



# *The Hebrew University of Jerusalem*

## *Syllabus*

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

*Last update 16-09-2020*

*HU Credits:* 2

*Degree/Cycle:* 2nd degree (Master)

*Responsible Department:* Law

*Academic year:* 0

*Semester:* 2nd 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

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Teaching Staff:

Prof Tomer Broude

Course/Module description:

*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. Online via Zoom and other platforms.*

Course/Module Content:

*Indicative syllabus - to be changed prior to the course*

**INTERNATIONAL REGULATION OF TRADE AND INVESTMENT**  
**Course 62532**

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Prof. Tomer Broude  
tomerbroude@gmail.com

*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 (RTAs), and bilateral investment treaties (BITs), 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, technical standards, state-to-state dispute resolution and investor-state dispute settlement (ISDS). Particular attention will be devoted to the non-trade policy effects of international trade regulation and investment protection, in fields such as public morals, health and the environment. Moreover, as these are areas under considerable upheaval over the last two years and for the foreseeable future, we will track developments such as the ongoing 'trade war' between the US and (primarily) China, WTO reform, the increasing use of security exceptions and Brexit*

*ATTENDANCE AND PARTICIPATION: Your attendance and active participation is important for the success of the course and for your success in it. 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 you must send me a reasoned e-mail 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 3 pages double-spaced, raising reactions and questions for the next class discussion, based on the readings. They must not be merely descriptive. 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 ASSIGNMENT: The final assignment will be in the form of a take-home exam/essay on a recent international economic law case or developing issue. The final assignment grade constitutes 75 per cent of the final grade.*

*OFFICE HOURS: I will be available to meet with students by appointment, generally on Tuesdays or Wednesdays. E-mail me at tomerbroude@gmail.com and I'll be*

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happy to set up a meeting at my office at the Law Faculty (228).

*LAPTOPS: The use of computers in class is permitted for the purposes of note-taking and accessing course reading materials only. Should students be overly distracted by their electronic devices, their use during class may be prohibited.*

*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 ([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). IMPORTANT: If any of the hyperlinks do not work, please copy the web address and paste in your web browser. If that fails, please send me an e-mail and I will distribute the reading.*

## *CLASSES AND READINGS*

*----- [NO CLASS ON 17.10.18] -----*

### *1. Introduction: Trade, investment, and much more (24.10.18)*

*- The Economist, "America Holds the WTO Hostage", Oct. 2, 2017, <https://businessmirror.com.ph/america-holds-the-wto-hostage/>.*

*- Anne O. Krueger, "The Global Trade System Could Break Down", Project Syndicate, September 17, 2018 <https://www.project-syndicate.org/commentary/trump-attacks-on-world-trade-organization-by-anne-krueger-2018-09>*

*- ICTSD reporting; "Australia wins landmark WTO ruling on plain tobacco packaging," REUTERS, 28 June 2018.*

*- Aarshi Tirkey, "Trade Wars: Can the WTO Strike Back?", October 5, 2018 <https://www.orfonline.org/expert-speak/trade-wars-can-wto-strike-back-44709/>*

*- The Guardian, Cecilia Olivet and Alberto Villareal, "Who Really Won the Legal Battle between Philip Morris and Uruguay?", 28 July, 2016, <https://www.theguardian>.*

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[com/global-development/2016/jul/28/who-really-won-legal-battle-philip-morris-uruguay-cigarette-adverts](http://com/global-development/2016/jul/28/who-really-won-legal-battle-philip-morris-uruguay-cigarette-adverts).

- 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%93seal-products> (copy and paste in your browser).

## *2. WTO basics: Economics, history and legal overview (31.10.18)*

- 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) (copy and paste to your browser).

- Articles I, II, III, XI, XX, XXI, XXII, XXIII GATT, [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf) (copy and paste to your browser).

## *3. The WTO dispute settlement system: Fundamentals and development (7.11.18)*

- Articles XXII, XXIII GATT [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf); 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).

## *4. Tariff bindings and Quantitative Restrictions (14.11.18)*

- Articles II:1 (a, b), II:2 GATT [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf).

- *WT/DS56/R, Panel Report, Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, adopted April 22, 1998, (<http://www.worldtradela>

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*w.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.

- *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.

#### 5. National Treatment (Taxation and Regulation) (21.11.18)

- *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.

- *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.

#### 6. Public Policy and Security Exceptions (28.11.18)

- *Arts. XX-XI GATT*.

- *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.

- *WT/DS512 Russia - Measures Concerning Traffic in Transit, Third Party Executive Summary by the United States of America*, February 27, 2018, <https://ustr.gov/sites/default/files/enforcement/DS/US.3d.Pty.Sub.Re.GATT.XXI.fin.%28public%29.pdf>

----- [NO CLASS ON 5.12.18] -----

#### 7. Trade in Services (12.12.18)

- *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,

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([http://www.worldtradelaw.net/reports/wtoab/us-gambling\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-gambling(ab).pdf)), pp. 51-73.

#### 8. International investment law basics (19.12.18)

- 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 Sauvé and Roberto Echandi, eds., Cambridge University Press, 2012,  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1957686](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957686).

- 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>.

- Tomer Broude, Yoram Z. Haftel and Alex Thompson, "Who Cares About Regulatory Space in BITs? A Comparative International Approach" in *COMPARATIVE INTERNATIONAL LAW*, Anthea Roberts, Pierre-Hugues Verdier, Mila Versteeg and Paul B. Stephan, eds. (Oxford University Press, 2018)  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2773686](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2773686).

#### Required Reading:

As above.

#### Additional Reading Material:

N/A

#### Grading Scheme:

#### Additional information:

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