

Course Outline

COURSE: LAWS 5200W/INAF 5507F – International Economic Law:
Regulation of Trade and Investment

TERM: Winter 2023

PREREQUISITES: Open only to students in their master's year who have not studied international economic law.

CLASS: **Day & Time:** Thursdays 11:35 AM – 2:25 PM
 Room: B454 LA (Loeb Building)

INSTRUCTOR: Jean-Michel Marcoux

CONTACT: **Office:** D483 LA (Loeb Building)
 Office Hrs: Wednesdays 1:00 PM – 2:00 PM
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CALENDAR COURSE DESCRIPTION

Study of regulation of international economic activity. Discussion of relevant international institutions, legal aspects of integration, governmental regulation of trade and investment.

COURSE DESCRIPTION

The regulation of economic activity at the international level extensively relies on trade and investment agreements negotiated by states. While primarily seeking to promote the liberalization of economic relations, international economic agreements inevitably intersect with other areas for which states have a right to regulate. Through an interdisciplinary and critical approach, this seminar proposes an analysis of international economic agreements that asks whether they encourage or impede the provision of global public goods. In contrast to private goods, global public goods are both nonexcludable (i.e., it is politically, socially, economically and technically infeasible to exclude someone from the benefits of the good) and nonrival (i.e., someone's consumption does not reduce its availability to others) in consumption. Examples of global public goods include a clean environment, global health, food security, gender equity and international peace, among others. Most importantly, these goods are considered as a means to improve people's life. Questions about their provision (or lack thereof) thus often constitute the

basis of the opposition to the World Trade Organization, regional trade agreements and international investment agreements.

The seminar is divided into two main sections. First, it provides an overview of key concepts, as well as the political economy of trade agreements and investment agreements (Weeks 1 to 3). Second, it focuses on how the provision of specific global public goods fits within the World Trade Organization (WTO), regional trade agreements (RTAs) and international investment agreements (IIAs) (Weeks 4 to 13).

This seminar will be held in person, every week. The instructor and students will share information, ideas and learning experiences through discussions based on mandatory readings and additional publicly available resources. Classes will not be recorded and will not be made available to participants on Brightspace.

From Week 1 to Week 3, as well as Week 13, the discussions will be led by the instructor. From Week 4 to Week 12, each class will include three components:

1. A brief introduction of the topic by the instructor (15 minutes);
2. A reading presentation and a discussion led by students (45-60 minutes); and
3. A guided discussion led by the instructor (75-90 minutes).

By the end of this seminar, you will be able to:

- understand key aspects of the political economy of the World Trade Organization, regional trade agreements and international investment agreements;
- apply the concept of global public goods to analyze the content and the implementation of international economic agreements;
- critically engage with arguments made by various authors in the field of international economic law; and
- research a specific international economic law topic and elaborate a clear argument pertaining to the provision of global public goods by relying on relevant scholarly references and primary sources (e.g., international agreements and cases).

REQUIRED TEXTS

All *mandatory readings* are available via ARES (a link is available on Brightspace). You are expected to read all mandatory readings to participate in discussions and to complete reading presentations (see “Evaluation” below). Mandatory readings typically represent around 80 pages for each class.

Additional resources are included for each class on Brightspace. While they are not mandatory,

they include primary sources that can be used as illustrative cases when preparing reading presentations (see “Evaluation” below). I will also rely on these additional resources during the guided discussion for each class.

During the semester, you are required to provide a book review of *Emerging Powers and World Trading System: The Past and Future of International Economic Law* by Gregory Shaffer. The book is available to purchase at the Carleton University Bookstore.

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

All components must be successfully completed in order to get a passing grade.

Assignment	Weight	Due Date
Reading presentation	20%	TBA (see below)
Book Review	20%	January 27 th , 11:59 PM
Research plan	20%	February 10 th , 11:59 PM
Research paper	40%	April 7 th , 11:59 PM

Reading Presentation

From Week 4 to Week 12, each class will include a presentation of the *mandatory readings* by two or three students. The reading presentation serves three objectives: 1) summarizing the content of the mandatory readings; 2) critically assessing the arguments made by the author(s) by identifying their strengths and their weaknesses; and 3) launching a discussion with the participants in the seminar. With a view to facilitating discussion with the participants and further illustrating the issues related to the topic, students are invited to consider the *additional resources* that have been added to Brightspace for each class.

The presentation should last for a total of 45 minutes (for teams of two students) or 60 minutes (for teams of three students). A sign-up sheet will be available on Brightspace to establish the schedule of the reading presentations after the first class. You are required to complete the sign-up sheet by Thursday, January 19th, 5:00 PM. The final schedule of the reading presentations will be uploaded and announced on Brightspace by the following day.

The reading presentation will be graded according to the following criteria: 1) ability to summarize the main issues of the mandatory readings; 2) capacity to critically engage with the

content of the mandatory readings; 3) capacity for synthesis; and 4) ability to generate discussion with the other participants in the seminar.

Book Review

You are required to write a book review of *Emerging Powers and World Trading System: The Past and Future of International Economic Law* by Gregory Shaffer. The book review serves two purposes: 1) summarizing the main arguments provided by the author; and 2) critically assessing the arguments by identifying their strengths and their weaknesses. You are not required to conduct additional research in order to prepare the book review. However, you are expected to provide clear references to the book in your review in order to support your claims.

The book review should include a maximum of 1,500 words (excluding footnotes). References should be included by using the *Canadian Guide to Uniform Legal Citation*, 9th edition (McGill Guide). A useful summary of the guide was prepared by the University of Alberta and can be found here: https://guides.library.ualberta.ca/ld.php?content_id=34487617. The book review must be uploaded in a Word document (.docx) on Brightspace by Friday, January 27th, 11:59 PM.

The book review will be graded according to the following criteria: 1) ability to summarize the main arguments provided by the author; 2) capacity to critically engage with the content of the book; 3) structure of argumentation; and 4) capacity for synthesis.

Research Plan

You are required to write a research plan on a topic related to the provision of global public goods in international economic law. The research plan will allow you to write a research paper of 4,000 words (see below). Please select a topic that you will be able to cover within this limit. The research plan should include four components: 1) a brief presentation of the topic; 2) a research question; 3) a summary of the argument that you will develop in the research paper; and 4) a preliminary bibliography of at least seven scholarly references (academic books, chapters in a collection of essays or peer-reviewed journals).

The research plan should include a maximum of 1,000 words (excluding footnotes and the bibliography). References should be included by using the *Canadian Guide to Uniform Legal Citation*, 9th edition (McGill Guide). A useful summary of the guide was prepared by the University of Alberta and can be found here: https://guides.library.ualberta.ca/ld.php?content_id=34487617. The research plan must be uploaded in a Word document (.docx) on Brightspace by Friday, February 10th, 11:59 PM. I will provide written feedback on each research plan by Friday, February 17th.

The research plan will be graded according to the following criteria: 1) references to the literature; 2) appropriate scope of the research question; 3) structure of argumentation; 4) capacity for synthesis; and 5) choice of references included in the preliminary bibliography.

Research Paper

After considering comments provided by the instructor, you are required to prepare a research paper on a topic related to provision of global public goods in international economic law. The research paper should recall the research question and provide a clear argument that is supported by references.

The research paper should include a maximum of 4,000 words (excluding footnotes and the bibliography). References should be included by using the *Canadian Guide to Uniform Legal Citation*, 9th edition (McGill Guide). A useful summary of the guide was prepared by the University of Calgary and can be found here: https://guides.library.ualberta.ca/ld.php?content_id=34487617. The research paper must be uploaded in a Word document (.docx) on Brightspace by Friday, April 7th, 11:59 PM.

The research paper will be graded according to the following criteria: 1) references to the literature; 2) appropriate scope of the research question; 3) structure of argumentation; 4) depth of the analysis; 5) capacity for synthesis; and 6) choice of references included in the bibliography.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

Unjustified late submissions of the book review, the research plan and the research paper will be penalized, following a 2% deduction of the final grade for each day. Also, please note that no extension will be granted for the reading presentation.

When granting an extension, the instructor will balance three considerations: 1) issues raised by the student asking for an extension; 2) fairness for the other participants in the seminar; and 3) academic integrity.

SCHEDULE

PART I - FOUNDATIONS OF THE ANALYSIS

Week 1 (January 12th): The Concept of Global Public Goods

Mandatory readings:

- Bodansky, Daniel. "What's in a Concept? Global Public Goods, International Law, and Legitimacy" (2012) 23(3) European Journal of International Law 651-668.
- Kaul, Inge. "Global Public Goods: Explaining their Underprovision" (2012) 15 Journal of International Economic Law 729-750.
- Brown Weiss, Edith. "Establishing Norms in a Kaleidoscopic World" (2019) 396 Recueil des cours/Collected Courses 110-125.

Week 2 (January 19th): The Political Economy of the WTO and RTAs

****Sign-up sheet for reading presentations must be completed by Thursday, January 19th, 5:00 PM****

Mandatory readings:

- Baldwin, Richard. "The Political Economy of Trade Policy" (1989) 3(4) Journal of Economic Perspectives 119-135.
- Baldwin, Richard. "The World Trade Organization and the Future of Multilateralism" (2016) 30(1) Journal of Economic Perspectives 95-116.
- Bown, Chad P. "Mega-Regional Trade Agreements and the Future of the WTO" (2017) 8(1) Global Policy 107-112.
- Rodrik, Dani. "What Do Trade Agreements Really Do?" (2018) 32(2) Journal of Economic Perspectives 73-90.

Additional resource:

- Canada-United States-Mexico Agreement (CUSMA) – Table of Contents

Week 3 (January 26th): The Political Economy of IIAs

****Book review must be submitted by Friday, January 27th, 11:59 PM****

Mandatory readings:

- Elkins, Zachary et al. “Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000” (2006) 60 *International Organization* 811-846.
- Bonnitcha, Jonathan, Lauge N. Skovgaard Poulsen and Michael Waibel. *The Political Economy of the Investment Treaty Regime* (Oxford: Oxford University Press, 2017) 1-31.
- Linarelli, John, Margot E. Salomon and M. Sornarajah. *The Misery of International Law: Confrontations with Injustice in the Global Economy* (Oxford: Oxford University Press, 2018) 145-174.

Additional resource:

- Canada – 2021 Model FIPA

PART II – THE PROVISION OF GLOBAL PUBLIC GOODS IN INTERNATIONAL ECONOMIC AGREEMENTS

Week 4 (February 2nd): Clean Environment in WTO Agreements and RTAs

Mandatory readings:

- Charnovitz, Steve. “The WTO’s Environmental Progress” (2007) 10 *Journal of International Economic Law* 658-706.
- Cottier, Thomas. “Renewable Energy and WTO Law: More Policy Space or enhanced International Disciplines?” in Jacob Lesley and Daniel Drache (eds), *Gray Zones in International Economic Law and Global Governance* (Vancouver: UBC Press, 2018) 233-255. **[LIMITED USER ACCESS – PLEASE SAVE THE CHAPTER AND CLOSE THE BROWSER TO ALLOW OTHER STUDENTS TO USE THE E-BOOK]**
- Jinnah, Sikina and Jean-Frédéric Morin. *Greening through Trade: How American Trade Policy is Linked to Environmental Protection Abroad* (Cambridge: The MIT Press, 2020) 103-128.

Additional resources:

- General Agreement on Tariffs and Trade, Art XX
- Comprehensive Economic and Trade Agreement (CETA), Chapter 24
- Canada-United States-Mexico Agreement (CUSMA), Chapter 1
- Canada-United States-Mexico Agreement (CUSMA), Chapter 24
- Canada-United States-Mexico Agreement (CUSMA), Chapter 32
- Trade Talks Podcast, “Episode 156: Tackling Climate Change with a Carbon Border Adjustment Mechanism” (25 July 2021).

Week 5 (February 9th): Clean Environment in IIAs

*****Research plan must be submitted by Friday, February 10th, 11:59 PM*****

Mandatory readings:

- Biggs, Jack. "The Scope of Investors' Legitimate Expectations under the FET Standard in the European Renewable Energy Cases" (2021) 36(1) ICSID Review 99-128.
- Mbengue, Makane Moïse and Deepak Raju. "The Environment and Investment Arbitration" in Thomas Schultz and Federico Ortino (eds), *The Oxford Handbook of International Arbitration* (Oxford: Oxford University Press, 2020) 448-468. **[LIMITED USER ACCESS – PLEASE SAVE THE CHAPTER AND CLOSE THE BROWSER TO ALLOW OTHER STUDENTS TO USE THE E-BOOK]**
- Van Harten, Gus and Dayna Nadine Scott. "Investment Treaties and the Internal Vetting of Regulatory Proposals: A Case Study from Canada" (2016) 7 Journal of International Dispute Settlement 92-116.

Additional resource:

- Canada-United States-Mexico Agreement (CUSMA), Chapter 14
- *Eco Oro Minerals Corp v Republic of Colombia*, ICSID Case No ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021.

Week 6 (February 16th): Global Health in WTO Agreements and RTAs

Mandatory readings:

- Mercurio, Bryan. "WTO Waiver from Intellectual Property Protection for COVID-19 Vaccines and Treatments: A Critical Review" (2021) 62 Virginia Journal of International Law Online 9-32.
- Shaffer, Gregory. "Recognizing Public Goods in WTO Dispute Settlement: Who Participates? Who Decides? The Case of TRIPS and Pharmaceutical Patent Protection" (2004) 7(2) Journal of International Economic Law 459-482.
- Davison, Mark and Patrick Emerton. "The Treatment of Public Health Measures Affecting Intellectual Property Under Multilateral and Plurilateral Trade and Investment Agreements" (2019) 20 Journal of World Investment & Trade 759-783.

Additional resources:

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Part II, Section 5

- Ministerial Decision on the TRIPS Agreement (17 June 2022)
- Agreement for Trans-Pacific Partnership (TPP), Chapter 29
- Trade Talks Podcast, “Episode 150: Is the WTO Making It Harder to End the Pandemic?” (25 February 2021).

Week 7 (February 23rd): Reading Break

No class. No mandatory reading.

Week 8 (March 2nd): Food Security in WTO Agreements

Mandatory readings:

- Gruni, Giovanni. *The EU, World Trade Law and the Right to Food: Rethinking Free Trade Agreements with Developing Countries* (Oxford: Hart Publishing, 2018) 95-122.
- Margulis, Matias E. “Trading Out of the Global Food Crisis? The World Trade Organization and the Geopolitics of Food Security” (2014) 19 *Geopolitics* 322-350.
- Burnett, Kim and Sophia Murphy. “What Place for International Trade in Food Sovereignty?” (2014) 41 *Journal of Peasant Studies* 1065-1084.

Additional resource:

- General Agreement on Tariffs and Trade, Art XI
- Agreement on Agriculture

Week 9 (March 9th): Gender and Racial Equity in RTAs and IIAs

Mandatory readings:

- Bahri, Amrita. “Women at the Frontline of COVID-19: Can Gender Mainstreaming in Free Trade Agreements Help?” (2020) 23 *Journal of International Economic Law* 563-582.
- Moon, Gillian. “Fair in Form, but Discriminatory in Operation – WTO Law’s Discriminatory Effects on Human Rights in Developing Countries” (2011) 14(3) *Journal of International Economic Law* 553-592.
- Kumar Sinha, Amit and Pushkar Anand. “Feminist Overview of International Investment Law – A Preliminary Inquiry” (2021) 24 *Journal of International Economic Law* 99-125.
- Tzouvala, Ntina. “Full Protection and Security (for Racial Capitalism)” (2022) *Journal of International Economic Law* (forthcoming).

Additional resources:

- Global Affairs Canada, “Canada’s Inclusive Approach to Trade” (2020)
- Canada-Chile FTA, Chapter N *bis*
- Trade Talks Podcast, “Episode 124: Is Trade Bad for Women?” (5 March 2020).

Week 10 (March 16th): Peace in WTO Agreements

Mandatory readings:

- Bogdanova, Iryna. “Targeted Economic Sanctions and WTO Law: Examining the Adequacy of the National Security Exception” (2021) 48 *Legal Issues of Economic Integration* 171-200.
- Boklan, Daria and Amrita Bahri. “The First WTO’s Ruling on National Security Exception: Balancing Interests or Opening Pandora’s Box?” (2020) 19(1) *World Trade Review* 123-136.
- Lester, Simon and Huan Zhu. “A Proposal for Rebalancing to Deal with National Security Trade Restrictions” (2019) 42 *Fordham International Law Journal* 1451-1474.

Additional resources:

- General Agreement on Tariffs and Trade, Art XXI.
- Canada Border Services Agency, Customs Notice 22-02 (11 March 2022).
- Trade Talks Podcast, “Episode 81: National Security and Trade ; The Fear of Imitation” (18 April 2019).
- Trade Talks Podcast, “Episode 24: The Trump Administration Views Trade as National Security Threat” (21 February 2018).

Week 11 (March 23th): Cultural Heritage and Traditional Knowledge in International Economic Agreements

Mandatory readings:

- Puig, Sergio. *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge: Cambridge University Press, 2021) 36-58.
- Vadi, Valentina. “Crossed Destinies: International Economic Courts and the Protection of Cultural Heritage” (2015) 18 *Journal of International Economic Law* 51-77.
- Cottier, Thomas and Marion Panizzon. “Legal Perspectives on Traditional Knowledge: The Case for Intellectual Property Protection” (2004) 7(2) *Journal of International Economic Law* 371-400.

Additional resources:

- Agreement for Trans-Pacific Partnership (TPP), Chapter 29
- Canada-United States-Mexico Agreement (CUSMA), Chapter 32

Week 12 (March 30th): Economic Development and IIAs

Mandatory readings:

- Dixon, Jay and Paul Alexander Haslam. "Does the Quality of Investment Protection Affect FDI Flows to Developing Countries? Evidence from Latin America" (2016) *World Economy* 1080-1108.
- Fox, Genevieve. "A Future for International Investment? Modifying BITs to Drive Economic Development" (2014) 46 *Georgetown Journal of International Law* 229-259.
- Schneiderman, David. "International Investment Law and Discipline for the Indebted" (2022) 33 *European Journal of International Law* 65-96.

Week 13 (April 6th): Conclusion – Global Public Goods in International Economic Agreements: Impede, Condition, Tolerate or Encourage?

****Research paper must be submitted by Friday, April 7th, 11:59 PM****

No mandatory reading.

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

PLAGIARISM

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to:

books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

ACADEMIC ACCOMMODATIONS

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

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).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.

Winter 2023 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website:</i> https://calendar.carleton.ca/academicyear/	
January 9, 2023	Winter term begins.
January 20, 2023	Last day for registration and course changes (including auditing) in full winter and late winter courses.
February 20, 2023	Statutory holiday. University closed.
February 20-24, 2023	Winter break. No classes.
March 15, 2023	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
April 7, 2023	Statutory holiday. University closed.
April 12, 2023	Winter term ends. Last day of full winter, late winter, and fall/winter classes.
April 15-27, 2023	Final examinations in full winter, late winter, and fall/winter courses will be held. Examinations are normally held all seven days of the week.
April 27, 2023	All final take-home examinations are due on this day.