

INTERNATIONAL TRADE AND INVESTMENT LAW - LAW 332

COURSE DESCRIPTION AND OUTLINE

Fall 2010

Professor Andrew Newcombe

Office: Room 231
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Course website: <http://moodle.uvic.ca>
Time/location: Monday and Wednesday, 10:30-11:50 pm, Room 152

6 Oct.: Class cancelled. Make-up: 22 Oct., 12:30-2:00, Room 157

15 Nov.: Potential cancellation. Make-up: 5 Nov., 2:30-4:00, Room 157

I. COURSE DESCRIPTION

This course covers the international trade and investment regime under the World Trade Organization (WTO) agreements and the North American Free Trade Agreement (NAFTA). The course focuses on the core principles of international economic law applicable to the regulation of international trade and investment.

II. COURSE OBJECTIVES

By taking this course, students will:

- (i) develop their knowledge and understanding of the core principles of international economic law applicable to the regulation of international trade and investment;
- (ii) learn to interpret the WTO and NAFTA legal texts;
- (iii) become knowledgeable about the WTO and NAFTA dispute settlement systems and international trade jurisprudence; and
- (iv) study and critically evaluate the complex intersections between domestic regulatory authority and international trade and investment law.

III. COURSE MATERIALS

The course text is Guzman & Pauwelyn, *International Trade Law*. The text is available in the university bookstore (new and second-hand copies) and in the library on course reserve. Students will also need to consult the collection of WTO and NAFTA treaty texts available on the course Moodle site. Other course materials will be made available on the course Moodle site and on reserve in the library.

IV. COURSE METHODOLOGY

A variety of teaching methods will be employed during the course including lectures, class discussion and problem analysis. Students are expected to have read and be ready to discuss the assigned readings.

V. COURSE EVALUATION

Option 1

1.	In-class Closed Book Test (1), 8 November 2010	20%
2.	In-class Closed Book Test (2), 1 December 2010	10%
3.	Two 750-1000 word comments at 10% each	20%
4.	3000 word research paper or book review	50%
Total		100%

Option 2

1.	In-class Closed Book Test (1), 8 November 2010	20%
2.	In-class Closed Book Test (2), 1 December 2010	10%
2.	6000 to 6500 word research paper	70%
Total		100%

1. Comments

(a) *Description*

All students, with the exception of students writing the 70% paper, must write two comments on the course readings during the term. Each comment is worth 10% of the final grade. A comment should make a short argument regarding an issue addressed in the assigned readings. The student must make an argument to support the student's view. No research is required although, where appropriate, students may draw on other assigned readings, the course materials or the student's own knowledge in developing an argument.

The comments should be written on the basis that the reader is fully conversant with the assigned materials. **They must not be descriptive. The instructor may reject a comment that simply describes the assigned readings. A comment that simply briefs a case with some cursory analysis is not acceptable.**

(b) *Requirements*

- (i) A comment should be between 750 and 1000 words (three pages minimum to four pages maximum) and must be submitted to the website **by 7:00pm the day before the class in question**. Papers submitted after the class has been held on the assigned readings **will not be accepted in any circumstances**.
- (ii) Each comment will be graded out of 10 based on the soundness of the argument, the level of the analysis, insight, creativity and style.
- (iii) Only one comment may be submitted per class. You should plan to submit your comments throughout the term, writing on topics that are of interest to you.
- (iv) Codenames should not be used.

2. Paper or book review

(a) *Option one - 50%*

- (i) A **2500 (minimum) to 3500 (maximum)** word research paper on an approved topic relating to international trade or investment law or a book review on an approved book relating to international trade or investment law. The word count is all-inclusive (includes footnotes).
- (iii) **You must provide a two-page outline of the paper to the instructor by the beginning of class on Wednesday, 13 October 2010.** The outline must describe the paper's thesis and provide a bibliography of sources that might be used in the paper. If a student intends to write a book review, the outline should briefly describe the book, why the student wants to review the book and how the book topic relates to the course content. The outline should include a copy of the book's table of contents. Codenames should not be used on the outline.
- (iii) Book reviews may not be entirely descriptive. I am looking for a critical analysis of the arguments and materials in the book. The student is expected to engage critically with the book and analyze arguments and materials in the book in light of applicable course materials and classroom discussion. The instructor may reject a book review that simply describes the book.
- (iv) Failure to submit the outline on time will result in a loss of **three marks** per day on the paper's or review's final numerical mark out of 100 for each day that the outline is late.
- (v) The paper must include a bibliography of all sources.

(b) *Option two - 70%*

- (i) A **6000 (minimum) to 6500 (maximum)** word research paper on an approved topic relating to international trade or investment law. Up to **ten** students may write a longer research paper on an approved topic relating to the course content. Approval to write a longer research paper will be allocated on a first come first serve basis subject to the submission and approval of a paper proposal. If there is significant interest amongst students, the instructor reserves the right to allocate spots based on a lottery.
- (ii) **With the instructor's permission, a student may write a longer paper and use it to satisfy the Faculty's major paper requirement (7500 word minimum not including footnotes).**
- (iii) **You must provide a two-page outline of the paper to the instructor by the beginning of class on Wednesday, 13 October 2010.** The outline must describe in detail the paper's thesis and provide a bibliography of sources that might be used in the paper. Codenames should not be used on the outline.
- (iv) Failure to submit the outline on time will result in a loss of **three marks** per day on the paper's final numerical mark out of 100 for each day that the outline is late.

- (v) The paper must include a bibliography of all sources.

(c) Grading

Papers will be graded on the following basis:

1. **Thesis:** clear articulation of argument
2. **Organization:** clear structure throughout paper
3. **Research:** breadth and depth of research
4. **Analysis:** logic, balance, depth, context, critical analysis
5. **Originality/creativity:** novelty, insight
6. **Style:** correct legal citation, flow and grammar

All citations in papers must conform to the current edition of the *Canadian Guide to Uniform Legal Citation* (McGill Guide). Substantial non-compliance with the McGill Guide will result in a deduction up of to 10 marks. Non-compliant citations are subject to a one mark penalty per citation.

(d) Due date and submission requirements

- (i) A hard copy of the paper or book review must be submitted to the general office by **Thursday, 2 December at 4:00 pm** (the last day of classes for the term). **You must also send a copy of the paper or book review to the instructor by email.**
- (ii) **Students must note the word count for the paper or book review on the title page of the paper.**
- (iii) **Codenames should not be used on papers or book reviews.**
- (iv) Failure to submit the paper or book review by the deadline will result in a loss of **three marks** per day on the paper's or book review's final numerical mark out of 100 unless the instructor or Associate Dean has granted an extension. **Failure to submit the paper or book review electronically will result in a loss of three marks on the paper's or book review's final numerical mark.**
- (v) **Papers or book reviews that are under or over the word count minimum or maximum will be penalized five marks. The part of the paper over the word count will not be marked.**

4. In-class Closed Book Tests

There will be two in-class closed books tests that will examine your substantive knowledge and understanding of the course materials. The tests will question your substantive knowledge of course content (i.e. what is the difference between national and MFN treatment?) and also your analytical abilities through short hypotheticals (application of national and MFN treatment).

The tests will be closed book. No materials may be consulted during the tests. You will be provided a copy of any required WTO or NAFTA legal texts that you are required to analyze.

5. Grading System for comments, paper and tests

The table below shows the official grading system used by the instructor in arriving at final assessments of student performance.

Passing Grades	Grade Point Value	Percentage Value	Description	Comments
A+	9	90-100%	Exceptional	Grades in this range are normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	Outstanding	
A-	7	80-84%	Excellent	
B+	6	75-79%	Very good	Grades in this range are normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	Good	
B-	4	65-69%	Solid	
C+	3	60-64%	Satisfactory	These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	Minimally satisfactory	
D	1	50-54%	Marginal	A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49% and below	Unsatisfactory	

VI. UNIVERSITY REGULATIONS, EXPECTATIONS AND ACCOMMODATION

1. Regulations

Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2009-2010, both generally and specifically for the Faculty of Law.

2. Classroom Climate

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment.

For your reference, you may wish to consult the University's Policy on Human Rights, Equity and Fairness (<http://www.uvic.ca/universitysecretary/policies/>) and Policy on Discrimination and Harassment Policy (<http://www.uvic.ca/universitysecretary/policies/>). In particular, Section 5.1 of the Policy on Human Rights, Equity and Fairness provides that "All members of the university community are responsible for promoting a supportive and inclusive learning and working environment and for dealing respectfully and fairly with each other."

In addition, as lawyers in training, I expect you to conduct yourself in accordance with professional standards and rules of conduct. In particular, the Law Society of British Columbia's Professional Conduct Handbook provides in Chapter 1, Rule 4 that: "A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith."

I expect all aspects of this class to be conducted with this commitment firmly in mind. If you have any concerns about the climate of the class, please feel free to contact me or the Associate Dean.

3. Academic Integrity

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. All student work in this course must adhere to the University's Policy on Academic Integrity.

In particular, please note that the policy on plagiarism is as follows:

"A student commits plagiarism when he or she:

- submits the work of another person as original work
- gives inadequate attribution to an author or creator whose work is incorporated into the student's work, including failing to indicate clearly (through accepted practices within the discipline, such as footnotes, internal references and the crediting of all verbatim passages through indentations of longer passages or the use of quotation marks) the inclusion of another individual's work
- paraphrases material from a source without sufficient acknowledgement as described above

Students who are in doubt as to what constitutes plagiarism in a particular instance should consult their course instructor.

The University reserves the right to use plagiarism detection software programs to detect plagiarism in essays, term papers and other assignments."

4. Students with a Disability

If you have any type of disability, there are support systems, resources, and accommodation actions available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability

(<http://rcsd.uvic.ca/home.ihtml>) and I would be more than happy to work with you to ensure your success in this course.

5. Accommodation of Religious Observances

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday (see <http://www.uvic.ca/universitysecretary/policies/>). If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday, please speak with me (or the Associate Dean) and I will be pleased to work out some satisfactory form of accommodation.

VII. DOUBLE-SIDED PRINTING ENCOURAGED

In recognition that members of the university community have a personal responsibility for the way their conduct impacts the local and global environment, students are encouraged that all reports and other documents, whenever possible, be printed on both sides of the paper (University of Victoria Operational Policy 6485, Waste Management, section 2.8.1)

VII. COURSE OUTLINE

Note on schedule of topics and readings

The tentative schedule of topics and readings is set out below. Please note that this schedule and the assigned readings are subject to change as the course progresses.

Class 1: Introduction to the Free Trade Debate

Assigned readings

1. Guzman & Pauwelyn, Chapter 1, Trade and Economic Policy
2. Guzman & Pauwelyn, Chapter 2, The Modern Trade Debate Among Economists
Skim chapter and read Dani Rodrik “How to Save Globalization from its Cheerleaders”, pages 46-49.

Class 2: Introduction to the International Economic Law Researching International Economic Law Course Research Papers

No assigned readings

Class 3: Introduction to the World Trading System

Assigned readings

1. Guzman & Pauwelyn, Chapter 4, The WTO: History and Structure
2. WTO Organizational Chart

Class 4: Introduction to Dispute Settlement in the WTO

Assigned readings

Guzman & Pauwelyn, Chapter 5, WTO Dispute Settlement

Class 5: Special Topics in WTO Dispute Settlement/Dispute Settle in NAFTA

Assigned readings

1. Guzman & Pauwelyn, Chapter 6, Special Topics in WTO Dispute Settlement
2. Trebilcock and Howse, *The Regulation of International Trade*, 3rd ed., pp. 147-153 (Dispute Settlement in the NAFTA) (**on course reserve in library in a folder**).

Class 6: Tariffs

Assigned readings

Guzman & Pauwelyn, Chapter 7, Tariffs

Class 7: Quantitative Restrictions

Assigned readings

Guzman & Pauwelyn, Chapter 8, Quantitative Restrictions

Class 8: National Treatment – Internal Taxation

Assigned readings

Guzman & Pauwelyn, Chapter 9, National Treatment – Internal Taxation

Class 9: National Treatment – Internal Regulation

Assigned readings

Guzman & Pauwelyn, Chapter 10, National Treatment – Internal Regulations

Class 10: Most-Favoured-Nation Treatment

Assigned readings

Guzman & Pauwelyn, Chapter 11, Most-Favoured-Nation Treatment

Class 11: Preferential Trade Agreements

Assigned readings

Guzman & Pauwelyn, Chapter 12, Preferential Trade Agreements

Class 12: General Exceptions: GATT Article XX

Assigned readings

Guzman & Pauwelyn, Chapter 13, General Exceptions: GATT Article XX

Class 13: The Chapeau of GATT Article XX

Assigned readings

Guzman & Pauwelyn, Chapter 13, The Chapeau of GATT Article XX

Class 14: Trade Remedies

Assigned readings

Note on Trade Remedies. Posted on Moodle.

Class 15: Agreement on Sanitary and Phytosanitary Measures (SPS Agreement)

Assigned readings

Guzman & Pauwelyn, Chapter 18, Agreement on Sanitary and Phytosanitary Measures

Class 16: Agreement on Technical Barriers to Trade (TBT Agreement)

Assigned readings

Guzman & Pauwelyn, Chapter 19, Agreement on Technical Barriers to Trade

Class 17: Trade in Services

Assigned readings

Guzman & Pauwelyn, Chapter 20, Trade in Services

Class 18: Development

Assigned readings

Guzman & Pauwelyn, Chapter 22, Development

Class 19: Labour and Environmental “Side Agreements”

Assigned readings

To be posted.

Classes 20-21: Investment

Assigned readings

To be posted.