INTERNATIONAL TRADE LAW AND REGULATION

LAWG 966-10 (2 credits) and 966-11 (3 credits)

GEORGETOWN UNIVERSITY LAW CENTER

Syllabus: Course Outline and Other Information

Fall 2016

Timothy C. Brightbill
Adjunct Professor

NOTE: Please feel free to call me at the above numbers or send me an e-mail if any questions arise in connection with this course.

© 2016 Timothy C. Brightbill
COURSE OUTLINE AND OTHER INFORMATION

I. COURSE REQUIREMENTS

A. Examinations and/or Papers

966-10 (2-credit course): Examination – Dec. 13 – 6 pm

Students in the two-credit course must take the final examination. There is no paper option.

Examination: The exam format used most often in the past has been seven short-answer questions, with students required to answer six of the seven questions in the two-hour exam period. Students are not given extra credit for answering all seven questions.

There will be an optional exam review session at the end of the semester, where the exam will be discussed in greater detail, and I will review the prior year’s exam.

966-11 (3-credit course): WTO Paper

Students in the three-credit class are required to write a paper that is 25 pages (approximately 6000 words), excluding footnotes, and the paper must be on a WTO topic. There is no exam option.

Important Dates: October 10 – deadline for selection of paper topic
October 17 – deadline for submission of two-page outline
November 11 – deadline for submission of first draft
December 16 – due date for papers (submitted to Registrar)

J.D. students may enroll in the course for three credits and prepare a research paper that satisfies the Law Center's writing requirement. An outline, first draft, and meeting to discuss revisions are all required. Both the draft and final papers must be supported by substantial independent research. Each section and subsection of the conference draft should be substantially complete and should include footnotes.

Students should select a topic in consultation with Professor Brightbill by October 10. A short (two pages or more) outline must be submitted by October 17. The outline should include a preliminary statement of your intended thesis or approach, the sources you plan to consult, and a preliminary plan for organizing the paper. For example, the outline might sketch out a description of a legal doctrine that you intend to criticize, followed by a list of the key criticisms and the policy recommendations or doctrinal changes implied by your analysis. The list of sources in this outline does not need to be complete, but it should provide sufficient details to allow me to provide feedback about the materials that you have reviewed and your plan for additional research.
Completed papers must be delivered to the Registrar's Office on the dates set by the Registrar. Papers may be submitted either through the Georgetown Law Online Paper/Exam Management System (http://www.law.georgetown.edu/exams/) or in hard copy to the Office of the Registrar. Citations should be complete and in proper Bluebook form. All citations should be in footnote form, not endnote form. Margins should be one inch, line spacing should be double, and the typeface should be 12pt or greater. A table of contents should be included.

The paper should reflect careful legal research using a variety of sources. Your paper should show that you studied the relevant authorities and appreciate the differences between them. Your research should not be limited to legal authorities (e.g., case law and statutes), but must include law review articles and legal treatises. Your research need not demonstrate that you have read every work that relates to your topic, but it should show that you have consulted a broad range of resources.

The paper should articulate a thesis about an issue in WTO law and develop it. Your paper should contain an analysis that is critical and novel. (Critical legal analysis is important: for example, it is not enough to simply recite historical or factual events or to restate the opinion set forth in a case.) The paper should demonstrate why you believe that the topic that you have chosen is important and interesting and should reflect good writing and careful editing. In particular, the paper should be organized in a logical manner that complements your theme. The paper should make good use of road maps, topic sentences and transitions to guide the reader. Your writing should show a command of the standard rules of grammar, a clear style, and the polish that comes from thoughtful rewriting.

B. Additional Requirements for All Students (966-10 and 966-11)

1) **Reading assignments:** All students must complete the reading assignments in the course materials. Planned reading assignments are subject to change, and I may substitute in current news articles or recent case decisions.

2) **Class team presentation:** During the semester, students will be split into teams to provide short presentations to the rest of the class on particular subjects. These subjects will be assigned in advance, to allow time for adequate preparation by the team. Professor Brightbill may factor class presentations into the final course grade.

3) **Meaningful class participation is highly encouraged,** and I may factor class participation into the final course grade.

C. **Additional Resources**

The following materials are not required reading, but may prove useful for additional research on particular topics:
1. Books:

GATT/WTO Analytical Index

Uruguay Round Agreements Act and Statement of Administrative Action, H.R. Doc. 103-316 (103d Cong., 2d Session)


2. Industry Newsletters (subscription may be required):

Inside U.S. Trade  http://www.insidetrade.com/

BNA International Trade Reporter  http://news.bna.com/itln/

3. Websites:

World Trade Organization  www.wto.org
U.S. Trade Representative  www.ustr.gov
Department of Commerce  www.doc.gov
U.S. Court of International Trade  www.cit.uscourts.gov
Court of Appeals for Federal Circuit  www.cafc.uscourts.gov

II. COURSE OUTLINE

1. Introduction

A. The World Trade Organization (“WTO”) Agreement

(i) Purpose and Scope

(ii) The Main WTO Organizations

(iii) The Key Regulatory Rules are Set Out in GATT 1994, Which is Substantially the Same as the 1947 General Agreement on Tariffs and Trade

(iv) The Most Favored Nation Commitment

(v) Tariff Reductions

(vi) The Role of the Interpretive Agreements (Subsidies, Antidumping, etc.)
(vii) Relationship of WTO to United States Law

B. Survey of United States Trade Laws

(i) Regulation of Imports

(a) Customs Duties

(b) “Unfair” Trade Statutes (Antidumping, Countervailing Duty, §§ 337, 301)

(c) “Escape Clause” (§§ 201, 406)

C. Key U.S. Trade Agencies and Congressional Committees

(i) The International Trade Administration (“ITA”), Department of Commerce


(iii) The U.S. Trade Representative (“USTR”)

(iv) The House Ways and Means Committee and the Senate Finance Committee

(v) The Trade Policy Staff Committee (“TPSC”), and the National Economic Council (“NEC”)

2. The Evolution of Legal Principles: Appellate Review and Dispute Resolution

A. The Obligations of the Treaties and Implementation Statutes as Refined and Interpreted by Courts and Dispute Resolution

B. The Court of International Trade (“CIT”)

(i) The Substantial Evidence Standard of Review

(ii) Decisions Not in Accordance with Law Are Also Reviewable

(iii) Judicial Deference to Administrative Interpretations of Statutes

C. The Scope of Review and the Role of the Courts in Determining Trade Policy in Antidumping and Countervailing Duty Cases

D. The Appellate Jurisdiction of the Court of Appeals for the Federal Circuit (“CAFC”)

E. Review by WTO Panels and Appellate Body
3. **Antidumping: Sales of Imported Products in the United States at “Less than Normal Value”**

A. The Theoretical and Economic Rationale for Antidumping Measures

B. Article VI of GATT 1994 and the Uruguay Round Antidumping Agreement

C. Standing: Who Has the Right to File an Antidumping Petition on Behalf of the Industry?

D. Foreign Market Value: the Benchmark for “Normal Value”
   
   (i) Home Market Prices Are the Usual Test

   (ii) Third Country Prices Are Utilized Where Home Market Prices Are Not Sufficient

   (iii) Constructed Value Based on the Cost of Production in the Producer Country

E. Export Price: the Price of Imports in the U.S. Market

F. The Constructed Export Price is Used Where the Dumped Product is Imported By an Affiliate of the Foreign Producer

G. Calculation of the *Ad Valorem* Antidumping Duty

H. Circumvention

I. Imports From Nonmarket Economies (NMEs)

J. Antidumping and Antitrust

4. **Countervailing Duty Law: Subsidies that Distort Trade**

A. Economic and Legal Rationale

B. The Agreement on Subsidies and Countervailing Measures (“SCM”) Adopted in the Uruguay Round

C. Definition of Countervailable Subsidies Under U.S. Law
   
   (i) Export Subsidies

   (ii) Domestic Subsidies
(a) Examination of Specificity as a Means to Define Countervailable Subsidies

(b) When Regional Subsidies are Specific

(iii) Types of Domestic Subsidies

(a) Loans or Guarantees on Terms Inconsistent with Commercial Considerations

(b) Equity Participation by Governments in Domestic Industries

(c) Provision of Goods, Materials or Services on Preferential Terms

(d) Upstream Subsidies

(iv) Privatization and The Countervailing Duty Law

(v) Countervailing Duty Law and Nonmarket Economies

5. Material Injury and Causation

A. The Statutory Provisions

B. Elements of the Injury Analysis

(i) Definition of the Injured Industry

(ii) Evaluation of Injury Factors: Economic Performance Criteria

(iii) The Vital Causal Link Between Unfairly Traded Imports and Injury

(iv) The Elements of a Threat of Injury Case

6. Safeguards

A. Article XIX of GATT 1994 and the Safeguards Agreement: Emergency Action to Limit Imports That Cause Serious Injury

B. The Safeguard Agreement Adopted in the Uruguay Round


(i) Relief Is Possible Where Imports Are a Substantial Cause of Serious Injury to the Domestic Industry

(ii) The Elements Necessary to an Affirmative Finding

(iii) ITC Recommendations of Remedy
D. WTO Review of the US Safeguard Actions on Wheat Gluten and Steel

E. Section 406 (19 U.S.C. § 2436) and Section 421 – Safeguards for Nonmarket Economies and Chinese Imports

(i) Analysis of Remedy Applicable to Nonmarket Economies
(ii) The Necessary Elements of an Action as Construed by the ITC
(iii) Section 421: A Special Safeguard Concerning Chinese Imports

7. Intellectual Property Rights

A. The WTO Agreement on Trade Related Aspects of Intellectual Property (“TRIPS”)
   (i) What is Intellectual Property?
   (ii) Structure of the TRIPS Obligations

B. Enforcement of Intellectual Property Rights Under U.S. Law
   (i) Use of Section 337 to Remedy Foreign Infringement of U.S. Patents, Trademarks, and Copyrights (Statutory and Common Law) on Products Shipped to the United States

C. ITC Proceedings in Section 337 Cases
   (i) Remedies Include Exclusion and Cease and Desist Orders
   (ii) Enforcement of Orders

D. Presidential Review

8. Trade in Services

A. WTO General Agreement on Trade in Services (GATS)

9. Enforcement of U.S. International Rights: Section 301

A. The Statute and Its Origins: The Principle of “Reciprocity”
B. The Various “Restraints” or Practices that are Unreasonable or Unjustifiable and Therefore Actionable Under Section 301
   (i) Violation or Denial of Trade Agreement Obligations (“Mandatory Investigations”)
(ii) Denial of U.S. Intellectual Property Rights by Foreign Governments

(iii) Denial of Access to Foreign Markets

(iv) Denial of Worker Rights by Foreign Governments

C. The Relationship of Section 301 to the WTO Agreements

10. Trade and Investment

A. WTO Rules on Investment

B. Bilateral Investment Treaties

C. Investor State Arbitration

D. Does the “Fair and Equitable Treatment” Standard Apply to WTO Violations?

11. Free Trade Agreements

A. GATT 1994 Provisions Relating to Regional Agreements
   (i) Distinction between Free Trade Areas and Customs Unions
   (ii) The MFN Problem

B. Common Provisions

12. Course Review and Wrap-Up (Optional Session)

A. Review of Course Materials and Answers to Questions Regarding Substance or Procedures

B. Review of Recent Examination and Consideration of Model Answers

    #   #   #