Trade Law and Policy

Professor Teachout

Fall Term, 2020

Syllabus

Text:  Guzman, Pauwelyn, and Hillman, International Trade Law, 3rd ed. (2016) and Documents Supplement

Office hours:  Thursday, 4:00-5:00 or by appointment

Goals: The course on Trade Law and Policy has three basic goals: (1) to introduce students to the system of rules and regulations governing international trade; (2) to help students develop a basic competency in identifying and analyzing typical trade law problems; and (3) to provide a critical perspective for evaluating and criticizing both current U.S. trade policy and the current regime of international trade rules. Although we will devote some attention to particular regulatory provisions of regional trade agreements (such as the USMCA, the revised version of NAFTA), our primary focus will be on the rules and regulations governing members of the World Trade Organization (the WTO).

By the end of the course, students should be able to:

(1) understand and explain the institutions and processes established under the auspices of the WTO for regulating international trade and resolving disputes;

(2) identify possible WTO-based challenges to member state practices and policies that create barriers to the free movement of international trade; and

(3) analyze those challenges, applying established rules and doctrines, taking into account both policies favoring free trade and policies supporting the freedom of member states to establish their own health and welfare preferences.

Class organization and structure:

The first class sessions will be devoted to providing basic orientation to the underlying architecture and organization of international trade law. We then turn to in-depth study of particular requirements established by WTO agreements (such as GATT, GATS, and TRIPS) and supplementary provisions in regional trade agreements (such as the newly-established USMCA replacing NAFTA). These sessions will proceed primarily on analysis of a series of practice-related problems aimed at pulling into focus some of key legal issues encountered in practice.

Practice-Related Problems:

Starting the second week of classes, I will be organizing students into teams of two (if an odd number, one team of 3) to work on a series of practice-related problems. If there is a student in the class you would like to work with on these problems, please let me know by the end of the first week of classes. Otherwise I will be assigning students to teams. For most of the problems, preparation will take the form of working through the problem beforehand and being prepared to share your team’s analysis with the class in the session assigned for class discussion. However, over the course of the term, your team will be responsible for preparing and posting in advance a brief written analysis of five of the assigned problems. You may choose the five problems you wish to treat this way. Your posted submissions will not be individually graded but, together with your contributions to class discussion, will be considered as an element of class participation.

Resources:

There are many internet resources available for students and practitioners of international trade law. For introductory purposes, the most helpful are the following:

[www/wto.org](https://www/wto.org) (official WTO site)

[www.ustr.gov](http://www.ustr.gov) (official site of the U.S. Trade Representative)

[www.usmca.com](http://www.usmca.com) (official site of the U.S., Mexico, Canadian free trade agreement)

[www.worldtradelaw.net](http://www.worldtradelaw.net) (a comprehensive site for trade law practitioners, covering both WTO and regional trade agreements and disputes)

We will have a chance to explore the resources available on these and other sites over the course of the semester.

Evaluation

Evaluation will be based (except as noted below for students electing to do a research paper) in part on a final take-home exam (80%) and class participation (20%). I give more weight than normal to class participation in this class to encourage active student participation in discussion of the problems we will be analyzing.

Students have the option of doing a research paper on an area of interest in lieu of taking a final take-home exam. If you choose this option, your grade on the paper will count toward 80% of your final grade and class participation for the remaining 20%. You may do the research project individually or with another student if you prefer. If you are interested in exploring this option, we need to discuss possible paper topics before the end of the third week of classes and settle on a topic no later than the end of September. The research project must meet all the requirements for a certified AWR. You must take the initiative if this is an option you wish to explore.

Syllabus

Session #1: Introduction to Trade Law and Policy/ Current Issues

The first class session will focus on current issues in trade law and policy. Please read and be prepared to discuss the following articles and notices. When you come to class, be prepared to share with the class five questions you have regarding the material covered in the assigned readings below:

(1) WTO – Summary of Achievements and Shortfalls in First 25 Years (January, 2020)

<https://www.wto.org/english/news_e/news20_e/dgra_01jan20_e.htm>

(2) WTO – Concerns about Technical Barriers to Trade (June 8, 2020) (see in particular Food and Ag Concerns:

<https://www.wto.org/english/news_e/news20_e/tbt_08jun20_e.htm>

(3) Society for International Economic Law [SIEL] Newsletter (Spring 2020)

Breakdown in Global Trade Regime: See President Bossche’s Letter “Can It Get Any Worse?”

<https://mcusercontent.com/4fc66c22502199424a36b7a77/files/1eea7ae0-9730-4b69-9045-20ac1f0d1ad5/SIEL_NL_45_final.pdf>

(4) Way forward to “Sustainable” Trade in Wake of Coronavirus Pandemic: WTO Panel Discussion (June, 2020)

<https://www.wto.org/english/news_e/news20_e/envir_04jun20_e.htm>

Session #2: Overview Continued: The Economics of Trade Liberalization/Comparative Advantage/Global Value Chains; Key Provisions in the USMCA

This class continues our overview of current issues in trade law and policy and then turns to consideration of the notion of “comparative advantage” which serves as the key economic justification for trade liberalization policy.

We will begin by going around the room and asking each of you to share briefly a topic or recent story about some aspect of global trade that interests you. If you want to find news stories about recent developments you can type in “global trade” on any major search engine; or check recent issues of The Economist; or look under news stories on the WTO site listed above.

Next, we will consider the key provisions in the United States Mexico Canada agreement (the new version of NAFTA) described in the New York Times story cited below The USMCA is an example of a preferential regional agreement authorized under GATT (a keystone WTO agreement). The proliferation of such agreements over the past quarter century is something we will return to later in the course.

Read: [https://www.nytimes.com/2020/01/29/business/economy/usmca- deal.html?nl=todaysheadlines&emc=edit\_th\_200130&campaign\_id=2&instance\_id=154 08&segment\_id=20795&user\_id=898da8cda34af2ce762463a28e399d7a&regi\_id=63509 3370130](https://www.nytimes.com/2020/01/29/business/economy/usmca-%09deal.html?nl=todaysheadlines&emc=edit_th_200130&campaign_id=2&instance_id=154%0908&segment_id=20795&user_id=898da8cda34af2ce762463a28e399d7a&regi_id=63509%093370130)

We will spend the remainder of the class discussing the case for trade liberalization focusing on the phenomenon of “comparative advantage” illustrated by the hypothetical “North-South” example on pp. 13-16 of the text.  This notion of “comparative advantage” is such a crucial element of the case for trade liberalization that it is important you understand it. In preparation for class, work through the “North-South” example and be prepared to share your analysis with the class.

Read:  Text, Ch. 1, Trade and Economic Policy: pp. 1-7 (top), (skip the Kim article and questions pp.7-11), pp.11-17 (bottom); pp 19 (bottom)-20).

Session #3: Introduction to the WTO

Read: Text, Ch 4, WTO: History, Structure, and Future, pp. 90(mid)-113

Starting with this session, please have the Documents Supplement available for reference in class discussion. For the remainder of the term we will be working closely with the agreements reproduced there.

Session #4: Dispute Settlement in the WTO

Read: Text, Ch. 5, WTO Dispute Settlement, pp. 127-48; Documents Supplement [Doc. Supp.], GATT: Articles XXII:1 and XXIII:1; Dispute Settlement Understanding: Articles 4.3, 4.7, 6.1, 16.4, 17.5, 17.6, 17.13, 17.14, 21.3, 21.5, 22.4, 22.6

Prepare answers to “Antigua Gambling” problem on p. 148. In class I will be calling on you for your answers to the questions in this problem.

Session #5: Special Topics in WTO Dispute Settlement

Read: Text, Ch. 6, Special Topics in WTO Dispute Settlement, pp. 151-71(top), 174-79; Doc. Supp., Dispute Settlement Understanding [DSU], 14.1, 17.10, 18.2, 23; DSU Appendix 3.2, 2.3

Prepare Patricia and Protectio problem on pp.178-79.

Session #6: Tariffs

*EC-Customs Classification of Chicken Cuts* (2005)

Read: Text, Ch. 7, Tariffs, pp.181-90 (mid), 196(bottom)-209(top); GATT II:1(a,b), 2, VIII:1(a), XXVIII, XXXV1:8

Prepare Tramontanan Chocolate Duties problem at pp. 216-17.

Session #7: Quantitative Restrictions

*Japan – Semi-Conductors* (1988)

*Argentina-Bovine Hides* (2000)

*Argentina-Import Measures* (2015)

Read: Text, Ch. 8, Quantitative Restrictions, pp. 219-46; Doc. Supp., GATT XI:1- 2(a), XIII; Agreement on Safeguards 11.1(b), 3

Prepare Patrian Shoes Problem, pp. 250-51.

Session #8: National Treatment-Internal Taxation

*Japan – Taxes on Alcoholic Beverages* (1996)

*Chile-Taxes on Alcoholic Beverages* (2000)

Read: Text, Ch. 9, National Treatment-Internal Taxation, pp. 253-75 (mid); Doc. Supp., GATT III:1, 2; *Ad Note* to GATT III:2

Prepare Luxury Taxes and Carbon Taxes problems on pp.279-80.

Session #9: National Treatment-Internal Regulations

*EC-Asbestos* (2001)

Read: Text, Ch. 10, National Treatment-Internal Regulation, pp. 283-300 and referenced GATT provisions.

Session $10: National Treatment-Internal Regulations (cont).

*EC-Seals* (2014)

*Tuna Dolphin I* (1991)

Read Text, Ch. 10, National Treatment-Internal Regulation, pp. 300-322

Prepare: Communian Beef (team assignment) and Flandrian Child Labor Ban on pp. 321-22.

Session #11: Most-Favored-Nation Treatment

*EC-Bananas* (1994)

*Canada-Autos* (2000)

` *EC-Seals* (2014)

Read: Text, Ch. 11, Most-Favored-Nation Treatment, pp. 323-51, and referenced GATT provisions.

Prepare: Morealia-Soccer Balls and Eutopia’s Carbon Tax and Flandria’s Ban on Child Labor Products problems on p. 350-51

Session #12: Preferential Trade Agreements

*Turkey-Textiles* (1999)

Read: Text, Ch. 12, Preferential Trade Agreements and referenced provisions in GATT and GATS, pp. 353-380

Prepare: East-West Compact problem on p. 380

Session #13: General Exceptions: GATT Article XX (Part One)

*Brazil-Tyres* (2007)

*EC-Asbestos* (2001)

*US-Cross Border Gambling* (2005)

Read: Text, Ch. 13, General Exceptions: GATT Article XX, pp. 381-401 (mid)

Session #14: General Exceptions: GATT Article XX (Part Two)

*US-Shrimp* (1998)

*China-Raw Materials* (2011)

Read: Text, Ch. 13, General Exceptions: GATT Article XX, pp. 401(mid)-17.

Prepare: Tabac Tobacco problem on pp. 416-17.

Session #15: General Exceptions: The Chapeau of GATT Article XX

*US-Shrimp* (1998) and (2001)

Read: Text, Ch. 14, pp. 419-444

Prepare: Novador and Sashima problem on pp. 453-55 .

Session #16: Dumping and Anti-Dumping Duties

*US-Hot-Rolled Steel* (2001)

*EC-Bed Linens* (2001)

*US-Antidumping and Countervailing Duties* (2011)

Read: Text, Ch. 15, Dumping and Anti-Dumping Duties, pp. 457-85(top)

No problem for this session.

Session #17: Subsidies and Countervailing Duties (Part One)

*US-Antidumping and Countervailing Duties* (2011)

*Canada-Renewable Energy Generation* (2013)

Read: Text, Ch. 16, Subsidies and Countervailing Duties, pp. 503-25 and related provisions in GATT and the SCM agreement

Session #18: Subsidies and Countervailing Duties (Part Two)

*EC-Large Civil Aircraft* (2011)

*US-Cotton* (2008)

Read: Text, Ch. 16, Subsidies and Countervailing Duties, pp. 525-48 (top)

Prepare problem to be assigned.

Session #19: Safeguards

*Argentina-Footwear* (2000)

*US-Lamb* (2001)

Read: Text, Ch. 17, Safeguards, pp. 551-77

No problem this session.

Session #20: Agreement on Sanitary and Phytosanitary Measures

*EC-Hormones* (1998)

Read: Text, Ch 18, Agreement on Sanitary and Phytosanitary Measures, pp. 581-608 and cited provisions in SPS agreement

Prepare: Salmon Plangue problem on pp. 617-18

Session #21: Agreement on Technical Barriers to Trade (Part One)

*US-Tuna II* (2012)

*EC-Seals* (2014)

Read: Text, Ch. 19, Agreement on Technical Barriers to Trade, pp. 619-42 and cited provisions in TBT agreement

Session #22: Agreement on Technical Barriers to Trade (Part Two)

*US-Tuna II* (2012)

Read: Text, Ch. 19, Agreement on Technical Barriers to trade, pp. 642-60

Prepare: Plain Packaging of Cigarettes problem at pp. 658-60

Session #23: Trade in Services [GATS] (Part One)

*US-Gambling* (2005)

Read: Text, Ch. 20, Trade in Services, pp. 661-689 (top)

Session #24: Trade in Services [GATS] (Part Two)

*China-Audiovisuals* (2010)

Read: Text, Ch. 20, Trade in Services, pp. 689-700

Prepare: Complexian Distribution Services problem at pp. 699-700

Session #25: Trade-Related Aspects of Intellectual Property Rights [TRIPS]

Read: Text, Ch. 21, Trade-Related Aspects of Intellectual Property Rights, pp. 701-29(top)

No problem.

Session #26: The WTO and Developing Countries

*EC-Tariff Preferences* (2004)

Read: Text, Ch. 22, WTO and Developing Countries, pp. 739-68

No problem.