CONTENTS

List of Figures xiv Preface xv List of Abbreviations xvii Table of WTO Cases xxi Table of GATT Cases xliii

1 International Trade and the Law of the WTO 1

- 1 Introduction 1
- 2 Economic Globalisation and International Trade 3
 - 2.1 Emergence of the Global Economy 3
 - 2.2 A Blessing or a Curse? 14
 - 2.3 Free Trade versus Restricted Trade 19
 - 2.4 International Trade to the Benefit of All? 29
- 3 The Law of the WTO 33
 - 3.1 International Rules on International Trade 34
 - 3.2 Basic Rules of WTO Law 38
- 4 Sources of WTO Law 43
 - 4.1 The Marrakesh Agreement Establishing the World Trade Organization 43
 - 4.2 Other Sources of WTO Law 54
- 5 WTO Law in Context 65
 - 5.1 WTO Law and International Law 65
 - 5.2 WTO Law and National Law 69
- 6 Summary 77 Further Readings 79

2 The World Trade Organization 80

- 1 Introduction 80
- 2 The Origins of the WTO 81
 - 2.1 The General Agreement on Tariffs and Trade of 1947 82
 - 2.2 Uruguay Round of Multilateral Trade Negotiations 85

Van den Bossche, Peter The law and policy of the World Trade Organization vi Contents

- 3 Mandate of the WTO 88
 - 3.1 Objectives of the WTO 88
 - **3.2** Functions of the WTO 90
- 4 Membership and Institutional Structure 113
 - 4.1 Membership of the WTO 113
 - 4.2 Institutional Structure of the WTO 128
- 5 Decision-Making in the WTO 145
 - 5.1 WTO Decision-Making in Theory 146
 - 5.2 WTO Decision-Making in Practice 151
 - 5.3 Participation in WTO Decision-Making 152
- 6 Other Issues 156
 - 6.1 Legal Status of the WTO 156
 - 6.2 WTO Budget 157
- 7 Summary 159 Further Readings 162

3 WTO Dispute Settlement 164

- 1 Introduction 165
- 2 Jurisdiction of the WTO Dispute Settlement System 168
 - 2.1 Nature of the Jurisdiction 168
 - 2.2 Scope of the Jurisdiction 169
- 3 Access to the WTO Dispute Settlement System 179
 - 3.1 Right of Recourse to WTO Dispute Settlement 179
 - 3.2 Access of Members other than the Parties 183
 - 3.3 Indirect Access to the WTO Dispute Settlement System 184
- 4 Key Features of WTO Dispute Settlement 185
 - 4.1 Single, Comprehensive and Integrated System 186
 - 4.2 Different Methods of Dispute Settlement 187
 - 4.3 Multilateral Dispute Settlement 188
 - 4.4 Preference for Mutually Acceptable Solutions 189
 - 4.5 Mandate to Clarify WTO Provisions 190
 - 4.6 Remedies for Breach 199
- 5 Institutions of WTO Dispute Settlement 209
 - 5.1 Dispute Settlement Body 209
 - 5.2 Panels 212
 - 5.3 The Appellate Body 233
 - 5.4 Other Entities Involved in WTO Dispute Settlement 245
- 6 Process of WTO Dispute Settlement 246
 - 6.1 General Observations on the WTO Dispute Settlement Process 248
 - 6.2 Consultations 266
 - 6.3 Panel Proceedings 271
 - 6.4 Appellate Body Proceedings 278
 - 6.5 Implementation and Enforcement 285
- 7 Developing-Country Members and WTO Dispute Settlement 292
 - 7.1 Special Rules for Developing-Country Members 292

- 7.2 Legal Assistance for Developing-Country Members 293
- 8 Challenges to WTO Dispute Settlement 294
- 9 Summary 296 Further Readings 303

4 Most-Favoured-Nation Treatment 305

- 1 Introduction 305
- 2 Most-Favoured-Nation Treatment under the GATT 1994 307
 - 2.1 Nature of the MFN Treatment Obligation of Article I:1 of the GATT 1994 *307*
 - 2.2 MFN Treatment Test of Article I:1 of the GATT 1994 311
 - 2.3 Most-Favoured-Nation Treatment Obligation and the Enabling Clause of the GATT 1994 321
- 3 Most-Favoured-Nation Treatment under the GATS 325
 - 3.1 Nature of the MFN Treatment Obligation of Article II:1 of the GATS 325
 - 3.2 MFN Treatment Test of Article II:1 of the GATS 327
 - **3.3** Deviations from the Most-Favoured-Nation Treatment Obligation under the GATS *338*
- 4 Summary 339 Further Readings 340

5 National Treatment 341

- 1 Introduction 341
- 2 National Treatment under the GATT 1994 342
 - 2.1 Nature of the National Treatment Obligation of Article III of the GATT 1994 344
 - 2.2 National Treatment Test for Internal Taxation on Like Products 351
 - 2.3 National Treatment Test for Internal Taxation on Directly Competitive or Substitutable Products 365
 - 2.4 National Treatment Test for Internal Regulation 376
- 3 National Treatment under the GATS 399
 - 3.1 Nature of the National Treatment Obligation of Article XVII:1 of the GATS 399
 - 3.2 National Treatment Test of Article XVII:1 of the GATS 402
- 4 Summary 412 Further Readings 414

6 Tariff Barriers 415

- 1 Introduction 415
- 2 Customs Duties on Imports 417
 - 2.1 Definition and Types 417
 - 2.2 Purpose of Customs Duties on Imports 422

viii Contents

SCHLARD CROSS STREET OF MARK SHOULD CROSS STREET, SHOULD CROSS STRE

- 2.3 Customs Duties as a Lawful Instrument of Protection 423
- 2.4 Negotiations on the Reduction of Customs Duties 423
- 2.5 Tariff Concessions and Schedules of Concessions 436
- 2.6 Protection of Tariff Concessions 442
- 2.7 Modification or Withdrawal of Tariff Concessions 447
- 2.8 Imposition of Customs Duties on Imports 450
- 3 Other Duties and Charges on Imports 461
 - 3.1 Definition and Types 462
 - 3.2 Rule Regarding Other Duties or Charges on Imports 464
 - 3.3 Measures Exempted from the Rule 466
- 4 Customs Duties and Other Duties and Charges on Exports 469
 - 4.1 Definition and Purpose 470
 - 4.2 Rules Applicable on Export Duties 471
- 5 Summary 474 Further Readings 476

7 Non-Tariff Barriers 478

- 1 Introduction 479
- 2 Quantitative Restrictions on Trade in Goods 480
 - 2.1 Definition and Types 480
 - 2.2 Rules on Quantitative Restrictions 482
 - 2.3 Administration of Quantitative Restrictions 492
 - 2.4 Special and Differential Treatment 498
- 3 Other Non-Tariff Barriers on Trade in Goods 498
 - 3.1 Lack of Transparency 499
 - 3.2 Unfair and Arbitrary Application of Trade Measures 504
 - 3.3 Customs Formalities and Procedures 510
 - 3.4 Government Procurement Laws and Practices 512
 - 3.5 Other Measures and Actions 514
- 4 Market Access Barriers to Trade in Services 517
 - 4.1 Definition and Types of Market Access Barriers 518
 - 4.2 Rules on Market Access Barriers 520
 - 4.3 Negotiations on Market Access for Services 521
 - 4.4 Schedules of Specific Commitments 525
 - 4.5 Modification or Withdrawal of Commitments 532
- 5 Other Barriers to Trade in Services 534
 - 5.1 Lack of Transparency 534
 - 5.2 Unfair and Arbitrary Application of Trade Measures 535
 - 5.3 Licensing and Qualification Requirements and Technical Standards 536
 - 5.4 Government Procurement Laws and Practices 537
 - 5.5 Other Measures and Actions 538
- 6 Summary 540 Further Readings 543

ix Contents

ere subsciell CARDER Stores of ADMINISTER STORES

8 General and Security Exceptions 544

- 1 Introduction 544
- 2 General Exceptions under the GATT 1994 546
 - 2.1 Key Features of Article XX of the GATT 1994 547
 - 2.2 Two-Tier Test under Article XX of the GATT 1994 554
 - 2.3 Specific Exceptions under Article XX of the GATT 1994 556
 - 2.4 Chapeau of Article XX of the GATT 1994 592
 - 2.5 Policy Space for Members to Protect Other Societal Values 604
- 3 General Exceptions under the GATS 605
 - 3.1 Two-Tier Test under Article XIV of the GATS 606
 - 3.2 Specific Exceptions under Article XIV of the GATS 607
 - 3.3 Chapeau of Article XIV of the GATS 615
 - 3.4 The Prudential Exception under the GATS Annex on Financial Services *617*
- 4 Security Exceptions under the GATT 1994 and the GATS 618
 - 4.1 Article XXI of the GATT 1994 618
 - 4.2 Article XIV bis of the GATS 623
- 5 Summary 623 Further Readings 629

9 Economic Emergency Exceptions 630

- 1 Introduction 630
- 2 Safeguard Measures under the GATT 1994 and the *Agreement on Safeguards* 631
 - 2.1 Requirements for the Use of Safeguard Measures 634
 - 2.2 Domestic Procedures and Notification and Consultation Requirements 645
 - Consultation Requirements 645
 - 2.3 Characteristics of Safeguard Measures 647
- 3 Safeguard Measures under other WTO Agreements 655
 - 3.1 Safeguard Measures under the Agreement on Agriculture 655
 - 3.2 Safeguard Measures under China's Accession Protocol 657
 - 3.3 Safeguard Measures under the GATS 658
- 4 Balance-of-Payments Measures under the GATT 1994 and the GATS 659
 - 4.1 Balance-of-Payments Measures under the GATT 1994 659
 - 4.2 Balance-of-Payments Measures under the GATS 668
- 5 Summary 668 Further Readings 670

10 Regional Trade Exceptions 671

- 1 Introduction 671
- 2 Proliferation of Regional Trade Agreements 673
- 3 Regional Trade Exceptions under the GATT 1994 679
 - 3.1 Exceptions Relating to Customs Unions 680
 - 3.2 Exceptions Relating to Free-Trade Areas 685

- 2.2 Entities Covered by the TBT Agreement 895
- 2.3 Temporal Scope of Application of the TBT Agreement 896
- 2.4 Relationship with Other WTO Agreements 897
- 3 Substantive Provisions of the TBT Agreement 899
 - 3.1 MFN Treatment and National Treatment Obligations 899
 - **3.2** Obligation to Refrain from Creating Unnecessary Obstacles to International Trade *912*
 - 3.3 Obligation to Base Technical Barriers to Trade on International Standards *921*
 - 3.4 Other Substantive Provisions 925
- 4 Institutional and Procedural Provisions of the TBT Agreement 929
 - 4.1 TBT Committee 930
 - 4.2 Dispute Settlement 931
 - 4.3 Technical Assistance 932
- 5 Summary 932 Further Readings 934

14 Sanitary and Phytosanitary Measures 935

- 1 Introduction 935
- 2 Scope of Application of the SPS Agreement 937
 - 2.1 Measures to Which the SPS Agreement Applies 937
 - 2.2 Entities Covered by the SPS Agreement 941
 - 2.3 Temporal Scope of Application of the SPS Agreement 942
 - 2.4 Relationship with Other WTO Agreements 943
- 3 Substantive Provisions of the SPS Agreement 944
 - 3.1 Basic Principles 945
 - 3.2 Goal of Harmonisation 951
 - 3.3 Obligations Relating to Risk Assessment 955
 - 3.4 Obligations Relating to Risk Management 961
 - 3.5 Provisional Measures and the Precautionary Principle 967
 - 3.6 Other Substantive Provisions 973
- 4 Institutional and Procedural Provisions of the SPS Agreement 983
 - 4.1 SPS Committee 983
 - 4.2 Dispute Settlement 985
 - 4.3 Technical Assistance 989
- 5 Summary 990 Further Readings 992

15 Intellectual Property Rights 993

- 1 Introduction 994
- 2 The Origins and Objectives of the TRIPS Agreement 994
 - 2.1 Origins of the TRIPS Agreement 995
 - 2.2 Objectives and Principles of the TRIPS Agreement 996

- xiii Contents
 - 3 Scope of Application of the TRIPS Agreement 998
 - 3.1 Substantive Scope of Application 998
 - 3.2 Temporal Scope of Application 1000
 - 4 General Provisions and Basic Principles of the TRIPS Agreement 1001
 - 4.1 Relationship between the *TRIPS Agreement* and WIPO Conventions 1002
 - 4.2 The National Treatment Obligation 1003
 - 4.3 The Most-Favoured-Nation Treatment Obligation 1009
 - 4.4 Exhaustion of Intellectual Property Rights 1011
 - 5 Substantive Protection of Intellectual Property Rights 1013
 - 5.1 Copyright and Related Rights 1013
 - 5.2 Trademarks 1021
 - 5.3 Geographical Indications 1029
 - 5.4 Patents 1033
 - 6 Enforcement of Intellectual Property Rights 1042
 - 6.1 General Obligations 1043
 - 6.2 Civil and Administrative Procedures and Remedies 1044
 - 6.3 Provisional Measures and Border Measures 1046
 - 6.4 Criminal Procedures 1047
 - 6.5 Acquisition and Maintenance of Intellectual Property Rights 1047
 - 7 Institutional and Procedural Provisions of the TRIPS Agreement 1048
 - 7.1 Council for TRIPS 1048
 - 7.2 Transparency 1049
 - 7.3 Dispute Settlement 1049
 - 8 Special and Differential Treatment of Developing-Country Members 1051
 - 8.1 Transitional Periods 1051
 - 8.2 Technical Assistance and Transfer of Technology 1053
 - 9 Summary 1054

Further Readings 1056

Index 1057