



## STUDY PROGRAMME

(1) European Legal Studies Programme

(2) Transatlantic Affairs

## ACADEMIC YEAR

2023-2024

## SEMESTER

Second

## COURSE TITLE

New Directions in EU Trade Law and Policy

## COURSE PROFESSOR

I. Van Damme

## COURSE ASSISTANT

F. Romanelli

## NATURE OF COURSE (COMPULSORY, OPTIONAL)

Optional

## LANGUAGE OF INSTRUCTION

English

## ECTS CREDITS

4

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## 1. COURSE OBJECTIVES

This seminar will focus on the design and practice of EU Trade Law and Policy.

The seminar will start with an overview of the history of EU Trade Law and Policy and the core principles of international trade law, focusing on, *inter alia*, the dynamic development of the scope of the common commercial policy, the role of the CJEU and the relationship of co-adaptation between the European Union and the GATT 1947/WTO. The overview of that history will end with an introduction to the European Union's current policy of 'strategic autonomy'. For the purpose of this seminar, EU Trade Law and Policy will be understood as also covering investment law and policy.

Against that historical background, the seminar will address the institutional aspects of EU Trade Law and Policy. Those aspects include, but are not limited to, the vertical and horizontal allocation of competences, the practice of and principles governing the negotiation and conclusion of EU-only and mixed trade and investment agreements and their possible provisional application.

After having covered the institutional aspects, the next part of the seminar will focus on substantive aspects of EU trade and investment law and its enforcement.



In covering the substantive aspects of EU trade law, the seminar will start with the function and operation of EU trade defence instruments, including recent (proposed) reforms. Next, the seminar will consider the design and structure of EU preferential trade agreements (PTAs) and examine how those agreements compare with the WTO covered agreements. Particular attention will be given to rules of origin in EU PTAs and the sustainability chapters in those agreements. This part of the seminar will also cover sanctions and export control as well as substantive aspects of EU legislation addressing supply chains (such as the deforestation regulation, and the forthcoming corporate due diligence and forced labour legislation). In addressing aspects of substantive EU investment law, the focus will be on FDI control and the main features of EU investment agreements.

The discussion about enforcement will distinguish between unilateral tools for enforcement and resort to various forms of third-party adjudication. The unilateral tools encompass, apart from trade remedies, more recent initiatives such as, for example, the Enforcement Regulation, the creation of the Chief Trade Enforcement Officer and the Anti-coercion Regulation. The availability of third-party adjudication includes “internal” remedies before the CJEU as well as “external” remedies before notably the WTO dispute settlement bodies, various types of disputes settlement under EU PTAs and dispute settlement under investment agreements. The EU position on WTO dispute settlement reform and ISDS reform will also be addressed.

In view of synergies in content, this seminar is deemed particularly complementary with the courses

- I. GOVAERE, “External Relations of the EU Autonomous Legal Order”
- P. VAN DEN BOSSCHE, “WTO Law: Substantive and Institutional Aspects”

## 2. LEARNING OUTCOMES

The course objectives tie in with the following learning outcomes of the programme European Legal Studies:

- 1.1. Possess advanced knowledge of the European Union (EU), its institutions, competences, substantive principles and legal doctrines.
- 1.2. Possess general knowledge on the main elements of the EU’s law and policy at large.
- 1.3. Possess in-depth, scientific knowledge on specific areas of EU law, with specific emphasis on trade and investment law.
- 2.1. Be able to think analytically, correctly analysing complex legal problems in a multi-level legal order, the various sources of law, legal instruments and actors, and to formulate a scientifically sound position on the basis of logical reasoning.
- 2.2. Be able to think dynamically, to understand the constantly changing and evolving nature of the European integration process and to provide constructive commentary on its possible future development.
- 2.3. Be able to think critically, formulating an independent opinion and interpretation of complex legal problems, contextualising findings and weighing a multitude of factors, including findings from other disciplines.
- 2.4. Be able to process a large amount of information within a short amount of time and to deliver accurate and reflective outcomes.
- 2.5. Be able to work with primary sources of law, such as judgments and legislation, and to reflect independently on their significance and interpretation.
- 2.6. Be able to work in a multi-cultural context, understanding and mediating different legal systems, legal traditions and normative frameworks in a constructive way.
- 2.7. Be able to develop, research, discuss and critically answer questions regarding a scientific research question of EU law in a scientifically responsible way.



- 2.8. Have a pro-active attitude towards self-development, through self-study, lifelong learning and professional growth, particularly through preparatory reading for group discussion in the courses.
- 2.9. Draft a clear legal scientific text in the area of EU law.
- 2.10. Present and defend orally an issue relating to EU law on the basis of legal argumentation or a personal position.
- 2.11. Be able to study and work in the area of EU law in English and French, including through interaction with native speakers.

The course objectives tie in with the following learning outcomes of the programme Transatlantic Affairs :

- 1.1 The graduate masters the most important theoretical approaches and concepts of, depending on his or her disciplinary focus, Economics, International Relations and Diplomacy Studies, Legal Studies and/or Political Science relevant for the analysis of transatlantic affairs.
- 1.2 The graduate can describe, explain and illustrate the current state of scientific research in the field of transatlantic affairs in a broad sense and, is, in line with his or her disciplinary focus, able to critically assess the results of this research.
- 1.3 The graduate has good knowledge of, depending on his or her disciplinary focus, the political and/or legal systems, the decision-making processes, the economic structures and the main internal and external policies of the European Union.
- 1.4 The graduate has insights into historical, political, legal and economic aspects of transatlantic affairs as well as into those policy areas that are of essential importance to transatlantic affairs. He or she can use these insights to contextualize and interpret new developments.
- 1.5 The graduate is able to incorporate knowledge and understanding of various fields of transatlantic affairs and of different related disciplines (such as Economics, International Relations, Legal Studies, Political Science) as well as to adopt both a European perspective on transatlantic affairs.
- 2.1 The graduate can approach the field of transatlantic affairs in a broad sense analytically by assessing the challenges in this domain with an open mind for diversity and for complex situations.
- 2.2 The graduate has the ability to critically reflect upon problems regarding an extensive range of transatlantic affairs, to adopt well-informed points of view and to communicate them effectively orally and in writing, whether working independently or in a team.
- 2.4 The graduate is capable of processing a large amount of information and appropriately analyse relevant sources depending on his or her disciplinary focus within a short period of time and of suggesting possible actions that contribute to problem-solving in a creative way.
- 2.5 The graduate has the intellectual maturity and skills to take responsibilities and function autonomously in a professional environment at national or international level, and especially in a transatlantic context, and to work efficiently and effectively through planning, organizing, setting priorities, meeting deadlines, cooperating across cultural boundaries and networking.

### 3. COURSE CONTENTS

The content of the seminar is as follows:

1. History of EU trade law and policy and the core principles of international trade law; the dynamic evolution of the common commercial policy; the process of co-adaptation between the EU and the GATT 1947/WTO; the EU policy of strategic autonomy;
2. Institutional aspects of EU trade law and policy (allocation of competences; the role of EU institutions; the negotiating and conclusion of (mixed) EU trade and investment agreements and their provisional application; the role of the CJEU);
3. EU trade defence instruments; reforms; foreign subsidies;
4. Trade and national security - EU sanctions and export control;
5. Unilateral trade preferences;
6. Design and structure of EU PTAs (incl. rules of origin and sustainability chapters);



7. Trade and labour, fundamental human rights and environment;
8. Substantive investment law; FDI screening and ISDS reform;
9. Enforcement, unilateral remedies, third party adjudication (WTO, FTA, ISDS), reform of WTO DSS and ISDS/MICS.

## 4. TEACHING METHOD

This seminar will require active participation of students.

For each class, a reading list will be assigned. That reading list will include a list of questions to guide the students' reading of those materials.

## 5. FURTHER DETAILS ON THE TEACHING METHOD

For each class, a group of students will be asked to prepare a position paper (see below) on a question selected from the list of questions included in the reading list for that class. That position paper will be marked. That same group of students is assigned the task of acting as 'active discussants' for that class (see below).

For the entire seminar, a syllabus will be available that contains an outline of the course and extracts of mandatory reading materials and references to useful further readings.

## 6. COURSE MATERIAL

In addition to relevant case-law of the CJEU, WTO dispute settlement reports and PTA panel reports, and legislation (and legislative proposals), reading materials will be drawn from (especially): M. Hahn and G. Van der Loo (eds), [\*Law and Practice of the Common Commercial Policy\*](#) (Brill, 2021)

The reading list for each seminar will also identify optional reading materials.

## 7. EVALUATION

Students are evaluated on the basis of their class participation (35%) and an open book written exam (65%).

Class participation (35%) covers students' general class participation during each class as well as their written position papers on one of the 'questions to consider' for the classes assigned to them.

For each class, the intranet lists the students who are asked to prepare more intensely for the class and consider the 'questions to consider' in reading the materials for the class. In addition, those students must submit to the course assistant several days before the class a max. one-page position paper (Times Roman, font size 11, single spaced) answering one of the 'questions to consider' listed in the reading list for that class. Students may freely decide what question to address in their position paper for the classes assigned to them via the instructions on the intranet.

The written exam (65%) will require students to answer three questions. Students may select any three questions from a list of approximately 8-12 questions in the exam. The list of questions will cover all classes and will be a combination of essay and problem questions.

Participation in all evaluation forms (permanent and periodic evaluation) is compulsory and a prerequisite to receive an exam mark. In case of non-compliance the final score will automatically be reduced to the highest non-passing and non-compensable grade.



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# ECTS CARD

Exams organised in second session period are 100% written exams.

## 8. MASTER'S THESIS EVALUATION

The evaluation of Master's theses includes an oral defence of the thesis, during the final exam session, in the presence of the Supervising Professor and the Academic Assistant responsible for the seminar.

The defence must begin with a 10 mins Power Point Presentation by the student, with an added value to the written work (correct potential mistakes, include updates, present additional information, etc.)

## 9. COVID-19

The College of Europe reserves the right to change the delivery and assessment of the course in case of restrictions related to the Covid-19 pandemic. Any communication from the Department in this regard takes precedence over the information provided in this ECTS card.