INTERNATIONAL ECONOMIC LAW:
REGULATION OF TRADE AND INVESTMENT

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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 seminar 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 and, will familiarize students with the nature and structure of international rights and obligations in the field of international trade and investment.

The role of law in society and the nature and basis of international law and its relationship to national law will be examined before continuing with a look at various trade models which have had an influence on the development of international economic law. The course will then concentrate on the World Trade Organisation (WTO) legal framework, and a study will be made of the “juridicalization” of the GATT/WTO framework. The evolution of rules within the framework will be illustrated through a look at select aspects of the regulation of international economic activity, including the main international obligations, contingency protection, bilateral and plurilateral agreements, and regional integration, as well as an examination of the development of the expansion of international regulation of economic activity under the WTO. The course will examine how conflicts in the interpretation and implementation of the WTO agreements are resolved through discussion, negotiation, and dispute resolution under the new Dispute Settlement Mechanisms which has evolved in the WTO and, how the DSM has contributed to the juridification of the framework for regulating international trade. An examination of the developing framework for the regulation of international investment will be made, including the mechanisms for settling investment disputes. The legal framework for regulating investment will be compared to the legal framework for regulating trade. In addition, a brief examination of the position of developing countries in international economic law and the future of the Global trading system will be made.

A fundamental theme of this seminar will be assessing the role of law in regulating international economic transactions. In particular, the course will focus on policy and legal issues that are becoming increasingly important in the current world trading system. Recently, governments have placed considerable emphasis on the need for greater order and certainty in international
commercial relationships. This has led to a considerable increase in domestic law applicable to international trade as well as to considerable legalisation of multilateral and bilateral commercial relationships.

Course Materials


2. In addition to the text, weekly readings will be assigned. Most of these readings are available “on-line”, and reference has been included as to where they can be located. Copies of required readings not on-line will be available on reserve in library. (Note: required readings are those indicated under the heading “readings” in the outline; those articles under the heading “see also” are for additional reference.)

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

   8. WTO website - www.wto.org - this website has a lot of information on the WTO/GATT, including a number of videos on different aspects of the WTO, including: “From GATT to WTO”, “To the heart of the WTO”, “Basic principles of the WTO system”, “Why is it important to liberalize ?”.
15. Bethlehem, Daniel; Donald McRae; Rodney Neufeld; and Isabelle Van Damme; eds. The Oxford Handbook of International Trade Law (New York: Oxford University Press, 2009).

Students may also want to look at The United Nations Audiovisual Library of International Law (http://www.un.org/law/avl/). The Audiovisual Library has, inter alia, the Lecture Series, featuring a permanent collection of lectures on virtually every subject of international law given by leading international law scholars and practitioners from different countries and legal systems.

Students in this course are also advised to regularly keep up on current developments in the international trade area. Events involving international economic law are a daily occurrence in the press. Useful sources include, inter alia, newspapers (the general news section as well as the business section), The Economist, and the World Trade Review (http://journals.cambridge.org.proxy.library.carleton.ca/action/displayJournal?jid=WTR).

Students should consult the WTO website, particularly the section “Resources for Students”: http://www.wto.org/english/forums_e/students_e/students_e.htm.

Format of Course
The course will follow a seminar format and students will be expected to have read the assigned readings and be prepared to discuss and analyse the materials during the seminar. Generally, the first half of the seminar will deal with a general presentation and discussion of the week’s topic(s), while the second half of the seminar will deal with a more detailed discussion of the readings.

Starting with the seminar of October 1st, two or three students per week will be required to lead discussion of that week’s topics, during the second half of the seminar. Students will choose one of the required readings to prepare for discussion, and will lead the discussion of that particular reading. This will involve preparation of a critique of the reading, including, e.g., what the
Considerable reading is required for all participants in the seminar, not just those leading it. Each week features a reading list divided into two sections. The first section is required reading for all students for that week's topics; those readings listed as “see also” are additional readings on the topic. The list is not exhaustive. If leading a seminar, students will be expected to have consulted the “see also” readings, as well as other sources they consider useful.

In addition to the above presentation, each student will be required to prepare an in-depth research paper (approximately 6000-6500 words) dealing with an issue relating to the subject matter covered by the course. Specific topics for the papers must be chosen in consultation with me by no later than the class of October 29th. Students must prepare, and hand in by that time, a two-page (8&1/2x11 - Times New Roman - Font size 12, double-spaced) statement on their research paper, and, in addition to the two-page statement, a preliminary bibliography. The statement should give an idea of the thrust of the paper, and should indicate the approach to be taken, and how the paper relates to the main theme of the seminar, i.e., the role of law in regulating international economic transactions. An annotated bibliography is not necessary, but a sentence or two on the relevance of each source would be useful. This is meant to be a preliminary bibliography, indicating that some relevant research has been done, not necessarily a comprehensive bibliography. The statement will be marked and returned to the student with any suggestion as to possible alternate considerations, etc.

Papers must be printed (8&1/2x11 paper - Times New Roman - Font size 12, double-spaced), be properly foot-noted and contain a proper bibliography. Papers must also have a cover page setting out, inter alia, the student's name and number, and the title of the paper. The papers are
due the last day of classes, i.e., December 3rd. NO EXTENSIONS WILL BE GIVEN. Late papers will be downgraded at the rate of one letter grade for each day late, i.e., an A paper will go to B after one day, C after two days, etc. (note: these penalties for late papers also apply to the presentation papers and essay statements).

Evaluation

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

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<thead>
<tr>
<th>Component</th>
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<tr>
<td>Participation</td>
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<tr>
<td>“Presentation” report</td>
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<tr>
<td>Oral presentation/discussion</td>
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<tr>
<td>In-Class test</td>
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<tr>
<td>Research paper statement</td>
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You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: [http://www2.carleton.ca/equity/](http://www2.carleton.ca/equity/)

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: [http://www2.carleton.ca/equity/](http://www2.carleton.ca/equity/)

**Academic Accommodations for Students with Disabilities:** The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable) at [http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/](http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/). You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at [http://www2.carleton.ca/equity/](http://www2.carleton.ca/equity/)

**Students are requested to read the section ‘Instructional Offences’ in the University's Graduate Calendar. Cheating, plagiarism and/or complementarity will be severely penalized. Penalties range from a zero mark to expulsion or suspension from studies at the University.**
INTRODUCTORY MATERIAL

Sept.10  a) About the Course
- 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

c) International Law
- nature and basis of IL
- “soft law”
- reception of IL in Domestic Law
- constitutional problem in Canada

Readings:

a) WTO DG Pascal Lamy, “Trade improves the lives of people”, speech at the Minnesota Economic Club in Minneapolis, United States on 17 April 2012, http://www.wto.org/english/news_e/sppl_e/sppl224_e.htm

(http://web.ebscohost.com.proxy.library.carleton.ca/bsi/pdf?vid=3&hid=13&sid=ffaa3ece-f4f9-416e-8a8f-f94a81a74b1a%40sessionmgr10)

(http://ejt.sagepub.com.proxy.library.carleton.ca/cgi/reprint/9/4/591)


5. Barrie McKenna, “Canada’s blockaded bridges to provincial trade”, Ottawa, The Globe and Mail, June 23 2013,

See also:


THEORETICAL UNDERPINNINGS

Sept.17 a) Underpinnings of the trade regime
- the Ideal of Free Trade and Comparative Advantage
- the Efficiency Model
- the Collective Action Model
- the Embedded Liberalism Model

b) the international legal framework
- liberal trade and the impact of trade restrictions
- a legal framework for trade and investment
- the role of international economic law (IEL)
- relation to private and public international law
- bilateral/plurilateral/multilateral agreements
- the scope of international economic law
- the relevance of the international legal framework

Readings:

http://www.nijhoffonline.nl.proxy.library.carleton.ca/book?id=nij9789004178601_nij9789004178601_i-421

(http://jiel.oxfordjournals.org.proxy.library.carleton.ca/content/1/1/1.full.pdf+html)
(http://www.fathom.com/feature/121776/)

See also:

a) Steve Suranovic, International Trade Theory and Policy,

(http://www.lexisnexis.com.proxy.library.carleton.ca/hottopics/lnacademic/?shr=t&sfi=AC00NBGenSrch&csi=142670)

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT), AND THE WORLD TRADE ORGANISATION (WTO)

From GATT to WTO
Sept.24 Multilateral regulation of trade
- the Bretton Woods System
- a legal framework for international trade regulation
- the GATT rules
- Non-discrimination - the MFN obligation, national treatment
- Competing Policies, national security, "general exceptions", e.g., health and welfare
-the WTO

Readings:

See also:


The Juridicalization of the GATT/WTO
A. Evolution of Rules

Contingency Protection
a) Safeguards and Adjustment Policies
- the GATT safeguard regime
- adjustment
- export restraints, agreements and arrangements
b) Subsidies and Dumping
- antidumping rules and their sources
- the material injury test
- rules on subsidies and countervailing duties

Readings:

3. Chad P Brown, “Why are safeguards under the WTO so unpopular?”, (2002) 1 World Trade Review 47-62 (http://journals.cambridge.org.proxy.library.carleton.ca/action/displayFullt ext?type=1&fid=100394&jid=WTR&volumeId=1&issueId=01&aid=1003 93&bodyId=&membershipNumber=&societyETOCSession=)

2. WTO websites, “Subsidies and countervailing measures”,
<http://www.wto.org/english/tratop_e/scm_e/scm_e.htm>; “Anti-dumping”,
<http://www.wto.org/english/tratop_e/adp_e/adp_e.htm>.


See also:
(http://journals.cambridge.org.proxy.library.carleton.ca/action/displayFullText?type=1&fid=228888&jid=WTR&volumeId=3&issueId=01&aid=228887&bodyId=&membershipNumber=&societyETOCSession=), and Alan O. Sykes, “The ‘safeguards mess’ revisited – a reply to Professor Jones”, World Trade Review (2004), 3: 1, 93–97
(http://journals.cambridge.org.proxy.library.carleton.ca/action/displayFullText?type=1&fid=228890&jid=WTR&volumeId=3&issueId=01&aid=228889&bodyId=&membershipNumber=&societyETOCSession=).


Oct.8 **Plurilateralism and Bilateralism**
- 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
Readings:

See also:
1. WTO website: “Regional Trade Agreements”, http://www.wto.org/english/tratop_e/region_e/region_e.htm#top
2. “Compendium of Issues Related to Regional Trade Agreements”, Background Note by the Secretariat, WTO, TN/RL/W/8/Rev.1, 1 August 2002 (http://www.wto.org/english/tratop_e/region_e/region_negoti_e.htm)

B. Evolution of the Dispute Settlement Mechanism

Oct.15 Dispute Settlement(1)
- power-oriented versus rule-oriented diplomacy
- from diplomacy to juridification; from GATT to the WTO

Readings:

3. William J. Davey, “The WTO Dispute Settlement Mechanism“, Illinois Public Law Research Paper No. 03-08, June 25, 2003, pp.3-10 (up to and including the introductory remarks on the WTO Dispute Settlement System. Students should also skim the remainder of the article. (The remainder will be required reading for next week.) (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=419943)


See also:


Oct.22 In-Class Test

Oct.29 Reading Week
Nov.5

Dispute Settlement(2)
- institutions of WTO dispute settlement
- WTO dispute settlement proceedings
- challenges to the WTO DSM, e.g., amicus briefs, transparency, precedent

Readings:

See also:
A LEGAL FRAMEWORK FOR REGULATING INVESTMENT

Regulation of Investment
- investment and trade protection
- TRIMs
- BITs and FIPAs
- the FTA and NAFTA chapt.11
- the MAI
- codes of conduct

Readings:

See also:


Nov.19 Investment Disputes Settlement
- state-state vs. investor-state DS
- role of ICSID
- NAFTA c.11 Disputes
- issues/problems with investment DS

Readings:


See also:


DEVELOPING COUNTRIES

Nov.26 Developing Countries
- GATT: Article XVIII
- GATT: Part IV
- Enabling Clause
- The WTO Agreements
- Development Law

Readings:


See also:

THE FUTURE?

Dec.3 The Future of the Global Trading System
- the post-Uruguay Round agenda
- multilateralism vs. regionalism/bilateralism
- environment
- labour
- competition policy
- transparency
- participation
- democratic deficit

Readings:


See also:

INTERNATIONAL ECONOMIC LAW

SELECTED BIBLIOGRAPHY

BOOKS:

General International Law


General International Economic Law


The GATT and the WTO

2. Cameron, James & Karen Campbell, editors. Dispute resolution in the World Trade Organisation (London: Cameron May, 1999) [Call number: K4600.D57]
JOURNALS:
1. American Journal of International Law
2. Canadian Yearbook of International Law
3. Canadian International Lawyer
7. International Legal Materials
8. Journal of International Law & Economics
10. Journal of World Trade
11. International Law Journals and Reviews of various Law Schools
12. The International Lawyer
13. World trade review [Electronic resource], available through library ("The World Trade Review (WTR) has been established at the initiative of the Secretariat of the World Trade Organization (WTO) in close cooperation with Cambridge University Press")
16. The Journal of World Investment
18. The European Journal of International Law

SERIES:

INTERNET SOURCES: There are a number of internet sites which deal with international economic law or aspects of it. The following are just a few of the many sites which should be consulted.

1. WTO:
   http://www.wto.org/
2. NAFTA:
   www.nafta-sec-ala.org
3. International Trade Law sites:
   http://lexmercatoria.net/
4. United Nations -
   http://www.un.org/
5. UNCITRAL:
   http://www.uncitral.org/en-index.htm
6. UNCTAD:  
7. International Trade Canada  
8. International Trade Law (The University of Western Australia) (good sources)  
9. Update to *Guide to International Trade Law Sources on the Internet*  
   http://www.llrx.com/features/trade2.htm
10. Institute of International Economic Law, “Researching International Economic Law on the Internet”,  