

**THE GOVERNMENT OF THE RUSSIAN FEDERATION**  
**Federal State Autonomous Educational Institution**  
**for Higher Learning**

**THE NATIONAL RESEARCH UNIVERSITY**  
**HIGHER SCHOOL OF ECONOMICS**

**Faculty of Law**  
**Public and Private International Law Department**

**Master Degree Curriculum**  
**Year 1**

Field of Education **40.04.01. – Jurisprudence**

Detailed Field – **Law of International Trade, Finance and Economic**  
**Integration**

Level – **Master degree**

**REGIONAL TRADE AGREEMENTS AND ZONES OF FREE TRADE**  
**Course Syllabus**

**Author of the Course / Course Instructor**  
**David A. Wirth, A.B., A.M., J.D., Professor**

**Approved at the Public and Private**  
**International Department session**

Natalya Y. Erpyleva  
Department Head

---

September 6, 2016 (Protocol N 13)

**Approved at the Academic Council**  
**of Master Program “Law of**  
**International Trade, Finance and**  
**Economic Integration” session**

Vladislav V. Starzhenetskiy  
Academic Supervisor of Master  
Program

---

September \_\_\_\_, 2016 (Protocol N \_\_\_\_)

**Moscow, 2016**

*This Syllabus cannot be used by other departments of the University or by other universities without a permission of the Departments, which drafted it.*

## **1. Course Description**

### **a. Title of a Course**

Regional Trade Agreements and Zones of Free Trade

### **b. Pre-requisites**

None. No prior familiarity with international law, trade law, or investment law is required or assumed.

### **c. Course Type** (compulsory, elective, optional)

Compulsory

### **d. Abstract**

Regional Trade Agreements and Zones of Free Trade is a compulsory Research Seminar to be taught in English. A good command of legal English is required. No prior familiarity with international law, trade law, or investment law is necessary or assumed. This course is an up-to-the-minute, in-depth treatment of the phenomenon of regional free trade agreements (RTAs, which, including bilateral FTAs, are sometimes collectively called “preferential trade agreements”). The phenomenon of bilateral and multilateral RTAs is of increasing importance, particularly as potentially universal efforts such as the Doha Agenda in the World Trade Organization have stalled. Although a number of regional trade agreements such as the trilateral North American Free Trade Agreement (NAFTA), have been adopted since the early 1990s, many continue to be controversial from scholarly, policy, principled, and practical points of view. The UK’s Brexit vote has propelled the issue of regional economic integration to the forefront of international high politics. Other regional efforts, such as the Trans-Pacific and Trans-Atlantic Partnerships, may or may not come into force despite intense efforts at negotiating them. This course is divided into three components: (1) jurisprudential characteristics of regional trade agreements, including departures from the all-important most favored nation discipline; (2) case studies of specific extant and proposed regional trade agreements and their distinctive characteristics, including NAFTA, APEC, and the Eurasian Economic Community; and (3) free trade zones. The principal evaluative instrument in the course will be a research paper of 10-15 pages in length prepared under the instructor’s supervision.

## **2. Learning Objectives**

The main purpose of the course is to make students able to use international norms of trade in goods and foreign investment in a variety of regional settings of diverse legal character, and to perform legal research and solve concrete problems in this field.

## **3. Learning Outcomes**

### **Students must gain knowledge as to:**

- competence and working methods of international judicial and quasi-judicial trade and investment bodies at the regional level;
- sources of regional trade and investment law;
- scope of application and content of the basic international norms concerning trade and investment at the regional level.

### **Skills and abilities:**

- to use specific terms and sources of regional trade and investment law;
- practical abilities of research, analysis of judicial and quasi-judicial decisions and scientific works;
- to analyse and solve cases, building up of a legal position and composition of procedural documents on cases in the sphere of regional trade and investment law;
- to understand the structure and functioning of a variety of international institutions;
- to address the relationship between public policy goals and specific governmental and private measures;
- to apply elementary concepts from other disciplines, such as economics and science, in a legal context;
- to correlate international and domestic regulatory policies and measures.

### **Students should gain the following competences:**

- ability to work with information (search, evaluate, use information, necessary for fulfilment of scientific and professional tasks, from various sources, including application of the systematic approach);
- ability to carry out professional activities in an international setting;
- ability to search, analyse, and work with legally relevant information by using the juridical, comparative and other specific methods;

- ability to describe legal problems and situations in the field of regional trade and investment;
- ability to work with and interpret primary operative texts;
- ability to draft a research paper in English.

#### **4. Course Plan**

“C&M” refers to JEAN-PIERRE CHAUFFOUR & JEAN-CHRISTOPHE MAUR, EDS., PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT: A HANDBOOK (World Bank Group 2011), ISBN 978-0-8213-8643-9. This book can be downloaded without charge from the Internet at <<https://openknowledge.worldbank.org/handle/10986/2329>>

References to other readings in texts set out in section 5.b below are indicated by the surname of the principal author. All these texts are available from the Law Faculty library.

### **I. THEORY OF REGIONAL TRADE AGREEMENTS**

This portion of the course addresses regional FTAs in the context of disciplines governing world trade, particularly the all-important MFN obligation.

#### **Topic 1**

Introduction to Regional Trade Agreements

Reading:

C&M chapter 2, pages 37-67.

Pauwelyn, Guzman & Hillman, pages 369-380.

#### **Topic 2**

Relationship to the GATT/WTO regime.

Reading:

GATT Article XXIV and Understanding,  
<[https://www.wto.org/english/tratop\\_e/region\\_e/regatt\\_e.htm](https://www.wto.org/english/tratop_e/region_e/regatt_e.htm)>

Jackson, Davey & Sykes, pages 535-556 (Turkey – Textiles). What is the

difference between a free trade area and a customs union, and how are they treated differently under article XXIV? What requirements must be satisfied before article XXIV applies?

Van den Bossche & Zdouc, pages 664-668 (Canada – Autos. The background to this dispute is described in note 5, page 554, of the previous reading). How are the requirements for RTAs for trade in services different from that for trade in goods?

Problem Exercise: The East-West Compact (Pauwelyn, Guzman & Hillman page 380).

## **II. REGIONAL INTEGRATION**

As we discuss substantive regional arrangements one by one, the reading is structured in the form of (1) a basic introduction WTO law on the topic, followed by (2) a discussion of the substantive issue in RTAs in the C&M text. As you read this material, think about ways in which RTAs may be able to address the issue under discussion in a manner superior to the WTO, a potentially universal setting. What are the tradeoffs involved? How is this likely reflected in the legal requirements established by RTAs?

### **Topic 3**

Intellectual Property

Reading:

Pauwelyn, Guzman & Hillman, pages 661-676.

C&M pages 387-406.

Problem Exercise: Free Trade Agreements and Customs Unions (Folsom, Gordon, Van Alstine & Ramsey, pages 467-468).

### **Topic 4**

Services

Reading:

Pauwelyn, Guzman & Hillman, pages 661-676.

C&M pages 235-274.

Problem Exercise: Preferential Trade in Services (Pauwelyn, Guzman & Hillman pages 697-699).

### **Topic 5**

Dispute Settlement

Reading:

NAFTA article 2005, <<https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement?mvid=1&secid=ed3bd8c9-2d73-45fb-9241-d66364f8037a#A2005>>

Jackson, Davey & Sykes, pages 556-565 (Mexico – Taxes on Soft Drinks).

Jackson, Davey & Sykes, pages 572-577 (In re Live Swine).

C&M pages 467-502.

## **III. REGIONAL FREE TRADE AGREEMENT CASE STUDIES**

This portion of the course addresses a variety of RTAs. As you read each case study, keep in mind the similarities and differences between and among each.

### **Topic 6**

NAFTA

Reading:

Folsom, Principles of International Trade Law, pages 452-464, 480-488 (§§ 16.3-16.5, 16.8-16.9).

In The Matter of Cross-Border Trucking Services

First read the following background of the dispute: Robert J. Carbaugh, NAFTA and the U.S.-Mexican Trucking Dispute, <[http://www2.southeastern.edu/orgs/econjournal/index\\_files/JIGES%20JUNE%20](http://www2.southeastern.edu/orgs/econjournal/index_files/JIGES%20JUNE%20)

2011%20NAFTA%20and%20the%20U.S.-Mexican%20Trucking%20Dispute.pdf>

Then read the operative portion of the panel's report, paragraph 246 on page 71 until the end.

In paragraph 287, the panel states: "The United States has made no significant effort to defend its position on investment on the merits." How can you explain this, given Professor Carbaugh's analysis? What does this tell you about the shape of the larger bilateral issue, as distinct from the legal issues presented to the panel for resolution?

### **Topic 7** MERCOSUR

Reading:

Weiler & Cho, The Law of Regional Economic Integration in the American Hemisphere <[http://www.jeanmonnetprogram.org/wp-content/uploads/NAFTA\\_UnitIV\\_FTAA\\_2006.pdf](http://www.jeanmonnetprogram.org/wp-content/uploads/NAFTA_UnitIV_FTAA_2006.pdf)>. Read pages 13-32. From the point of view of the theory of RTAs, how is MERCOSUR different from NAFTA?

Fabio Morosoni, The MERCOSUR and WTO Retreaded Tires Dispute, <[https://www.researchgate.net/publication/228174779\\_The\\_MERCOSUR\\_and\\_WTO\\_Retreaded\\_Tires\\_Dispute\\_Rehabilitating\\_Regulatory\\_Competition\\_in\\_International\\_Trade\\_and\\_Environmental\\_Regulation](https://www.researchgate.net/publication/228174779_The_MERCOSUR_and_WTO_Retreaded_Tires_Dispute_Rehabilitating_Regulatory_Competition_in_International_Trade_and_Environmental_Regulation)>. Read pages 68-110. This case study involves two disputes decided under the auspices of MERCOSUR and a third on related subject matter in the WTO. What does this case study teach about the relationship between RTAs and the WTO?

### **Topic 8** CIS Agreements and the EEU

Reading:

Vicari, The Eurasian Economic Union, <<https://interventionseconomiques.revues.org/2823>>. How does the EEU compare with other RTAs we have studied?

Additional readings to be supplied

## **Topic 9**

APEC

Reading to be supplied

## **Topic 10**

The proposed OECD MAI

Reading:

Salzman, Labor Rights, Globalization, and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development, 21 Mich. J. Int'l L. 769 (2000), <[http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1882&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1882&context=faculty_scholarship)>. Read pages 774-787 and 804-842. How does the OECD compare in institutional structure to the RTAs we have studied? As of this writing, the Russian Federation's proposed accession to OECD membership is pending.

## **Topic 11**

TPP and TTIP

As of this writing, the futures of both the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership are uncertain. Negotiations on the former have been concluded, but the agreement has not entered into force pending approval by the proposed parties to the agreement. Negotiations on the latter have been suspended, and are complicated by the recent Brexit vote.

Reading:

Congressional Research Service, The Trans-Pacific Partnership: In Brief, <<https://www.fas.org/sgp/crs/row/R44278.pdf>>.

The EU has made some of its TTIP textual proposals publicly available. Read the following connected to the subject matter that we have been studying in this course:

Trade in Goods: <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230#market-access>>. Read the explanatory note, which can be accessed by clicking on those items.

Services and Investment: Click on “Using positive and negative lists.”

Intellectual Property: Click on “EU concept paper on geographic indications.”

Dispute Settlement: Click on “Investment in TTIP” and read articles 9, 10, and 12 of the EU’s textual proposal.

#### **IV. ZONES OF FREE TRADE**

As we study one example of a free trade zone, keep in mind its structural legal attributes that could be generalized to other situations, such as those within the Russian Federation.

##### **Topic 12**

Maquiladora case study

Reading:

Folsom, Gordon, Van Alstine & Ramsey, pages 530-542, including problem 6.6.

Ministry of Economic Development of the Russian Federation, Special economic zones in Russia, <<http://www.ved.gov.ru/eng/investing/sez/>>.

##### **Content of the discipline:**

| №  | Topic                                     | Hours in total | Contact Hours |          | Self-study |
|----|---|----------------|---------------|----------|------------|
|    |   |                | Lectures      | Seminars |            |
| 1. | Introduction to Regional Trade Agreements | 18             | 0             | 1        | 17         |
| 2. | Relationship to the GATT/WTO regime       | 22             | 0             | 3        | 19         |
| 3. | Intellectual Property                     | 18             | 0             | 2        | 16         |
| 4. | Services                                  | 18             | 0             | 2        | 16         |
| 5. | Dispute Settlement                        | 18             | 0             | 2        | 16         |

|     |  |            |          |           |            |
|-----|--|------------|----------|-----------|------------|
| 6.  | NAFTA                                  | 22         | 0        | 3         | 19         |
| 7.  | MERCOSUR                               | 18         | 0        | 2         | 16         |
| 8.  | CIS Agreements and the EEU             | 18         | 0        | 2         | 16         |
| 9.  | APEC                                   | 18         | 0        | 2         | 16         |
| 10. | The proposed OECD MAI                  | 18         | 0        | 2         | 16         |
| 11. | TPP and TTIP                           | 20         | 0        | 1         | 19         |
| 12. | Free Trade Zone/Maquiladora case study | 18         | 0        | 2         | 16         |
|     | <b>Total:</b>                          | <b>228</b> | <b>0</b> | <b>24</b> | <b>204</b> |

## 5. Reading List

### a. Required

JEAN-PIERRE CHAUFFOUR & JEAN-CHRISTOPHE MAUR, EDS., PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT: A HANDBOOK (World Bank Group 2011), ISBN 978-0-8213-8643-9. This book can be downloaded without charge from the Internet at <<https://openknowledge.worldbank.org/handle/10986/2329>>.

Other materials indicated in Course Plan, which are either available on the internet or will be supplied by the instructor. All the other texts referenced in the Course Plan are available in the Law Faculty library.

### b. Optional (all available in Law Faculty library)

RALPH H. FOLSOM, PRINCIPLES OF INTERNATIONAL TRADE LAW (West 2014), ISBN 978-0-314-29140-0

RALPH H. FOLSOM, NAFTA: FREE TRADE AND FOREIGN INVESTMENT IN THE AMERICAS (West 2014), ISBN 978-0-314-29026-7

RALPH H. FOLSOM, MICHAEL WALLACE GORDON, MICHAEL PO. VAN ALSTINE & MICHAEL D. RAMSEY, INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM-ORIENTED COURSEBOOK (West: 12<sup>th</sup> ed. 2015), ISBN 978-1-63459-267-3

JOHN H. JACKSON, WILLIAM DAVEY & ALAN O. SYKES, JR., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS, AND TEXT (West: 6<sup>th</sup> ed. 2013), ISBN 978-0-314-28026-8

JOOST H.B. PAUWELYN, ANDREW T. GUZMAN & JENNIFER A. HILLMAN, INTERNATIONAL TRADE LAW (Wolters Kluwer: 3d ed. 2016), ISBN 978-1-4548-7310-5

PETROS C. MAVROIDIS & MARK WU, THE LAW OF THE WORLD TRADE ORGANIZATION (WTO): DOCUMENTS, CASES & ANALYSIS (West: 2d ed. 2013), ISBN 978-0-314-28721-2

PETER VAN DEN BOSSCHE & WERNER ZDOUC, THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS (Cambridge: 2015)

### **c. Internet Resources**

[www.wto.org](http://www.wto.org) (website of World Trade Organization, including all dispute settlement reports of panels and Appellate Body)

<https://www.nafta-sec-alena.org/Home/Welcome> (NAFTA Secretariat)

<http://www.mercosur.int/> (MERCOSUR official website)

<http://www.eaeunion.org/?lang=en> (Eurasian Economic Zone official website)

<http://www.apec.org/> (APEC official website)

<https://icsid.worldbank.org/apps/ICSIDWEB/Pages/default.aspx> (ICSID website, including awards of arbitral tribunals constituted under ICSID auspices and that of Additional Facility)

<http://www.naftaclaims.com/> (private website compiling awards and pleadings in NAFTA investor-state disputes)

<http://www.worldbank.org/> (World Bank official website)

[www.oecd.org](http://www.oecd.org) (OECD official website)

[www.ustr.gov](http://www.ustr.gov) (website of U.S. Trade Representative)

## 6. Grading System

Grading in this course will be based on three types of written work product:

- (1) Written responses to the problem exercises (four, target 750 words each, no more than 1,000 per exercise); and
- (2) The final, written research paper.

Of these, the first group (four problem exercises) will count together count 30% toward the course grade, and the research paper 70%.

The process of drafting the research paper includes the following interim junctures on roughly the following schedule:

|                  |  |
|------------------|--|
| March 1, 2017    | Select topic   |
| March 15, 2017   | Propositional outline due  |
| Week of March 20 | Mandatory individual conference with instructor on propositional outline |
| April 19, 2017   | First draft due  |
| June 21, 2017    | Final draft due  |

*Outlines, drafts, and other interim work product associated with the research paper will not be graded.* The purpose of this policy is to encourage students to undertake challenging projects in a low-risk setting.

It is understood that in some cases modifications in this schedule may be appropriate. However, *failure to meet deadlines in timely fashion without the instructor's prior permission will affect the grade.* Accordingly, if a student

anticipates difficulty in meeting any deadlines, he or she is strongly encouraged to consult with the instructor in advance.

## 7. Guidelines for Knowledge Assessment

Criteria for evaluation of knowledge and skills (max = 5 for each home-based exercise)

|   |  |       |
|---|--|-------|
| 1. Written responses to problem exercises | A correct full document fully setting out a comprehensive solution to the problem in precise analytical language   | 5     |
|   | In general, a correct full document containing a well-thought out solution to the problem, but there are minimal mistakes or omissions   | 4     |
|   | In general, a correct full document containing a well-thought out solution to the problem in analytical language, but there are several mistakes or omissions (< or = 5)                       | 3     |
|   | A document that fails to meet minimum expectations for the assignment because of structural mistakes or omissions  | 2-1   |
|   | No credit  | 0     |
| 3. Final research paper                   | A thoughtful, original, rich, carefully and fully researched text that makes a substantial original contribution to scholarly thought in the field, formulated in precise analytical language. | 50-42 |
|   | In general, an adequately researched paper with a satisfactory, logical argument on a topic that is well understood by reference to the existing scholarly literature in the field.            | 40-32 |

|  |  |       |
|--|--|-------|
|  | In general, a text that meets minimum standards for research and logical reasoning, but there are errors or omissions in research or analytical treatment. | 30-22 |
|  | A text that fails to meet minimum expectations for the assignment because of structural mistakes or omissions  | 20-1  |
|  | No credit  | 0     |

**A sample of a paper topic:**

Examination of two recently-concluded regional trade agreements to determine their consistency with WTO law, including an assessment of the extent to which these agreements may, in the long term, strengthen or weaken the multilateral trading system.

**8. Methods of Instruction**

Use of of interactive educational technologies, including:

- Socratic method;
- Interactive discussion;
- Written answers to problem exercises, subsequently discussed in class;
- Written feedback on outlines and drafts.

Use of ratings for home-based exercises and accumulative system of control.

**9. Special Equipment and Software Support (if required):**

Access to internet and computer-based drafting equipment.

**10. Competences gained as a result of the course:**

| <b>Code of the competence</b> | <b>Content of the competence</b>  |
|-------------------------------|---|
| SK-2                          | Able to offer concepts, models, able to invent methods and instruments  |
| SK-8                          | Able to carry out a professional activity in international environment  |
| PK-2                          | Able to organize different types of professional activity on the basis of legal and ethical norms   |
| PK-7                          | Able to present the results of legal professional and academic activity in conformity with rules of legal technique, legal normative acts, local normative acts and customs |
| PK-8                          | Able to search, analyse and use relevant legal information applying formal-juridical, legal comparative and other methods   |
| PK-16                         | Able to carry out professional legal activity according to the principles of legality, justice and social responsibility  |

**Course Instructor – David A. Wirth, A.B., A.M., J.D., Professor**