

LAWS 3208 A - International Trade Regulation

**INTERNATIONAL ECONOMIC LAW:
INTERNATIONAL REGULATION**

Prerequisite: LAWS 2003 [1.0] (no longer offered) or LAWS 2005 [1.0] (no longer offered) or LAWS 2601 or LAWS 2202 or LAWS 2501 or BUSI 2601

Instructor:

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Office Hours:

Tuesdays 3:30 pm - 6:00 pm
or by appointment

Course Time/Place: Tuesdays 6:05 pm - 8:55 pm/Tory Building 202

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

OBJECT OF THE COURSE:

The rules which comprise international economic law form the legal framework at an international level for the regulation of international trade and investment. This course will examine the role played by international law and specifically by international economic law in regulating international economic activity. It will examine the development and elements of the international legal framework for regulating trade and investment.

The role of law in society will be examined before continuing with a study of the nature, sources and operation of international economic law. The course will concentrate on the World Trade Organisation legal framework and a study will be made of select aspects of the regulation of international economic activity, including, the main international obligations, contingency protection, bilateral and plurilateral agreements, regional integration, and dispute settlement mechanisms. An examination of the development of the expansion of international regulation of economic activity under the World Trade Organization (WTO) will be made. In addition, an examination of some of the elements of the regulation of international investment will be made.

A fundamental theme of this course will be assessing the role of law in regulating international economic transactions.

COURSE MATERIALS

1. The text for the course is: Peter van den Bossche, The Law and Policy of the World Trade Organization : Text, Cases and Materials, 2nd ed., (Cambridge, UK: Cambridge University Press, 2008).

2. In addition to the text, the readings will also on occasion refer to materials which can be accessed on-line or are on reserve in the Library.

3. Students may also wish to consult the following sources:

1. Jackson, John H., The World Trading System - Law and Policy of International Economic Relations, 2nd ed., (Cambridge, Mass.: The MIT Press, 1997). Call number: K4602.2 1997. (On reserve in Library)
2. Jackson, John Howard, Legal problems of international economic relations; cases, materials, and text on the national and international regulation of transnational economic relations. 3rd ed. (St. Paul, Minn.: West Pub., 1995). Call number: K3943.A58J3 1995.
3. Michael J. Trebilcock and Robert Howse, The Regulation of International Trade, 3rd ed., (London and New York: Routledge, 2005). Call number: K3943 .T72 2005. (On reserve in Library)
4. Hugh M. Kindred, *et al.*, International Law - Chiefly as Interpreted and Applied in Canada. 6th ed. (Toronto: Emond Montgomery Publications, 2000). . Call number: JX68.I4984 2000.
5. WTO website - www.wto.org
6. The International Economic Law Interest Group of the American Society of International Law website - <http://www.international-economic-law.org/>

FORMAT OF COURSE

The course will follow a lecture and discussion format. Students must read the assigned readings and be prepared to discuss them in class.

EVALUATION

(All components must be completed in order to get a passing grade)

Mid-term	40%
Final exam	60%
	100%

COURSE OUTLINE and READINGS**Jan.4****a) Introduction**

- outline of course
- expectations

b) "Law"

- the idea of law
- theories of law
- the role of law in society
 - establishing rules
 - dispute settlement
- the Concept of Legalization

Readings:

1. Harris, Phil, An Introduction to Law, 4th ed., (London: Weidenfeld and Nicolson, 1993), Ch. I, "Law and Society", pp.1-22. (On reserve in Library)
2. Abbott, Kenneth W., et al, 'The Concept of Legalization', (2000) 54 (3) Intl Organization, 401-419. (Available at <http://www.princeton.edu/~amoravcs/library/concept.pdf>)

Jan.11**a) IL and Domestic Law**

- interplay of international law and domestic law
- reception of IL in DL
- constitutional problem in Canada

b) Liberalised Trade

- the Ideal of Free Trade and Comparative Advantage
- liberal trade and the impact of trade restrictions

c) Introduction to "International Economic Law" - "IEL"

- a legal framework for trade and investment
- the scope of international economic law
- relation to private and public international law
- bilateral/plurilateral/multilateral agreements
- the relevance of the international legal framework

Readings:

1. Text, Chapter 1, sections: 1.1, 1.2 & 1.3.1, pp. 1-37.
2. Davidson, P.J., "Uniformity in International Trade Law: The Constitutional Obstacle", (1988) 11 Dal. L.J. pp.677-680 (Introduction) and pp.685-697 (The Constitutional Issue). (available on-line through library)

Jan.18Multilateral regulation of trade (Part I)

- the Bretton Woods System
- a legal framework for international trade regulation
- the GATT
- the WTO
- TRIPs, GATS

Readings:

1. Text, Chapter 2, sections: 2.1, 2.2 & 2.3, pp.76-102, and Chapter 1, section 1.3.2, pp.37-42.

(See also:

1. John H. Jackson, The World Trading System, 2nd ed., (Cambridge: The MIT Press, 1997), Chapter 2, "The International Institutions of Trade: The WTO and the GATT", pp.31-78.)

Jan.25Multilateral regulation of trade (Part II)

- the GATT/WTO rules
- Competing Policies

a)Rules on Market Access

- Tariff Barriers to Trade in Goods
- Non-Tariff Barriers to Trade in Goods
- GATT bindings and tariff negotiations
- reciprocity

Readings:

Text, Chapter 5, sections: 5.1, 5.2: 5.2.1-5.2.2.5, pp.401-413; and section 5.3.1, pp.444-446, & introduction to section 5.3.4, pp.460-461.

b).The Most Favoured Nation (MFN) Policy

- the MFN obligation
- conditional and unconditional MFN
- exceptions to MFN

Readings:

Text, Chapter 4, Sections: 4.1 & 4.2, pp.321-334.

c).The National Treatment Obligation

- national treatment and the GATT
- examples, exceptions

Readings:

Text, Chapter 4, Section 4.4.1, pp.344-348; review "tests" in 4.4.2-4.4.4, pp.348-390, but don't worry about detail.

d).Competing Policies

- national security
- "general exceptions", e.g., health and welfare
- restrictive business practices
- balance of payments

Readings:

Text, Chapter 7, section 7.1, pp.615-616; intro. to section 7.7, p.714..

Feb.1Contingency Protection I

a) Safeguards and Adjustment Policies

- contingency protection
- safeguard actions
- the escape clause
- adjustment
- export restraints, agreements and arrangements

Readings:

1. Text, Chapter 7, section 7.5, pp.670-695; section 5.3.2.3, pp.453-454.
2. WTO website, "Safeguards on the WTO website",
<www.wto.org/english/tratop_e/safeg_e/safeg_e.htm >.

Feb.8Contingency Protection II

b) Subsidies and Dumping

- antidumping rules and their sources
- the material injury test
- rules on subsidies and countervailing duties

Readings:

1. Text, Chapter 6, pp.507-613.

Feb.15Mid-term Exam**Feb.22**

Study Week

Mar. 1Regional Integration

- the GATT rules - custom unions, free trade areas and preferential arrangements
- the Canada-U.S. Free Trade Agreement and the NAFTA
 - the rules
 - more than trade --regulation of investment
- the European Community (EC)
- AFTA; APEC
- dispute settlement in RTAs

Readings:

1. Text: Chapter 7, section 7.6, pp.695-714.
2. Michael J. Trebilcock and Robert Howse, The Regulation of International Trade, 3rd ed., (London and New York: Routledge, 2005), chapter 1, "The Basic Elements of ... the North American Free Trade Agreement, and the European Union", pp.38-48; chapter 6, "... Multilateralism vs. regionalism", pp.193-201. [on reserve in library]
3. Davidson, Paul J., "Ask not what the WTO can do for RTAs, But what RTAs can do for the WTO", (2005) Asia Pacific Law Review, Vol 13 No 1, pp.47-61 [on reserve in library].

- Mar. 8** Dispute Settlement(1)
 -power-oriented versus rule-oriented diplomacy
 -from GATT to the WTO
 -principles of WTO dispute settlement

Readings:

1. Text, Chapter 3, sections 3.1 & 3.2, pp.169-235.

- Mar. 15** Dispute Settlement(2)
 -institutions of WTO dispute settlement
 -WTO dispute settlement proceedings
 -challenges to the WTO DSM

Readings:

1. Text, Chapter 3, sections 3.3, 3.4, 3.5 & 3.6, pp.235-316.

- Mar. 22** Regulation of Investment
 -relation of trade and investment
 -GATT/FIRA
 -WTO/TRIMs
 -the CUSFTA and NAFTA Chapter 11
 -BITs and FIPAs
 -the MAI
 -codes of conduct

Readings:

1. Michael J. Trebilcock and Robert Howse, The Regulation of International Trade, 3rd ed., (London and New York: Routledge, 2005), chapt.14, "Trade and Investment", pp.439-470.

- Mar. 29** Investment Disputes
 - problem of investor-state disputes
 - role of ICSID
 - NAFTA c.11 Disputes

Readings:

1. 2.1 Overview: International Centre for Settlement of Investment Disputes, Course on Dispute Settlement, United Nations Conference on Trade and Development, United Nations, New York and Geneva, 2003, http://www.unctad.org/en/docs/edmmisc232overview_en.pdf
2. Vanduzer, J. A., "Investor-State Dispute Settlement under NAFTA Chapter 11 : the shape of things to come?", The Canadian Yearbook of International Law (1998), volume 35 , p. 263-290 [available on-line through library]
3. Martin Valasek and Azim Hussain, Ogilvy Renault LLP, "Investor-state arbitration, court intervention, and the ICSID Convention in Canada", CBA Newsletter-sections, http://www.cba.org/CBA/newsletters-sections/pdf/11_09_intl-icsid.pdf
4. Cyndee Todgham Cherniak, "Canada STILL Has Not Ratified ICSID", Trade Lawyers Blog, Sunday, February 21, 2010, <http://www.tradelawyersblog.com/blog/article/canada-still-has-not-ratified-icsid/>

- Apr. 5** Review