CONTACT INFORMATION:

Email: [redacted]

My preferred method of contact is by email. During the week I will normally respond to emails within 24 hours – on the weekend responses may take longer. In emergencies only, I can be reached at my mobile number: [redacted]

Office Hours:

As an adjunct professor, I do not have an office on campus, but I will usually be available to meet with students, by appointment, on Tuesday and Thursday afternoons, generally between 2 and 6 pm. I prefer to schedule a one hour session, although half-hour sessions can be booked. As I will need to find a meeting space, students wishing to meet with me should schedule an appointment in advance; make your appointment by 5:00 pm on Thursday for an appointment on Tuesday, and by 5:00 on Tuesday for an appointment on Thursday. I will usually also be available immediately after class, without appointment.

Please note that it will be appropriate to post most questions about the subject-matter of the course on the Canvas course site (see below), for general discussion. Please also alert me by email if you do this, so I’ll be sure not to miss it.

Canvas Course Site:

I expect to rely heavily on the Canvas Course site to communicate with you about assignments, to make course materials and supplementary materials available to you, and to extend our classroom discussions. You should already be enrolled in the site; if you find you are not, you should enroll as soon as possible.

The Canvas site can be used as a blog for the course, and I hope course participants take advantage of it in that way. All course members should check the site regularly (at least once between Monday and Wednesday morning). Course members who are uncomfortable speaking during course meetings, or who wish to take additional time to formulate a question or comment, should use the site as a supplement to class participation. I will check the site frequently (at least every other day), and will respond to questions or comments promptly.
COURSE SYLLABUS

THE WTO & PUBLIC INTERNATIONAL LAW
Fall 2015
Mark E. Herlihy

COURSE REQUIREMENTS:

1. Attendance, Preparation, and Participation

This course is a cross-listed graduate level course: we will be jointly exploring a complex set of issues with few uncontested answers. To achieve success in this endeavor, both regular attendance and adequate preparation are necessary, and the active participation of all course members in each meeting is encouraged. Course members will be permitted one unexcused absence; further unexcused absences may have a negative effect on the course grade. To be considered “excused,” you should discuss with me (in person or by email) the reason for the absence in advance; or, in the case of sudden illness or an emergency, as soon as possible after the missed meeting.

Course members should be prepared to participate in each meeting. One of my goals is for each of you to take an active role in discussion, and if necessary I will make an effort to call on course members whose voices have not been heard. Posting on the Canvas site, or responding to posts there, will also count as participation.

Thoughtful participation in course meetings and/or on the Canvas site will have a positive effect (up to half a grade level) on the final grade.

2. The Paper

The principal basis on which grades are awarded in this course is a research paper. The research paper for this course must be a minimum length of 6,000 words, exclusive of footnotes. This is a two-credit course which does not qualify for the JD Writing Requirement, and thus first drafts and rewrites are not required, but I will review and comment on a draft if you submit one to me in a timely fashion – I will discuss an appropriate time schedule later in the course. Topic approval is required, and you are encouraged to discuss your ideas for a topic with me as early in the semester as you can. All course members should have had at least one conversation with me about a paper topic by Meeting 8 of the course, and all course members should have an approved topic in hand by Meeting 10 (November 4).

The paper in this course does not fulfill the J.D. Writing Requirement. It can, however, fulfill the paper requirement for the WTO Certificate awarded through the Institute of International Economic Law (IIEL), provided the paper topic has been approved in advance and meets the length requirement. If you intend to fulfill the Certificate paper requirement in this course, you should make an extra effort to discuss possible topics with me by Meeting 8.
Due Date:

I have granted the full extension authorized by the Registrar for the submission of papers. For this semester, Law School policy dictates that, while the paper may be submitted at any time after the last course meeting, it MUST be submitted to the Office of the Registrar not later than 5:00 pm on Monday, February 1, 2016. This is an absolute deadline that I cannot extend; any further extension can be granted only by the Associate Dean of your program (J.D. or LL.M.), and is normally granted only in extraordinary circumstances.

Submission may be made either by submitting the paper through the Online Paper/Exam Management System, or by timely submitting by hand (that is, NOT by email or fax), a printed, hard copy, (that is, NOT an electronic copy on a storage device such as a CD, thumb drive, or disk) to the Registrar’s Office.

3. Additional Information Regarding Grades and Academic Regulations:

The Student Handbook, containing essential information about grading, course withdrawals, and other academic regulations and requirements, is available on the Law School website at www.law.georgetown.edu/go/handbook. Particular attention should be paid to the regulations regarding course withdrawals, and sanctions applicable to examinations and papers.

COURSE MATERIALS

There are no texts that need to be purchased for the course this year; all texts and materials are available online, through the Canvas site, or on reserve at the library. Students may wish to buy at least a copy of the WTO Agreements to have for ease of reference. The standard volume of the agreements is now published by the Cambridge University Press in cooperation with the WTO:

THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS
Date Published: January 2000
Cambridge University Press
Format: Paperback
ISBN: 9780521785808

That volume can be purchased at the bookstore, through Amazon, or directly from Cambridge University Press. The Document Appendix to Professor Jackson's textbook is also suitable.
All cases to be read for the course will be available on Canvas. In addition, the following materials (among others) are available on Canvas:


2) The Conclusions of the ILC Study Group on the Fragmentation of International Law;

3) The Vienna Convention on the Law of Treaties (I have also posted the Draft Articles with Commentaries, for those who want more information);

4) Chapter II of the Statute of the International Court of Justice.

The bookstore is stocking a limited number of copies some recommended texts:

1) THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (Cambridge University Press) [referenced above]


NOTE: This book is not available through Amazon except at an exorbitant price for used texts. It is for all practical purposes identical to documents 1 and 2 listed above, available on Canvas.

3-5) the Mitchell, Jouannet, and Pauwelyn texts listed as Items 1, 2 and 4 below (Course Reserve).
Course Reserve:

Four texts for this course should be on course reserve:


(2) JOOST PAUWelyn, CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW (Cambridge; New York: Cambridge University Press, 2003). [Call #: K4610 .P38 2003] (referred to hereafter as “Pauwelyn”); and


Some copies of these texts are available at the bookstore.

Additional useful materials will be identified during course meetings, and either the materials themselves or links to them will be posted on Canvas.
UNIT I – INTRODUCTION TO PUBLIC INTERNATIONAL LAW AND THE WTO

Meeting 1

Theme: Introduction to the Course

Meeting 2

Theme: Introduction to Public International Law (“PIL”)

Topics to be covered include: history and sources of PIL – evolution of the “persistence” of PIL – the rise of multilateral international institutions.

Assignment:

Read: (1) The “Charming Betsy” case;
(2) the “Lotus” case;
(3) Speech by former New Zealand Trade Negotiations Minister Tim Groser: “Governance and Multilateralism.”

On-going Assignment:

See Assignment for Meeting 4.

Meeting 3

Theme: Introduction to The WTO: Core Principles and the Role of Interpretation

Topics to be covered include: history of WTO; general organization of WTO as an institution; the dispute settlement process under the WTO Dispute Settlement Understanding; the political bargain underlying the formation of the WTO.
Assignment:

Read: (1) *US – Reformulated Gasoline (AB) (abridged)*

(2) *US – Section 301 (Panel) (abridged)*

Meeting 4

**Theme:** Fragmentation and the Vienna Convention on the Law of Treaties

Topics to be covered include: the question of the existence of an international legal “system”; the idea of “systemic integration,” and the mechanisms supporting movements toward it; the Vienna Convention on the Law of Treaties and the role of the interpretive provisions (Articles 31 and 32) in the process of systemic integration; the role of professionalism in the integration process; the role of the political in the process of systemic integration.

Assignment:

Read: (1) the introductory sections (Paragraphs 1-45), and Section F (Paragraphs 410-480) of the ILC Fragmentation Report, and

(2) Articles 31-33 of the Vienna Convention on the Law of Treaties, also in “Key Documents.”

Meeting 5

**Theme:** Fragmentation and the Vienna Convention on the Law of Treaties (continued)

Assignment:

Read: Sections C, D, and E of the ILC Fragmentation Report

Time will be allocated in this session to address issues relating to paper topics and the writing process.
UNIT II – THE WTO’S INITIAL ACCOMMODATION OF THE REGULATION OF HEALTH, NATURAL RESOURCE, AND ENVIRONMENTAL ISSUES

Meeting 6

Theme: GATT ARTICLE XX and Unilateral Action by WTO Members: Is there a Duty of Good Faith in the WTO?

Topics to be covered include: The Dispute Settlement Understanding; the accommodation of member “sovereignty” in the WTO through the general exception provision of the GATT; the interpretation of the general exception provision; the techniques of applying the general exception provision.

Assignment:

Review: The Dispute Settlement Understanding; GATT Article XX

Read assigned portions of:

(1) GATT: Tuna/Dolphin report;
(2) WTO: Shrimp/Turtle reports (both abridged and available on Canvas).

Meeting 7

Theme: Sovereignty, Subsidiarity, and Objective Standards in the WTO

Topics to be covered include: “sovereignty,” “subsidiarity,” and the balancing concept of a “margin of appreciation”; the reliance on objective standards as the touchstone for resolving tensions; introduction to the SPS and TBT Agreements.

Assignment:

Review: The SPS and TBT Agreements
Read assigned portions of the following (available in abridged form and available on Canvas):

(1) The Korea – Beef AB Report,
(2) the EC – Asbestos AB report, and
(3) the Japan – Apples report

Meeting 8

Theme: Reliance on Objective Standards in the SPS and TBT Agreements: A Shifting of the Balance?

Topics to be covered include: a review of the WTO’s regulation of the domestic regulatory regimes of Members through reliance on objective “science-based” standards; the status of the Precautionary Principle in public international law and in the WTO regime.

Assignment:

Read assigned portions of:

(1) the Beef – Hormones report;
(2) the EU – GMOs report

UNIT III – THE EMERGENCE OF THE TBT AGREEMENT

Meeting 9

Theme: Developing WTO Jurisprudence under the TBT Agreement

Topics to be covered include: the role of the TBT Agreement in constraining protectionism; further consideration of “objective standards” and a “margin of appreciation” as relevant to the TBT Agreement.
Assignment:

Read assigned portions of:

(1) the Tuna II AB report;
(2) the Clove Cigarettes AB report;
(3) the US – Country of Origins Labeling Requirements (COOL) AB report.

Meeting 10

Theme: The TBT Agreement – Further Developments

Assignment: Read portions of the EC – Seal Products AB report.

UNIT IV – OTHER ASPECTS OF THE SYSTEMIC INTEGRATION OF THE WTO

Meeting 11

Theme: The WTO and Regional Trade Agreements

Topics to be covered include the NAFTA disputes over trucking between Mexico and the US; trade as an aspect of foreign relations.

Assignment:

Review: Article XXIV of GATT 1994; NAFTA materials (to be identified)

Read: Mexico – Taxes on High Fructose Corn Syrup (AB)

Meeting 12

Theme: “Comitology” in the WTO System: Accession, Waivers, and the TBT Committee

Topics to be covered include: the concept of “comitology” (borrowed from EU studies); the council and committee structures within the WTO; the role of the Secretariat; informal standard-making and dispute resolution in the committee process. Some
attention may be paid to the “working group” process for accessions to WTO membership, and particular interpretative problems posed by the products of such processes in dispute resolution. One focus of the class will be on the activities of the TBT Committee. The Kimberley Process waiver will also be addressed.

Assignment: Selected materials will be made available on Canvas.

Meeting 13

Theme: Course Wrap-Up