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Fall 2005

DIPL 6032 International Trade Law

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Fall 2005

Whitehead School of Diplomacy and International Relations, Seton Hall University

Professor Stephen Kim Park

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DIPL 6032
INTERNATIONAL TRADE LAW

This course examines the process and substance of international trade law, focusing primarily on the law of the World Trade Organization and secondarily on the law of regional trade organizations and the foreign trade law of the United States. We will begin with an overview of issues relating to the concept of free trade, the institutionalization of international trade, the relationship between U.S. and international trade law, and WTO dispute settlement. Next, we will cover the legal principles and rules of international trade. Finally, we will consider the relationship between trade and other global concerns, such as environmental protection, health and safety, human rights, labor, development, and democracy.

Throughout the course, we will refer to economic and political debates and use analytical methods in these disciplines to augment our understanding of international trade law. A major objective of the course is to learn how to engage international trade law in a variety of different practice-oriented settings. Towards that end, this course features (1) role simulations, case studies, and case-based advocacy and (2) a multi-issue/multi-party negotiation exercise.

Requirements

- **In-Class Final Exam** – 40% of course grade
- **Midterm Paper** – 20% of course grade
- **Class Participation** – 20% of course grade
- **Negotiation Exercise** – 20% of course grade

Readings

- The required TEXT (available in the campus bookstore and online): John H. Jackson, William J. Davey & Alan O. Sykes, *Legal Problems of International Economic Relations* (4th ed. 2002)
- The required document SUPPLEMENT (available in the campus bookstore and online)
- Additional required readings to be posted on the course website and/or distributed in class

You are strongly encouraged to keep abreast of current events in the news relevant to the course; in addition, links to useful websites will be posted on the course website. Discussion threads based on current events and course topics will be set up on the course website and contributions will count toward the class participation portion of your grade.

Plagiarism, cheating, and other forms of academic impropriety will be dealt with in accordance with University and School policies and as additionally specified for specific assignments.

SCHEDULE

1. INSTITUTIONS, RULES, AND PROCESSES

A. The What, Why, and How of International Trade Law (September 12th)

- Overview of course
- *What*: Actors, Issues and Rules, and Regimes of International Trade
- *Why (or Why Not)*: Economic and Political Perspectives on Free Trade
- *How*: ROLE SIMULATION: Going Bananas Over Bananas

Readings:

- TEXT, pp. 4-39
- John Cassidy, “Winners and Losers: The Truth about Free Trade,” *The New Yorker* (Aug. 2, 2004)

B. The United States and the World Trade Organization (September 19th)

- The WTO: History, Structure, Process, and Legal Authority
- U.S. foreign trade law and its relationship to the WTO

Readings:

- TEXT, pp. 208-38; 72-116; 238-42, 244-45
- SUPPLEMENT: (1) Agreement Establishing the World Trade Organization
- Jane A. Restani & Ira Bloom, “Interpreting International Trade Statutes: Is the Charming Betsy Sinking” 24 *Fordham Int’l L.J.* 1553 (2001)

C. WTO Dispute Settlement (September 26th)

- Law vs. Diplomacy and the Uruguay Round
- Process of WTO dispute settlement
- Nullification or Impairment

Readings:

- TEXT, pp. 246-336 (U.S. – Petroleum, Japan – Film, U.S. – Sec. 301)
- SUPPLEMENT: (1) WTO Dispute Settlement Understanding; (2) GATT Article XXIII
- Susan Esserman & Robert Howse, “The WTO on Trial,” *Foreign Affairs* (Jan./Feb. 2003)

2. FUNDAMENTAL PRINCIPLES AND EXCEPTIONS

A. Tariffs, Quotas, and Non-Tariff Barriers (October 3rd)

- Tariff negotiations
- Rules of Origin

- Generalized System of Preferences (GSP)
- Quotas
- Non-Tariff Barriers

Readings:

- TEXT, pp. 338-57, 376-85 (Superior Wire), 1186-94; 387-412 (Japan – Semiconductors)
- SUPPLEMENT: (1) GATT Article XI; (2) WTO Agreement on Agriculture; (3) WTO Agreement on Textiles and Clothing; (4) GATT Article XVII
- European Communities – Tariff Preferences, WTO App. Body (2004)
- CASE STUDY: Chinese Textiles
 - *The Economist*, “Unquotable” (Dec. 28, 2004)

B. MFN and Regionalism (October 10th)

- Scope and application of MFN
- Art. XXIV exception to MFN
- Regionalism and Bilateralism: NAFTA and other U.S. FTAs

Readings:

- TEXT, pp. 415-38 (Canada – Autos), 441-42 (Problems), 442-46; 447-72 (Turkey – Textiles)
- SUPPLEMENT: (1) GATT Article I; (2) GATT Article XXIV
- CASE STUDY: Dominican Republic – Central American Free Trade Agreement (DR-CAFTA)
 - Office of the United States Trade Representative, CAFTA Briefing Book
 - *Wall Street Journal*, “Cafta is No Cure-All for Central America” (July 18, 2005)

C. National Treatment (October 17th)

- Discrimination and the concept of like product
- Internal Taxation and Regulation
- Product vs. Process
- Aim-and-Effect test

Readings:

- TEXT, pp. 479-526 (U.S. – Sec. 337, Japan – Shochu, EC – Asbestos, Korea – Beef; Problems – pp. 505-06)
- SUPPLEMENT: (1) GATT Article III

MIDTERM PAPER: Distributed October 3rd – Due October 17th
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D. Dumping and Subsidies (October 24th)

- Rationale for anti-dumping laws
- U.S. antidumping law generally and the Byrd Amendment
- Subsidies and bounded protectionism
- Principles and exceptions to countervailing duty law

- The concept and calculation of injury

Readings:

- TEXT, pp. 681-699; 767-828 (Canada – Aircraft (incl. 21.5 decision), Brazil – Aircraft, United States – FSC, Indonesia – Autos; Problems – pp. 827-28), 845-48 (Softwood Lumber); 727-66
- SUPPLEMENT: (1) GATT Article VI; (2) WTO Antidumping Agreement; (3) WTO Agreement on Subsidies and Countervailing Measures
- CASE STUDY: Byrd Amendment
 - *Wall Street Journal*, “Trade Imbalance: Why Uncle Sam Wrote a Big Check to a Sparkler Maker,” (Dec. 5, 2002)
 - United States – Continued Dumping and Subsidy Offset Act of 2000, WTO App. Body (2003)
- CASE STUDY: Boeing-Airbus
 - *The Economist*, “Boeing v Airbus” (June 23, 2005)
 - Canada – Aircraft and Brazil – Aircraft (see above: TEXT, pp. 777-90)

E. Safeguards and Adjustment Assistance (October 31st)

- Safeguard procedures and legal requirements
- Economic and political dimensions of safeguard actions: justifications and implications
- Trade adjustment assistance

Readings:

- TEXT, pp. 604-07, 607 & 639-42, 642-69 (Argentina – Footwear, U.S. – Lamb, U.S. – Wheat Gluten); 669-75
- SUPPLEMENT: (1) GATT Article XIX; (2) WTO Agreement on Safeguards
- CASE STUDY: U.S. Steel Safeguards
 - Imposition: U.S. Department of State, “White House Explains Steel Import Relief Decision”
 - Imposition: Robert Zoellick (then-USTR), “Reigning Champions of Free Trade,” *Financial Times* (Mar. 13, 2002)
 - Exclusions: U.S. Commerce Department, “Fact Sheet: Exclusion of Products from Safeguard on Steel Products and Automatic Adjustment of the Remedy” (Mar. 21, 2003)
 - WTO Ruling: *Inside U.S. Trade*, “Appellate Body Largely Upholds Ruling Against U.S. 201 Tariffs” (Nov. 14, 2003)
 - Repeal: President’s Statement on Steel (Dec. 4, 2003)
 - Repeal: *Washington Post*, “Bush Rescinds Tariffs on Steel” (Dec. 5, 2003)

3. INTERNATIONAL TRADE LAW IN PRACTICE

A. NEGOTIATION EXERCISE (Multiple Classes)

- Subsidies in agriculture
- Intellectual Property rights and public health
- Trade in services and outsourcing

Schedule:

- Oct. 24th and Oct. 31st (end of class): Introductory lectures and class discussions
- Monday, Nov. 14th: Memorandum due; team meetings and conferences; Q&A plenary session

- **Saturday, Nov. 19th, 12 – 6 PM (Location TBA): Negotiation Session**
- Nov. 28th (beginning of class): Wrap-up discussion

Readings:

- Negotiation Exercise PACKET
- TEXT, pp. 1221-28 (Doha Round); 398-400, 826 (Agriculture); 921-27, 960-92 (IP); 853-63, 885-94, 902-12 (Services)
- SUPPLEMENT: (1) WTO Agreement on Agriculture; (2) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs); (3) General Agreement on Trade in Services (GATS)
- Additional readings to be posted on the course website and distributed in class

4. “TRADE AND”...AND BEYOND: WHAT NOW AND WHERE NEXT?

A. Article XX, SPS and TBT: Environmental- and Health-related Exceptions (November 28th)

- GATT Article XX exceptions
- Health and Safety: SPS and TBT agreements
- Regulatory protection or protectionism under different guise?

Readings:

- TEXT, pp. 532-74 (Asbestos, Beef, U.S. – Gasoline, U.S. – Shrimp (incl. 21.5 decision)); 575-95 (EC – Hormones); 1006-26
- SUPPLEMENT: (1) GATT Article XX; (2) WTO Agreement on the Application of Sanitary and Phytosanitary Measures; (3) WTO Agreement on Technical Barriers to Trade
- CASE STUDY: Genetically-Modified Food
 - *Multinational Monitor*, “Biotech food fight” (June 1, 2003)
 - *The Economist*, “Far less scary than it used to be” (July 24, 2003)
 - European Commission, “Commission authorises import of canned GM-sweet corn under new strict labelling conditions – consumers can choose” (May 19, 2004)

B. Conclusion: Whither Free Trade? (December 5th)

- Trade and Human Rights, Labor, and Development
- Democracy and International Governance
- Final Thoughts

Readings:

- TEXT, pp. 1026-36, 1167-86; 1197-1221
- Andrew T. Guzman, “Global Governance and the WTO,” 45 Harv. Int’l L.J. 303 (2004)
- John O. McGinnis & Mark L. Movsesian, “Response: Against Global Governance in the WTO,” 45 Harv. Int’l L.J. 353 (2004)

IN-CLASS FINAL EXAMINATION: December 12th (during class period)
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