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Introduction to World Trade Law

The scope of the field of 'World Trade Law' is somewhat difficult to define. In part, this is because a number of terms have been used to describe it: International Economic Law, International Trade Law, Global Trade Law and International Trade Regulation, among others. All seem to refer to generally the same subject matter, although there may be slight variations. There are a wide range of topics that have, to some extent, aspects that are 'global' or 'international' or 'world-wide'; that relate to 'trade' or 'economics'; and that are 'legal' or 'regulatory' in nature. We chose the term 'World Trade Law' in large part because it emphasises the central role of the World Trade Organization (WTO) in regulating the rules of world trade. The WTO is not the only relevant legal instrument or international organisation, but it is the broadest and most comprehensive in its coverage, and to some extent governs other bilateral and regional agreements in this area. In addition, while we address various 'economic' issues in this book, the core focus is on 'trade' issues. To the extent that other issues are discussed, it is in large part because of their connection to trade. Thus, 'World Trade Law' seemed the most appropriate title for this volume.

The 'World Trade Law' covered by this book focuses on the legal instruments that regulate trade flows. This includes international agreements related to trade, as well as certain domestic laws affecting trade flows. The international agreements begin with the WTO Agreement, which established the World Trade Organization. With 155 countries (or customs territories) as members as of this writing (and many more attempting to join), the WTO is almost a fully global agreement at this point. It provides a binding set of rules on a wide range of trade-related topics (including trade in goods and services, intellectual property protection, as well as a few limited rules on investment).

In addition to the WTO, there are the numerous bilateral, regional and plurilateral trade agreements. These agreements are, in a sense, still part of the multilateral system. This is the case because the WTO Agreement establishes conditions which these agreements must meet in order to be permitted under WTO rules. However, these agreements often go further in terms of economic integration than do WTO rules, so there are important substantive differences. The most prominent of the regional agreements are the European Union (EU), the North American Free Trade Agreement (NAFTA), Mercosur (the Southern Common Market) and the ASEAN Free Trade Area (AFTA). Having proliferated in large numbers in recent years, bilateral agreements are increasingly gaining in importance in any 'World Trade Law' discussion or debate.

Investment agreements also play a significant role in trade law. Traditionally, these

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agreements have taken the form of bilateral investment treaties, under which the signatories promise to give certain treatment to inward investment in their territory. Recently, though, many bilateral and regional trade agreements have now incorporated investment provisions, thus combining both trade and investment into a single agreement.

In terms of domestic law, the key areas covered are the so-called 'trade remedies', where domestic agencies oversee a quasi-judicial process for putting up barriers to both fair and unfair trade (within the boundaries of certain international rules). Also important is customs administration, under which governments collect duties and otherwise regulate imports and exports.

While this book does briefly cover domestic laws, the focus is on the international agreements, with a heavy emphasis on the rules of the WTO. In a sense, WTO rules are an umbrella under which almost everything else falls. The WTO sets the international trade rules and regulates regional and bilateral trade agreements and domestic trade laws.

Before moving on to the substance of this text, it is important that students are first introduced to international trade and economics more generally. We will do so in this chapter by looking at how trade has played, and continues to play, an important role in the world economy. As will be seen, the trend is towards more trade and deeper international integration. The chapter then asks and attempts briefly to answer the following questions: why do nations trade? why is integration increasing? what is the effect of this? In answering these questions, we present several extracts providing various perspectives on globalisation and trade. Finally, we provide an outline of the structure of the book.

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I. INCREASED TRADE AND DEEPER INTEGRATION: GLOBALISATION!

'Globalisation' is an often spoken but seldom defined term used by many to describe the growing inter-connectedness of the world. This inter-connectedness, of course, includes but is not limited to trade. The ability to speak on the telephone or send an email to someone in another country, to send a parcel or travel beyond one's borders with relative ease are all the result of 'globalisation'. The ability to purchase a product made in another country, or conversely to sell a product beyond one's own border, as well as the ability to make an investment in a foreign country, are also examples of 'globalisation'.

While some portray 'globalisation' as a new trend, this cannot be farther from the truth. 'Globalisation', in its rawest form, began with the first human migrants from Africa over 60,000 years ago. Continual movement of people, whether by choice, necessity (due to, for instance, natural disaster) or coercion (due to, say, an invading army), as well as the emergence of powerful nations, firmly established the position of 'globalisation' in the world.

It is often the emergence of technological advances that increases the pace of 'globalisation'. For instance, writing in the 1850s, David Livingstone stated:

> The extension and use of railroads, steamships, telegraphs, break down nationalities and bring peoples geographically remote into close connection commercially and politically. They make the world one, and capital, like water, tends to a common level.[1]

Today, relatively inexpensive air travel, telephone and computer network coverage, and a host of other recent technological advances, have taken this further and created a world where one can instantly connect to others in every country in the world.

The impact of 'globalisation' on world trade law has run a similar course. New technologies, such as relatively safe ocean-going vessels, created opportunities for explorers to 'discover' new lands and establish trading routes. This, in combination with colonisation, allowed merchants of varying countries to trade their wares while also providing a more diverse range of products to the populace (whether it be food, wine, spices, silk, cloth, etc).

By the 1910s, trade (imports and exports) in goods as a percentage of gross domestic product (GDP)—output—had reached 12 per cent in several colonising nations. This level of trade diminished with increased protectionism and two world wars and, in fact, did not return until the 1970s. Thus, it can unquestionably be stated that 'globalisation' is not new. Instead, it is a new term to describe a very old process.[2]

It can also be stated that the world trade-to-GDP ratio has continued to grow. In other words, the importance of trade to the world is increasing. While part of the growth can be attributed to technological advances, a large part is due to the reduction in trade barriers and trade stability brought about by the GATT/WTO system. As noted, the legal obligations resulting from such international agreements form the substance of this book, but it is worthwhile at this point to provide some statistics on the trends in world trade.

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(a) Increased Trade and Increased Importance of Trade

The first statistical point to make is simply that trade, as a whole, is increasing. Table 1.1 shows a consistent rise in exports and imports throughout the decades. Notably, it also shows the rapid rise in trade in the period following the conclusion of the Uruguay Round and advent of the WTO in 1995.

Table 1.2 shows the percentage growth in world merchandise exports and production from 2005 to 2010; of note, while the effects of the global financial crisis were devastating to the 2009 trade figures, the world strongly rebounded in 2010. It is also worth noting the consistently stronger growth in trade relative to GDP, and in the case of 2009

Table 1.1 World Merchandise Trade
(US dollars at current prices (billions))

	1948	1953	1963	1973	1983	1993	2003	2010
World exports	59	84	157	579	1838	3676	7377	14851
World imports	62	85	164	594	1882	3786	7695	15077

[1] As cited in 'The Early Pioneers', *The Economist*, 28 July 2007, 76.
[2] *Ibid.*

Table 1.2 Growth in the volume of world merchandise exports and production, 2005–10
(Annual percentage change)

	2005–10	2008	2009	2010
World merchandise exports	3.5	2.5	–12.0	14.0
Agricultural products	3.5	2.5	–2.5	7.5
Fuels and mining products	1.5	1.0	–5.5	5.5
Manufactures	4.0	2.5	–15.0	18.0
World merchandise production	2.0	1.0	–2.5	4.0
Agriculture	2.0	3.5	0.5	0.0
Mining	0.5	1.5	–1.5	2.0
Manufacturing	2.5	0.0	–4.0	5.5
World GDP	2.0	1.5	–2.5	3.5

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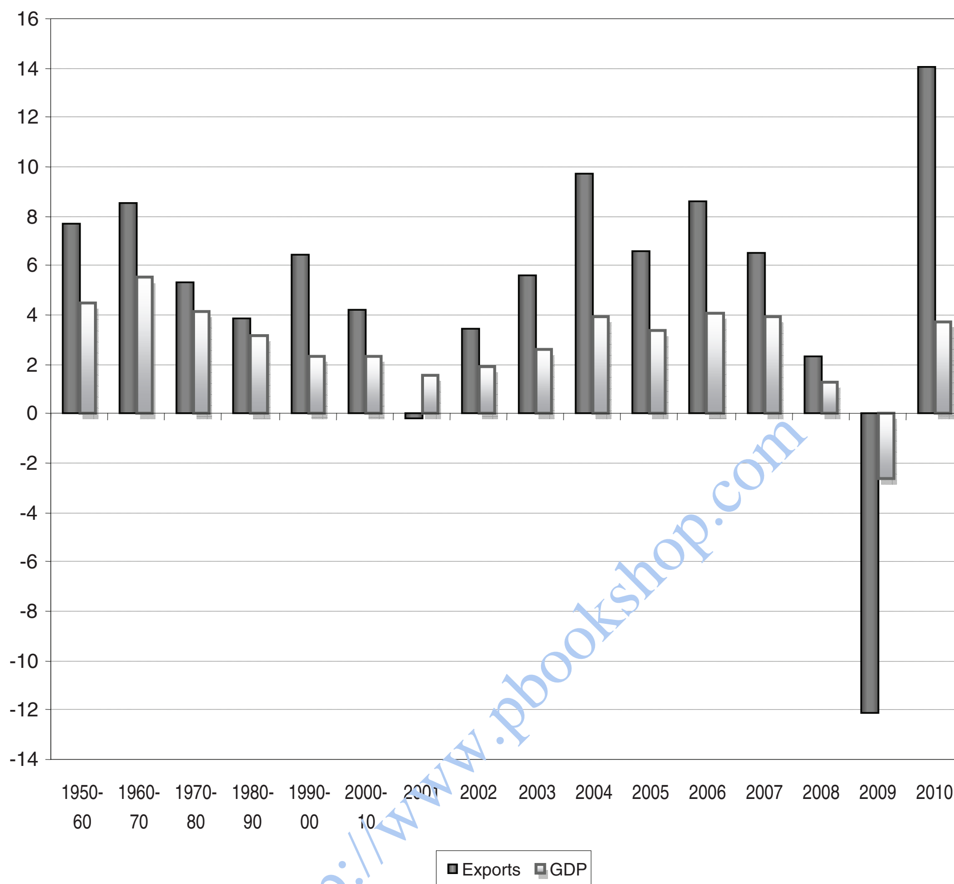
the deeper loss of trade volume relative to the decline in GDP. The trade-to-GDP ratio is discussed in more detail below.

This consistently strong growth rate has correspondingly led to rises in GDP in every continent.[3] Not only are global GDP and the level of global trade increasing, but so is trade as a percentage of world output trade, with trade now accounting for approximately 25 per cent of world output, up from 15 per cent in the 1980s.

Moreover, as briefly noted above, the importance of international trade relative to domestic transactions is also increasing. This can be measured by using a trade-to-GDP ratio, which measures the average share of exports and imports of goods and services in GDP. Often referred to as a 'trade openness' ratio, the term is in fact misleading, as a low ratio does not necessarily imply high tariff or non-tariff protection, but may be due to other factors. For instance, international trade seems especially important for smaller countries (whether it be in terms of land mass or population) that are in close proximity to countries with open trade regimes. Larger, as well as more isolated countries tend to have lower trade-to-GDP ratios. Other factors, such as history, culture, trade policy, the structure of the economy and the presence of multinational firms, also help explain differences in trade-to-GDP ratios across countries. Regardless, it is clear that total trade (exports and imports) of both goods and services as a percentage of GDP is increasing. Remembering that the trade-to-GDP ratios of the industrialised countries reached 12 per cent in the 1910s before falling and only recovering to those levels again in the 1970s, the current statistics show the substantial increase in importance of trade over the last three decades, and even a large increase since 1995. Figure 1.1 illustrates not only the consistent rise in the percentage of world exports as well as global GDP, but also highlights the rise in exports as a percentage of global GDP.[4]

[3] See WTO, *World Trade Report 2006* (Geneva, WTO, 2006) 2.
[4] See also http://www.wto.org/english/news_e/pres11_e/pr628_e.htm.

Figure 1.1 Volume of world merchandise exports and gross domestic product, 1950-2010
Annual percentage change



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Source: WTO, International Trade Statistics 2011, available at http://www.wto.org/english/res_e/statis_e/its2011_e/its11_charts_e.htm (visited on 15 April 2012).

(b) What is Traded?

Merchandise accounts for the majority of world trade (approximately 61 per cent), while services (approximately 20 per cent) are playing an increasingly important role in world trade. Meanwhile, mining (approximately 11 per cent) and agriculture (approximately 8 per cent) account for a small, but politically important percentage of world trade.

Figure 1.2 further breaks down the trade in goods statistics and reveals the change in trading volumes from 1950 to 2010, while Figure 1.3 shows the average annual percentage change in trade in agricultural products, fuels and mining, and manufacturing in three periods from 1950 to 2010.

Manufacturing (of all kinds) accounts for a large percentage of all trade in goods, but the prominence of agriculture in world trade continues to diminish. This continues a

Figure 1.2 World merchandise trade volume by major product group, 1950–2010 (volume indices, 1950 = 100)

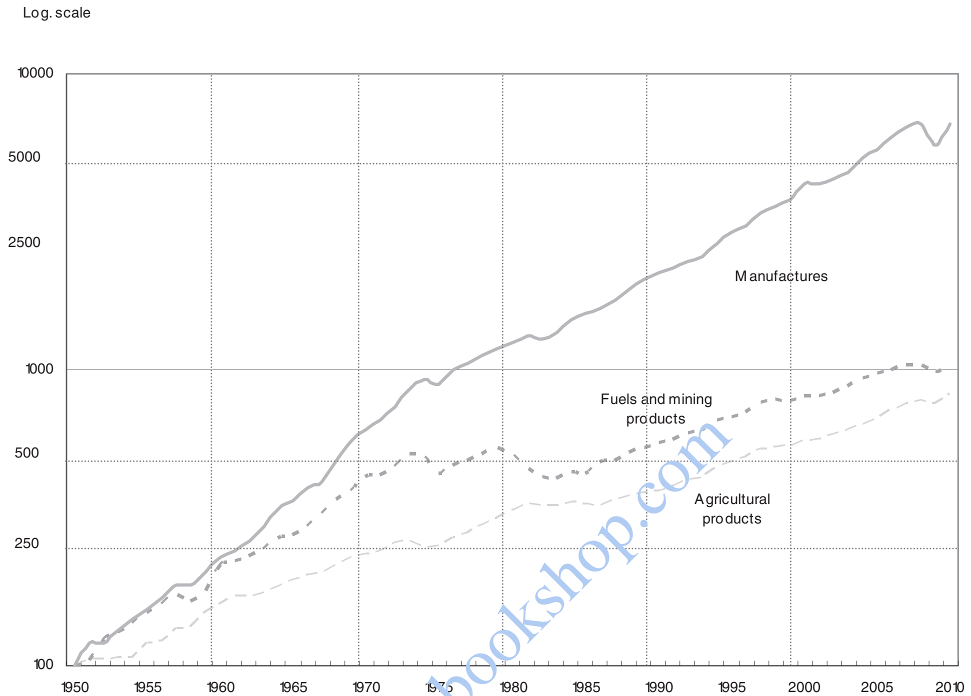

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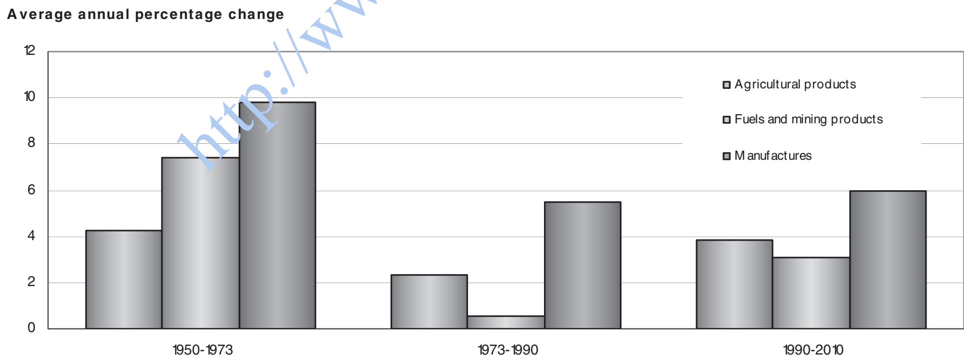
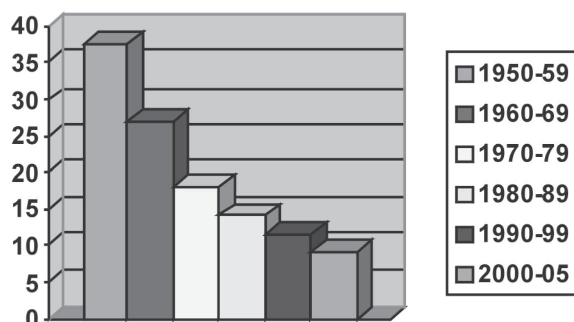
Figure 1.3 World merchandise average annual percentage change, 1950–2010



long decline for agriculture as a share of global trade. Thus, despite the prominence of agriculture in the multilateral trade negotiations, its role in the economies of most nations has declined for over 50 years. Figure 1.4 tracks the decline of world agriculture exports as a percentage of total world trade.

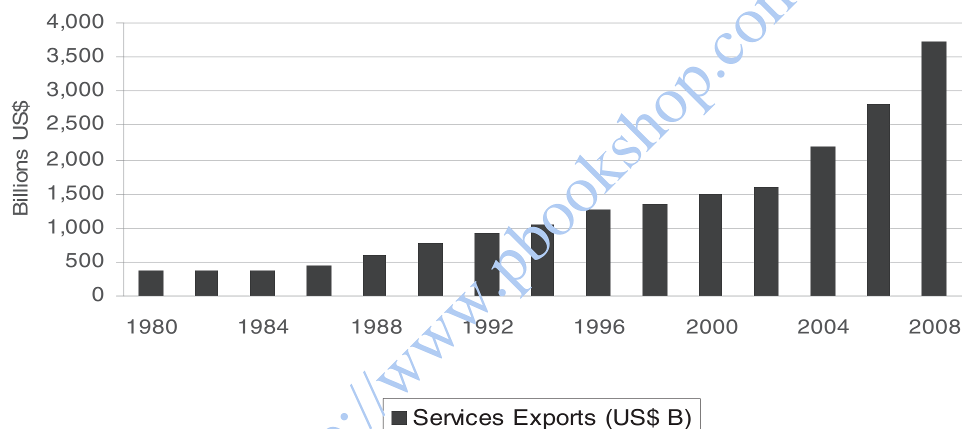
This shift from agriculture has disproportionately affected developing countries, many of which have industrialised in the last few decades. Overall, while agriculture accounted for 58 per cent and manufacturing 12 per cent of developing country exports in 1960,

Figure 1.4 Agriculture as percentage share of world merchandise exports



Source: *World Trade Report 2006*, above n 3, 7.

Figure 1.5 Global growth in services



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manufacturing exports accounted for 65 per cent and agriculture only 10 per cent of developing country exports in 2001. This trend has been particularly true in many East Asian nations, such as Korea, Hong Kong and Singapore, where rapid industrialisation since the 1960s dramatically shifted output and trading patterns.

Trade in services has also significantly increased its position of prominence in the last few decades. Figure 1.5 shows the rapid post-WTO rise in global service exports.

The service sector significantly contributes to global growth, with its contribution to GDP averaging around 60 per cent in most advanced countries. Figure 1.6 shows the contribution of services to the GDP in select countries, while Figure 1.7 shows the world contribution to the services trade by country.

(c) Who Trades?

It is fair to say that large countries dominate trade—large economies produce more goods and services to sell and generate more income for people to buy more (what economists