

- 1. Department: NA**
- 2. Faculty: Legal Studies**
- 3. Course Code: LW00**
- 4. Course Title: International Economic Law**
- 5. Number of Credits: 4**
- 6. Course Objectives**

The objective of the course is to provide an overview of the content, meaning and application of international economic law. The scope and limits of international economic law essentially lie within the ambit of international economic relations. States, therefore, form the core of the economic activities and relations. It is also important to note that the phrase “international economic law” is understood in this course in its broadest sense to include various aspects of international trade, financial and investment laws. Within the broad spectrum of international law, it is to be noted that both international trade law and international commercial law have evolved into a separate and yet specialized areas of study. This course may not traverse the entire length and breadth of these areas, although an attempt will be made to study some of the basic principles that have had an impact on the international economic law. At its broadest sense, as defined by available sources, international economic law essentially seeks to “deal with the conduct of sovereign States in international economic relations and also the conduct of private parties involved in cross-border economic and business transactions”.

The content of International Economic Law encompasses a wide spectrum of areas such as for example, trade in goods and services, international financial law, economic and regional integration, dispute settlement and conflict resolution (with focus on alternative dispute resolution mechanisms), investment law and regulation of foreign investment. The Course, besides examining international economic legal principles, will also study the context, formation and impact of various international economic institutions with specific focus on South Asian countries. The formulation and implementation of the international economic legal principles concerning varied subject matters have been moved from one economic or trade institution to another noting the impact and change it could bring to domestic legal and regulatory framework. The negotiations and the formulation of minimum standards concerning intellectual property rights (IPRs) is one fine example. Besides IPRs, these subject matters include goods and services, investment measures and dispute settlement. There have been efforts, considering the need to evolve a common procedural framework to facilitate smooth movement of global transactional chain and trade, to bring in uniformity or harmonization in these procedural frameworks. Such uniformity already exists in maritime practices for a very long time through various treaties and conventions among countries. However, efforts are underway to extend these efforts to other areas as well. Besides maritime practices, we could note many other areas which are being considered for harmonization such as for example, various principles in the field of private international law, legal and policy issues relating to regional economic integration, international investment measures, competition, electronic commerce, international monetary

regulation and international commercial arbitration. The course will discuss the impact of working of the South Asian Free Trade Area (SAFTA) and its role in the regional economic integration.

- 7. Minimum prerequisites:** Knowledge of commercial law/private international law is expected, but not mandatory

8. Course structure

Week -1

Definition, Scope and History of International Economic Law with specific focus on theoretical framework; Concept of sovereignty in International Economic Relations; Globalization, International Economic Law and South Asia

Antony Anghie, 'The Heart of My Home: Colonialism, Environmental Damage, and the Nauru Case' (1993) 34 *Harvard International Law Journal* 445.

Leila Choukroune & James Nedumpara, *International Economic Law* (CUP, 2021)

Mathias Herdegan, *Principles of International Economic Law* (OUP, 2024)

Week-2

Permanent Sovereignty over Natural Resources (PSNR); New International Economic Order (NIEO); Charter of Economic Rights and Duties: United Nations Conference on Trade and Development (UNCTAD); Approach of South Asian Countries

J.N. Hyde, 'Permanent sovereignty over natural wealth and resources', (1956) 50 *American Journal of International Law* 854

Kamal Hossain & Subrata Roy Chowdhry (eds) *Permanent Sovereignty Over Natural Resources in International Law: Principle and Practice* (London: Frances, 1984)

Nico Schrijver, *Sovereignty over Natural Resources* (CUP, 2009)

E. Duruigbo, 'Permanent sovereignty over natural resources and people's ownership of natural resources in international law', (2006) 38 *George Washington International Law Review* 33.

Week-3

Evolution of General Agreement on Trade and Tariffs (GATT), World Trade Organization (WTO); Structures, Principles and Working of WTO; South Asian Countries and WTO.

Mathias Herdegan, *Principles of International Economic Law* (OUP, 2024)

Saman Kelegama, and Indra Nath Mukherji. "WTO and South Asia: From Doha to Cancun." (2003) 38 *Economic and Political Weekly* 3864.

Rana Ejaz Ali Khan & Muhammad Ijaz Latif, (2009) : 'Analysis of trade before and after the WTO: A case study of South Asia', (2009) 2 *Pakistan Journal of Commerce and Social Sciences* 53.

ENR de Silva, ‘Is South Asia the missing bloc in world trade? An analysis of South Asian FTAs’ compatibility with WTO rules’, (2024) 23(1) *Journal of International Trade Law and Policy*, 59.

Week- 4

WTO AB Impasse – the concerns – Is Article 25, DSU Arbitration an interesting option? - Current developments in International Trade – WTO – the Plurilateral Agreement on Multiparty Interim Appeal Arbitration

Akhil Raina, “Meditations in an Emergency: The Appellate Body Deadlock – What it is, Why it is a Problem, and What to do About it”, (2018) Leuven Centre For Global Governance Studies (KU Leuven).

Bashar H Malkawi, “Can Article 25 Arbitration Serve as a Temporary Alternative to WTO Dispute Settlement Process?”, January 5, 2019 <http://arbitrationblog.kluwerarbitration.com/2019/01/05/can-article-25-arbitration-serve-as-a-temporary-alternative-to-wto-dispute-settlement-process/>

Andrew Lang, “The Judicial Sensibility of the WTO Appellate Body”, (2016) 27(4) *EJIL* 1095.

Jennifer Hillman, “Three Approaches to Fixing the World Trade Organization’s Appellate Body: the Good, the Bad and the Ugly?” <https://www.law.georgetown.edu/wp-content/uploads/2018/12/Hillman-Good-Bad-Ugly-Fix-to-WTO-AB.pdf>

Tetyana Payosova, Gary Clyde Hufbauer, and Jeffrey J. Schott, “The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures” (2018) Peterson Institute for International Economics WP <https://www.piie.com/system/files/documents/pb18-5.pdf>

Clement Marquet, “Crisis at the Appellate Body: Towards More or Less Consent in WTO Adjudication?” (June 1, 2018). Society of International Economic Law (SIEL), Sixth Biennial Global Conference. <https://ssrn.com/abstract=3217863>

Oisín Suttle, “Rules and Values in International Adjudication: The Case of the WTO Appellate Body” (2019) 68 *ICLQ* 399

Geraldo Vidigal, “Addressing the Appellate Body Crisis: A Plurilateral Solution?” (April 1, 2019). <https://ssrn.com/abstract=3359555>

Jens Hillebrand Pohl, “Blueprint for a Plurilateral WTO Arbitration Agreement Under Article 25 of the Dispute Settlement Understanding” (2018) <https://ssrn.com/abstract=3170510>

Joost Pauwelyn, ‘The WTO’s Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What’s New?’ (2023) 22(5) *World Trade Review* 693.

Week 5

Special and Differential Treatment in the WTO – The Enabling Clause – The Generalised System of Preferences – South Asian countries and the role of the GSP in the economic development

Alexander Keck and Patrick Low, “Special and Differential Treatment in the WTO: Why, When and How?” (January 2004) *WTO Staff Working Paper No. ERSD-2004-03*. <https://ssrn.com/abstract=901629>

Biswajit Dhar & Abhik Majumdar “The India-EC GSP Dispute: The Issues and the Process” (2006) ICTSD Asia Dialogue on WTO Dispute Settlement and Sustainable Development https://www.ictsd.org/sites/default/files/downloads/2013/02/the-india-ec-gsp-dispute_dhar-and-majumdar.pdf

Lorand Bartels, “The WTO Enabling Clause and Positive Conditionality in the European Community's GSP Program”, (2003) 6 *Journal of International Economic Law* 507

Jennifer L. Stamberger, “The Legality of Conditional Preferences to Developing Countries under the GATT Enabling Clause” (2003) 4 *Chicago Journal of International Law* 607.

Gene M Grossman Alan O Sykes, “A preference for development: the law and economics of GSP” (2005) 4(1) *World Trade Review* 41.

Matthew G. Snyder, GSP and Development: Increasing the Effectiveness of Nonreciprocal Preferences, (2012) 33 *Michigan Journal of International Law* 821.

Weeks 6-8

International Tax Law – tax base – sources of international tax principles – tax treaties and agreements – OECD-BEPS project – UN Model Double Taxation Convention – comparative analysis - transfer pricing and the concept of permanent establishment (PE) - Understanding the problem of tax avoidance and how transparency can help

UK v Amazon

<https://www.youtube.com/watch?v=cETKO42wMOs>

Prem Sikka, “No Accounting for Tax Avoidance” (2015) 86(3) *The Political Quarterly* https://www.researchgate.net/publication/277253155_No_Accounting_for_Tax_Avoidance

Achim Pross. “How Tax Transparency Went Global – the New Automatic Exchange Standard: from concept to reality”

Brian Arnols, “An introduction to tax treaties” https://www.un.org/esa/ffd/wp-content/uploads/2015/10/TT_Introduction_Eng.pdf

United Nations Model Double Taxation Convention between Developed and Developing Countries https://www.un.org/esa/ffd/wp-content/uploads/2014/09/UN_Model_2011_Update.pdf

Madalina Cotrut (ed.) *International Tax Structures in the BEPS Era: An Analysis of Anti-Abuse Measures Vol.2* (IBFD, 2015)

Andrew P Morris, Lotta Moberg, “Cartelizing Taxes: Understanding the OECD’s Campaign against “Harmful Tax Competition” (2012) 4(1) *Columbia Journal of Tax Law* 1

Gillian Brock and Hamish Russell, “Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals” (2015) *Harvard University Edmond J. Safra Research Lab Working Papers*, No. 57

Hugh J. Ault, “Some Reflections on the OECD and the Sources of International Tax Principles” (2013) Max Planck Institute for Tax Law and Public Finance Working Paper 2013 – 03.

Julia Braun & Alfons Weichenrieder, “Does Exchange of Information between Tax Authorities Influence Multinationals’ Use of Tax Havens?” (2015) SAFE working paper No. 89, <https://ssrn.com/abstract=2573596>

Michael P. Devereux & John Vella, “Are We Heading Towards a Corporate Tax System Fit for the 21st Century?” (November 20, 2014). Oxford Legal Studies Research Paper No. 88/2014. <https://ssrn.com/abstract=2532933>

Week 9

International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD) Structure and Functions; Impact on Developing Countries with specific focus on South Asian countries.

Mathias Herdegan, *Principles of International Economic Law* (OUP, 2024) Part VI.

Week 10

International Investment Law – the Investor Protections and the role of international arbitral tribunals – Counter-measures in Investment Law – ISDS and the legitimacy crisis resulting from procedural weaknesses in the ISDS – the work of the UNCITRAL WGIII

Y Shany, *The Competing Jurisdiction of International Courts and Tribunals* (OUP, 2003).

J Crawford, ‘Continuity and Discontinuity in International Dispute Settlement’ in C Binder et al, (eds), *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (OUP, 2009) 817.

M Paporinskis, ‘Barcelona Traction: A Friend of Investment Protection Law’ (2008) 8 *Baltic Yearbook of International Law* 105, 105-33.

B Simma and D Pulkowski, ‘Of Planets and Universe: Self-Contained Regimes in International Law’ (2006) 17 *European Journal of International Law* 483.

Eran Sthoeger, Christian J Tams, ‘Swords, Shields and Other Beasts: The Role of Countermeasures in Investment Arbitration’, (2022) 37(1-2) *ICSID Review - Foreign Investment Law Journal* 121.

S Schill, ‘Reforming Investor-State Dispute Settlement: A Comparative and International Constitutional Law Framework’, (2017) 20(3) *Journal of International Economic Law* 649.

Knieper, J., ‘UNCITRAL’s Working Group III Discussion on Dispute Prevention’, (2021) 17(2) *University of St. Thomas Law Journal*, 455.

Khor, M., ‘A Summary of Public Concerns on Investment Treaties and Investor-State Dispute Settlement’, in Mohamadieh, K., Ka-Min, L. (eds.), *Investment Treaties: Views and Experiences from Developing Countries*, Geneva, (The South Centre, 2015).

Week 11

Current developments in the ISDS – The *Achmea* conundrum and the impact of prohibition of intra-EU arbitrations on arbitration with EU – the Energy Charter Treaty and the concerns related to its reforms as well as withdrawal of member-states – A possible Investment Court - Investor Obligations, Business and Human Rights

Kim, J.W., Winnington-Ingram, L.M., ‘Investment Court System under EU Trade and Investment Agreements: Addressing Criticisms of ISDS and Creating New Challenges’, (2021) 16(5) *Global Trade and Customs Journal* 181.

P Bernardini, 'Reforming Investor–State Dispute Settlement: The Need to Balance Both Parties' Interests', (2017) 32(1) ICSID Review 38.

B Choudhury, 'Investor obligations for human rights' (2020) 35 ICSID Review Foreign Invest Law Journal 82.

Surya Deva, *Regulating corporate human rights violations: humanising business* (Routledge, 2012).

P Abel, 'Counterclaims based on international human rights obligations of investors in international investment arbitration' (2018) 1(1) Brill Open Law 61

Week 12

Revision and Discussion

9. Readings

Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, *The World Trade Organization: Law, Practice and Policy* (OUP, 2006).

Simon Lester, Bryan Mercurio, Arwel Davies and Kara Leitner, *World Trade Law: Text, Materials and Commentary* (Hart, 2008)

Bernard Hoekman and Michel Kosteki, *The Political Economy of the World Trading System* (OUP, 2005)

John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, 2d edition (CUP, 1997).

Anand R.P. *New States and International Law*, (Vikas Publishing House: Delhi:1972);

Anthony Anghie, B.S.Chimni, Karen Mickelson and Obiora Okafor (eds.) *The Third World and International Legal Order: Law, Politics and Globalization* (Kluwer, 2003)

AK Koul, 'Developing Countries in the GATT/WTO — Their Obligations and the Law', (2004) 44 Indian Journal of International Law, 451-487.

Kenneth W. Dam, *The GATT: Law and International Economic Organization* (Chicago: University of Chicago Press, 1970).

Christper Arup, *The New World Trade Organisation Agreements* (CUP, 2000).

Robert E. Hudec, *The GATT Legal System and World Trade Diplomacy* (Butterworths, 1990).

Upendra Baxi, 'The New International Economic Order, Basic Needs and Rights: Notes towards Development of the Right to Development' (1983) 23 Indian Journal of International Law 225.

Sachin Chaturvedi, and S. K. Mohanty, 'The WTO and Trade in Electronically Delivered Software: Emerging Challenges and Policy Options – An Indian Perspective' (2008) 42(5) Journal of World Trade 927.

BS Chimni, 'The World Trade Organization, Democracy and Development: A View from South', (2006) 40 Journal of World Trade 5.

Sandeep Gopalan, 'Transitional Commercial Law: The Way Forward', (2003) 18(4) American University International Law Review, 803.

VG Hegde, 'Intellectual Property Rights: National and International Legal Aspects Relating to Patenting of Life Forms' (1998) 38(1) *Indian Journal of International Law* 28.

Aditya Mattoo, and Arvind Subramanian, 'The WTO and the Poorest Countries: The Stark Reality', (2004) 3(3) *World Trade Review* 385.

Pemmaraju Sreenivasa Rao, "The Role of Soft Law in the Development of International Law: Some Random Notes", in *Fifty Years of AALCO: Commemorative Essays in International Law*, Asian-African Legal Consultative Organization, New Delhi 2007;

M Sornarajah, *The International Law on Foreign Investment* (CUP, 2010)

Surya P. Subedi, *International Investment Law: Reconciling Policy and Principle* (Hart, 2008)

Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (Kluwer, 2001).

UNCTAD, *The Outcome of the Uruguay Round: An Initial Assessment* (Geneva: UNCTAD, 1994), 41-105, 205-219

10. Evaluation and Weightage of different components of Evaluation

Evaluation is based on experiential model with case problems

Evaluation is conducted as per the following

Mid-semester examination – 40%

Class participation via discussions and case presentation – 20%

End-semester examination – 40%

