



## *Syllabus*

# **INTERNATIONAL REGULATION OF TRADE AND INVESTMENT - 62532**

*Last update 03-08-2017*

HU Credits: 2

Responsible Department: law

Academic year: 0

Semester: 1st Semester

Teaching Languages: English

Campus: Mt. Scopus

Course/Module Coordinator: Tomer Broude

Coordinator Email: [tomerbroude@gmail.com](mailto:tomerbroude@gmail.com)

Coordinator Office Hours: TBA

Teaching Staff:  
Prof Tomer Broude

Course/Module description:

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*This course examines the legal frameworks governing global business and international trade and investment relations between states. Focusing on the law of the World Trade Organization (WTO), regional trade agreements, and bilateral trade treaties, the course will discuss fundamental questions of trade and investment policy and international political economy, covering a broad range of international regulatory and legal issues, such as trade in goods, trade in services, trade remedies, technical standards and dispute settlement. Particular attention will be devoted to the non-trade policy effects of international trade regulation, in fields such as public morals, health and the environment.*

*Course/Module aims:*

*The course aims to achieve broad familiarity with key issues in international trade and investment law, and an initial level of technical proficiency.*

*Learning outcomes - On successful completion of this module, students should be able to:*

*Students will be able to identify key trade and investment issues, arrange them according to substantive/procedural as well as preliminary/main issues, compare and categorize trade and investment strategies, construct legal arguments as well formulate them in formal terms, and make critical suggestions for reform.*

*Attendance requirements(%):*

*80 - Note that the course will be taught during the first seven weeks of the semester*

*Teaching arrangement and method of instruction: Class lectures/discussions, with small breakout exercises, where possible.*

*Course/Module Content:*

*INTERNATIONAL REGULATION OF TRADE AND INVESTMENT*

*INTERNATIONAL REGULATION OF TRADE AND INVESTMENT*

*Course 62532*

*Prof. Tomer Broude*

*tomerbroude@gmail.com*

*Fall 2014, Tuesdays, 12:30-14:00*

*Office Hours: Tuesdays, 16:30-17:30, Law 228 (by appointment)*

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*ATTENDANCE AND PARTICIPATION: Your attendance and active participation is important for the success of the course. Attendance will be noted. I understand that students will occasionally miss class due to outside commitments, etc., but all students must attend at least 80% of classes in order to receive credit. Please reserve missed classes for instances of genuine need and in any case do let me know in advance if you cannot attend.*

*READING AND RESPONSE PAPERS: This is largely a case-based course. You are required to read all the reading items for each class meeting. Moreover, each student is required to write 2 short critical response papers over the semester. Response papers may address one or all of the reading items for that week. The papers should be no more than 4 pages double-spaced, raising reactions and questions for the next class discussion, based on the readings. All papers must be submitted in hardcopy only, at the beginning of the class that is planned to deal with the relevant reading assignments. Grades for the response papers constitute 25 per cent of the final grade*

*FINAL EXAM: The final exam will include a case analysis and more theoretical questions. The exam grade constitutes 75 per cent of the final grade.*

*OFFICE HOURS: I will be available to meet with students after class on Tuesdays between 16:30 and 17:30. My office number is 228 Law. In any case please let me know if you intend to visit, and if those times are inconvenient, e-mail me at [tomerbroude@gmail.com](mailto:tomerbroude@gmail.com) and I'll be happy to set up a meeting.*

*LAPTOPS: The use of computers in class is not permitted.*

*GENERAL READING MATERIALS: The syllabus below sets out the specific readings for classes in the course, but there are a number of sources that will inform our discussions throughout the course. All the WTO agreements that will be discussed during the course, including the Dispute Settlement Understanding (DSU) can be accessed and downloaded from the WTO website at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) (scroll down to find the particular agreement you are looking for), or can be purchased in hardcopy online*

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([http://www.wto.org/english/res\\_e/publications\\_e/legal\\_texts\\_e.htm](http://www.wto.org/english/res_e/publications_e/legal_texts_e.htm)). WTO dispute documents can be found at [http://www.wto.org/english/tratop\\_e/dispu\\_e/find\\_dispu\\_cases\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm) (by subject, Member state, year etc.), and GATT (pre-WTO) disputes are at [http://www.wto.org/english/tratop\\_e/dispu\\_e/gt47ds\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/gt47ds_e.htm).

## CLASSES AND READINGS

### 1. Introduction: Trade, investment, and much more

- WT/DS441/1, Australia v. Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements applicable to Tobacco Products and Packaging, Request for Consultations by the Dominican Republic, 23 July 2012, [http://www.worldtradelaw.net/cr/ds441-1\(cr\).pdf](http://www.worldtradelaw.net/cr/ds441-1(cr).pdf).

- Markus Krajewski, 'Investment Law and Public Services: Clashes of Interests or Peaceful Coexistence?', *Investment Treaty News*, July 19, 2012, <http://www.iisd.org/itn/2012/07/19/investment-law-and-public-services-clashes-of-interests-or-peaceful-coexistence/>.

- Rob Howse, Joanna Langille and Katie Sykes, 'Sealing the Deal: The WTO's Appellate Body Report in EC-Seal Products', *ASIL Insights*, 2014 <http://www.asil.org/insights/volume/18/issue/12/sealing-deal-wto%E2%80%99s-appellate-body-report-ec-%E2%80%93-seal-products>.

### 2.-3. WTO basics: Economics, history and legal overview

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- WTO, *Understanding the WTO* (2007), pp. 9-61,  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf).

- Articles I, II, III, XI, XX, XXI, XXII, XXIII GATT.

#### 4. The WTO dispute settlement system: Fundamentals and development

- Articles XXII, XXIII GATT; and WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes*,  
[http://www.wto.org/english/docs\\_e/legal\\_e/28-dsu.doc](http://www.wto.org/english/docs_e/legal_e/28-dsu.doc).

- WTO, *Understanding the WTO* (2007), pp. 55-61,  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf).

- *Application of Article I:1 to Tax Rebates* □ *Ruling by the Chairman* (1948) GATT BISD II/12 [http://www.wto.org/english/tratop\\_e/dispu\\_e/48taxexp.pdf](http://www.wto.org/english/tratop_e/dispu_e/48taxexp.pdf).

- *Spain* □ *Tariff Treatment of Unroasted Coffee* (1981) GATT BISD 28S/102,  
[http://www.wto.org/english/tratop\\_e/dispu\\_e/80coffee.pdf](http://www.wto.org/english/tratop_e/dispu_e/80coffee.pdf).

#### 5. Tariff bindings

- Articles II:1 (a, b), II:2 GATT.

- WT/DS56/R, *Panel Report, Argentina* □ *Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, adopted April 22, 1998, ([http://www.worldtradelaw.net/reports/wtopanelsfull/argentina-textiles\(panel\)\(full\).pdf](http://www.worldtradelaw.net/reports/wtopanelsfull/argentina-textiles(panel)(full).pdf)), pp. 3-5 and 86-91.

- WT/DS56/AB/R, *Appellate Body Report, Argentina* □ *Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, adopted April 22, 1998, ([http://www.worldtradelaw.net/reports/wtoab/argentina-textiles\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/argentina-textiles(ab).pdf)), pp. 14-20.

#### 6. Quantitative Restrictions

- GATT Arts. XI; XII:1 and 2; and XIX:1(a).

- WT/DS155/R, *Panel Report, Argentina* □ *Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*, adopted February 16, 2001, ([http://www.worldtradelaw.net/reports/wtopanels/argentina-bovinehides\(panel\).pdf](http://www.worldtradelaw.net/reports/wtopanels/argentina-bovinehides(panel).pdf)), pp. 2-8 and 113-120.

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## 7. National Treatment □ Internal Taxation

- GATT Art. III and note ad Art. III.
- WT/DS87/AB/R, Appellate Body Report, Chile □ Taxes on Alcoholic Beverages, adopted April 22, 1998, ([http://www.worldtradelaw.net/reports/wtoab/chile-alcohol\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/chile-alcohol(ab).pdf)), pp. 1-3, 11-23.

## 8. National Treatment □ Internal Regulation

- GATT Art. III and note ad Art. III.
- WT/DS135/AB/R, Appellate Body Report, European Communities □ Measures Affecting Asbestos and Asbestos-Containing Products, adopted March 21, 2001, ([http://www.worldtradelaw.net/reports/wtoab/ec-asbestos\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/ec-asbestos(ab).pdf)), pp. 31-55.

## 9. Public Policy Exceptions

- Art. XX GATT.
- WT/DS135/AB/R, Appellate Body Report, European Communities □ Measures Affecting Asbestos and Asbestos-Containing Products, adopted March 21, 2001, ([http://www.worldtradelaw.net/reports/wtoab/ec-asbestos\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/ec-asbestos(ab).pdf)), pp. 60-63.
- WT/DS58/AB/R, Appellate Body Report, United States □ Importation of Certain Shrimp and Shrimp Products, adopted October 12, 1998, ([http://www.worldtradelaw.net/reports/wtoab/us-shrimp\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-shrimp(ab).pdf)), pp. 46-76.

## 10. Trade in Services

- WTO, General Agreement on Trade in Services (GATS), [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.doc](http://www.wto.org/english/docs_e/legal_e/26-gats.doc).
- WT/DS28/AB/R, Appellate Body Report, United States □ Measures Affecting Cross-Border Supply of Gambling Services, adopted April 20, 2005, ([http://www.worldtradelaw.net/reports/wtoab/us-gambling\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-gambling(ab).pdf)), pp. 51-73.

## 11. The WTO and regional trade agreements

- Arts. I, XXIV:4, 5, 6, 8; Enabling Clause 1, 2.
- WT/DS34/AB/R, Appellate Body Report, Turkey □ Restrictions on Imports of Textile and Clothing Products, adopted November 19, 1999

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([http://www.worldtradelaw.net/reports/wtoab/turkey-textiles\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/turkey-textiles(ab).pdf)).

## 12. International investment law basics

- Tomer Broude, 'Investment and Trade: The 'Lottie and Lisa' of International Economic Law?', in *NEW DIRECTIONS AND EMERGING CHALLENGES IN INTERNATIONAL INVESTMENT LAW AND POLICY*, Pierre Sauv© and Roberto Echandi, eds., Cambridge University Press, 2012, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id1957686](http://papers.ssrn.com/sol3/papers.cfm?abstract_id1957686).

- Kenneth J. Vandeveld, 'The Political Economy of a Bilateral Investment Treaty', 92(4) *American Journal of International Law* (1998), <http://www.jstor.org/discover/10.2307/2998126?uid3738240&uid2&uid4&sid21102652103341>.

- Articles 1-7, 12-13 and 23-25, 2012 US Model BIT (TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF [Country] CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT), <http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>.

## 13. The jurisdiction of investment tribunals

- *Fedax N.V. v. The Republic of Venezuela*, ICSID Case No. ARB/96/3, (1997), [http://italaw.com/sites/default/files/case-documents/ita0315\\_0.pdf](http://italaw.com/sites/default/files/case-documents/ita0315_0.pdf).

- *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 (<http://italaw.com/sites/default/files/case-documents/ita0095.pdf>), pp. 63-99 (2008),

- *Loewen Group Inc. & Raymond L. Loewen v. United States of America*, ICSID CaseNo. ARB(AF)/98/3 [NAFTA], Final Award (June 26, 2003), paras. 30-41 (facts), and paras. 220-39 (continuous nationality), <http://italaw.com/sites/default/files/case-documents/ita0470.pdf>.

### Required Reading:

As above.

### Additional Reading Material:

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N/A

*Course/Module evaluation:*

*End of year written/oral examination 75 %*

*Presentation 0 %*

*Participation in Tutorials 0 %*

*Project work 0 %*

*Assignments 0 %*

*Reports 25 %*

*Research project 0 %*

*Quizzes 0 %*

*Other 0 %*

*Additional information:*

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