

Course Outline

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| COURSE: | LAWS 4200A – International Economic Law |
| TERM: | Fall 2023 |
| PREREQUISITES: | LAWS 2908, 0.5 credits from LAWS 3207 or LAWS 3208, and fourth-year Honours standing. |
| CLASS: | Day & Time: Mondays 2:35 PM – 5:25 PM Room: Please check Carleton Central for current room location |
| INSTRUCTOR: | Jean-Michel Marcoux |
| CONTACT: | Office: C564 LA (Loeb Building) Office Hrs: Mondays 1:00 PM – 2:00 PM Telephone: 613-520-2600 x 3672 Email: jeanmichel.marcoux@carleton.ca |

CALENDAR COURSE DESCRIPTION

Selected topics in international economic law. May include: the legal regulation of international economic activity; methods of dispute settlement; standardization and development of an autonomous international trade law; and selected conventions and institutions governing international economic law.

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 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 (WTO), regional trade agreements (RTAs) and international investment agreements (IIAs).

The seminar is divided into two main sections. First, it provides an overview of key concepts, as well as the political economy of free trade agreements and international investment agreements (Weeks 1 and 2). Second, it focuses on how the provision of specific global public goods fits within the WTO, RTAs and IIAs (Weeks 3 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 on Zoom and will not be made available to participants on Brightspace.

From Week 1 to Week 2, as well as Week 13b, the discussions will be led entirely by the instructor. From Week 3 to Week 13a, 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 (60-75 minutes).

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

- Understand key aspects of the political economy of the World Trade Organization, free 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 the arguments made by various authors in the field of international economic law.
- 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 post critical reflections on Brightspace (see "Evaluation" below). Mandatory readings typically represent around 50 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.

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 | 15% | TBA (see below) |
| Critical reflections posted on Brightspace | 15% | December 4 th , 11:59 PM |
| Research plan | 20% | October 6 th , 11:59 PM |
| Research paper | 40% | December 8 th , 11:59 PM |
| Class participation | 10% | Every class |

Reading Presentation

From Week 3 to Week 13a, each class will include a presentation of the *mandatory readings* by a team of 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 to 60 minutes (depending on the number of students involved). 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 Monday, September 18th, 7:00 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.

Critical Reflections Posted on Brightspace

From Week 2 to Week 13a, a discussion will be added to Brightspace after each class (see the module entitled “Discussions”). You are required to post two short critical reflections throughout the term, either by starting a new thread under a discussion or by leaving a reply to a thread started by another student. Each reflection should demonstrate your understanding and critical engagement with the *mandatory readings* of a specific class. Therefore, you are required to explicitly refer to mandatory readings in your text, by at least providing the name of the author(s) and the year of the publication you are referring to in parentheses.

Each reflection must be around 500 words. Moreover, each reflection must relate to a different class (i.e., you cannot post two reflections for the same class). All reflections must be posted on Brightspace by Monday, December 4th, 11:59 PM.

The critical reflections will be graded according to the following criteria: 1) references to mandatory readings; 2) depth of the analysis; and 3) 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 3,500 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 750 words (excluding footnotes and the bibliography). References should be included by using the *Canadian Guide to Uniform Legal Citation* (McGill Guide). A useful summary of the guide can be found here: https://library.carleton.ca/sites/default/files/help/writing-citing/Using_uniform_legal_citation_2018.pdf. The research plan must be uploaded in a Word document (.docx) on Brightspace by Friday, October 6th, 11:59 PM. I will provide written feedback on each research plan by Friday, October 20th.

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 the 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 3,500 words (excluding footnotes and the bibliography). References should be included by using the *Canadian Guide to Uniform Legal Citation* (McGill Guide). A useful summary of the guide can be found here: https://library.carleton.ca/sites/default/files/help/writing-citing/Using_uniform_legal_citation_2018.pdf. The research paper must be uploaded in a Word document (.docx) on Brightspace by Friday, December 8th, 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.

Class Participation

Given that the seminar primarily relies on discussions among participants, attending in-person sessions is mandatory throughout the entire term. In addition to attending classes, you are required to actively participate in the discussions led by students and by the instructor. Careful consideration of the mandatory readings that are assigned for each class greatly contributes to an active participation in these discussions.

Class participation will be graded according to the following criteria: 1) frequency of interventions; and 2) relevance of interventions. Moreover, unjustified absence from a class will be penalized, following a deduction of 2 points from the participation grade for each class missed (maximum of 10 points).

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). 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 course; and 3) academic integrity.

Unjustified late submissions of the critical reflections, the research plan or the research paper will be penalized, following a 10% deduction of the grade for each day (i.e., 1,5 points/day for the critical reflections, 2 points/day for the research plan and 4 points/day for the research paper). No extension will be granted for the reading presentation.

SCHEDULE

PART I - FOUNDATIONS OF THE ANALYSIS

Week 1 (September 11th): 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.

Additional resource:

- Audio Visual Library of International Law, "Edith Brown Weiss on the Commons, Public Goods and International Law", 4 December 2017.

Week 2 (September 18th): The Political Economy of International Economic Agreements

*****Sign-up sheet for reading presentations must be completed by Monday, September 18th, 7:00 PM*****

Mandatory readings:

- Bonnitcha, Jonathan, Lauge N. Skovgaard Poulsen and Michael Waibel. *The Political Economy of the Investment Treaty Regime* (Oxford: Oxford University Press, 2017) 1-31
- 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 resources:

- Canada-United States-Mexico Agreement (CUSMA) – Table of Contents
- Canada – 2021 Model FIPA

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

Week 3 (September 25th): Clean Environment in WTO Agreements and RTAs

Mandatory readings:

- Asmelash, Henok. “The First Ten Years of WTO Jurisprudence on Renewable Energy Support Measures: Has the Dust Settled Yet?” (2022) 21 *World Trade Review* 455-478.
- 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 4 (October 2nd): Clean Environment in IIAs

Research plan must be submitted by Friday, October 6th, 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**]

Additional resources:

- 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 5 (October 9th): Thanksgiving

No class. No mandatory reading.

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

Mandatory readings:

- Sell, Susan K. “The Rise and Rule of a Trade-Based Strategy: Historical Institutionalism and the International Regulation of Intellectual Property” (2010) 17(4) *Review of Political Economy* 762-790.
- 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.

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 (October 23rd): Reading Break

No class. No mandatory reading.

Week 8 (October 30th): Food Security in WTO Agreements

Mandatory readings:

- Burnett, Kim and Sophia Murphy. "What Place for International Trade in Food Sovereignty?" (2014) 41 *Journal of Peasant Studies* 1065-1084.
- 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.

Additional resources:

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

Week 9 (November 6th): 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.
- Tzouvala, Ntina. "Full Protection and Security (for Racial Capitalism)" (2022) 25 *Journal of International Economic Law* 224-241.

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 (November 13th): Peace in WTO Agreements

Mandatory readings:

- 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 (November 20th): Cultural Heritage and Indigenous 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.

Additional resources:

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

Week 12 (November 27th): 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.
- Schneiderman, David. “International Investment Law and Discipline for the Indebted” (2022) 33 *European Journal of International Law* 65-96.

Week 13a (December 4th): International Economic Agreements as Global Public Goods?

*****Critical reflections must be posted on Brightspace by Monday, December 4th, 11h59 PM*****

Mandatory readings:

- Choudhury, Barnali. “International Investment Law as a Global Public Good” (2013) 17(2) *Lewis and Clark Law Review* 481-520.

- Mavroidis, Petros C. "Free Lunches? WTO as Public Good, and the WTO's View of Public Goods" (2012) 23 European Journal of International Law 731-742.

Week 13b (December 8th): Conclusion – Global Public Goods in International Economic Agreements: Impede, Condition, Tolerate or Encourage?

****Research paper must be submitted by Friday, December 8th, 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 that can be found at:

<https://carleton.ca/equity/contact/form-pregnancy-accommodation/>

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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

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. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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/>.