

GEORGETOWN UNIVERSITY LAW CENTER
LONDON SUMMER PROGRAM

INTERNATIONAL TRADE

Judge John G. Roberts, Jr., U.S. Court of Appeals for the District of Columbia Circuit (July 12-22); Judge Timothy C. Stanceu, U.S. Court of International Trade (July 25-August 5)

Schedule: 9:00 a.m. to 11:00 a.m. weekdays from July 12 through August 5, 2005
Examination: Tuesday, August 9, 2005 at 1:30 p.m.

This three-credit course will survey international law topics relevant to international trade, concentrating on the institutions and agreements that have emerged since the end of the Second World War to further global commerce and investment. We will examine, in particular, the disciplines established under the General Agreement on Tariffs and Trade (the "GATT") and later expanded under the Uruguay Round of world trade negotiations, which gave rise to the World Trade Organization (the "WTO"). In analyzing how these disciplines have been effectuated in U.S. law, the course will begin with the constitutional framework for the respective roles of the legislative and executive branches in the regulation of foreign commerce and consider the deference given by courts to administrative actions in this field. We will proceed to examine the operation of specific implementing statutes and regulations. In doing so, the course will introduce the basic features of customs and tariff law, rules of origin, "safeguard" measures for particular industries, various preferential trade programs, regulation of exports, and measures to address unfair trade practices, including imposition of antidumping and countervailing duties and tariff laws for the protection of intellectual property.

The breadth and complexity of the subject matter require us to present the material as a survey. To provide an overview of how we have organized the subject matter, we have included, on pages 2 and 3 of this document, a summary identifying in outline form the topics covered by each of the 19 sessions comprising the course. In the opening session to be held on Tuesday, July 12, Judge Roberts will present an introduction discussing the scope and the organization of the course.

Reading Assignments

The syllabus, which begins on page 5 of this document, sets forth the required and recommended reading for the 19 sessions. The professors reserve the right to add additional reading assignments, as either required or recommended reading, prior to the individual sessions. The principal reading assignments are found in the following texts:

John H. Jackson, William J. Davey, and Alan O. Sykes, Jr., Legal Problems of International Economic Relations (4th ed. 2002). In the syllabus, this text is referred to as “Jackson.”

John H. Jackson, William J. Davey, and Alan O. Sykes, Jr., 2002 Document Supplement to Legal Problems of International Economic Relations (4th ed. 2002). In the syllabus, this text is referred to as “Document Supplement.”

We have assembled additional materials as required reading. These materials will be distributed to you by the Law Center and are listed in the syllabus as numbered handouts. *Please bring the Jackson text and the Document Supplement to each session, as we may make reference to various excerpts during the lectures. Also, please bring the handouts to the sessions to which they pertain.*

Examination

The examination will be held on August 9, 2005, at 1:30 p.m. This will be a **closed book examination**. No materials may be brought into the examination room.

Classroom Participation

Classroom participation is vital to the success of the course and, accordingly, will be considered in determining a student's grade.

Consultations

Judges Roberts and Stanceu will be available for consultation during the course. Contact information will be provided at the first session.

Summary of Topics for **INTERNATIONAL TRADE**, Part I
Judge Roberts

Week 1: Theory and Basis of International Trade Regulation and the U.S. Constitutional Framework				
	<u>Tuesday, July 12</u>	<u>Wednesday, July 13</u>	<u>Thursday, July 14</u>	<u>Friday, July 15</u>
	<p><u>Introduction and Scope:</u></p> <p>Overview of issues implicated by regulation of international trade transactions: why should governments regulate international trade any differently than domestic trade?</p> <p>Free trade, fair trade, and arguments for protection</p>	<p><u>U.S. Constitutional and Statutory Foundation:</u></p> <p>Constitutional and legislative bases for United States international trade law</p> <p>The domestic legal background of international trade regulation</p> <p>Executive power and enabling legislation; the “fast track” accommodation</p>	<p>International agreements and United States law</p> <p>Self-executing and non-self-executing treaties</p> <p>Respective roles of the executive, legislative, and judicial branches</p> <p>Judicial review of international trade determinations</p> <p>Federalism; role of state and local governments</p>	<p><u>International Law Basis for International Trade Regulation:</u></p> <p>Sources of international law relevant to international trade</p> <p>The role of sovereigns and the rights of individuals</p>
Week 2: The General Agreement on Tariffs and Trade and the World Trade Organization				
<u>Monday, July 18</u>	<u>Tuesday, July 19</u>	<u>Wednesday, July 20</u>	<u>Thursday, July 21</u>	<u>Friday, July 22</u>
<p><u>Introduction to the Bretton Woods System and the General Agreement on Tariffs and Trade (“GATT”):</u></p> <p>Goals of the Bretton Woods system (International Monetary Fund, World Bank, and GATT)</p> <p>GATT legal structure</p>	<p><u>The Uruguay Round and the World Trade Organization (“WTO”):</u></p> <p>Emergence of a new international agreement in the Uruguay Round</p> <p>Relationship between the GATT/WTO agreements and U.S. domestic law</p>	<p><u>Dispute settlement under the World Trade Organization:</u></p> <p>Overview</p>	<p><u>Dispute settlement under the World Trade Organization:</u></p> <p>Particular issues</p>	<p><u>Introduction to Tariffs:</u></p> <p>Tariff bindings under GATT Art. II</p> <p>Consequences of exceeding tariff bindings</p>

Summary of Topics for **INTERNATIONAL TRADE**, Part II
Judge Stanceu

Week 3: Tariffs, Quotas, Transparency, and Non-Tariff Barriers				
<u>Monday July 25</u>	<u>Tuesday July 26</u>	<u>Wednesday July 27</u>	<u>Thursday July 28</u>	<u>Friday July 29</u>
<u>Basic Customs Law Principles:</u> Harmonized System (“HS”) and the Harmonized Tariff Schedule (“HTSUS”) Classification Valuation Entry procedures Penalties and forfeitures	<u>Special Tariff Programs and Procedures:</u> Rules of origin and preference Country of origin marking Drawback Foreign-trade zones, bonded warehouses, temporary importations	<u>The MFN Obligation:</u> GATT Article I Multilateralism v. bilateralism Growth of bilateral and regional agreements Trade preferences for developing countries	<u>The North American Free Trade Agreement:</u> NAFTA market access provisions NAFTA Rules of Origin NAFTA Dispute Settlement AD/CVD Binational panels and Extraordinary Challenges	<u>The National Treatment Obligation and Related WTO Disciplines:</u> GATT Article III Non-tariff barriers WTO Agreement on Sanitary and Phytosanitary Measures WTO Agreement on Technical Barriers to Trade
Week 4: Trade Remedies				
<u>Monday Aug. 1</u>	<u>Tuesday Aug. 2</u>	<u>Wednesday Aug. 3</u>	<u>Thursday Aug. 4</u>	<u>Friday Aug. 5</u>
<u>Antidumping and Countervailing Duty Law:</u> Theoretical basis for remedy Provisional measures The determination of normal value The determination of U.S. price Non-market economy cases Administrative and sunset reviews	<u>Antidumping and Countervailing Duty Law:</u> The ITA subsidy determination GATT and WTO disciplines on AD and CVD The ITC injury determination WTO Byrd Amendment case	<u>Injury Analysis in AD and CVD Cases:</u> Defining the domestic industry Factors in determining injury or threat Causation Cumulation	<u>Safeguards and Escape Clause Remedies:</u> Section 201 of the Trade Act of 1974 and Related Provisions Trade Adjustment Assistance	<u>Remedies for Unfair Trade Practices; Intellectual Property Protection; Export Controls:</u> Section 301 of the Trade Act of 1974 Section 337 of the Tariff Act of 1930 Section 526 of the Tariff Act of 1930 “Gray Market” Goods The WTO “TRIPS” Agreement

Syllabus for
INTERNATIONAL TRADE

Week 1: Theory and Basis of International Trade Regulation and the U.S. Constitutional Framework

Tuesday, July 12

Introduction and Scope

Introduction to scope of the course and the division between portions conducted by Judges Roberts and Stanceu, respectively. Overview of issues implicated by regulation of international trade transactions: why should governments regulate international trade any differently than domestic trade? Free trade, fair trade, and arguments for protection. Why are there riots when the World Trade Organization meets?

Required reading: Jackson, chapter 1. Recommended reading: John Cassidy, "Winners and Losers: The Truth About Free Trade," The New Yorker, Aug. 2, 2004, pp. 26-30 (handout no. 1).

Wednesday, July 13

Constitutional and Statutory Bases for the Regulation of International Trade

Constitutional and legislative bases for United States international trade law. The domestic legal background of international trade regulation. Executive power and enabling legislation; the "fast track" accommodation.

Required reading: Jackson, chapter 3.1 – 3.3.

Thursday, July 14

Constitutional and Statutory Bases for the Regulation of International Trade, cont.

International agreements and United States law. Self-executing and non-self-executing treaties. The respective roles of the executive, legislative, and judicial branches. Judicial review of international trade agency determinations. Federalism considered and the role of state and local governments.

Required reading: Jackson, chapter 3.4 – 3.6(C)(2). Recommended reading: Jane A. Restani and Ira Bloom, *Interpreting International Trade Statutes: Is the Charming Betsy Sinking?*, 24 Fordham Int'l L. J. 1533 (2001) (handout no. 2).

Friday, July 15

The Basis in International Law for the Regulation of International Trade

Sources of international law relevant to international trade. The role of sovereigns and the rights of individuals.

Required reading: Jackson, chapter 5.1 – 5.3.

Week 2: The General Agreement on Tariffs and Trade and the World Trade Organization

Monday, July 18

Introduction to the Bretton Woods System and the General Agreement on Tariffs and Trade (“GATT”)

Origins and development of the GATT as it emerged, together with other institutions, *i.e.*, the International Bank for Reconstruction and Development (“World Bank”) and International

Monetary Fund, from a series of conferences held at Bretton Woods, New Hampshire, in the mid- to late-1940s. GATT legal structure.

Required reading: Jackson, chapter 5.4, chapter 6.1 – 6.2.

Tuesday, July 19

The Uruguay Round and the World Trade Organization (“WTO”)

Overview of the World Trade Organization, which emerged from the conclusion of eight years of negotiations known as the “Uruguay Round” and which expanded on the structure that had evolved under the GATT. Relationship between the WTO/GATT agreements and U.S. domestic law.

Required reading: Jackson, chapter 6.3 – 6.7. Recommended reading: John O. McGinnis & Mark L. Movsesian, *The World Trade Constitution*, 114 Harv. L. Rev. 511, 530-548 (2000) (handout no. 3).

Wednesday, July 20

Dispute Settlement under the World Trade Organization

Overview of the topic of dispute settlement under the World Trade Organization.

Required reading: Jackson, chapter 7.1 – 7.3.

Thursday, July 21

Dispute Settlement under the World Trade Organization, cont.

Expansion of the topics addressed in the previous session, considering particular issues arising in WTO dispute settlement.

Required reading: Jackson, chapter 7.4 (beginning) - 7.4(D).

Friday, July 22

Introduction to Tariffs

Basic concepts of tariffs and the treatment of tariffs in the GATT, serving as background for specific topics in customs law that will be addressed the following week in the sessions conducted by Judge Stanceu. The concept of tariff “bindings” as they are addressed by GATT Article II; rights and obligations that arise under the GATT when bindings are exceeded.

Required reading: Jackson, chapter 8.1 – 8.2.

Week 3: Tariffs, Quotas, Transparency, and Non-Tariff Barriers

Monday, July 25

Basic Customs Law Principles

Introduction to customs law. Principles under which goods are classified for tariff purposes under internationally-harmonized rules that were established during the 1980s as the “Harmonized Commodity Description and Coding System (“Harmonized System”) under the direction of the Customs Cooperation Council (which, since the Uruguay Round, is now known as the World Customs Organization). Valuation of goods for international trade purposes under GATT disciplines. Procedures for the “entry” of merchandise under U.S. law. Penalties, forfeitures and other sanctions for violations of the customs laws.

Required reading: Timothy C. Stanceu, *Classification and Valuation in Customs Law* (handout no. 4); Jackson, chapter 8.3, except that the “Notes and Questions” sections are recommended, but not required, reading. Also, included in the distributed materials (as handout no. 5) is New York County Lawyers Ass’n, Handbook on Customs & International Trade Law, (2d ed. 1996) (last section omitted). Students are strongly encouraged to consult this handbook frequently to obtain a summary of the various topics addressed in the lectures and required reading during the

second half of the course. In some instances, the Handbook summarizes or repeats subject matter addressed in the required readings, but it does so in a format and style that is ideal as an introduction or review of this subject matter. *Please bring the Handbook to the sessions during the last two weeks of the course, as Judge Stanceu will refer to them during the lectures.*

Tuesday, July 26

Special Tariff Programs and Procedures

The distinction between rules of origin and rules of preference, under U.S. law and under emerging WTO principles of harmonization. Country of origin marking and the disciplines applied to it under GATT. Drawback of duties paid on goods subsequently exported or on goods used in manufacturing goods for export. Special tariff procedures that allow flexibility to U.S. importers and manufacturers in meeting tariff obligations, including foreign-trade zones, bonded warehouses, and temporary importations under bond.

Required reading: Timothy C. Stanceu, *Rules of Origin* (handout no. 6); Uruguay Round Agreement on Rules of Origin, Document Supplement pp. 235-42.

Wednesday, July 27

The Most-Favored Nation (“MFN”) Obligation

The Most-Favored Nation obligation, as fundamentally established in GATT Article I and as applied, with its several exceptions, including exceptions for preferences for developing countries and exceptions allowing for bilateral and regional trade agreements.

Required reading: Jackson, chapter 10; GATT Articles I and II, Document Supplement at 17-20.

Thursday, July 28

The North American Free Trade Agreement (“NAFTA”)

NAFTA market access, including tariff elimination, conversion of tariffs to tariff-rate quotas, and the special rules for agricultural products of Mexico. NAFTA “Rules of Origin” (actually rules of preference) and the “NAFTA Marking Rules” (actually non-preferential rules of origin). NAFTA dispute settlement, both generally and in the special context of antidumping and countervailing duty binational panels and extraordinary challenges.

Required reading: Jackson, chapter 11.

Friday, July 29

The National Treatment Obligation under the GATT and Related WTO Obligations

The National Treatment obligation as set forth in GATT Article III and as it has developed under the GATT and the WTO, which applies and extends the principle in the Agreement on Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade. General exceptions to the National Treatment obligation.

Required reading: Jackson, chapter 12 through middle of page 519; rest of chapter is recommended, but not required, reading.

Week 4: Trade Remedies

Monday, August 1

Antidumping and Countervailing Duty Law

Summary of the principles of U.S. antidumping and countervailing duty law, including the theoretical basis for remedy of each type of “unfair trade practice.” “Provisional measures” that may result in liability for duties on entries of imported merchandise made prior to a final determination of dumping or subsidy, and prior to the final determination of injury. In dumping cases, the basic comparison between “normal value” and “U.S. price” by which the International Trade Administration (“ITA”), U.S. Department of Commerce, determines the “dumping margin.” Special rules for determining antidumping duties in cases in which the goods are produced in a non-market economy country. “Administrative” reviews of orders that annually recalculate the dumping margin; “sunset” reviews of orders.

Required reading: Jackson, chapter 16, pp. 676-707.

Tuesday, August 2

Antidumping and Countervailing Duty Law, cont.

Continuation of previous session, in which basic antidumping law and countervailing duty law principles are surveyed. The determination of subsidy by the International Trade Administration. Disciplines imposed by the WTO on measures to address dumping and subsidy. Case study of the WTO decision on the “Byrd Amendment,” under which antidumping duties are paid to U.S. producers who brought or supported an antidumping petition.

Required reading: Jackson, chapter 16, 707 (beginning with “(B) The Substantive Rules”) through 726; Jackson, chapter 18, pages 828-50. Recommended reading: Jackson, chapter 18, pages 767-76; Excerpt from WTO Panel Decision on Byrd Amendment (handout no. 7).

Wednesday, August 3

Injury Analysis in Antidumping and Countervailing Duty Law

Completion of discussion on antidumping and countervailing duty law, including discussion of the determination of injury by the U.S. International Trade Commission. Under WTO rules, measures directed against dumping and subsidies may not be imposed absent a determination of “injury” to a domestic industry.

Required reading: Jackson, chapter 17 to middle of page 759; rest of chapter is recommended reading.

Thursday, August 4

Safeguards, Escape Clause Remedies and Trade Adjustment Assistance

Section 201 of the Trade Act of 1974 and related provisions, which provide a remedy for imports that, although fairly traded, nevertheless are determined by the International Trade Commission to injure a domestic industry. The discretion vested in the President to impose or reject safeguard measures. “Trade Adjustment Assistance” to U.S. workers adversely affected by imports.

Required reading: Jackson, chapter 15 through page 630.

Friday, August 5

Remedies for Unfair Trade Practices; Intellectual Property Protection; Export Controls

Remedies for “unfair trade practices” associated with trading partners of the United States, as provided for under Section 301 of the Trade Act of 1974. Remedies for “unfair trade practices” (principally, patent infringement) associated with particular imported merchandise. Restrictions on importation of goods bearing trademarks owned by U.S. citizens under Section 526 of the Tariff Act of 1930, including exceptions for “gray market” goods bearing genuine trademarks. The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”). Export controls and the constitutional restrictions on the taxing of exports.

Required reading: Jackson, chapter 20, pp. 921-27 and 942-65 (beginning with “(B) Gray Market Problem”). Jackson, 1045-52; U.S. Shoe Corp. v. United States, 523 U.S. 360, 118 S. Ct. 1290, 140 L. Ed. 2d 453 (1998) (handout no. 8).