INTERNATIONAL ECONOMIC LAW:
REGULATION OF TRADE AND INVESTMENT

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.

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 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. In addition, an examination of developing countries in international economic law and an examination of some of the elements of the regulation of international investment will be made. Various dispute settlement mechanisms for different international economic disputes will be discussed, with an emphasis on the WTO Dispute Settlement Mechanism, and its contribution to the juridification of the framework for regulating international trade.

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. Considerable emphasis has been placed by governments recently 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”. 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?”

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. Useful sources include, *inter alia*, the business section of newspapers, The Economist, and the World Trade Review (electronic resource, available in the library).

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 5th, two or three students per week will be required to lead discussion of that week's topics. This will include the preparation of a number of questions to initiate discussion. In addition, these students will be required to choose a reading for discussion, related to that week's topic, that is not already on the outline, that they think is a potential reading for inclusion on the outline, and prepare a short summary and critique of the reading for presentation to the class (maximum 15 minutes). The critique should include, e.g., what the author has to say on the topic, how well the author addresses the issue, how the reading relates to the topic and other readings, whether you agree or not, why it should be a required reading, etc. A report, including the discussion questions, and the summary and critique of the chosen reading must be prepared to hand in. Reports must be typed, double-spaced on 8&1/2x11 paper. Reports should not exceed five pages. One copy should be placed in the NPSIA Resource Centre, Dunton Tower, and one copy in the Law Graduate Study Room/Lounge in the Loeb Building, C463, for consultation by students in the seminar; one copy is to be handed in for marking, together with a copy of the reading. Weeks will be assigned at the class of September 28th. Students should peruse the topics in the outline with a view to choosing a presentation week. I will attempt to accommodate student interest in the scheduling of presentations, and students should let me know at the class of September 21st if they have a preferred topic.

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 arising from 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 26th. Students must prepare, and hand in by that time, a two page statement on their research paper. The statement should be double-spaced and include 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 bibliography would be in addition to the two-page statement indicating the thrust of the paper. The statement will be marked and returned to the student.

Papers must be typed, double-spaced on 8&1/2x11 paper, 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., November 30th. 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)

Participation 10%
Written presentation 10%
Oral presentation 10%
In-Class test 20%
Research paper statement 5%
Research paper 45%

100%

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. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.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.
COURSE OUTLINE and READINGS

Sept. 14

a) Introduction
- outline of course
- expectations

b) The Role of IEL
- the Ideal of Free Trade and Comparative Advantage
- liberal trade and the impact of trade restrictions
- the relevance of the international legal framework
- a legal framework for trade and investment

Readings:

See also:

Sept. 21

a) “Law”
- the idea of law
- theories of law
- the role of law in society
  - establishing rules
  - dispute settlement
- the Concept of Legalization

b) International Law
- nature and basis of IL
- “soft law”

c) IL and Domestic Law
- reception of IL in DL
- constitutional problem in Canada

Readings:


See also:


Sept.28 a) Trade Models
- The Efficiency Model
- The Collective Action Model
- The Embedded Liberalism Model

b) Introduction to “International Economic Law" - “IEL”
- what is international economic law?
- approaches to international economic law
- the scope of international economic law
- a legal theory of WTO law
- relation to private and public international law
- bilateral/plurilateral/multilateral agreements
Readings:


See also:


Oct.5  Multilateral regulation of trade

- the Bretton Woods System
- from GATT to WTO
- 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:

Oct.12 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:


Outline – LAWS 5200 & INAF 5507 F

Davidson  -  Fall 2010-11

< http://www.wto.org/english/tratop_e/adp_e/adp_e.htm >.


See also:


Oct.19
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 >


3. ASEAN and APEC websites:
   < www.aseansec.org >; < www.apecsec.org.sg >


Oct.26 In-Class Test
Nov.2 Regulation of Investment
- investment and trade protection
- TRIMs
- the FTA and NAFTA chapt.11
- BITs and FIPAs
- the MAI
- codes of conduct

Readings:

See also:

Nov. 9 Dispute Settlement(I)
- power-oriented versus rule-oriented diplomacy
- dispute settlement procedures in the GATT/WTO

Readings:
1. Text: Chapt. 4, "Dispute Settlement", pp.112-147.

See also:

Nov. 16 Dispute Settlement(II)
- dispute settlement procedures in the NAFTA
- role of ICSID
- issues/problems with DS - e.g., amicus briefs, transparency, precedent
Readings:

See also:

Nov.23 Developing Countries
- GATT: Article XVIII
- GATT: Part IV
- Enabling Clause
- The WTO Agreements
- Development Law

Readings:
5. GATT: Article XVIII; GATT: Part IV.
7. WTO website, “Trade and development”- http://www.wto.org/english/tratop_e/devel_e/devel_e.htm ; Doha Development
Agenda: Negotiations, implementation and development –
http://www.wto.org/english/tratop_e/dda_e/dda_e.htm

See also:

Nov.30
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-alena.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”,
    http://www.ll.georgetown.edu/intl/iiel/trade/tradeservices.htm

**Students should consult the Lexis website (www.lexis.org - available through library) re articles. The site contains the full text of many journals.**