Free and Fair Trade in the Americas Course Outline and Reading List 14
Chile Summer Program 2011
Professor James Cooper, California Western School of Law

Course Meetings

The class meets from 12:15 p.m. to 1:55 p.m. each day during the first two weeks of Session Two. On July 5 and 6, the class meets at 10 a.m. and goes to 12:15 p.m. (including a coffee break). On July 7 and 8, the class meets at 10 a.m. and goes to 12 p.m. (including a coffee break). On July 12, the class begins at 11:15 p.m. and goes to 2 p.m. Attendance in all classes is mandatory.

Course Description

Free trade has not been a total success in Latin America. In fact, many of the prescriptions for economic development promoted by the United States, the World Trade Organization and regional trade blocs have not resulted in tangible results for the majority of Latin Americans. This survey course introduces students to the major issues of free trade in the Americas – from human issues like social dumping to health and public safety concerns over cross border pharmaceutical sales. We provide a detailed examination of border security, corporate practices and other governance issues. We examine competing jurisdictions, new forms of sovereignty, and the rise of the surveillance society. We dissect the U.S.-Chile Free Trade Agreement and the Andean Trade Promotion and Drug Eradication Act and explore the alternative regimes being offered by MERCOSUR, the Southern Cone Customs Union and the Venezuelan-led ALBA, the Bolivarian Accord for the People of Our America.

Materials

For this class, there is no required casebook - only a set of law review and other articles, which you may access on line and through Lexis and Westlaw, and selected readings with which you will be provided a copy prior to the class so that you can read them ahead of time and come prepared to discuss these materials. Please also be familiar with the United States-Chile Free Trade Agreement which can be found at http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text.

Class Participation and Attendance

Students are expected to attend class, to complete each reading assignment before each meeting, and to discuss the material in class. There are "push points": The student's grade may be increased or decreased up to three points.

Final Examination

Students shall be evaluated on the basis of a 48-hour take home examination (to be handed out on July 12, 2011, and submitted via email to ssanchez@cwsl.edu by 2 p.m. Santiago de Chile time on July 14, 2011), which is worth 85% of the final grade and on the basis of participation which is worth 15% of the final grade. There are "push points".

Course Outline

Monday, June 20, 2011 Course Introduction, Themes, and Review of Syllabus

International Trade Themes:

- Ethical Supply Chain
- Homogenization of Culture
- Law and Order: Immigration/National Security; Labor Pools and the Prison Industrial Complex

The History of International Trade in 60 Minutes or Its Free
Absolute Advantage, Comparative Advantage and Taking Advantage
"Beggar Thy Neighbor" Policies, Trade Wars, Trade Distortion, and Other Stories
Moving From Goods to Services: The Post-Industrial Economy
Trade "And"

Required Reading:

World Trade Organization, *What is the World Trade Organization?*, UNDERSTANDING THE WTO: THE BASICS, *available at* http://wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (last visited on June 6, 2011). See also http://www.wto.org/english/tratop_e/dda_e/work_organi_e.htm.

Raj Bhala, *Doha Round Betrayals*, 24 EMORY INT'L L. REV. 147-183 (2010).

Dani Rodrick, *Free Trade Optimism: Lessons from the Battle in Seattle*, FOREIGN AFFAIRS, May/June 2003, *available at* http://www.foreignaffairs.com/articles/58991/dani-rodrik/free-trade-optimism-lessons-from-the-battle-in-seattle (last visited on June 25, 2011).

Raj Bhala & James Cooper, *A world trade round gone bad*, SAN DIEGO UNION-TRIB., June 3, 2011, at B-7, *available at* http://www.signonsandiego.com/news/2011/jun/03/a-world-trade-round-gone-bad/ (last visited on June 3, 2011).

International Centre for Trade and Sustainable Development, *"Doha Light" Takes Shape as WTO Members Lower Ambitions*, BRIDGES WEEKLY TRADE NEWS DIGEST, June 1,

2011, *available at* http://ictsd.org/i/news/bridgesweekly/107865/ (last visited on June 1, 2011).

Tuesday, June 21 Most Favored Nation and National Treatment

The Doha Development Agenda and the Millennium Challenge Goals
"Stumbling Blocs": The Proliferation of Regional Trade Agreements
Article 24 of GATT/WTO
Canada-U.S. Free Trade Agreement 1989
The History of NAFTA
Side Agreements and Side Deals: Labor and Environment
NAFTA as a Reaction to the WTO and the EU
The United States-Chile Free Trade Agreement, U.S.-CAFTA-DR and U.S.-Peru FTA
Trade in Services Versus Trade in Goods
The Reduction of Tariffs, Negotiating groups, the Value of MFN, the Annual Report to Congress under the Jackson-Vanik Amendment

Required Reading:

Preamble, United States-Chile Free Trade Agreement, *available at* http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text (last visited on June 11, 2011).

James M. Cooper, *Spirits in the Material World: A Post-Modern Approach to United States Trade Policy*, 14 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 957 (1999).

James Cooper, *U.S. not the only trading game for Latin America*, SAN DIEGO UNION-TRIBUNE, Sept. 28, 2008, at F3, *available at* http://www.signonsandiego.com/uniontrib/20080928/news_lz1e28cooper.html

James Cooper, *Questioning Europe's Promise*, SAN DIEGO UNION-TRIB., Feb. 3, 2005, *available at* http://www.signonsandiego.com/uniontrib/20050203/news_lz1e3cooper.html (last visited on Jan. 2, 2010).

Visions of Unity, ECONOMIST, Dec. 9. 2004, *available at* http://www.economist.com/agenda/displaystory.cfm?story_id=S%27%29%28%3C%2BQ%21%23%21%21%40%21P%0A (last visited Mar. 25, 2005).

New economic alliance forms in Latin America, CNN.COM, Apr. 29, 2011, *available at* http://edition.cnn.com/2011/WORLD/americas/04/29/peru.pacific.alliance/index.html (last visited May 1, 2011).

Wednesday, June 22 Rules of Origin/Tariff and Non-Tariff Barriers

Trade in Goods: From Rules of Origin to Rules of Production
Screwdriver Plants and Duty Drawbacks
The Rise of *Maquiladoras*: The Internal Mexican Immigration Problem
The "Made in The World" Program of the World Trade Organization
The Non-Tariff Barriers
Tariffs and Subsistence Farming: GMOs in Mexican Tortillas Made from U.S. Corn

Required Reading:

Medea Benjamin, *Interview: Subcomandante Marcos*, *in* FIRST WORLD, HA HA HA! THE ZAPATISTA CHALLENGE 57-70 (Elaine Katzenberger ed., 1995).

WTO, Made in the World, *available at* http://wto.org/english/res_e/statis_e/miwi_e/miwi_e.htm (last visited on June 19, 2011).

Thursday, June 23 Intellectual Property Rights

The Globalization Bargain:
California's Economy and the Importance of IP Rights
The Perils of Paraguay and Other Developing Countries
Tripping out on TRIPS
Special 301 Watch List and Priority Watch List
Section 337 of the Trade Act 1930 (as amended)
When China and India Have Innovations to Protect

Required Reading:

Office of the United States Trade Representative, *USTR Releases Annual Special 301 Report on Intellectual Property Rights*, May 2011, *available at* http://www.ustr.gov/about-us/press-office/press-releases/2011/may/ustr-releases-annual-special-301-report-intellectual-p (last visited on June 6, 2011). See the report at http://www.ustr.gov/about-us/press-office/reports-and-publications/2011/2011-special-301-report.

U.S.-Chile Trade Free Agreement, Chapter 17, *available at* http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text (last visited on June 6, 2011).

James Cooper, *Piracy 101*, CAL. WEST. INT'L L. J. (Special Edition) 89 (2005).

James Cooper, *Why Intellectual Property Matters*, LOS ANGELES DAILY JOURNAL, Sept. 15, 2010, at 5.

James Cooper, *Intellectual Property Theft in Latin America*, PROVIDENCE JOURNAL, March 14, 2010.

Pirated CDs may fund terror networks, PROVIDENCE JOURNAL, Aug. 17, 2004, *available at* http://www.projo.com/opinion/contributors/content/projo_20040817_ctcoop.136211.html

Tuesday, June 20 IP Rights Continued

Wednesday, June 29 Foreign Direct Investment

A New Model for Foreign Investment: NAFTA Chapter 11
Open Field (Sort of): Of Bank Defaults and Nationalizations
Corporate Governance, Corporate Welfare, Corporate Neglect
Bailouts: Savings and Loan, Tequila Effect, Citibank,
The Doomed Multilateral Agreement on Investment (MAI) under the auspices of Organization for Economic Cooperation and Development
Implications for Sovereignty: Changing Mexican Laws to Ensure Compliance
The Revenge of Europe: The Spaniards Return

Required Reading:

James Cooper, *"Seen and Not Seen": System Friction and the Battle Over Corporate Governance*, in TRENDS IN WORLD TRADE POLICY: ESSAYS IN HONOR OF SYLVIA OSTRY (edited by Alan Alexandroff) (2006).

James M. Cooper, *Nations and corporations must learn to work together*, SAN DIEGO UNION-TRIB., Sept. 24, 1999, at B5.

Eric Gillman, *Legal Transplants in Trade and Investment Agreements: Understanding the Exportation of U.S. Law to Latin America*, 41 GEO. J. INT'L L. 263 (2009)

Multilateral Agreement on Investment *available at* http://www.oecd.org/document/35/0,3343,en_2649_33783766_1894819_1_1_1_1,00.html (last visited on June 11, 2011).

Franklin Briceno, *Peru cancels mine after 6 killed in clash*, MIAMI HERALD ON LINE, *available at* http://www.miamiherald.com/2011/06/24/2283301/at-least-3-dead-as-peru-police.html (last visited on June 25, 2011).

Thursday, June 30 Labor and Free Trade

U.S.-Chile Free Trade Agreement Chapter 18
NAALC - The NAFTA Side Agreement, A Toothless Tiger
The Role of the International Labour Organisation
Child Labor: Consumer Boycotts/Public Information
Colombia-U.S. Free Trade Agreement – Labor Concerns Among Union Leaders in the U.S. and Democratic Lawmakers

Required Reading:

James Cooper, *Child Labour and the National and International Legal Responses*, LI:6 INT'L J. 411 (1997).

James Cooper, *The Life Cycle of Immigration: A Tale of Two Migrants*, 6 RUTGERS J. L & PUB. POL. 259 (2009) (with William Aceves, Alejandro Gonzalez, and Pedro Egaña Marshall).

Stacie E. Martin, *Labor Obligations in the U.S.-Chile Free Trade Agreement*, 25 COMP. LAB. L. & POL'Y J. 201 (2004).

César F. Rosado Marzán, *Of Labor Inspectors and Judges: Chilean Labor Law Enforcement After Pinochet (and What the United States Can Do to Help)*, 54 ST. LOUIS U. L.J. 497 (2010).

International Centre for Trade and Sustainable Development, *US Trade Pacts with Colombia, Korea, Panama Face New Setback*, BRIDGES WEEKLY TRADE NEWS DIGEST, June 1, 2011, *available at* http://ictsd.org/i/news/bridgesweekly/107862/ (last visited on June 1, 2011).

Friday, July 1 Dispute Resolution Mechanisms

Non-Violent Dispute Resolution and The Decline of Trade Wars
A Rules-Based System under the WTO Dispute Settlement Understanding
Converging Legal Culture (Mexico/Quebec and the Civil Law and Canada/the US and Common Law; Chile and the Mapuche?)
Other Mechanisms: Anti-Dumping Measures and Countervailing Duties; NAFTA Side Agreement Fact Finding
Trade in Services: The Globalization of the Legal Profession

Required Reading:

James Cooper, *Signs of change in U.S. Trade Policy*, SAN DIEGO UNION-TRIB., Dec. 12, 1997, at B10.

Office of the United States Trade Representative, *WTO Appellate Body Confirms U.S. Win in Airbus Case: $18 Billion in Illegal European Subsidies to Airbus*, May 2011, *available at* http://www.ustr.gov/about-us/press-office/press-releases/2011/may/wto-appellate-body-confirms-us-win-airbus-case-18-bill (last visited on June 10, 2011).

Tuesday, July 5 The Environment and Free Trade

Is Sustainable Development an Obstacle to Free Trade?
Bringing in the Sharks for the Tuna-Dolphin Case
Are GATT and Environmental Protection Adversaries?
Marginalization: The NAFTA Side Agreement

Required Reading:

Heather Corbin, Note, *The Proposed United States-Chile Free Trade Agreement: Reconciling Free Trade and Environmental Protection*, 14 COLO. J. INT'L ENVTL. L. & POL'Y 119 (2003).

Rachel T. Kirby, *Giving Power to the People: Comparing the Environmental Provisions of Chile's Free Trade Agreements with Canada and the United States*, 10 SUSTAINABLE DEV. L. & POL'Y 65 (2009).

Kevin C. Kennedy, *The Status of the Trade-Environment-Sustainable Development Triad in the Doha Round Negotiations and in Recent U.S. Trade Policy*, 19 IND. INT'L & COMP. L. REV. 529 (2009).

Wednesday, July 6 GATS and Liberalization of Services (120 minutes)

The General Agreement on Trade in Services
The Move from Products to Services
The Liberalization of Financial Services
Post-Financial Crisis Regulation
Other Traditionally Protected Industries (Culture, Energy, Legal)
The Global Practice of Law

Required Reading:

Panagiotis Delimatsis & Pierre Sauvé, *Financial Services After the Crisis: Policy and Legal Conjectures*, 13 J. INT'L ECON. L. 837 (2010).

Thursday, July 7 The Future of Agriculture (120 minutes)

Comparative Advantage and the Developing World
Product Standards and Food Safety Issues
Non-Tariff Barriers, Subsidies and Other Unfair Trade Advantages
Hormones – The U.S. and Europe Go at it Again
Frankenfoods – The Battle over Genetically Modified Organisms
Farm Subsidies and Food Security
Mad Cow Disease, Mediterranean Fruit Flies, and Hoof and Mouth Disease

Required Reading:

Lindsay M. Fainé, *The Internationalization of Chilean Agriculture: Implications of the United States-Chile Free Trade Agreement*, 13 MINN. J. GLOBAL TRADE 383 (2004).

Friday, July 8 Alternatives in the Post-Financial Crisis World

Alternatives to the WTO and the Bretton Woods Institutions
The MAI, FTAA, and WTO Doha Round Are Dead: Expanding the Pie or Spreading the Misery?
ALBA, MERCOSUR, Andean Pact, and CARICOM
The Link to Self-Defense, the Rio Treaty, and Act of Chapultepec
Caracas Calling: The End of the Washington Consensus, The Rise of Alternative Trade Blocs and the Future of Free Trade
The U.S. in Decline; the Rise of China and the Return of Europe?
A New International Economic Order?

Required Reading:

Larry Catá Backer & Augusto Molina, *Cuba and the Construction of Alternative Global Trade Systems: ALBA and Free Trade Agreement in the Americas*, 31 U. PA. J. INT'L L. 679 (2010).

James Cooper, *Comercio (Lucha) Libre*, EL ALTEÑO (Bolivia), September 2006 (English translation).

James Cooper, *China-Latin America: Trade agreements dangerous to U.S.*, MIAMI HERALD, Mar. 10, 2005, at 27A.

BENJAMIN DANGL, THE PRICE OF FIRE: RESOURCE WARS AND SOCIAL MOVEMENTS IN BOLIVIA 75-90 (AK Press, 2007).

Jackson Bennett, *The Union of South American Nations: The New(est) Regionalism in Latin America*, 32 SUFFOLK TRANSNAT'L L. REV. 103 (2008).

Tuesday, July 12 The North American Free Trade Agreement (160 minutes)

The U.S.-Canada Free Trade Agreement 1989 Revisited
Harmonizing with "the South"
Labor and Environmental "Side Agreements"
Chiapas, Mexico's Tequila Effect, and the Destruction of Mexico's Middle Class
Jobs To Quell the Push Factor for Immigration to the United States
Chapter 11 Investor Dispute Settlement
The Connection to the War on Drugs and War on Terror
NAFTA as Building Bloc(k) for FTAA and Defense to European Union
Cultural Sovereignty Issues

Required Reading:

The Complicated Relationship: A Snapshot of the U.S.-Mexico Border, Konrad Adenauer Foundation Washington Office, June 17, 2010, available at http://www.kas.de/usa/en/publications/19916/, *reprinted in* Konrad Adenauer Stiftung, KAS International Reports (10/10), at 35-58 (http://www.kas.de/wf/en/33.20667/).

James Cooper, *Slow Road to Legal Reforms in Mexico*, SAN DIEGO UNION TRIBUNE, Nov. 27, 2006, available at http://www.signonsandiego.com/uniontrib/20061127/news_mz1e27cooper.html (last visited on Mar 11, 2011).

Examination handed out at end of class on July 12, 2011.

Thursday, June 14

Examination to be submitted to ssanchez@cwsl.edu by 2 p.m. (Santiago de Chile time)