

FALL 2024 LAWS 665 INTERNATIONAL TRADE LAW

SYLLABUS

TEACHING FACULTY

Prof. David Linnan

COVERAGE

Our international trade cum international economic law course will be an introduction to three distinct but related areas in international economic law, particularly as colored by recent policy and political changes. The practical aspect is that we shall pay increased attention in this course to general aspects of international economic law, because these recent policy changes reflect for us domestic pressures arising from what is being referred to as something like a new “trade war,” or more recently a new “technology war.” These three areas are (1) traditional multilateral trade law (GATT/WTO), (2) free trade areas or FTAs (like NAFTA originally, now USMCA, with coverage also of foreign direct investment), plus (3) increasing trade, ownership or technology-based restrictions claiming a basis in national security, whether in the narrow military sense, or more broadly in the sense of economic security (e.g., gaining a foothold in the “industries of the future”). The third finds its expression under domestic law in the US’ recently embarked-upon technology export limitations and climate change subsidy law introductions (in both cases seemingly directed against the PRC).

Welcome to the future, because the new emphasis on national security under domestic law has not been fully tested under either multilateral or FTA-type trade law. All of the above applies without even getting into former President Trump’s campaign proposal to raise all import tariffs by 10%, except for the PRC, where they would rise 90%. Meanwhile President Biden largely retained existing tariffs on PRC goods inherited from the Trump Administration. So the substance of American trade law and policy has changed drastically over the past eight years since the Obama Administration, equally under Presidents Trump and Biden, and the one thing that can be said safely is that this rapid evolution will continue, whomever the new President may be on January 20, 2025.

If you look across the Atlantic, in early 2023 the Europeans already introduced carbon border adjustment mechanisms (CBAMs) on a limited scale as part of their initial Green Economy push, with plans to increase coverage through 2026. Basically, CBAMs are carbon-based tariffs as a work-in-progress, aiming to address foreign methods of production, as compared to EU production, so as a result international trade law and international environmental law increasingly seem to overlap. So we have more pressure on trade law on the national security side from the US, but almost as much pressure from Europe on the climate (environmental) side. If you were to shift attention to developing country outlooks and interests, many feel quite threatened by climate change, not to mention CBAMs. As a rule, developed countries tend to enjoy temperate climates (cooler), while developing countries tend to enjoy tropical climates (hotter), meanwhile many developing countries are more than a bit alarmed by growing tensions between the PRC and the US (not to mention with Russia and Iran too), under the old parable that when two elephants fight, it is the grass that suffers. Without going into too much detail initially, economic outlooks are also shifting substantially given developing countries’ much larger agricultural sectors (both exports and food security are threatened by climate change), technological progress (expensive AI and increasing factory automation challenging their cheap labor advantage, etc.), and changing demographics also in most of

the developing world, which affects economic development prospects on a technical level. All this challenges almost 50 years of seemingly successful economic development policy, particularly in Asia, including “export-led development,” accomplished instrumentally via large-scale rural-urban migration. The bottomline is that economic policy and approaches tying into international economic law are unusually fluid presently on a worldwide basis, but for differing reasons involving differing groupings of countries.

In law practice terms, multilateral or WTO-level trade law is largely practiced by current and former government lawyers concentrated in national capitals, while FTA-type law is now part of the standard tool kit of all sophisticated business lawyers. And the increasing emphasis on national security aspects will presumably require familiarity with this burgeoning area of law among current and former government lawyers, as well as sophisticated business lawyers. Simply put, clients expect some level of legal sophistication in the US and abroad for structuring global business enterprises, as well as understanding cross-border digital economy and data regulation (which thus far has tended to be developed via FTA-type law, including foreign investment law). That broader scope is why you should be thinking about international economic law more broadly, rather than the traditional, relatively narrow view of trade in goods from a domestic law and policy perspective (meaning solely manufacturing).

MEETING TIMES & PLACES

The course is scheduled to meet regularly 2:40-4:45 pm Columbia time Wednesdays in Law School Room 204. Class sessions should be recorded and available on panopto, but that is only for review purposes. I shall hold scheduled Room 320 office hours Monday and Wednesday 12:30 to 2:30 pm. On request, beyond those times we can schedule a meeting at any mutually available time (via WhatsApp, Zoom, or we just meet physically at the Law School; my e-mail for scheduling an appointment is davidkeithlinnan@yahoo.com). Just email me, or otherwise just catch me in class to schedule a meeting outside office hours.

TEXT, CONTACTS AND APPROACH

We shall save you the cost of a commercial law casebook in this course. We shall use <http://www.proflinnan.com> as our instructional website for traditional trade law, and add additional material particularly on the national security and climate crossovers via email and blackboard. You can find the text of the relevant GATT/WTO or similar provisions normally on the World Trade Organization (WTO) website (<http://www.wto.org>), and the course website is free. I also was in Southeast Asia over the summer and talked with some Indonesian colleagues about possibly arranging some student to student work in teams to provide you with at least some exposure to how, in the cross border setting, foreign lawyers and countries may see things very differently (particularly in the developing country setting), or work under very different policy regimes, than US lawyers. But it may be October before we figure out how to structure such an exercise.

The order of coverage from our web-based materials follows:

[Unit 1](#) - Introduction on Background

[Unit 2](#) - International Economics, Development Policy Philosophy & Disruptions: Multilateral & FTA Trading Whys & Wherefores (Meanwhile, What Is IPEF?)

[Unit 3](#) - GATT/WTO/GATS; First Look at the Agreements, Plus Dispute Resolution

- (Rule-Based vs Economic Diplomacy Systems, WTO vs FTAs)
- [Unit 4](#) - Scope of National Security (GATT/WTO Article 21) and Currency Manipulation, But Now What Do Tech Export Limitations Mean?
 - [Unit 5](#) - Multilateral Trade Core Principles & Exceptions (GATT/WTO Article 1: MFN, Cultural Exceptions) & Goods vs Services
 - [Unit 6](#) - Multilateral Trade Trade Core Principles & Exceptions (GATT/WTO Article 3: National Treatment & Non-Discrimination)
 - [Unit 7](#) - Digital Commerce & Internet Across Borders (WTO vs FTAs, in practice)
 - [Unit 8](#) - Multilateral Trade Core Principles & Exceptions (GATT/WTO Articles 10 & 11: Non-Tariff Barriers (NTBs) & Technical Barriers to Trade (TBT) Agreement)
 - [Unit 9](#) - Multilateral Trade Core Principles & Exceptions (GATT/WTO Article 20: Scientific Standards & Sanitary and Phytosanitary (SPS) Agreement)
 - [Unit 10](#) - Trade & Environment Overlap (GATT/WTO Article 20 cont'd, in practice, but CBAMs too)
 - [Unit 11](#) - Trade Law & Trade Related Intellectual Property (TRIPs) Agreement: Technological Change Further Out
 - [Unit 12](#) - Global Supply Chains & FTAs and Investment Law Overlap, Now "Resilience"?
 - [Unit 13](#) - Services Liberalization More in FTAs than GATS, but Why?
 - [Unit 14](#) - Trade Remedies Approach: Antidumping & Countervailing Duties (Subsidies) Agreements, Plus Safeguard Agreement
 - [Unit 15](#) - Trade Liberalization for Textiles & Agriculture, Food Safety & Climate Change

This course is mostly a specialized international economic law course, but is offered without prerequisites knowing that some students will have prior knowledge and training in public international law, while others may not. We shall try to address this via online resources and office hours, but if all else fails, the public international law nutshell and similar black letter law summaries are helpful.

ASSESSMENT AND ATTENDANCE

This is a 2/3 credit course. Grading will be based primarily on either (i) a research paper (minimum 20 pages for two credit hours and 30 pages for three credit hours), or (ii) a 24-hour check-out final exam for two credit hours. If you write a paper, you do not take the exam. USC students may choose either assessment option, except that if you take the course for three credit hours you must write a paper (for USC Business School students, this also may be a case study). Class participation will be taken into account in letting you move up individually up to ½ grade (e.g., from a B to a B+, etc.) under either the 2 or 3 credit course version.

With the instructor's permission a three-credit hour research paper may also be structured to satisfy the USC Law School's graduation writing requirement. Students wishing to write such a thirty-page research paper in satisfaction of the graduate writing requirement should talk early and often with the instructor, since following the Law Student Handbook you will be required to choose a topic in consultation with the instructor, produce an outline, followed by a first draft and then a final version of the paper. Note that you must confer with the instructor at least three times in the process: to choose a topic cooperatively, review your writing outline together, and then for comments between your first draft and the final paper version. We can also organize a help session with the reference librarians to introduce you to trade law and international economics sources, as a way to help you get started.

You will also be required to prepare other problems and projects for class in groups, where we shall employ a self-grading process within groups (meaning your colleagues indicate whether you did your fair share of the work). The concept is that we rotate responsibility for preparing presentations of group problems so you presumably have one to prepare every 2-3 weeks in your group during the semester. Your grade will also reflect self-grading within your groups on the margin (basically, up or down a half letter grade in +/- terms, whether you take the course for two or for three credit hours).

The Law School, and ABA under its rules, care about your diligent pursuit of legal education, regardless of competing concerns. The standard Law School rules apply, so we shall take attendance. Regarding attendance, if you miss more than 25% of the classes you will be graded down irregardless (and also would not be included in any group CALI award, should it be awarded by group and your group be the class winner). It is your responsibility to sign the attendance sheet, and if you come to class more than ten minutes late you are counted as absent and should not sign the attendance sheet. You may not sign the attendance sheet for anyone else.

Learning Outcomes

In this course we seek:

1. To introduce you to the broader topic of international trade cum international economic law alongside related concerns increasingly touching upon climate change and national security;
2. To provide a technical introduction to sources of public international law as such, as applied to the specific specialized area of international trade law, including also the special skills involved in judging whether domestic law complies with international law requirements;
3. To familiarize you with the differing treaty structures and approaches in the multilateral trade law system (GATT/WTO), versus the free trade area or agreement approach (FTAs, e.g., NAFTA now USMCA);
4. To introduce you to the concept that the cross-border digital economy and IT services are increasingly regulated under FTAs;
5. To familiarize you with the attendant problems of balancing a variety of economic, political, development and negotiating problems in making international law among a wide variety of states, as opposed to the predominantly doctrinal approach in application that typically controls in most domestic law courses;
6. To improve your legal writing, judgment, analytical and advocacy skills through ordinary course outputs from all students working in teams on problems, as well as the experience of working in teams (as is often the case in law practice, so get used to it);
7. To provide a more individualized experience in legal writing and legal analysis for students who choose to satisfy their graduation legal writing requirement under the three-credit option; and
8. To expose you to the experience of working professionally with foreign colleagues trained in another legal system.