

INTERNATIONAL TRADE LAW SYLLABUS

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Office hours:

Wednesdays 3.30 to 4.30 pm

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Casebook and course materials:

The casebook for this class is J.H. Jackson, W.J. Davey, A.O. Sykes, *Legal Problems of International Economic Relations*, 5th ed. West. Readings in the casebook are referred to as “CB pp. ____” in the syllabus.

In addition, you will need to have a hard copy of the WTO agreements. You may choose any of the following options:

- print them from the course website on TWEN (will be a long printing job but it will be free)
- buy either the 3rd or 4th editions supplement to the Jackson casebook (1995 or 2002 respectively): cheap used copies available online, or
- buy the 5th edition supplement (2008-current edition but identical to the earlier ones; new or used).

A number of additional materials will be posted on TWEN (denoted as “course website” in the reading assignments). They are also required readings and you must register in the TWEN course to view the materials.

The course website also includes some more general resources that might be useful to you.

Class preparation and attendance:

Both are mandatory! Attendance is a requirement imposed by the school and the American Bar Association and is key to your success in this class.

If you need to miss a class, email me ahead of time (up to the day before the class). If you can attend but have been unable to prepare for some exceptional reason, also do let me know ahead of time. I will not call on you in class. However, more than occasional absence or lack of preparation will be sanctioned. If you are prevented from attending class for an extended period of time, you should talk to me or to the appropriate administrative personnel.

When you prepare for class, you should focus on:

- understanding the substance of the materials,

- understanding the process by which a particular rule or decision has come about,
- relating the materials to earlier segments of the class so that you can increase the sophistication of your arguments and critiques of the cases.

Finally, whether you had to miss a class, you fell behind in your readings, you feel confused for any reason, or you just want to take stock of how you are doing do come to my office and we will work it out. Feel free to come on your own or with your study group, for 5 minutes or for an hour.

Exam and evaluations:

Your evaluation will be based on a final exam. The exam will be 3 hours long and will be in-class. It will consist in:

- an “objective” part: short answers to short questions to assess whether you understand and master the basics (about 20 questions; 45 minutes). I will give you examples of typical questions as we progress in the course. This part will be closed books.
- 2 essays: one will be a problem/fact pattern where you have to discuss the legal issues raised and one will require a more general reflection on a trade law concept or issue. This part will be open books.

Good class participation will be rewarded in your evaluation and poor class attendance will be noted.

Other resources:

I encourage you to subscribe to a few news sources regarding trade law developments.

The following free services are good:

- WTO news alerts: <http://icd.wto.org/member/register.aspx?l=e>
- Public Policy Institute’s “trade fact of the week” at:

http://www.ppionline.org/cobrand/newsletter_subscribe.cfm

(and in my experience, they don’t spam with other unwanted materials).

- ASIL Insights and International Law in Brief (ILIB) both free subscriptions offered by the American Society of International Law that cover all international topics. www.asil.org For purposes of this class, the ILIB will keep you abreast of new bilateral and multilateral trade agreements, investment arbitrations, NAFTA and WTO cases.

The following subscription service available through the law library’s electronic “Research Databases” links is excellent:

BNA – International Trade Reporter: sign up for emails via the library website.

If you find other resources that you think could be valuable to the class, please feel free to post it on the forum discussion section of the course TWEN site. ***Remember that you will benefit individually and collectively from enhancing the class level in any way you can!***

SYLLABUS

While the readings are broken down by session, the dynamic of the discussion will require some flexibility. As the situation may require, the discussion pertaining to a session may spill over to the next class.

1. Sept. 1 **Why do we trade? Why do we regulate trade?**

Assignment:

- CB pp. 4 (section 1.3)-12
- CB pp. 41 (Section 5)-48 (excluding Section 2.3)
- Smoot Hawley tariffs (course website)
- Klare & Danielson, Catfish case-study (course website)

Think about...

- What is a tariff? (Make sure you understand basic terminology)
- What policy objectives are pursued by international trade liberalization?
- Is trade liberalization always desirable?

2. Sept. 8 **The Economics of International Trade Regulation: An Overview**

Assignment:

- CB pp. 14-39 (excluding Tyson article): if you feel overwhelmed by the economics graphs, don't panic, we will go over that in class again.
- CB pp. 51-59

Think about...

- Why are high tariffs and other trade restrictions often considered to be bad policy?
- Who benefits from higher tariffs and trade restrictions?
- How can trade be liberalized?

3. Sept. 13 **The WTO: Overview, institutions, members and accession**

Assignment:

- CB pp. 214-223
- Marrakesh Agreement Establishing the WTO Agreement (course website or document supplement)
- CB pp. 237 (Section C)-246
- WTO website (www.wto.org): look at the list of members; look at the Least Developed Country criteria and membership
- WTO Decision on consensus (course website)
- Vanuatu accession (course website) skim

Think about...

- Is the WTO an international organization?

- What is the object and purpose of the Marrakesh Agreement?
- What is the mandate of the WTO; what is the scope of its activities?
- How are decisions made at the WTO?
- What are the challenges facing developing countries when becoming members of the WTO (see the example of Vanuatu)?

4. Sept. 15 **The dispute settlement process at the WTO (I): Procedure, parties, claims**

Beware: long readings!

Assignment:

- See process overview and timeline at http://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm
- Dispute Settlement Understanding (course website or document supplement: arts. 1-6, 11, 13, 14, 16, 17, 19, 20, 25, 26.
- CB pp. 279-303 (excluding Notes and Questions).

Think about...

- What are the various procedures available for dispute settlement at the WTO?
- Do WTO members have to settle their disputes through the procedures provided?
- Are panel and Appellate Body (AB) reports binding on WTO members and why?
- Who can be a party to WTO disputes? States? International organizations? NGOs? Individuals? Who can join as a third party and how?
- What types of claims can a member make?

5. Sept. 20 **Dispute settlement (II): Treaty interpretation, value of precedent, remedies**

Assignment:

- CB pp. 306-321
- Dispute Settlement Understanding: articles 21 and 22
- CB pp. 348-367

Think about...

- How do the panels and AB compare with the International Court of Justice (and other international courts that you may be familiar with) with respect to treaty interpretation?
- What remedies are available at the WTO? How does that compare with other sectors of international law (human rights, environmental law, etc?)
- What is the problem with the implementation of remedies at the WTO? Think about what happens when a country with a small percentage of world trade wins a case against a large country with a big domestic market and multiple suppliers. What about the case of countries that are mostly reliant on the export of one or two commodities (which is the case of many Least Developed Countries)?

6. Sept. 22 **Trade regulation and US law**

Assignment:

- Refresh your memory on the Constitution: CB pp. 63-65 (excluding Section 3.2)
- CB pp. 84 (section 3)-86, 90-95

- CB pp. 120 (Section D) -124
- CB pp. 246-254
- Goss International (course website): how messy can it get??? Don't focus on the specifics of rules and standards of antisuit injunctions but rather, identify the procedural history of the dispute in various courts and focus on the balance between private disputes and remedies and trade rules at the national and supra-national level.

Think about...

- How does the President's ability to enter into international trade agreements compare with his/her ability to conclude treaties in other domains of international law?
- The Goss case is a remarkable example of the travels and tribulations that private companies engaged in international trade can endure. Most companies go bankrupt as soon as they get hit with punitive and other extraordinary customs duties because the cash-flow required to fight it is too high. What lessons does this case suggest regarding the effect and efficiency of international trade regulation?

7. Sept. 27 **The GATT (I): Tariffs, quotas, MFN**

Assignment:

- GATT Articles I, II, XI, XIII, XXVIII, XXVIII bis (course website or document supplement)
- CB pp. 380-382 (skim)
- CB pp. 382 (Section B)-383
- CB pp. 404 (Section C)-405 (excluding Senate Report); 407 (section 2)-top of 408 (excluding Generra).
- CB pp. 423-429 (excluding Notes and Questions on p. 429)
- CB pp. 475-481
- CB pp. 483 (section 2)-492
- CB pp. 390-398 (excluding Conair)

Think about...

- What is MFN treatment?
- Why are quotas banned at the WTO?
- What is the notion of "like product" and why does it matter?
- Valuation and classification: what is it and why is it relevant to the GATT's main rules?

8. Sept. 29 **The GATT (II): National treatment, general exceptions**

Assignment:

- GATT Articles III, XX, XI
- SPS Agreement article 5 (course website or document supplement)
- CB pp. 537-550 (excluding Notes and Questions)
- CB pp. 591-598 (excluding Notes and Questions)
- CB pp. 605 (Section 13.4)-625

Think about...

- What is “National Treatment”?
 - How do the exceptions of Article XX apply?
 - What is the effect of Article XX on members’ non-WTO international obligations?
- Could Article XX be used as a conflict of law clause?
- Read GATT Article XX(b) with SPS Article 5: how much leeway do governments have to take health-related measures domestically that are trade restrictive?

9. Oct. 4 **Safeguards under the WTO and under US domestic law**Assignment:

- GATT Article XIX
- Agreement on Safeguards (course website or document supplement): arts.
- CB pp. 691-708 (excluding Commissioners views)
- CB pp. 711 (industry definition)-714 (excluding Notes and Questions on p. 746)
- CB pp. 717 (serious injury)-734
- CB pp. 743 (remedial issues)-747

Think about...

- What is the rationale for safeguards?
- Do US rules on safeguards comply with WTO requirements?

10. Oct. 6 **Dumping and anti-dumping: WTO rules**Assignment:

- CB pp. 752-760 (excluding Notes and Questions on p. 760): do read this general overview before delving into the intricacies of the actual rules below.
- CB pp. 813-814
- GATT Article VI
- Antidumping Agreement (document supplement or course website): arts. 1-4, art. 7.1, 7.2, 8.1, 9.1, 9.2, 9.3, 11.
- CB p. 778 Note 3 (Fair Value Comparisons-explaining zeroing)
- CB pp. 787 (Section C)-802

Think about...

- How does “dumping” by the producers of country A of goods imported by country B affect the economy of country B? Is it all bad? Who stands to gain and who stands to lose within each country?
- What do you think happens if the US imposes large antidumping duties on steel from China but the EU doesn’t impose such antidumping duties? What is the effect on the European steel industry, on the US steel industry, on US and EU car manufacturers, on US and EU consumers?
- Read note 3 on p. 778 carefully: several panels and the AB have repeatedly found that “zeroing” was inconsistent with WTO obligations and could be challenged “as such” as an inconsistent measure (rather than as applied to the specifics of a given case). What is the problem with “zeroing”?

11. Oct. 13 **Subsidies and countervailing duties: WTO rules**

Assignment:

- CB pp. 848-852
- GATT Article XVI, Agreement on Subsidies and Countervailing Measures articles 1, 2, 3, 5, 6, 7.1, 7.9, 7.10, 8, 9.1 (document supplement or course website)
- CB pp. 888-894 (excluding notes and questions)
- CB pp. 906 (section D)-921

Think about...

- What is the difference between antidumping duties and countervailing duties?
- When can a WTO member impose countervailing duties?
- How does the WTO analysis and requirements on countervailing duties and the US' Court of International Trade approach compare?

12. Oct. 15 **Antidumping and countervailing duties under US law**

Assignment:

- AD and CVD procedure in the US: CB pp. 763 (Section 16.3)-768 (excluding Notes and Questions)
- AD and CVD timetables (Course website): just to view the complexity and length of the procedure...
- AD case in the US: CB p. 771-783 (prepare answers to the problems)
- CVD in the US: CB pp. 924-926

Think about...

- How much leeway does the US have in determining that there is a dumping situation and in calculating the dumping margin? How arbitrary does this seem to you?
- How burdensome do you think antidumping investigations are for foreign producers?
- How do the US rules compare to the WTO standards on finding that there has been dumping or a subsidy that should be offset by an antidumping duty or a countervailing duty?

13. Oct. 18 **Technical obstacles to trade: TBT, SPS, rules of origin...**

Assignment:

- CB pp. 647-665 (excluding notes and Questions)
- TBT Agreement (document supplement or course website) arts. 1, 2, 3, 4
- SPS Agreement (document supplement or course website) arts. 2, 3, 5
- CB pp. 669 (Section 14.3)- top of 670 (excluding EU sardines case); 688-690 (Notes 3-12)
- CB pp. 412 (Section D)-420

Think about...

- Why did WTO members decide to conclude an agreement on SPS and TBT? What

trade policy do these agreements serve?

- Who is bound by SPS, valuation and TBT rules and who are the rules addressed to more generally? How are those rules different in nature from GATT disciplines? What does that tell us about the nature of WTO regulation?

14. Oct. 20 **The GATS**

Assignment:

- GATS Articles I, II, VI, VIII, IX, X, XI, XII, XIV, XIV bis, XVI, XVII, XX, XXVIII, Annex on the Movement of Natural Persons Supplying Services under the Agreement (document supplement or course website)
- CB pp. 966 (Canada-periodicals)-970
- CB pp. 972-989

Think about...

- What are the 4 different types of trade in services?
- How does liberalization of trade in services operate under the GATS?
- What are the common features of the GATT and GATS?
- Can service providers operating within country A discriminate between residents and citizens of country A and foreigners in country A (e.g., tourists from abroad) under the GATS?
- Does it make sense to liberalize trade in services but not the movement of the persons providing the services (particularly with reference to the type of service described in GATS Article I:2.d)?

15. Oct. 25 **The TRIPS**

Assignment:

- If you have no background on IP law generally, read CB pp. 993-997
- CB pp. 997 (Section B)-1000
- CB pp. 1003 (Section C)- 1007 (Excluding Section D)
- CB pp. 1036-1038 (excluding notes and questions)
- TRIPS amendment (Course website)
- Find out how many WTO members (and which ones) have notified the organization of their intention to use the compulsory licensing mechanism.
- CB pp. 1039 (Section 20.3)-1047.

Think about...

- What is the relationship between the TRIPS and the Berne, Paris, Rome and Integrated Circuits Conventions?
- What are the implications of the compulsory licensing scheme? Is it a useful procedure?
- What is a gray market good?

16. Oct. 27 **Regional trade agreements and the WTO; special emphasis on NAFTA**

Assignment:

- CB pp. 497-500 (excluding Lawrence article)
- GATT Article XXIV
- CB pp. 504 (section B)-514 (excluding Notes and Questions)
- CB pp. 516 (section 11.3)-524
- CB pp. 527 (section B)-531 (excluding section D)
- Thelen TRIPS implementation (course website)

Think about...

- WTO advocates often feel threatened by the development of regional trade agreements. Why do you think that is? Is it a justified concern?
- How can states deal with conflicting obligations under the WTO and RTAs? Can international regulation remain non-hierarchical, decentralized and horizontal?
- What are the possible effects of the “TRIPS-plus” strategy on the implementation of TRIPS?

17. Nov.1

Trade and Investment: TRIMS and NAFTAAssignment:

- CB pp. 1110-1111
- TRIMS agreement (course website or document supplement) articles 1, 2, 3, 6, Illustrative list in the Annex
- NAFTA Chapter 11 (course website or document supplement) articles 1101-1106, 1109, 1110, 1114, 1115, 1116, 1120, 1122.
- CB pp. 1112-1120
- CB pp. 1128-1140

Think about...

- How do the TRIMS and NAFTA disciplines compare?
- How do the dispute settlement processes under the two agreements compare?

18. Nov. 3

The WTO and developing countries: Preferences, special treatment, current problemsAssignment:

- CB pp. 1144-1154 (excluding 1982 report): pay particular attention to the descriptions of GATT Articles XVIII, XXXVI-XXXVIII and to the Decision of 28 November 1971 (Enabling Clause) starting at p. 1152
- CB 1155 (section D)-1159 (excluding Report by the Secretary General of the OECD)
- CB pp. 1160 (section B)-1171 (excluding Notes and Questions)

Think about...

- What development policies may be implemented by WTO developing members? What policies are proscribed? Also look back to the rules on subsidies.
- What are the advantages and problems of GSP-style preferences?

- Although the case against the EC on preferences was a victory for India, it spurred much debate and controversy amongst WTO developing members. Why?
- Thinking back on all you have learned about the WTO agreements and the types of rules and disciplines they impose, what do you think the major hurdles are for developing members?

19. Nov. 8 **The Doha Round of negotiations and trade linkage**

Assignment:

- CB pp. 1058-1068 (including notes and questions)
- Charnovitz, Linkage (course website)
- Doha Declarations (course website) pp. 2-19

Think about...

- What are the outer limits of the WTO's regulatory power? What should they be?
- What is the impact of linkage on various members (rich industrialized countries, the range of developing members, least developed countries)?
- What is the impact of linkage on states not party to the WTO or to specialized treaties or organizations? (think back to the Shrimp-Turtles case and to the discussion on RTAs)
- In light of the debate regarding linkage and the scope of the WTO, what do you think of the Doha agenda and work program?

20. Nov. 10 **Trade sanctions: Exports control, embargoes, boycotts, anti-boycotts and other special trade restrictions under the WTO and US law**

Assignment:

- Chow, Chapter 13 (course website): read and do the problems
- Complete the NEU Exports Controls tutorial and the test (course website)

Think about...

- Aside from the WTO, what other large multilateral treaty and organization contemplates the use of trade restrictions for security purposes?
- Why is the Cuban embargo so controversial?