

International Law

Academic year 2019-2020

International Trade Law

DI064 - Autumn - 6 ECTS

Tuesday 18h15 - 20h00

Course Description

These are challenging days for the global trade governance system. Economic interdependence between countries and across production chains continues to grow, and stable rules on international trade and investment appear to be key. But the tide of (political) history seems to have turned against globalization. The United States seems to be turning its back on the rules of the World Trade Organization (WTO), even though it has historically been the chief architect and driving force of the system. Should and can the WTO, including the highly successful dispute settlement system, be reformed? Can this be achieved against the backdrop of a giant economic struggle between the US and China, all the while rapid technological advances are changing economic life, trade flows as well as trade and industrial policies?

Against this backdrop, this course offers practical, in-depth knowledge of substantive WTO law and legal policy, drawing heavily on the jurisprudence of WTO panels and the Appellate Body. We will cover the core disciplines of trade in goods and in services as well as the specialized WTO agreements on, for example, health measures, technical standards, subsidies, anti-dumping measures, and intellectual property rights. We will learn how WTO law balances the need for clear rules against unjustified

protectionism with the need to preserve legitimate regulatory space at the national level. We will also cover timely topics such as subsidies for green (renewable) energy and the co-existence of the WTO with regional trade agreements (including "mega-regionals" like CPTPP). Students will become acquainted with the unique WTO trade dispute settlement mechanism, its procedures and its current deep crisis. Beyond the existing rules and disciplines, we will also touch on the current WTO reform efforts as well as anti-globalization developments such as Brexit, the protectionist agenda of the Trump administration, the US – China "trade war", and the apparent convergence of economic policy and national security concerns.

> PROFESSOR

[Jan Bohanes](#)

[Office hours](#)

> ASSISTANT

Panagiotis A. Kyriakou

[Office hours](#)

Syllabus

Classes and readings

Classes will take place on **Tuesdays, 18:15 – 20:00.**

Please note the following special arrangements: There will be no class on Tuesday 5 November and Tuesday 19 November; we will schedule two make-up classes on **Thursday 10 October and Thursday 7 November.** The timing of the class is always the same, **from 18.15 – 20:00.**

All sessions will be recorded and the recordings will be made available. For the detailed time schedule and topics for each class, see the Course Schedule on pages 5 to 8 of this syllabus.

The readings for this course can be found in the book entitled *International Trade Law* (3rd edition), co-authored by Prof. Andrew Guzman, Prof. Joost Pauwelyn and Prof. Jennifer Hillman (Wolters Kluwer, 2016). Students should also obtain a copy of the legal texts either from the WTO website or by purchasing the Documents Supplement to the *International Trade Law* textbook. Students may buy these books at a reduced price with the assistance of Panagiotis Kyriakou. Please note that the IHEID library will have a certain number of copies of this book on reserve for this course and that no polycopié with the readings will be available at the Imprimerie Minute. All students are expected to have read the reading assignments prior to class and to engage in an informed discussion during class.

Additional reading assignments (mandatory or recommended) will be assigned on an ad hoc basis.

Basic Textbook:

- Joost Pauwelyn *et al.*, *International Trade Law* (3rd ed., Wolters Kluwer, 2016) – reserved copies are available in the IHEID library.

Additional Reading:

- Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization, Text, Cases and Materials* (4th ed., Cambridge University Press, 2017)
- Michael J. Trebilcock, *Advanced Introduction to Trade Law* (Edward Elgar Publishing, 2015)

Treaties & Legal Texts:

- WTO Secretariat, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (Cambridge University Press/WTO) – reserved copies are available in the IHEID library (also available at http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

Optional additional resources:

- WTO dispute settlement cases: if you need background to any of the cases excerpted in the course book go to: <http://www.worldtradelaw.net/dsc/dscpage.htm> where you will find a summary of each and every WTO dispute.
- Other useful websites:
 - www.wto.org (official website of the World Trade Organization)
 - www.worldtradelaw.net (case summaries and research tool for WTO law)
 - www.tradelawguide.com (research tool for WTO law)

- www.ustr.gov (official US government trade website)
- http://www.europa.eu.int/comm/trade/index_en.htm (official trade site of the European Commission)
- www.insidetrade.com (insider information on trade developments)
- <http://www.tradelab.org> (online platform set up to broaden access to legal expertise in international trade and investment law)

Guest speakers:

In the second session, we will welcome as co-presenter Dr. Christian Hederer, Professor of International Economics and International Economic Policy at the Technical University of Applied Sciences Wildau.

Grading:

The final grade is based on a **take-home final exam**, accounting in principle for 100%, and on class participation as described below. The exam will consist of a mix of multiple choice questions, short questions, and hypothetical cases and/or essay questions. Further instructions concerning the exam will be provided throughout the course and together with the exam. The precise timing of the exam will be determined in the early weeks of the semester.

Class participation: Oral class participation is mandatory and will be taken into account in the final grade. Active and high-quality participation will be rewarded with a bonus of up to 0.5 points (out of a total of 6.0 points). Persistent non-participation or poor preparation may be sanctioned by up to 0.5 points. Both bonus and deduction are at the sole discretion of the professor.

Because of the expected high number of students, we will designate a "panel" of selected students for each class session; these students will get priority for class participation in that particular class session. However, **all students are expected to be prepared for class participation at all times (including with respect to the material covered in previous classes)**, and the class instructor can call on any student at any time, including on students not assigned to the "panel".

Periodic exercises: Throughout the semester, the instructor will distribute (electronically) small (written) **non-mandatory exercises**. These exercises are intended to provide a practical dimension to the course. The exercises will teach students, for instance, how to obtain trade-related information from online resources, in particular from the WTO website, and to process/analyse that information. The exercises will also teach students how to solve hypothetical legal cases in a structured manner. Students will not be required to hand in these exercises or otherwise to provide evidence that they completed them. However, students who regularly complete these exercises may obtain valuable experience for the final exam.

Class attendance: **Class attendance is strictly mandatory.** Absence from any class session without prior discussion with, and prior dispensation granted by, the TA or course instructor (except in obvious urgent cases) will be sanctioned by a point deduction of 0.15 from the final grade. This point deduction will be doubled for any (unexcused) missed class session in which the student is assigned to the class participation "panel". Legitimate reasons for missing a class are, for instance, **mandatory** activities in other academic courses scheduled for the same time slot, as well as compelling health or family reasons. Legitimate reasons do **not** include, for instance, the wish to study for an exam in another course, the wish to go on holidays or the wish to participate in a weekly non-academic extra-curricular activity. Unexcused absence from more than **5** sessions will lead to a failing grade, regardless of performance on the final exam. There will be no exceptions from these rules.

This is a legal course. Nevertheless, we encourage non-lawyers to sign up. The greatest benefit for non-lawyers from taking this course is that you will learn how to think and how to analyse legal problems like an international (trade) lawyer. This is not only a useful and rewarding intellectual journey in and of itself. Many non-lawyers in the Graduate Institute student body will end up interacting professionally with (international) lawyers in some manner throughout their careers, or will deal with subject matters that have a legal dimension. Non-lawyers who challenged themselves during their university education and became acquainted and comfortable with legal reasoning will tend to do much better in these professional contexts. (The reverse is obviously also true for lawyers.) While non-lawyers may have a steeper learning curve in the early parts of the course than lawyers, they traditionally do very well in this course. In past years, some non-lawyers were able to receive very high grades, including 6.0. If you put in the time and effort, you will do very well.

Moreover, international trade law, by its nature, has multi-disciplinary dimensions. Therefore, class participation and contributions by students specializing in economics, political science, international relations or any other related field are an important and very welcome element of this course.

John H. Jackson WTO Law Moot Court 2019/2020:

Students with a particularly strong interest in international trade law and WTO law may also wish to consider participating in the 2019/2020 edition of the “John H. Jackson WTO Law Moot Court Competition” (previously “EMC2”), organized by the European Law Students Association (ELSA). This global competition involves a simulated WTO dispute and requires student teams – drawn from over 100 universities world-wide, including the world’s highest-ranked law schools – to present formal written submissions as well as participate in oral pleadings before panels composed of WTO law and trade policy experts. The competition provides an excellent opportunity to build WTO legal expertise and litigation experience and to make valuable professional contacts within the Geneva-based and global trade community. The Graduate Institute team will be selected and supervised by a team of coaches that includes the course assistant. Historically, the Graduate Institute team has been among the elite teams and won the entire competition in 2011/2012 and 2017/2018. Enrolling in DI064 is not required for participating in the Moot Court Competition, but is highly recommended for students without previous exposure to international trade law. For further information regarding the WTO Moot Court, students may wish to contact Panagiotis Kyriakou (panagiotis.kyriakou@graduateinstitute.ch).

COURSE SCHEDULE

Class	Topics	Readings
Session 1: 17 Sept. (Tue.) 18:15 – 20:00	Introduction & Overview of the Course: <ul style="list-style-type: none"> ● Structure and content of the course: What is the course intended to convey? What are students expected to achieve? ● Functions of the WTO as an institution, as a negotiating forum and as a dispute settlement system ● Evolution and general structure of the WTO treaty system 	Chapter 3, pp. 55 - 70 Chapter 4 Chapter 22, pp. 739 - 745
Session 2: 24 Sept. (Tue.) 18:15 – 20:00	Trade Theory and Economic Policy: <ul style="list-style-type: none"> ● Basics of economic trade theory: Why do countries trade? Why is trade considered to be welfare-enhancing? ● What are the benefits and risks of free trade? ● Who wins and who loses economically from trade liberalization? ● Theory of optimal intervention from economic, legal and political perspectives <p>Guest co-presenter: Prof. Christian Hederer</p>	Chapter 1 <i>Optional Reading:</i> Chapter 2, pp. 35 - 46
Session 3: 1 Oct. (Tue.) 18:15 – 20:00	WTO Rules on Border Measures: <ul style="list-style-type: none"> ● Customs, tariffs, tariff bindings and trade liberalization ● Prohibitions of quantitative restrictions and relevant exceptions 	Chapter 7, pp. 181 - 214 Chapter 8
Session 4: 8 Oct. (Tue.) 18:15 – 20:00	WTO Non-Discrimination I: <ul style="list-style-type: none"> ● Overview. Most-favoured nation vs. national treatment ● National treatment in internal taxation. Core case law on tax discrimination under Article III:2 of the GATT 1994 	Chapter 9
Session 5: 10 Oct. (Thu.) 18:15 – 20:00	WTO Non-Discrimination II <ul style="list-style-type: none"> ● National Treatment in internal (non-fiscal) regulation ● Core case law under Article III:4 of the GATT 1994 and other relevant WTO provisions 	Chapter 10
Session 6: 15 Oct.	WTO Non-Discrimination III: <ul style="list-style-type: none"> ● Key elements of the most-favoured nation (MFN) 	Chapter 11, pp. 323 - 334, 339 - 350

Class	Topics	Readings
(Tue.) 18:15 – 20:00	principle and core case law <ul style="list-style-type: none"> ● Exceptions to the MFN principle: Regional & preferential trade agreements: Are they a threat to or rather supportive of the WTO? ● The Enabling Clause and discrimination in favour of developing countries. 	Chapter 12 Chapter 22, pp. 751 - 768
Session 7: 22 Oct. (Tue.) 18:15 – 20:00	Exceptions from GATT/GATS free-trade rules: GATT Article XX and GATS Article XIV <ul style="list-style-type: none"> ● Squaring free trade and the right to pursue legitimate policy objectives such as protection of the environment, public health, public morals, or labour standards ● Article XX of the GATT 1995 and Article XIV of the GATS: Elements and core case law. ● National security exceptions 	Chapter 13 Chapter 14, pp. 419 - 440
Session 8: 29 Oct. (Tue.) 18:15 – 20:00	“Fair trade” and trade remedies I: <ul style="list-style-type: none"> ● Overview of main features, commonalities of and differences between the WTO agreements on anti-dumping, subsidies and safeguards ● Detailed discussion of dumping. Key concepts: dumping; injury and causation. ● Discussion of salient case law on dumping 	Chapter 15, pp. 457 - 493 Chapter 16 Chapter 17
Session 9: 7 Nov. (Thu.) 18:15 – 20:00	“Fair trade” and trade remedies II: <ul style="list-style-type: none"> ● Details of subsidies disciplines: Key concepts: financial contribution, benefit and specificity ● Anti-subsidy remedy at the domestic level: Imposition of countervailing duties ● Multilateral anti-subsidy remedies: Prohibited and actionable subsidies before the WTO. ● Determining adverse effects/special prejudice ● Salient case law 	Chapter 15, pp. 457 - 493 Chapter 16 Chapter 17
Session 10: 12 Nov. (Tue.) 18:15 – 20:00	WTO Dispute Settlement Process and Practice: <ul style="list-style-type: none"> ● Evolution and main features of the WTO dispute settlement mechanism. Function and jurisdiction of Panels and the Appellate Body. Key players in a WTO dispute ● From consultations to implementation: Key segments of a WTO dispute ● Remedies, implementation, compliance review: ● How are the rulings enforced? 	Chapter 5
Session 11:	WTO law against abuse of regulatory freedom:	Chapter 19

Class	Topics	Readings
26 Nov. (Tue.) 18:15 – 20:00	Agreement on Technical Barriers to Trade (TBT): <ul style="list-style-type: none"> ● How to define TBT and sanitary and phytosanitary (SPS) measures? What are the differences? ● Limits of the regulatory autonomy to pursue nontrade concerns under the TBT Agreement TBT disciplines against abuse of regulatory autonomy for protectionist purposes ● Key case law 	
Session 12: 3 Dec. (Tue.) 18:15 – 20:00	Agreement on Sanitary and Phytosanitary Measures (SPS): <ul style="list-style-type: none"> ● Regulatory autonomy of states to protect human, animal and plant life and health ● SPS disciplines against abuse of regulatory autonomy for protectionist purposes ● How should WTO adjudicative bodies deal with scientific uncertainty and respect national regulatory prerogatives while preventing abuse and protectionism? 	Chapter 19 Chapter 18
Session 13: 10 Dec. (Tue.) 18:15 – 20:00	Trade in services: <ul style="list-style-type: none"> ● Liberalization of trade in services: overview and key features of the GATS ● Key GATS concepts: commonalities and differences between GATT and GATS ● How to read a GATS schedule ● Salient case law 	Chapter 20
Date and time TBC	Optional (with Panagiotis Kyriakou): <ul style="list-style-type: none"> ● Review Session 	
Session 14: 17 Dec. (Tue.) 18:15 – 20:00	The Agreement on Trade Related Intellectual Property Rights (TRIPS): <ul style="list-style-type: none"> ● Introduction to key intellectual property (IP) rights ● Why are IPs related to international trade? What does the TRIPS Agreement regulate? What does it not cover and why? ● Protection of public health, access to cheap medicines and the TRIPS Agreement 	Chapter 21
Week of 17 December Time TBC	<u>Final Exam, to be submitted on Moodle</u>	Send exams to Panagiotis Kyriakou <u>ONLY</u>