Syllabus

International Protection of Intellectual Property Through the WTO

Donald R Dinan

Fall 2016

5:45 - 7:45 p.m.

202 - 255 - 1683

1. Office hours - I am available to meet and discuss any aspect of the course or answer any questions immediately after class. I am also available to meet for a more formal discussion as required on campus at the adjunct faculty offices to be arranged at a mutually convenient time. The best way to contact me is by email; make sure you leave a telephone number by which you can most easily be reached. Feel free, however, to call at the above number if that is easier or immediate action is required.

2. Class goals - The major purposes of this course are to introduce the student to the major international agreements which govern protection of intellectual property in the WTO and to learn how the dispute settlement provisions by which these treaties and intellectual property rights are enforced by the WTO. We will study only original materials, the treaties themselves and the relevant case law. An additional goal of the course is to teach how to read and interpret the various treaties and how to read and analyze the WTO case law in order to be able to apply them to different fact patterns. Finally, the course will teach an approach to intellectual property protection and to international trade that encourages an open mind, original thinking and independent analysis of the law and the facts.

3. Grading - There will be a three-hour open book examination at the end of the course. The exam will consist of three questions which will be equally weighted, i.e. each question will form one third of the exam grade and will be designed to be answered in approximately one hour. The exam will constitute approximately 85% of the grade. Class participation will form the additional 15 percent. There will be a review class at the end of the semester to prepare for the examination.

4. Attendance policy - The policy of Georgetown University Law Center is students are to punctually and regularly attend classes. This policy is expected to be adhered to in this course. Excused absences will be given liberally for good cause. Students are highly encouraged to participate actively in class work as much of the course will consist of debate and discussion in class. As noted above, class participation will form approximately 15% of the grade.
5. Voice recording - All classes will be recorded by echo360 and will be available to students at all times, including during the exam period, for viewing and review.

6. Computer policy- Students are allowed to use their laptops at all times in class for taking notes, quickly reviewing course materials that they have bookmarked, doing instant research and for such other uses related to class work.

A list of the class by class topics and reading assignments is attached.
INTERNATIONAL PROTECTION OF INTELLECTUAL PROPERTY
THROUGH THE WTO
Professor Donald R. Dinan

FALL

I. INTRODUCTION

Class 1

A general outline of the course will be given. The three main sources of law for the protection of intellectual property rights on an international basis will be set forth. They are: World Intellectual Property Organization (WIPO), World Trade Organization (WTO), and "extraterritorial" application of United States' law. The treaties and agreements governing intellectual property enforcement in the WTO that will be studied are: Paris Convention, Berne Convention, and WTO agreements - GATT, TRIPS, and DSU. Then case law of the TRIPS agreement will be analyzed with an emphasis on how the WTO has interpreted and applied the agreement. Relevant current events will also be reviewed as they arise. The basic source materials will be treaties, statutes, regulations, and case law. The General Agreement on Tariffs and Trade (GATT) will be discussed.

II. WIPO

Class 2

There will be a description of the structure, organization, and purpose of WIPO. The seventeen multilateral unions (treaties), which WIPO administers, will be reviewed. The Paris Convention for the Protection of Industrial Property will be reviewed and the Berne Convention for the Protection of Literary and Artistic Works will be studied.

III. WTO

Class 3

The creation of the WTO will be discussed. The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) and the WTO agreement on intellectual property will be thoroughly reviewed. The most important sections of TRIPS will be fully analyzed.
Class 4

The Dispute Settlement Understanding (DSU) of the WTO will be reviewed. The major provisions of that Understanding will be analyzed. The DSU is the enforcement agreement of the WTO, and it covers all disputes arising under TRIPS. The class will conclude with a comparison of the enforcement mechanism of the DSU with the enforcement mechanisms previously available under the GATT and currently available under the WIPO Conventions.

IV. U.S. LAW AND WTO

Class 5

Section 337 of the Tariff Act of 1930 (19 USC 1337), together with the amendments caused by the United States joining the WTO, will be analyzed. Section 337 prohibits the importation of articles into the United States which infringe United States’ patents, trademarks, and copyrights.

Class 6

The GATT case on Aramid Fibre (European Communities v. United States), which declared Section 337 in violation of GATT, will be analyzed. The United States’ response and its actions to make the law GATT/WTO compatible will be reviewed.

Class 7

Section 301 of the Trade Act of 1974 (19 USC 2411 & 2242), particularly “Special 301” which concerns intellectual property will be analyzed in detail. Special 301 allows the United States to take trade retaliation against countries who do not enforce their laws adequately, including intellectual property laws, so as to harm United States’ economic interests. Using United States’ government reports, an analysis of the actions which the United States has taken against various countries in the past will be done.

Class 8

The Section 301 case brought by the EU against the United States to have that law declared illegal will be covered.

V. WTO CASE LAW

Class 9

The WTO decision in India - Patent Protection for Pharmaceuticals, Agricultural, and Chemical Products case (United States v. India), the first major decision under TRIPS by the WTO, will be fully analyzed. The jukebox case (Irish music) between the EU and US will also be studied.
Class 10

The EU/US “Cuba Rum Case” where the United States sought to deny trademark protection to marks expropriated by the Cuban government.

Class 11

The WTO’s recent decision on TRIPS-EU Geographic Indications (GI) – The “Baloney” case – will be read.

Class 12

We will review the China IP case which the United States brought against China alleging China’s persistent failure to enforce intellectual property laws.

Class 13

The class will conclude with the Canada Pharma case where Canada challenged United States’ laws against generic drugs. A review of the course and a discussion of the exam will follow.
# INTERNATIONAL PROTECTION OF INTELLECTUAL PROPERTY THROUGH THE WTO

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## READING ASSIGNMENTS

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<tr>
<th>Class</th>
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<th>Topic</th>
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<tr>
<td>Class 1</td>
<td>August 30, 2016</td>
<td>GATT</td>
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<tr>
<td>Class 2</td>
<td>September 6, 2016</td>
<td>Paris Convention and Berne Convention</td>
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<tr>
<td>Class 3</td>
<td>September 13, 2016</td>
<td>TRIPS Agreement</td>
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<td>Class 4</td>
<td>September 20, 2016</td>
<td>DSU</td>
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<td>Class 5</td>
<td>September 27, 2016</td>
<td>Section 337 (materials to be distributed)</td>
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<tr>
<td>Class 6</td>
<td>October 4, 2016</td>
<td>Aramid Fibre European Communities vs. United States (Section 337 case)</td>
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<td>October 11, 2016</td>
<td>NO CLASS</td>
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<tr>
<td>Class 7</td>
<td>October 18, 2016</td>
<td>Section 301 (materials to be distributed)</td>
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<td>Class 8</td>
<td>October 25, 2016</td>
<td>301-310 of the Trade Act of 1975 (WT/D152/R)</td>
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<td>Class 9</td>
<td>November 1, 2016</td>
<td>India – Patent Protection for Pharmaceutical and Agricultural Chemical Products (WT/DS50/R) Appeal (WT/DS50/AB/R) Section 110(5) of the U.S. Copyright Act (WT/DS160/AB/R)</td>
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<td>Class 10</td>
<td>November 8, 2016</td>
<td>Section 211 Omnibus Appropriations Action of 1998 (Havana Club case) WT/DS174/AB/R)</td>
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<td>Class 11</td>
<td>November 15, 2016</td>
<td>Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (The Baloney case)</td>
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<td>Class 12</td>
<td>November 22, 2016</td>
<td>China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights (WT/DS362/R)</td>
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<td>Class 13</td>
<td>November 29, 2016</td>
<td>Canada – Patent Protection of Pharmaceutical Products (WT/DS114/R)</td>
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