

Course: Law and Economics of International Trade and Investment

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International economic relations are at the heart of globalization: economic interdependence between countries and across production chains continues to grow. Although they are regulated in many ways, cross-border economic activity may still have severe impacts on other desirable goals of the international community such as environmental protection and the promotion of human rights (non-economic concerns). This course will deal with international norms regulating trade and foreign investment as well as the interaction of those rules with other issue areas of international law.

In this course, we will shed light on the WTO by examining why it exists, how it developed from the GATT to what it is now, and how its trade rules fit with other public policy concerns. By drawing on WTO case law, economic and political theory the course will offer you an in-depth, practical knowledge of substantive WTO law. It will address the basic principles of trade in goods and trade in services, as well as more specialized WTO agreements on, for example, health measures, subsidies, and intellectual property. Regarding procedural aspects, the course will pay close attention to the unique WTO mechanism for the solution of trade disputes, the so-called Dispute Settlement Body, and its current crisis. What are the benefits and risks of trade liberalization from legal, economic, and political perspectives? How can trade liberalization go hand in hand with pursuing public policy goals such as protecting the environment and human rights ("non-trade concerns") or promoting the economic development of poor countries? The course will also deal with the interaction of peace and security under WTO law and highlight some current geopolitical developments, including sanctions and embargos.

International Investment Agreements (IIA) currently attract even more criticism than trade negotiations. IIAs protect Foreign Direct Investment (FDI) inter alia against expropriation, unfair and inequitable treatment as well as discrimination. The regime is also unique in that investors may sue foreign states before arbitral tribunals without the exhaustion of local remedies. We will discuss the typical content of IIAs and leading cases, including NAFTA-based ones, and explore the recent trends in treaty drafting, including the current UNCITRAL Working Group on Investor-State-Dispute-Settlement reform. The course will draw on economic insights to examine why states conclude those treaties. Furthermore, in-class discussions will help to approach and understand the puzzling interaction of investment law with sustainable development and other public policy concerns of host states.

The class looks at the economic rationale of trade agreements and IIAs and thus has a "law and economics" bent thus some background in economics would be helpful. Students in this course will find that a background in international law would be necessary but prior courses on public international law or arbitration are not a formal prerequisite. (Those who have not taken an international law course are strongly encouraged to, over the first weeks of term, become familiar with the basic sources of international law (treaty and custom) and the interpretation thereof in a basic text, such as the West nutshell on Public International Law.)

The Course takes place online via ZOOM on:

Friday, 02.06.	10-12 and 14-16
Monday, 05.06.	10-12 and 14-16
Tuesday, 06.06.	10-12 and 14-16
Wednesday, 07.06.	10-12
Thursday, 08.06.	10-12 and 14-16
Friday, 09.06	10-12

The invitation link will be sent to you on time. Classes start at 10 am (sharp).

Office Hours:

By individual appointment. Please send an e-mail to anne.van.aaken@uni-hamburg.de. Please ask all course related questions online on Zoom or to all via mail so that everyone can benefit.

Requirements:

This is a 2,5 credit course, The exam will be an exam of 3 hours open book. The readings will generally be available on the course web and it is expected that you have read them BEFORE the class.

We will use one book for trade and one for investment as well as additional material for some classes. The required book for trade is Michael Trebilcock & Joel Trachtman, *International Trade Law* (EE 2020, 2 ed.) (TT), specific chapters. The required book for investment is MATTHIAS HERDEGEN, *Principles of International Economic Law* (Paperback) by (OUP 2016, 2nd ed.) (MH), specific chapters.

Students should also obtain a copy of the legal texts either from the WTO website or by purchasing the Documents Supplement to the International Trade Law textbooks.

Optional additional resources:

Basic Textbooks

JOOST PAUWELYN & ANDREW GUZMAN, *International Trade Law*, (3rd ed., Wolters Kluwer, 2016)

PETER VAN DEN BOSSCHE & WERNER ZDOUC, *The Law and Policy of the World Trade Organization, Text, Cases and Materials* (3rd ed., Cambridge University Press, 2013)

A helpful short overview on WTO: WTO, *Understanding the WTO*, 1995, available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf (WTO).

Additional Reading: MICHAEL J. TREBILCOCK, *Understanding Trade Law* (Edward Elgar Pub, 2011)

Treaties & Legal Texts: WTO Secretariat, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (Cambridge University Press/WTO) - available at http://www.wto.org/english/docs_e/legal_e/legal_e.htm

WTO dispute settlement cases: if you need the background to any of the cases excerpted in the course book go to: <http://www.worldtradelaw.net/> where you will find a summary of every WTO dispute.

Websites for Trade

www.wto.org (official website of the World Trade Organization)
www.worldtradelaw.net (case summaries)
www.tradelawguide.com (research tool for WTO law)
www.ustr.gov (official US government trade website)
www.europa.eu.int/comm/trade/index_en.htm (official trade site of the European Commission)
www.insidetrade.com (insider information on trade developments)
www.tradelab.org (online platform set up to broaden access to legal expertise in international trade and investment law)

Websites for Investment:

<http://www.italaw.com/> (research tool for investment decisions)
<https://icsid.worldbank.org/en/> (ICSID case Law and legal materials)
<http://investmentpolicyhub.unctad.org/> (Treaty base and policy papers)

Content of classes and readings

<i>Classes:</i>	<i>Themes:</i>	<i>Readings:</i>
Class 1	<i>Economic Trade Theory and Policy, Modern Trade Debate Among Economists</i>	TT Chapter 1 VAN AAKEN/KURTZ, Beyond Rational Choice: International Trade Law and The Behavioral Political Economy of Protectionism, in 22 Journal of International Economic Law (2019), 601
Class 2	<i>The WTO: History, Structure, and Future</i>	TT: Chapters 2, 17, 4
Class 3	<i>Dispute Settlement in the WTO; Facts and Procedure</i>	EU WTO interim appeal arbitration arrangement
Class 4	<i>Trade in Goods: GATT and Annexes</i>	TT: 3, 5, 6, 7, 8, 9, 13, 17,11
Class 5	<i>Trade in Services and Intellectual Property Rights (GATS and TRIPS)</i>	TT: 10, 12

Class 6	<i>International Investment Law</i>	MH: 31-37(except 36)
Class 7	<i>Substantive Norms</i>	Slides
Class 8	<i>Dispute Settlement</i>	Slides
Class 9	<i>Economic Debate about Investment (Treaties)</i>	<p>ANNE VAN AAKEN, "International Investment Law Between Commitment and Flexibility: A Contract Theory Analysis". 12 Journal of International Economic Law (2009), 507.</p> <p>Slides and additional readings on those</p>
Class 10	<i>Investment and Sustainable Development</i>	<p>THEODORE H. MORAN, EDWARD M. GRAHAM, MAGNUS BLOMSTÖM, "Introduction and Overview", in: Does Foreign Direct Investment Promote Development? Peterson Institute, 2005, pp. 1-19</p> <p>HOWARD MANN, Reconceptualizing International Investment Law: Its Role in Sustainable Development, 17 Lewis&Clark Law Review (2013) 521.</p>