

# WTI Brown Bag Seminar



## Title

Trade & Security Exceptionalism

## Speaker

Prof. Kathleen Claussen, University of Miami School of Law

## When

Thursday  
06 June, 2019  
12.30-13.30

## Where

Anna Nussbaum Auditorium  
World Trade Institute  
Hallerstrasse 6, 3012 Bern

## Abstract

U.S. trade law suffers from a type of legal schizophrenia. On the one hand, the U.S. has sought since the mid-twentieth century to liberalize global trade policy. But alongside those moves, U.S. and international trade law have also created exceptions and authorities to depart from those primary rules in instances of national security or other under criteria that comprise a risk to U.S. economic security. These two legal categories seem benign. But when the former is overtaken by the latter, the result is a global economic and legal crisis. This Article makes three contributions. First, I argue that the neoliberal consensus that has dominated the last fifty years of trade rule development has exceptionalized national security to its detriment. Second, I make a normative case for reframing trade and national security within what I call the trade rule of law. Finally, I turn to the functional manifestations to demonstrate the need for reframing through specific examples. I argue that the exceptionalist paradigm has made the president a manager, rather than an agent, on trade and security, leading him to use “trade executive agreements” to go beyond the intended delegations and create binding rules with U.S. partners outside of congressional reach.

## Biography of the speaker

Professor Claussen’s primary scholarly interests include trade and investment law, dispute settlement and procedure, international contracts and issues in cross-border business transactions, national security including cybersecurity law, and federalism and conflict of laws. Prior to joining the Miami Law faculty in 2017, Professor Claussen was Associate General Counsel at the Office of the USTR in the Executive Office of the President. There, she represented the United States in trade dispute proceedings and served as a legal advisor for the United States in international trade negotiations. Professor Claussen has published in the print or online editions of the Yale Law Journal, the Minnesota Law Review, the American Journal of International Law, and the Yale Journal of International Law, among others. Her work on cross-border ethical issues in international commercial arbitration was awarded the International Institute for Conflict Prevention and Resolution Paper Prize. She is co-chair elect of the ASIL International Economic Law Interest Group, and serves on the Academic Council of the Institute for Transnational Arbitration. Professor Claussen has blogged at Lawfare, the International Economic Law & Policy Blog, and Opinio Juris, and been featured on or consulted as an expert for media outlets including Marketplace, CNBC, and the Financial Times.