fair trade and minimum standard obligations. During this part, students will learn about the fundamental jurisprudence and policy reasons with which they can identify what is prohibited and what is permitted under the WTO system and why.

The third part (weeks 12 - 13) is going to deal with the regionalism issue. Since the regional trade agreement is getting more important in these days and in the next decades of international trading system, an in-depth analysis of this subject will be tried.

Basic ideas and principles on multilateral rules of trade in services and intellectual property rights will be discussed in the fourth part (weeks 14 - 15).

Weeks 15 - 16 (if time allows and when volunteers exist) will be assigned for the discussions for the future of WTO system and WTO dispute settlement panel simulation. Some students will have chance to be a representative for certain government or a panelist and all students will have a lively experience to witness the WTO dispute settlement procedure in which trade disputes among nations are systematically and amicably solved. Through this experience, students will learn how to strategically respond to WTO panel procedures.

The following is the summary of the schedule:

<table>
<thead>
<tr>
<th>Week</th>
<th>Subject</th>
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<tbody>
<tr>
<td>1 - 2</td>
<td>Division of Jurisdiction among the International Organizations</td>
</tr>
<tr>
<td></td>
<td>Economic Foundations of the World Trade Order: Tariffs/ QRs/ Subsidies</td>
</tr>
<tr>
<td></td>
<td>The Institutional Foundations of the World Trade Order: WTO/ DSP of the WTO</td>
</tr>
<tr>
<td>3 - 11</td>
<td>Principles Governing World Trade in Goods and Their Policy Reasons</td>
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<tr>
<td>3 - 4</td>
<td>Non-Discrimination:</td>
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<td></td>
<td>Most-Favoured-Nation Treatment</td>
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<td></td>
<td>National Treatment</td>
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<tr>
<td>5 - 6</td>
<td>Open Market</td>
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<tr>
<td></td>
<td>Tariffs</td>
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<td></td>
<td>Quantitative Restrictions, State-Trading</td>
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<td>Safeguard Actions</td>
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<tr>
<td>7 - 9</td>
<td>Fair Trade</td>
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<tr>
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<td>Anti-dumping Measures</td>
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<td></td>
<td>Subsidies and Countervailing Measures</td>
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<tr>
<td>10 - 11</td>
<td>Trade and Science</td>
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<td></td>
<td>Sanitary and Phytosanitary Measures</td>
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<td></td>
<td>Technical Barriers to Trade</td>
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<tr>
<td>12 – 13</td>
<td>Regionalism and WTO system</td>
</tr>
<tr>
<td>15 - 16</td>
<td>(if time allows) Future of WTO System and Panel Simulation</td>
</tr>
</tbody>
</table>

III. Assigned Books and Materials

During the course, the following books and materials may be read by students. In reading some thick materials, a skipping may be necessary:

*Textbooks*

1. Texts of the WTO Agreement:
Students are required to bring in class an entire text of WTO Agreements, including, at least, the Agreement Establishing the WTO, GATT, GATS, Anti-dumping Agreement (Agreement on Implementation of Article VI of GATT), Agreement on Subsidies and Countervailing Measures, SPS (Sanitary and Phytosanitary Measures) Agreement, TBT (Technical Barriers to Trade) Agreement, Agreement on Safeguards, Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), and TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement.

※ One of the code books that include all the texts above is: Won-Mog Choi (ed.), Guk-jae Tong-Sang Bub Ki-Bon Ja-Ryo Jip (International Trade Law Selected Documents) (Ewha Womans University Press, 2003) (** This book is generally available at a large book store or at the Ewha Womans University Book Store).

(2) UNCTAD, Dispute Settlement: World Trade Organization:
   Module 3.1 - Overview (UNCTAD/EDM/Misc.232/Add.11)
   Module 3.2 – WTO: Panels (UNCTAD/EDM/ Misc.232/Add.12)
   Module 3.3 – WTO: Appellate Review (UNCTAD/EDM/ Misc.232/Add.17)
   Module 3.4 – Implementation and Enforcement (UNCTAD/EDM/ Misc.232/Add.23)
   Module 3.5 - GATT 1994 (UNCTAD/EDM/Misc.232/Add.33)
   Module 3.8 - Safeguard Measures (UNCTAD/EDM/Misc.232/Add.16)
   Module 3.6 - Anti-dumping Measures (UNCTAD/EDM/Misc.232/Add.14)
   Module 3.7 - Subsidies and Countervailing Measures (UNCTAD/EDM/Misc.232/Add.15)
   Module 3.9 - SPS Measures (UNCTAD/EDM/Misc.232/Add.13)
   Module 3.10 - Technical Barriers to Trade (UNCTAD/EDM/Misc.232/Add.22)
   Module 3.15 – Agriculture (UNCTAD/EDM/ Misc.232/Add.32)
   Module 3.13 - GATS (UNCTAD/EDM/ Misc.232/Add.31)
   Module 3.14 – TRIPS (UNCTAD/EDM/ Misc.232/Add.18)

** The “UNCTAD, Dispute Settlement: World Trade Organization” text book above can be freely downloaded from the “Dispute Settlement Course Modules” of the “Digital Library” of the “UNCTAD”(United Nations Conference on Trade and Development) at following website:
   http://www.unctad.org – Then, search with the key words “Dispute settlement course modules”

(Reference Books)
(1) John Jackson, The World Trading System – Law and Policy of International Economic Relations (MIT Press, 1997) - Although this book is old, it is considered as one of the best books in this field for beginners.
(5) Clair Wilcox, A Charter for World Trade, The Macmillan Company: New York (1949) – This very old book offers unique opportunities to a curious students who are eager to know the very foundation of the Wilsonian vision of regulating global trade by an international trade organization.
(6) Carsten Daugbjerg and Alan Swinbank, Ideas, Institutions, and Trade: The WTO and the Curious Role of EU Farm Policy in Trade Liberalization (2009)
(9) Hannah Murphy, Making of International Trade Policy: NGO’s Agenda-setting and the WTO, Edward Elgar (2010)

IV. Preparation for Classes
For each week of classes, students are required to read in advance the following basic texts of WTO agreements, relevant parts of UNCTAD modules, relevant chapters of reference books, and other relevant materials (most of these relevant materials will be distributed by the professor in advance). Students are also encouraged to read those academic papers or articles included in the list of Optional Readings as time allows:

Week 1 -- UNCTAD Module 3.1 - Overview (UNCTAD/EDM/Misc.232/Add.11)/ UNCTAD Module 3.2 – WTO: Panels / Module 3.3 – WTO: Appellate Review
< Optional Readings for Classes 1 - 2 >
- Patrick A. Messerlin, Three Variations on 'The Future of the WTO', JIEL 8(2) (2005)

Weeks 1 – 2 — Module 3.4 – Implementation and Enforcement / Module 3.5 – GATT 1994 (UNCTAD/EDM/Misc.232/Add.33) / Articles III, IV, IX, XI, XII of Agreement Establishing the World Trade Organization; General Interpretative note to Annex 1A; Articles XXII and XXIII of GATT; Articles 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 21, 22 of Understanding on Rules and Procedures Governing the Settlement of Disputes

< Optional Readings for Weeks 1 - 2 >
- William Davey, The WTO Dispute Settlement System: the First Ten Years. JIEL 8(1).
- Donald McRae, What is the Future of WTO Dispute Settlement?, JIEL 7(1) (2004)


< Optional Readings for Weeks 3 - 4 >
- Appellate Body Report of Chile – Taxes on Alcoholic Beverages (WT/DS110/AB/R) / Philippines – Taxes on Distilled Spirits (WT/DS396, 403) / Thailand – Customs and Fiscal Measures on Cigarettes from Philippines (WT/DS371)


< Optional Readings for Weeks 4 - 5 >
- Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products Recourse to Article 21.5 of the DSU by Argentina (WT/DS207/AB/RW/)
- Mauricio Salas and John Jackson, Procedural Overview of the WTO EC- Banana Dispute, JIEL (2000)

Weeks 5 - 6 – UNCTAD Module 3.15 – Agriculture/ Articles 1, 2, 3, 4, 20, Annex 1, Annex 5, Attachment to Annex 5 of Agreement on Agriculture / any information about Liberalization of Rice Market of Korea (including an interview entitled “Bizline - Full-scale opening vs delaying, What is the future of Korea’s rice market?” in YouTube – www.youtube.com; and another interview entitled “Business Today; Korea and Rice Market Liberalization” at http://www.arirang.co.kr/news/News_View.asp?nseq=164827); Schedule LX – Goods schedule of Republic of Korea and Its Certification of Modifications and Rectifications to Schedule LX (WT/Let/492) – available at http://www.wto.org/eng/htratop_e/schedules_e/goods_schedules_table_e.htm#kor
Article XIX of GATT; Articles 2, 4, 5, 6, 7, 8, 12 of Agreement on Safeguard / Appellate Body Report of United States - Definitive Safeguard Measures on Imports of Certain Steel Products (brought by Korea, WT/DS251/AB/R)

< Optional Readings for Weeks 5 - 6 >
- Schedule LXXV – Goods Schedule of the Philippines and its Certification of Rectifications and Modifications (WT/let/562)
- Waiver for the introduction of HS2007 changes (WT/L/833) / Japan – Goods Schedule and its Certification of Modifications and Rectifications to Schedule (WT/Let/362)
- Any information on Japanese rice market liberalization policy (including an article entitled “Trade Liberalization and Rice Farming in Japan and Heilongjiang China at
http://ap.fftc.agnet.org/ap_db.php?id=101
- Taiwan – Goods Schedule and its Certification of Modifications and Rectifications to Schedule (WT/Let/578) - available at http://www.wto.org/english/thewto_e/countries_e/chinese_taipei_e.htm/
- A documentary film entitled “Food from the Heavens – Taiwan’s Rice Culture” at http://www.youtube.com/watch?v=0wXjlrvRQYc
- Modalities for the Establishment of Specific Binding Commitments under the Reform Programme (MIN.GNG/MA/W/24, 20 December 1993):
  - Any materials on WTO Agreement on Agriculture
  - Any news reports on Rice Market Liberalization of Japan, Korea, Taiwan, and the Philippines

Week 8 – Mid-term Exam (Oct 15)

Weeks 7 & 9 -- Articles VI, XVI of GATT; Articles 2, 3, 4, 5, 8, 11, 17 of Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Articles 1, 2, 3, 4, 5, 6, 7, 11, 14, 15, Annex I of Agreement on Subsidies and Countervailing Measures / UNCTAD Module 3.6 - Anti-dumping Measures (UNCTAD/EDM/Misc.232/Add.14) / UNCTAD Module 3.7 - Subsidies and Countervailing Measures (UNCTAD/EDM/Misc.232/Add.15) / Appellate Body Report of European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen From India (WT/DS141/AB/R) / Appellate Body Report of United States – Subsidies on Upland Cotton (WT/DS267/AB/R) / US – Subsidies on Upland Cotton, Recourse to Article 21.5 of the DSU by Brazil (WT/DS267/AB/RW)

< Optional Readings for Weeks 7 - 9 >


< Optional Readings for Weeks 10 - 11 >
- United States – Certain Measures Affecting Imports of Poultry from China (WT/DS392) / US – Certain Country of Origin Labelling Requirements (WT/DS384, 386)

Weeks 12 – 13 – Article XXIV of GATT; Article V of General Agreement on Trade in Services; Article 4 of TRIPS Agreement; Understanding on the Interpretation of Article XXIV of the GATT 1994 / Appellate Body Report of Brazil - Measures Affecting Imports of Retreaded Tyres (WT/DS332/AB/R) / a quick look at the text of Free Trade Agreement between Korea and United States / a quick look at the Free Trade Agreement between Korea and China

< Optional Readings for Weeks 12 - 13 >
- Won-mog Choi, Legal Problems of Making Regional Trade Agreements with Non-WTO-Member States, JIEL (2005)
- Won-mog Choi, Regional Economic Integration in East Asia: Prospect and Jurisprudence, JIEL (2003)
- Won-mog Choi, Aggressive Regionalism in Korea-U.S. FTA: The Present and Future of Korea’s FTA Policy, JIEL (2009)

Week 14 – Final Exam (Oct 15)


<Optional Readings for Weeks 14 - 16>

- Rudolf Adlung, Public Services and the GATS, JIEL 9(2) (2006)

WTO Panel and Appellate Body Decisions (underlined materials) can easily be downloaded from the "disputes" section of the WTO Website (http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm). Students themselves should obtain the reports from the website and read them before each relevant class. In case of lengthy report, students need not read the front part of Factual Aspects and Main Arguments of the report but can only read the rear part starting from the 'Findings' (or some equivalent sections). Students may usefully search WTO cases through the World Trade Law Net service (www.worldtradelaw.net), which categorizes cases in a systematic way and serves summarized versions of WTO case reports.

**How to use the WTO report summary service:** To download the WTO report summary from the "Worldtradelaw.net" database service, students can visit the website http://www.worldtradelaw.net and click on the "DSC Features" section -> "DSCs for WTO Panel/Appellate Body Reports", and then search a particular report by the title or DS number, and download the summary by clicking on "Panel" or "Appellate Body". These summaries are quite helpful to understand long reports as a whole, given that these include only essential parts of the reports. It is a good way to start to read the summaries first, and, if students still have difficulties of understanding, they may try to read particular parts of the original reports on a selective basis. This may also save precious time for students struggling with a large volume of mandatory reading materials everyday. Note that this summary service is only accessible in the campus of universities that have subscribed to this service.

V. Exam and Grading

<Course Format>

<table>
<thead>
<tr>
<th>Lecture</th>
<th>Discussion/Presentation</th>
<th>Experiment/Practicum</th>
<th>Field Study</th>
<th>Other</th>
</tr>
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<tbody>
<tr>
<td>60%</td>
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<td>%</td>
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<Grading Policy>

<table>
<thead>
<tr>
<th>Midterm Exam</th>
<th>Final Exam</th>
<th>Quizzes</th>
<th>Presentation</th>
<th>Projects</th>
<th>Assignments</th>
<th>Participation</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 %</td>
<td>50 %</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>30 %</td>
<td>%</td>
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</tbody>
</table>

* If a student misses more than one-sixth of all the classes, she will get a grade of F.

* Cheating will be handled according to the rule of academic affairs established by Ewha Law School.

* Evaluation of group projects may include peer evaluations.
Class attendance is strictly required, and students must be fully prepared for each class. Since class discussion is considered important, it may count in the grade. The purpose of classroom discussion is to develop students' understanding of the particular concepts of law and the legal system, and to respond to questions which students may have. Occasionally the professor will use the classroom discussion to present his own views on certain subjects. The classroom discussion is not intended to cover every aspect of the materials in the textbook, not even all the materials which are assigned to the student. On the contrary, the classroom discussion is designed to highlight important points in these materials, or to give students an opportunity to raise questions about topics on which they are confused or concerned and to debate certain issues with their fellow students. Classroom discussion or lecture will also be used to present very current material not available in published form, or to present “off-the-record” analysis or comments, to help with understanding the subject.

Several students can volunteer to prepare for a briefing on a WTO case and present in class. These students can write a case summary (2 – 5 pages) to distribute in class, which will help saving time and sharing information for each other. When they prepare for the briefing, they do not need to summarize every point and content included in the WTO report. Focusing on the main subject of the week of the course, they should summarize only relevant facts and substantive findings by the panel. In other words, any procedural issues and minor findings by the panel should not be covered at all. For example, when students volunteer to present the “Korea - Taxes on Alcoholic Beverages” case during the weeks 3 - 4, they may focus on the issue of discrimination only, because the subject matter of the weeks’ study is nothing other than the non-discrimination principle. Therefore, their presentation may only include the following points: What were discriminations at issue? In this regard, why the complaining party brought the case? What was argument by defending party in regard to discriminations? How did the WTO Appellate Body rule on this issue? And Why?

Occasionally, students may want to dig deeper into particular subjects, and read more widely than the materials in the textbook permit. In particular, I would encourage students, when they have the time, to go to some of the secondary works (law journal articles and legal treaties) which are cited or extracted in the textbook or distributed materials.

Grading will depend primarily on the final examination. Classroom discussion and participation, including case presentations, will also have significant influence on grade.

VI. Special Accommodations

* According to the University regulation #57, students with disabilities can request special accommodation related to attendance, lectures, assignments, and/or tests by contacting the course professor at the beginning of semester. Based on the nature of the students’ requests, students can receive support for such accommodations from the course professor and/or from the Support Center for Students with Disabilities (SCSD).

* The contents of this syllabus are not final—they may be updated.
I. WHY NATIONS TRADE?

* Economic Theory of Information *(Anthony Downs)*: Most people earn their income in one area but spend it in many; hence the area of earning is much more vital to them than any one area of spending. People are therefore more likely to invest in information to exert political influence in their role as income receivers that in their role as income spenders. As a consequence producers rather than consumers tend to influence the formation of trade policies.

Comparative advantages v.s. Competitive advantages

Sources of Comparative Advantage
Demand among nations is considered the same. / Supply difference

1) Technology – Ricardo

2) Factor endowments – Hecksher/Ohlin

3) Technology-gap model for trade (Raymond Vernon)

4) Economies of scale (Krugman, Kindleberger)

5) Industrial policy

Comparative Advantage Theory (Ricardian Model)

<table>
<thead>
<tr>
<th></th>
<th>US</th>
<th>Bangladesh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cars</td>
<td>20</td>
<td>1</td>
</tr>
<tr>
<td>Bicycle</td>
<td>500</td>
<td>50</td>
</tr>
<tr>
<td>Relation</td>
<td>1 C or 25 B</td>
<td>1 C or 50 B</td>
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</tbody>
</table>

Both countries gain if one car is traded with **26 B – 49 B**
II. RANKING OF TRADE POLICY

* **Tariff**: a tax levied on imports at the time of importation, which usually has the effect of increasing the prices at which the imports are sold. A duty (or tax) levied upon goods transported from one customs area to another either for protective or revenue purposes. Tariffs raise the prices of imported goods, thus making them generally less competitive within the market of the importing country unless the importing country does not produce the items so tariffed.

* **Quotas**: an upper limit on the quantity or value of imports allowed during a given time period. Explicit limits, or quotas, on the physical amounts of particular commodities that can be imported or exported during a specified time period, usually measured by volume but sometimes by value.

* **Subsidy**: An economic benefit granted by a government to producers of goods, often to strengthen their competitive position. The subsidy may be direct (a cash grant) or indirect (low-interest export credits guaranteed by a government agency, for example).

* **VER(VRA)**: Arrangements through which exporters voluntarily restrain certain exports, usually through export quotas, to avoid economic dislocation in an importing country, and to avert the possible imposition of mandatory import restrictions.

* **Tax**: A payment exacted on persons, corporations and other economic entities by a government to help pay for government operations or to discourage the consumption of the goods or services taxed by raising their cost.

1. **Efficiency (effectiveness)**
   (1) Subsidy
   (2) Tariff
   (3) Quotas
   (4) VER

2. **Political Process**
   (1) VER
   (2) QR
   (3) Tariff
   (4) Subsidy

3. **Legal Status**
   (1) Sub
   (2) Tariff
   (3) QR
   (4) VER
- Without trade barriers, trade will naturally occur to get the benefit of trade, even between highly-unbalanced nations.

- It is because (i) no matter how inefficient or underdeveloped its economy is, any country can enjoy “comparative advantage”; and (ii) what brings about international trade is not competitive advantage but comparative advantage. Therefore, any underdeveloped economy can gain from trade with highly-developed economy.

- Free trade with the US? – how dangerous! Most of Korean industries will disappear, upon facing competition with American companies.

- Misunderstanding about the trade mechanism. Misconception about the driving force of trade – what matters is not competitive advantage, but comparative advantage. So, if Korea and US open up against each other, what are in competition to be bankrupt are actually Korean cars and Korean orange. Not competition between Korean orange (cars) and American orange (cars).

- Trade allows countries to concentrate on what they can do best. Trade translates the individual advantages of many countries into maximum productivity for all.

- Given these, minimizing governmental interference with trade flows is vital goal of world trading system. Industrial policies that purport to create artificial comparative advantages must be properly deal with so as to minimize their harmful effects on their own economy as well as on the world economy.
Therefore, a common multilateral trade rules are needed to discipline any harmful industrial policies and to minimize its impact on all.

These rules also give a ground for a national government to overcome political pressures from inside that tend to arise according to the principle of Economic Theory of Information.

“Look, there is a rule that prohibits quota! Another rule that requires tariff bindings. So even if we chose to protect you, it would end up being a violation of intl law. Having said this, sorry, I cannot give what you want.”

This is indeed a good excuse. And every state needs this. That is why WTO is prospering and even rich and powerful nations tend to abide by the rules. Sometimes, they may digress from the WTO rules in a short term due to certain inside politics, but a strong driving force to come back to the rules-based system always exists on a longer term basis. Because they need the rules and observance of the rules can make them free from endless pressure coming from special interest politics.

WTO Trade Rules are made and enforced, based on this delicate mosaic of economics, politics, and simple necessity. And it is fair to say that this mosaic has turned out to be quite stable, working as a major factor that has brought a global economic booming for almost every GATT/WTO member economy since the 2nd WW.