# International Trade Law

Prof. Ilaria Espa; Prof. Filippo Fontanelli

The course aims to offer students an overall view of international economic law, addressing both of its fundamental components in two distinct modules: international trade law and international investment law.

### Module I: Prof. Ilaria Espa

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to illustrate both the international discipline of trade in goods and services, and the activity of the main international organisations operating in the economic sector. This entails the analysis of autonomous but interconnected legal systems, since the discipline of international economic relations is mostly based on regulatory and operational interventions of specific international organisations (on a regional or global basis). The study of the course contents, especially if combined with attendance, aims to enhance students’ learning of the contents, the terminology and the overall legal framework regulating the international trade in goods and services. For a full understanding of the legal framework for trade liberalisation implemented in the EU single market and in exchanges with third countries, attending students will be able to take a closer look at various aspects of customs law and the multilateral trading system within the WTO framework. Then the course will focus on the main economic cooperation organisations operating worldwide (such as the WTO, the IMF, and the World Bank), or operating within the framework of economic integration regional agreements (the EU; the EIB; the EBRD, etc.).

***COURSE CONTENT***

– Customs duties and the *Harmonized System of Tariff Nomenclature*.

– Customs operations; nature, value, origin of goods.

– The *WTO* and the *Multilateral Trading System*.

– The *Regional Trade Agreements* and other forms of *Trade Liberalization*.

– The *Generalized Schemes of Preferences*.

– The European Union trade policy.

– The international monetary and financial institutions.

– The treatment of foreign investment in international law.

– The liberalisation of service provisions according to the GATS; the EU *Commitments* and the liberalisation of services in extra-EU relations.

– The *Trade Defence Instruments: Retaliation; Antidumping; Countervailing Duties; Safeguards*.

– Sustainable development and human rights in the framework of international economic law.

***READING LIST***

M. R. Mauro, *Diritto internazionale dell’economia. Teoria e prassi delle relazioni economiche internazionali,* Napoli, 2019 (except Chapter 2 and Chapter 7).

For the students who have attended the entire first module, the exam may focus on the lecture notes along with the textbook specified above or (at students' choice) on the lecture notes along with the textbook: Peter Van Den Bossche and Denise Prevost, *Essentials of WTO Law,* 2nd edition, Cambridge University Press, 2021.

***TEACHING METHOD***

Lectures with discussion of practical cases under the lecturer's guidance. In particular, students will analyse in class a series of WTO rules, of EU and Italian law concerning customs operations and international trade in goods and services. The material examined will be in English.

***ASSESSMENT METHOD AND CRITERIA***

Oral examinations on the fundamental legal institutions and the various legal regimes applicable to international trade. The assessment will focus on students’ detailed analyses and accurate answer contents; their critical assessment and legal reasoning skills; their ability to accurately mention legislative and case law sources; the ability to contextualise the topics addressed and relate the different issues; their accurate expression skills and correct use of legal terminology.

In light of the aforementioned criteria, excellent and good marks will be assigned to the students who respectively demonstrate excellent or good performances in all the aspects considered above.

Satisfactory marks will be assigned to students who demonstrate their knowledge of the course contents and reference sources without significant gaps, fair argumentation, contextualisation, and correlation skills, as well as an appropriate use of the technical-legal language.

Pass marks will be assigned to students with basic preparation and knowledge gaps on significant parts of the course content, an adequate ability to address the different topics and create connections among them, as well as a partly incorrect use of the technical-legal language.

Students with preparation gaps on significant parts of the course content, difficulties contextualising and addressing the subject issues, as well as a highly inappropriate use of the technical-legal language, will fail the exam.

***NOTES AND PREREQUISITES***

*Please note*

The exam is divided into two modules. The exam on the first course module shall be taken with Prof. Espa (subject to prior notice via email to the lecturer at least one week before the exam date, copying matteo.manfredi@unicatt.it and ilaria.colombo1@unimi.it) on the official exam dates included in the notices on the lecturer page and on the Blackboard course page.

The exam concerning the second course module shall be taken with Prof. Fontanelli on the official exam dates with registration via i-Catt. The exam mark will be registered only once, after the student has passed both module exams, prior to signing up for one of Prof. Fontanelli’s exam dates. It is not possible to take a single exam for both modules and with a single lecturer.

It is possible to take the exam of the second module before the exam of the first module; even in this case, however, the mark registration will be taken on one of Prof. Di Noia’s exam dates, prior to signing up to for the exam.

Drafting a final dissertation in this subject requires being able to understand complex legal texts in English.

In light of the teaching method used, students’ attendance is strongly recommended since the course contents will be dealt with during the frontal lectures and the learning process will be based not as much on the textbooks included in the reading list but on a guided analysis of material that is difficult to find and refer to. The textbook chosen to be studied provides an overall analysis of the subject also for non-attending students. The lecturer and the assistants are available for any clarification for students who cannot attend the course.

Prerequisites for attending the course is the study of European Union law. The material used in class will mostly be in English, therefore attending students are expected to have adequate understanding of complex textbooks in English; however, lecture explanations and/or clarifications outside lecture time may compensate for any difficulties in understanding the language.

Further information can be found on the lecturer's webpage at https://docenti.unicatt.it/ppd2/it/docenti/81187/ilaria-espa/didattica or on the Faculty notice board.

*Receiving Hours*

Prof. Espa receives after class or upon agreement via email.

For requests relating to the exam program, the final dissertation, or the exams abroad, please contact the assistants at the email addresses indicated on the lecturer's web page.

It is not possible to prepare a final dissertation in this subject without the ability to understand complex legal texts in English.

* 1. Module II: *Prof. Filippo Fontanelli*

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The module offers an analysis of the sources and principles of international law that provide protection to foreign investments and explores their historical origin and functioning. In particular, it examines the custom and contractual sources (bilateral and multilateral treaties) which offer substantial protection to investors and investments, as well as the systems for settling disputes between investors and States, typically referred to international arbitral tribunals.

The module also discusses the reasons that have led to the proliferation of criticisms against the international investment protection system and to the numerous attempts to reform it, linked in various ways to its supposed inability to adapt and to some consequences of the dispute system increasingly disliked by many states. Among the various recent and contemporary developments, the module addresses the attempt to create a permanent jurisdiction that replaces the ad hoc courts, the concerted abandonment of the Energy Charter Treaty, the regulation of external financing to the appeals brought by investors and the tendency to include in the treaties the exceptions related to public interests such as the protection of the environment or the protection of indigenous peoples.

***COURSE CONTENT***

* Introduction: the legal framework of international investment protection law
* The scope of investment treaties and the right of investors to refer disputes to arbitration
* The settlement of disputes between foreign investors and States
* The minimum standard of substantive treatment and fair and equitable treatment
* Non-discrimination clauses
* The expropriation
* Contractual disputes and the so-called umbrella-clauses
* Exceptions and justifications (state of necessity, exercise of public powers)
* Forms of compensation for injury
* Opposition to law and investment arbitration, and attempts at reforms
* The new horizons in international investment law

***READING LIST***

There is no scientific monograph in Italian on the subject. The lecturer will previously share the reading materials (articles and primary sources) related to each week, which will form the exam programme. The primary sources and most of the reading materials will be almost exclusively in English.

For students who have attended the entire second module, the exam will focus on the lecture notes and on the material specified above or (at the student's choice) on the lecture notes and the textbook: David Collins, *An Introduction to International Investment Law*, Cambridge University Press, 2016.

A brief compendium in Italian on the subject is: Mario Cera e Simona Di Valentin, *Il diritto degli investimenti*, Il Mulino, 2015. The study of this textbook does not replace the exam materials, however this textbook is recommended for those who want to approach the subject gradually, using an introductory textbook in Italian.

***TEACHING METHOD***

Lectures including discussion of practical cases under the guidance of the lecturer. In particular, the course will analyse the sources of international law relating to the protection of foreign investments and investment arbitration. The materials examined will be mainly in English.

***ASSESSMENT METHOD AND CRITERIA***

Oral exams on the fundamental legal principles and the various legal structures applicable to foreign investments. The exam will assess the completeness of the analysis and the correctness of students’ answers; their critical evaluation and legal argumentation skills; the ability to accurately indicate regulatory and jurisprudential sources; the ability to contextualise the topics covered and connect them; presentation accuracy and appropriate use of legal terminology.

According to the criteria mentioned above, excellent and good marks will be awarded to students who demonstrate excellent or, respectively, good skills in all the spheres specified above.

Quite good marks will be awarded to students who demonstrate knowledge of the programme contents and of the reference sources without relevant gaps, fair ability to argue, contextualise and connect topics, and adequate use of technical-juridical language.

Sufficient marks will be awarded to students who demonstrate only basic knowledge and training gaps on non-fundamental parts of the programme, a sufficient ability to orient themselves between the various topics and to make connections, as well as the use of only partially inaccurate technical-legal language.

The exam will not be passed in case of knowledge gaps on fundamental parts of the programme, of significant difficulties of contextualisation and orientation concerning the subject, as well as of highly inappropriate use of technical-legal language.

***NOTES AND PREREQUISITES***

*Note*: The course is divided into two modules. The exam for the second module of the course must be taken with Prof. Fontanelli on the dates of the official exam sessions indicated in the notices on the lecturer page and on the Blackboard course page, with registration via i-Catt.

There will be a single mark awarded to students once they have passed the exams for both modules of the Course, subject to formal registration on one of the exam dates with Prof. Fontanelli. It is not possible to take the exam for the two modules on a single date with a single lecturer. The second module exam can be taken before the first module exam; also in this case, however, the mark must be registered on one of Prof. Fontanelli’s exam dates, after formally registering to the exam session.

Due to the teaching method used, lecture attendance is strongly recommended, as the programme will be covered during frontal lessons based not so much on the textbooks included in the reading list as on the guided examination of materials that are difficult to find and consult. If course attendance is not possible, the reading materials provided require familiarity with the subject for a correct understanding. The subject is fully covered in the volume by Collins indicated above. Course holders and collaborators are available to provide any clarifications for non-attending students.

It is strongly recommended to approach the study of the subject only after passing a course in public international law. Most of the materials consulted in class will be in English, therefore (attending or non-attending) students must be able to adequately understand complex texts in that language; in any case, explanations during lectures and/or clarifications outside the lessons will make up for any difficulties due to language understanding.

It is not possible to prepare a dissertation on this subject without being able to understand complex legal texts in English.

Further information can be found on the lecturer's webpage at https://docenti.unicatt.it/ppd2/it/docenti/81187/ilaria-espa/didattica or on the Faculty notice board.