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THE INTERNATIONAL LAW OF FOOD

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Professor David A. Wirth

May 21-June 15, 2018

COURSE INFORMATION AND SYLLABUS

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Class sessions: 9:00-12:00

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Location: TBA

I. OBJECTIVES

Food is essential to human survival. It is also a source of interest, pleasure, concern, and profit to individuals, industry, and governments. Inevitably, we make decisions about the food we eat, some with great particularity such as those who describe themselves as vegans. Food quality and dietary choices are a major issue, with the obesity epidemic that originated in the United States now spreading abroad. Many of us have preferences about where our food comes from, as demonstrated by the “Farm to Fork” and “locavore” movements. The popularity of organic food responds to a concern among some about how food is grown. And all of us are concerned about the purity and safety of the food we eat, with outbreaks of foodborne illness in cantaloupes and contamination such as the European horse meat scandal dominating headlines.

Increasingly, issues related to food are international in dimension. For example fifteen percent of the total U.S. food supply is imported, including 50% of fresh fruits, 20% of fresh vegetables, and 80% of seafood. Food insecurity continues to be a serious problem in the twenty-first century, as 870 million people in the world do not have enough to eat. In 2011, nearly 4 billion tons of food aid was provided internationally, reaching more than 65 million people. At the same time, our own country produces

significant food surpluses – nearly 3 billion metric tons in 2008 -- largely as a result of agricultural subsidies, and the United Nations reports annual food surpluses globally.

As the numerous issues connected with food have become ever more international, there has been a commensurate need for the adoption of rules and the creation of institutional infrastructure to govern interactions between governments, to regulate the behavior of food suppliers, and to protect public health and safety. This course examines those issues on the international level through the lens of law and governance.

There are no prerequisites, and no prior familiarity with either public international law or domestic regulatory law is assumed in this seminar-style course. Basic principles in both areas will be elaborated by the instructor as necessary to facilitate discussion, and every component is designed to include all background necessary to a complete understanding of the material.

Much of the course addresses basic analytical skills associated with the study of the law governing the relations between states, and to that extent provides an introduction to international law. The course also provides an introduction to some substantive areas of international law, such as trade and human rights, as well as exposure to international institutions such as the UN Food and Agriculture Organization and the World Trade Organization. It is also designed to familiarize students with working with the texts of primary legal materials, such as treaties, statutes, and regulations.

The course, taught by a law professor with extensive experience in instruction of non-law students, may be of particular interest to those considering law school as a user-friendly introduction to legal method. It should also cover material of interest to those studying social sciences, including international relations, political science, and sociology, as well as to generalists.

This preliminary syllabus is based on experience in prior years and is representative of the schedule students can anticipate. The actual schedule may vary, depending on the particular situation at the time of delivery.

## II. READINGS

There is no published text on this subject matter, and consequently none for purchase. The bulk of the readings will be excerpts from the professional legal literature, most of which is available to the public without copyright restriction. The readings will be available generally on the internet, or published to a Westlaw TWEN website.

### III. SIMULATED MULTILATERAL NEGOTIATION

The course will include a simulated multilateral negotiation of a Codex Alimentarius standard on labelling for “natural” products of agricultural origin. Students will be assigned roles as governmental representatives or non-state observers. The purposes of the negotiation include the assimilation of the course material through active learning techniques and exposure to the real-world dynamics of international diplomacy.

The negotiation will be conducted over three sessions during the span of the course. **Each round of negotiations will require a written work product in advance** (an opening statement or a negotiating proposal, as the case may be) as indicated on the schedule below.

Detailed instructions will be distributed in writing and explained in advance of the first session. The negotiation itself will not be graded, but all course participants are expected actively to contribute to the exercise.

### IV. EVALUATION AND GRADING

This course will be evaluated by two take-home examination exercises, one a midterm which will count 35% of the grade, and a take home final examination which will count 55%, with the remainder (10%) consisting of class participation.

The take-home midterm exercise will be distributed at the end of class on Monday, June 4, and will be due through the “Assignments” portion of the course website at 5:00 PM local time on Wednesday, June 6. The take-home is expected to take you no more than 4 hours, meaning that students who have other obligations should be at no disadvantage in doing the midterm exercise.

The final will be an 8-hour self-scheduled, one-day take-home examination, to be returned through the “Assignments” folder of the course website within 8 hours of the time you choose to begin the examination. You **must** take the examination within one week of the conclusion of the course. I will e-mail you the password that will open the examination at the beginning of whatever 8-hour period you choose (which, however, must be within a week after the course’s conclusion).

### V. ATTENDANCE AND DEMEANOR

It is expected that all students will routinely and punctually attend, be prepared for, and participate in all classes and field visits. Students should comport themselves

consistently with their presence as guests in a foreign country. Serious disciplinary issues may result in a student's being removed from the program and asked to return home.

## VI. EXCURSIONS AND CULTURAL ACTIVITIES

The formal class sessions will include visits to the European Food Safety Authority in Parma and the UN Food and Agriculture Organization in Rome. In addition, there will be required excursions, most likely in the afternoon of a more general character that are not part of the instructional program as such. The agenda is still to be determined, but will likely include at least some of the following:

- Tour of city and Parma's main monuments
- Wine tour of Castell'Arquato Vineyard
- Tour of Parmigiano-Reggiano cheese factory
- Tour of Parma ham facility
- Academia Barilla (Italian Food Academy)
- ALMA (international school of Italian cuisine)

## VII. CLASS SESSIONS AND READING ASSIGNMENTS

The subject matter and representative reading assignments for each class are set out below. Any modifications to this agenda will be clearly transmitted to students, most likely via e-mail and oral announcements. Material not covered in one class will be addressed in the next; in other words the entirety of the material will be covered in the order set out below. Additional material, particularly that relating to current events that take place during the course, may be interpolated from time to time. Assignments, particularly in the latter portion of the course, are subject to change as the schedule evolves.

### **Day 1, Monday, May 21: Introduction**

This introductory class provides basic background that supports the analytical subjects presented in the remainder of the course. For the first class, no need to prepare anything, but we will as a group construct a typology of the international law of food, in anticipation of the remainder of the course. Please think about the following questions

beforehand:

- What kind of issues would you expect to be dealt with internationally, as opposed to domestically, or perhaps some combination of both? Give some thought not just to substantive subject matter areas (e.g., food safety), but also the attributes or criteria that such issues (which are multiplying rapidly even as the course takes place) might have in common.
- What food-related issues would you expect to benefit (or suffer, for that matter) from the application of public policy in the form of law? Specifically international law? (Don't worry about what "international law" is for the time being, we'll deal with that as we go along).

This class will also include an introduction to the negotiation simulation, the first round of which will be conducted on Wednesday, May 23.

**Day 2, Tuesday, May 22: International human right to food**

This class will explore the need for food from a legal, and particularly human rights, perspective

Readings:

- "Food," in Andrew Clapham & Susan Marks, *International Human Rights Lexicon* (OUP, 2005). [http://www.amazon.com/International-Human-Rights-Lexicon-Susan/dp/0198764138#reader\\_0198764138](http://www.amazon.com/International-Human-Rights-Lexicon-Susan/dp/0198764138#reader_0198764138). Read pp. 163-174, stopping at "Trade Law and Food." You can display the entire chapter by typing in "food" in the search engine "Search Inside This Book" on the left, then click on page 163. This item has also been posted on the course website under "Course Materials."
- Olivier De Schutter, United Nations Special Rapporteur on the Right to Food, <http://www.srfood.org/en/special-rapporteur>. Read just this introductory page. (The current special rapporteur is Hilal Elver, <http://www.ohchr.org/EN/Issues/Food/Pages/HilalElver.aspx>, but De Schutter's web page describes the role in greater detail).
- Contribution of the Special Rapporteur, Mr. Olivier De Schutter, to the inquiry launched by the International Development Committee of the Parliament of the United Kingdom in advance of the June 2013 G8 Summit,

[http://www.srfood.org/images/stories/pdf/otherdocuments/2012.12.17%20-%20srftf\\_uk%20inquiry%20global%20food%20security.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/2012.12.17%20-%20srftf_uk%20inquiry%20global%20food%20security.pdf)

- Universal Declaration of Human Rights article 25,  
<http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>
- International Covenant on Economic, Social and Cultural Rights, article 11,  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- Committee on Economic, Social and Cultural Rights General Comment No 12,  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en). Click on the pdf document under “English.” This document is also posted on the course website under “Course Documents.”
- FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,  
<ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e.pdf>. Read only the actual text of the Guidelines, beginning at page 9. What do the Guidelines aim to achieve, and how from and institutional, structural, and legal point of view would they accomplish those goals?

Also take a look at the UN organogram,

[http://www.un.org/en/aboutun/structure/pdfs/UN\\_System\\_Chart\\_30June2015.pdf](http://www.un.org/en/aboutun/structure/pdfs/UN_System_Chart_30June2015.pdf).

### **Day 3, Wednesday, May 23: Food security**

This class will address issues of food aid and international assistance, as well as the role of multilateral institutions (UN Food and Agriculture Organization, World Bank) national and supranational institutions (U.S. Agency for International Development, EU institutions) and other international institutions (Intergovernmental Panel on Climate Change). While not part of the readings as such, give some thought as to how non-governmental organizations (NGOs) such as Oxfam, Care, and Save the Children fit into a broader understanding of agenda-setting and implementation of food security policy.

Readings:

- Rome Declaration on World Food Security,  
[http://www.fao.org/wfs/index\\_en.htm](http://www.fao.org/wfs/index_en.htm). This is a short document. Please read the entire thing. What is the policy purpose of this instrument? Its legal status?

- Millennium Development Declaration,  
<http://www.un.org/millennium/declaration/ares552e.pdf>. Scan the entire instrument so that you have a sense of its policy purpose and legal status. “Hunger” – i.e. food security – appears in paras. 6 (the first millennium development goal), 19, and 20, in the first bullet point in each. How does the Declaration anticipate achieving the goals set out in the instrument? How does this instrument relate to the Rome Declaration, if at all?
- Text of 2009 G-8 communique on food security,  
[http://www.g8italia2009.it/static/G8\\_Allegato/LAquila\\_Joint\\_Statement\\_on\\_Global\\_Food\\_Security\[1\].0.pdf](http://www.g8italia2009.it/static/G8_Allegato/LAquila_Joint_Statement_on_Global_Food_Security[1].0.pdf). Scan the document to get a sense of its purpose and legal force. How does this instrument mesh structurally, if at all, with the UN and FAO instruments?
- World Bank Food Security Strategy,  
<http://www.worldbank.org/en/topic/foodsecurity/overview#2>.
- EU Implementation Plan,  
[https://ec.europa.eu/europeaid/sites/devco/files/working-paper-food-nutrition-security-swd2013104-20130327\\_en\\_5.pdf](https://ec.europa.eu/europeaid/sites/devco/files/working-paper-food-nutrition-security-swd2013104-20130327_en_5.pdf). How would this instrument work in operational practice?
- U.S. Agency for International Development , Feed the Future Initiative,  
<http://www.usaid.gov/who-we-are/organization/bureaus/bureau-food-security>. Click on “double U.S. support . . . ,” highlighted in blue, to see the President’s call to action.
- Green Revolution background, <http://education-portal.com/academy/lesson/what-is-the-green-revolution-definition-benefits-and-issues.html#lesson>, read the text on the web page. You can watch the video, but it stops midway at “Issues with the Green Revolution” unless you pay (you shouldn’t) but the entire text is written out on the page.
- FAO, 1996 Rome Declaration background, Lessons from the Green Revolution,  
<http://www.fao.org/docrep/003/w2612e/w2612e06a.htm>
- 7 U.S.C. § 3103, <http://www.law.cornell.edu/uscode/text/7/3103>, skip to subsection (19), which defines “sustainable agriculture.” How does this definition

differ from the approach of the green revolution, addressed in the two previous items?

- Proposed Global Food Security Act of 2013, <https://www.govtrack.us/congress/bills/113/hr2822/text>. Focus on sections 101 and 102, skip the remainder. How would this bill work in practice? What are its goals?
- Laudato si', the Pope's encyclical on climate change, [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html). Skip to paragraph 157, in which the encyclical mentions food security. How in Francis's view is food security related to climate change? What policy responses does he recommend to assure the poor of the world an adequate supply in a world in which climate will almost certainly be significantly disrupted by climate change that is already occurring and will continue to occur?
- Intergovernmental Panel on Climate Change, 5<sup>th</sup> Assessment Report, Working Group II, [http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap7\\_FGDall.pdf](http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap7_FGDall.pdf). Read just the executive summary, pp. 2-4.
- Paris Agreement, [http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf). Search for "food" in this instrument to see how the global community proposes to address the relationship between climate change and food security., for which the readings are as follows:

The second portion of this class will be devoted to the first round of the simulated negotiation. Consult the general instructions in the "Simulated negotiation" folder of the course website, as well as your confidential instructions handed out (in paper copy) at the first class.

Be sure to post the written versions of your opening statements on the course website under "Forums/Delegation Proposals." Be sure to identify your delegation in your statement!

**Day 4, Thursday, May 24: Governmental Regulatory Structures for Food and preparation for visit to EFSA**

In anticipation of our visit to the European Food Safety Authority, we will look at the



U.S. regulatory system for food, then background to the EFSA visit. After that we will take up the situation in another important food-producing country, China.

This class will provide further background by discussing national laws, institutions, and regulatory authorities (e.g., USDA, FDA, European Food Safety Authority) responsible for the purity and safety of the food supply, including their powers, jurisdiction, and functional limitations. The class includes an introduction to the structure and functioning of the 28-member European Union.

### 1. United States

This class is a more detailed discussion of food safety issues, including the new Food Safety Modernization Act in the United States.

#### Readings:

- To get a sense of the shape of the food safety problem in the U.S., take a look at 10 Deadliest Food Contaminations in U.S. History, <http://www.everydayhealth.com/healthy-living-pictures/deadliest-foodborne-illness-outbreaks-in-us-history.aspx#/slide-1>. If you're interested in the "big 10" from last year, have a look at Food Safety News, The 10 Biggest Foodborne Illness Outbreaks of 2015, <http://www.foodsafetynews.com/2015/12/the-10-biggest-u-s-foodborne-illness-outbreaks-of-2015/#.V0Ts0fkrKUk> (including our own homegrown Chipotle outbreak). What do these incidents have in common? How are they different? What challenges do they present to investigators, such as the Centers for Disease Control, in identifying the source of the outbreak and curtailing it?
- U.S. Department of Agriculture: <http://www.usda.gov/wps/portal/usda/usdahome?navid=food-safety>
- Food and Drug Administration: Federal Food Drug and Cosmetic Act (FFDCA), first adopted 1906. Here is an overview of its application in the Peanut Corp. Case: <http://www.marlerblog.com/legal-cases/the-federal-food-drug-and-cosmetic-act-overview-of-food-adulteration-and-criminal-sanctions/#.U4VkDnJdUrV>
- Here is a brief summary of the Food Safety Modernization Act to get you started: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm267460.htm>. Then read the more detailed summary at <http://www.ift.org/public-policy-and->

[regulations/recent-news/2011/january/~media/Public%20Policy/PolicyDevelopment/FDAFoodSafetyModernizationAct\\_summary.pdf](http://www.fda.gov/oc/ohrt/regulations/recent-news/2011/january/~media/Public%20Policy/PolicyDevelopment/FDAFoodSafetyModernizationAct_summary.pdf). Read the executive summary and the summaries of sections 102 (registration of food facilities) and 103 (hazard analysis and preventive controls), pp. 5-15 in the original pagination.

- Excerpts from statute, <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247548.htm>. Read as much of sections 102 and 103 as you need to answer the following questions:
- What regulatory design has Congress adopted in FSMA to increase the safety of the food supply in the U.S.?
- What are the function and salient features of the risk-based preventive controls identified in section 103?
- Excerpts from pending FDA rulemakings,
  - Final rule on risk-based preventive controls, <http://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM461834.pdf>. Read ONLY into the second page, stopping at “The Definition of a ‘Farm . . . ’” (it’s short). From your read of that section, think are the salient implementation issues that FDA is grappling with?
  - Packaging, harvesting, etc. food for human consumption, <http://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM472887.pdf>. Read only through point 5, “Worker Safety Health and Hygiene.” From your read of this summary, what do you think are the salient implementation issues that FDA is grappling with?

## 2. European Union

- Structural background on the European Union: [http://www.dadalos-europe.org/int/grundkurs4/eu-struktur\\_1.htm#Rat\\_der\\_EU](http://www.dadalos-europe.org/int/grundkurs4/eu-struktur_1.htm#Rat_der_EU)
- Chronology of Major Treaty Changes (posted on course website under “Course Materials.”)
- As background, please read Emilie H. Leibovitch, Food Safety Regulation in the European Union: Toward an Unavoidable Centralization of Regulatory Powers,

43 Tex. Int'l L.J.429 (2008), <http://www.tilj.org/content/journal/43/num3/Leibovitch429.pdf> The article makes an argument for the centralization of food safety authority in the EU and contains a useful comparative analysis with the U.S. It also highlights the enumerated and limited powers of EFSA. In your reading focus on section II.A ("Historical Evolution," pp. 432-433 in original pagination) and, to get a greater understanding of EFSA's powers in particular situations, section III ("Toward an Inevitable Centralization . . . ", pp. 442-449).

- Please take a look at EFSA's home page to get a sense of what the institution does and how it does it: <http://www.efsa.europa.eu/en/aboutefsa.htm>, Please review the interactive tool "From Field to Fork." The organizational structure can be found at <http://www.efsa.europa.eu/sites/default/files/assets/orgchart.pdf>. Keep this structure in mind as you read the excerpts from Regulation 178/2002 below.
- The legal instrument creating EFSA is Regulation 178/2002, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R0178&from=EN>. Scan Chapter III, dealing with the institutions and powers of EFSA, pages L31/12 to L31/19, stopping before "Section 5, "Financial Provisions."

### **Day 5, Friday, June 25: Visit to EFSA**

We will continue our background discussion of governmental regulatory structures for food, assigned for the previous class, until departing on the bus for our visit to EFSA.

Negotiating proposals for Wednesday's second round of negotiations are due by 5:00 PM to the "Forums/Delegation Proposals" folder on the course website. Be sure to identify your delegation in your proposal!

### **Day 6, Monday, May 28: China**

This class will begin with a debrief of the visit to EFSA. Come to class having given some thought to the presentation we received. What are EFSA's powers and functions? How does it deliver on those expectations programmatically? What powers and functions might the EU have given to EFSA in addition to those it has? You can use the U.S. FDA as a useful comparison on this regard.

Why do you suppose EFSA's mandate is limited as it is, and the political authorities declined to delegate additional powers that might have facilitated its functioning as an FDA-like EU-wide agency? In addressing this question, give some thought to the

differences between the EU and the U.S. as political and legal entities.

To the extent there are outstanding issues on either food security, or regulation in the U.S. and EU, we will continue discussing them. Then the following:

3. China

- Professor Shen's article on China's food safety law, The Development of and Challenges Facing Food Safety Law in the People's Republic of China (available on TWEN course website in folder "Course Materials.) Unlike the material on FSMA we have encountered so far, this excerpt deals with both domestic regulation and exports. As you read, pay attention to both, identifying the different regulatory challenges presented by exports. We will encounter agricultural exports from countries like China when we return to the import provisions of FSMA.
- An article from Wikipedia on food safety incidents in China, [http://en.wikipedia.org/wiki/Food\\_safety\\_incidents\\_in\\_China](http://en.wikipedia.org/wiki/Food_safety_incidents_in_China). (Ordinarily I would not assign an excerpt from Wikipedia for a university class, but this was recommended by a colleague who is an expert on China). How do the various incidents described in this article differ one from another in their attributes from a public policy point of view? What regulatory tools would be relevant, useful, or necessary in addressing each?
- Article from *Food Safety News* (website under "Course Materials"). This publication is what is known in the biz as a "trade paper." Typically these are small operations with low circulation often to a narrow industry niche, and consequently high costs. Not surprisingly, subscription rates have tended to be quite high, often prohibitively so even for academic libraries. Somewhat to my surprise, apparently one can get a free subscription to this one, by going to <http://www.foodsafetynews.com/>. Highly recommended!

More for reference than for reading for class, please take a look at:

- The text of China's new law (website under "Course Materials"); and
- The regulation under the law (website under "Course Materials:).

Think about convergence with the principles of food safety policy and practice that we have been discussing so far in class – what challenges has China faced in delivering safe

food to its public, and how has it responded from a regulatory design point of view.

**Days 7, 8 & 9, Tuesday, Wednesday, and Monday, May 29 & 30 and June 4: Trade in Agricultural products: Food safety regulations as potential trade barriers**

These classes examine in greater detail the potential for divergences in national regulatory policies to manifest as trade disputes. In particular, these sessions address the WTO Agreement on Sanitary and Phytosanitary Measures, as applied in the EC-Hormones and EC-Biotech disputes, and the WTO Agreement on Technical Barriers to Trade, as applied in the Tuna II labeling dispute, protected designations of origin, and the COOL case.

Readings:

- Wirth, *The World Trade Organization Dispute Over Genetically Modified Organisms: The Precautionary Principle Meets International Trade Law*, 37 Vermont L.R. 1153 (2013), <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1605&context=lsfp/>  
Read from the beginning through page 1172, stopping at “The Quarantine Disputes.” Begin reading again at page 1177 “The GMO Dispute” to the end.
- “The WTO Appellate Body Knocks Down U.S. “Dolphin-Safe” Tuna Labels But Leaves a Crack for PPMs, <http://www.asil.org/insights/volume/16/issue/25/wto-appellate-body-knocks-down-us-%E2%80%9Cdolphin-safe%E2%80%9D-tuna-labels-leaves>
- “The WTO Ruling on U.S. Country of Origin Labeling (“COOL”),” <http://www.asil.org/insights/volume/16/issue/23/wto-ruling-us-country-origin-labeling-%E2%80%9Ccool%E2%80%9D>
- Consider the implications of the COOL case for the Italian system of Denominazione di Origine Controllata (DOC), similar to that in place in other countries for wine and other foodstuffs, as described on our wine-tasting field trip and in greater detail at <http://www.alfanet.it/welcomeitaly/vino/docg/>.
- On the relationship between geographical indications, trade law, and food safety, please read Wirth, *Geographical Indications, Food Safety, and Sustainability Challenges and Opportunities* (March 29, 2015). Boston College Law School Legal Studies Research Paper No. 359. Available at

<http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1943&context=lsfp>.

This paper has been uploaded to the course website as well.

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The second round of the simulated negotiation will be held during the second half of class on Wednesday, May 30. Written proposals should be posted in advance on the course website under the folder “Forums/Delegation proposals.”

The password for the midterm exercise will be announced at the end of class on Monday, June 4 and will be due by 5:00 PM on Wednesday, June 15, to the “Assignments and Quizzes” folder of the course website.

There is no class on Thursday and Friday, May 31 and June 1, when the Università degli Studi di Parma is closed for the Festa della Repubblica.

**Day 10, Tuesday, June 5:**

The first portion of this class will discuss food safety for imports through the lens of the U.S. Food Safety Modernization Act (Day 4) and the extensive system of private voluntary standards, such as the Global Food Safety Initiative and Global GAP, crafted by, applied to, and evaluated by the food industry with little or no governmental involvement. The class includes a discussion of private third party audits as an enforcement tool, and a critical evaluation of the relationship of private non-binding standards to public law.

**Readings:**

- Food Import Safety, The Food Safety Modernization Act, [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Produce\\_Safety\\_Project/FoodImportBrief.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Produce_Safety_Project/FoodImportBrief.pdf)
- Food Safety Modernization Act, [http://www.ift.org/public-policy-and-regulations/recent-news/2011/january/~media/Public%20Policy/PolicyDevelopment/FDAFoodSafetyModernizationAct\\_summary.pdf](http://www.ift.org/public-policy-and-regulations/recent-news/2011/january/~media/Public%20Policy/PolicyDevelopment/FDAFoodSafetyModernizationAct_summary.pdf). Read pp. 29-35 in the original pagination, dealing with import requirements (sections 301-309) and third party certification (section 307).

- Excerpts from statute: section 307  
<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247548.htm>
- Lesley K. McAllister, Third-Party Programs to Assess Regulatory Compliance, <http://www.acus.gov/sites/default/files/documents/Third-Party-Programs-Revised-Draft-Report-10.5.12.pdf>. Read pp. 1-15 (through “FDA, Imported Food Programs”) and pp. 40-54 (“Evaluating Third Party Programs”)
- Wirth, *The International Organization for Standardization: Private Voluntary Standards as Swords and Shields*, 36 B.C. Env'tl. Aff. L. Rev. 79 (2009), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1337766](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1337766). Click on “Download This Paper,” read pp. 79-92 in the original pagination. This article has also been uploaded to the “Course Documents” folder on the course website.
- Wirth, Private Voluntary Standards and New U.S. Food Safety Legislation The Food Safety Modernization Act and Imported Food (powerpoint, “Course Materials” on website).

**Day 11, Wednesday, June 6: All day field trip to cheese factory and ALMA International Cooking School**

Your proposals for the third and final round of the simulated negotiation are due by 6:00 this evening to the “Forums/Delegation Proposals” folder on the course website.

**Day 12, Thursday, June 7: Equivalence and Mutual Recognition**

In this class we will continue our discussion of the Food Safety Modernization Act’s structure for imports, the last two slides of the powerpoint on private voluntary standards (course website “Course Materials”).

After that:

- Class R.K. Malik, Mutual Recognition Agreements in International Food Trade, <http://www.fao.org/docrep/w9474t/w9474t05.htm>.

Then we will analyze two bilateral agreements between the U.S. and China:

- Memorandum of Understanding Between United States Food and Drug Administration and China’s Center for Food Safety Risk Assessment Regarding Cooperation to Enhance Activities of Mutual Interest,

<<http://www.fda.gov/downloads/InternationalPrograms/Agreements/MemorandaofUnderstanding/UCM384998.pdf>>.

- Agreement between the Department of Health and Human Services of the United States of America and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China on the Safety of Food and Feed,  
<<http://www.fda.gov/InternationalPrograms/Agreements/MemorandaofUnderstanding/ucm107557.htm>>.

How are these two agreements different from each other in legal form? In their policy objectives? In the international legal and domestic regulatory tools deployed to achieve their goals.

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The third and final round of negotiations will take place in the second half of this class.

**Day 13, Friday, June 8: Resources of the Global Commons: Fisheries**

This class addresses fisheries agreements as challenges to the collective management of common resources. The class also addresses alternative means of protecting commercially important species, such as listing bluefin tuna (used in sushi) and endangered sharks (commercially harvested for their fins) by the Convention on International Trade in Endangered Species (CITES).

Readings:

- The Economist, Governing the Oceans, Feb. 22, 2014 (posted on website under “Course Materials”)
- FAO, State of the World’s Fisheries, 2012, Read pp. 52-62, “The Status of Fishery Resources”, <http://www.fao.org/docrep/016/i2727e/i2727e.pdf>
- A net with holes: the regional fisheries management system, <http://www.savethehighseas.org/publicdocs/RFMO.pdf>
- Regional Fisheries Bodies, <http://www.igfa.org/Conserve/RFBs.aspx>
- Pauley, et al., Global Trends in World Fisheries: Impacts on Marine Ecosystems and Food Security,



<http://rstb.royalsocietypublishing.org/content/360/1453/5.full.pdf+html>

- S. Cullis-Suzuki, et al., Failing the High Seas: A Global Evaluation of Regional Fisheries Management Organizations,  
[http://scholar.google.com/scholar\\_url?hl=en&q=http://www.vliz.be/imisdocs/publications/211447.pdf%26embedded%3Dtrue&sa=X&scisig=AAGBfm38dFK2Hd3BizkL6kSohHUjYacCCw&oi=scholar](http://scholar.google.com/scholar_url?hl=en&q=http://www.vliz.be/imisdocs/publications/211447.pdf%26embedded%3Dtrue&sa=X&scisig=AAGBfm38dFK2Hd3BizkL6kSohHUjYacCCw&oi=scholar)
- With respect to bluefin tuna and shark fins,  
see <http://www.wwf.org.hk/en/?10160/WWF-Appraises-Government-for-Issuing-Shark-Fin--Bluefin-Tuna-Internal-Ban>. What is the relationship between this action by the Hong Kong government and the larger multilateral process?

In the afternoon we will visit Academia Barilla. In preparation for this event, please read the Harvard Business School case on Barilla, posted on the course website under “Course Materials.”

**Days 14 & 15, Monday and Tuesday, June 11 & 12: Visits to UN Food and Agriculture Organization and UN World Food Programme, Rome**

Watch for reading assignments transmitted by our hosts in preparation for these visits.

**Day 16, Wednesday, June 13: Agricultural Subsidies**

The WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) establishes categories of prohibited (“red box”) and actionable (“amber box”) subsidies. The latter are not prohibited, but can be challenged through the dispute settlement process if they cause injury, serious prejudice, or loss of market access to another WTO Member in a third state. In the WTO Agreement on Agriculture (AoA), WTO Members undertook to reduce trade-distorting subsidies in the agricultural sector. The AoA provides for “blue box” subsidies, which are those that would ordinarily be treated as “amber box,” but also require farmers to limit production. The AoA also has a category of “green box” or permitted subsidies. Disciplining agricultural subsidies, particularly in industrialized countries such as the United States, Japan, and the EU, is already a component of the Doha Development Agenda.

Readings:

- Basic information on the EU's Common Agricultural Policy: <http://www.learneurope.eu/index.php?cID=353>
- Policy analysis and criticism of the CAP: [http://subweb.diis.dk/graphics/Publications/Policybriefs2012/PB-Reforming-the-CAP\\_web.pdf](http://subweb.diis.dk/graphics/Publications/Policybriefs2012/PB-Reforming-the-CAP_web.pdf)
- Basic information on the U.S. Farm Bill: <http://www.snaptohealth.org/farm-bill-usda/u-s-farm-bill-faq/>
- Policy analysis and criticism of the most recent Farm Bill: <http://www.voanews.com/content/brazil-says-us-farm-bill-violates-trade-rules-/1856057.html>
- Agricultural subsidies and the Doha Development Agenda: [http://www.cgdev.org/files/12219\\_file\\_Doha\\_brief\\_final.pdf](http://www.cgdev.org/files/12219_file_Doha_brief_final.pdf)

**Day 17, Thursday, June 14: Special Topics (tentative)**

**Fair trade (using coffee as an example)**

- As you read Elizabeth Bennett, A Short History of Fairtrade Certification Governance, [http://www.elizabethannebennett.com/wp-content/uploads/2013/06/Fairtrade\\_history\\_chapter\\_BENNETT\\_2012.pdf](http://www.elizabethannebennett.com/wp-content/uploads/2013/06/Fairtrade_history_chapter_BENNETT_2012.pdf), think of how this issue fits into the other issues of the course – right to food, economic, social, and cultural rights, food security, and trade rules being among the most obvious.

**Comparative treatment of organic labeling standards**

As to comparative standards for organic labeling, consider the use of antibiotics in animal feeds, discussed in this excerpt: <http://www.ota.com/organic/benefits/antibiotics.html>

- Here are USDA's regulations on this issue: <http://www.ecfr.gov/cgi-bin/text-idx?SID=a884bc326fe7bc46104dd3cb4a043b36&node=7:3.1.1.9.32.7.354.4&rgn=div8>
- Here is the EU regulation (article 15(1)(f)(ii): [http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX\\_SESSIONID=xwpTTvyN59Btk7cHg7f0Slp9rx1vTCnTj8bBlSjzS69dlh157Ffh!-694022248?uri=CELEX:32007R0834](http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=xwpTTvyN59Btk7cHg7f0Slp9rx1vTCnTj8bBlSjzS69dlh157Ffh!-694022248?uri=CELEX:32007R0834)

- Here is (you knew it was coming!) the Codex Alimentarius standard (Annex 1, part B, paragraph 22): [www.codexalimentarius.net/input/download/standards/360/cxg\\_032e.pdf](http://www.codexalimentarius.net/input/download/standards/360/cxg_032e.pdf).

How do the different approaches compare one with another?

**Animal welfare: international standards for humane treatment of food-producing animals**

- Private certification systems: <http://certifiedhumane.org/>
- EU harmonized standards:  
[http://ec.europa.eu/food/animal/welfare/factsheet\\_farmed03-2007\\_en.pdf](http://ec.europa.eu/food/animal/welfare/factsheet_farmed03-2007_en.pdf)

The material to be covered on the final examination ends here, with the subject matter for this class.

**Day 18, Friday, June 15**

This is a reserve day, to cover topics that students have requested and/or to complete discussion of previous material.

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