

MACQUARIE
UNIVERSITY



FACULTY OF
BUSINESS AND ECONOMICS

Unit code
851

International Trade Law

First semester, 2011

Department
Accounting and Corporate Governance

**MACQUARIE UNIVERSITY
FACULTY OF BUSINESS AND ECONOMICS
UNIT GUIDE**

Year and Semester: 2011, 1

Unit convenor: Professor Peter Gillies

[Prerequisites / Corequisites:] nil

Credit points: 4

Students in this unit should read this unit guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

ABOUT THIS UNIT

The unit examines topics in international trade law. It considers both public and private international trade law. Public international trade law deals with the global trading regimes such as the World Trade Organisation in conjunction with the General Agreement on Tariffs and Trade (WTO-GATT), which regime governs trade between nations. Private international trade law deals with the rules governing private party transactions, such as the content of an international contract for the sale of goods, or the methods available for paying for the international delivery of goods, or the rules governing transport of these goods.

TEACHING STAFF

Convenor

Peter Gillies

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Postgraduate administrator

Alma Urbiztondo

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CONSULTATION TIMES

W3A417 Tuesday 2-3, 6-6.30 or by appointment

CLASSES

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- There will be a weekly face-to-face class on Tuesday 3-6pm, in C5A310
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- The timetable for classes can be found on the University web site at [:http://www.timetables.mq.edu.au/](http://www.timetables.mq.edu.au/)

PRIZES

- Not applicable

REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS.

Recommended textbooks:

(nb: not every textbook deals with all topics)

Moens, G & Gillies, P (1998) *International Trade : Law, Business and Ethics*, 2nd edition, Routledge-Cavendish, Oxford, 2006

(Abbrev MG)

OR

Burnett, R, and Bath, V, *Law of International Business in Australia*, Federation Press 2009
(goof coverage of international business transactions)

(Abbrev BB)

OR

Mercurio, B, et al, *International Business Law* OUP 2010

(Abbrev M)

Blackboard: some materials will be uploaded to Blackboard.

Recommended References

(Later editions of some of these books may be available)

August, R, *International Business Law – Text, Cases & Readings*, 4th edn, Prentice Hall, New Jersey, 2004

Australian Law Reform Commission 1996, *Legal Risk in International Transactions: Australian Law Reform Commission*, AGPS, Canberra.

Burnett, R, and Bath, V, *The Law of International Business in Australasia*, Federation Press, Sydney, 2009

Carr, I, *Principles of International Trade Law*, Cavendish, London, 2005

Chuah, JCT, *Law of international trade*, Sweet & Maxwell, London, 1998

De Cruz, P, *Comparative Law in a Changing World*, Cavendish, 1999

- Fisher, S & Fisher, D, 1998, *Export Best Practice – Commercial and Legal Aspects*, Federation Press, 1998
- Folsom, RH, Gordon, MV & Spanogle, JA, *International Business Transactions – A Problem – Oriented Course Book*, 3rd edn, West Publishing, US, 1995
- Hudec, RE, *Essays on The Nature of International Trade Law*, Cameron May, 1999
- Islam, MR, *International Trade Law*, LBC, Sydney, 1999
- Islam, MR, *International Trade Law of the WTO*, OUP, 2006
- Klotz, JM & Barrett, JA, *International Sales Agreements – An Annotated Drafting and Negotiating Guide*, Kluwer Law International, 1998
- Malbon, J, *Exporting*, Business Law Education Centre, Melbourne, 1994
- Mercurio, B et al, *International Business Law*, OUP, Melbourne, 2010
- Mo, J, *International Commercial Law*, 4th edn, LexisNexis Australia, 2008
- Norton, J, Andenas, M & Foster, M (eds), *The Changing World of International Law in the 21st Century: A Tribute to the Late Kenneth R Simmonds*, Kluwer Law, The Hague, 1998
- Pryles, M, Davies, M & Waincymer, J, *International Trade Law – Commentary and Materials*, 2 ed, Thomson Lawbook, Sydney, 2004
- Ramberg, J, *International Commercial Transactions*, Kluwer Law International, 1997
- Sacks, P & Malbon, J (eds) 1992, *Australian Export Manual*, Longman Professional, South Melbourne.
- Sarachek, B, *International Business Law – A Guide For Executives With Case Examples*, Darwin Press, Princeton, New Jersey, 1994
- Schaffer, R, Earle, B & Augusti, F, *International Business Law And Its Environment*, 5th edn, West Publishing, St Paul, US, 2002
- Seer, G & Smolke-Day, M, *Introduction To International Business Law: Legal Transactions in a Global Economy*, Oceana Publications, New York, 1996
- The Australian Institute of Export 2000, *The Export Handbook*, 17th edn, College of International Business, Sydney.
- Zeller, B 1998, *International Commercial Law for Business*, Federation Press, Sydney, 1998

THOMSON

Harris, *Cases and Materials on International Law*, 7ed 2008

Qureshi and Zeigler, *International Economic Law*, 2 ed 2007 (Sweet and Maxwell)
Schmitthoff's *Export Trade* . 11 ed (Sweet and Maxwell)
Honnold, J, Reitz, C, *Sales Transactions Domestic and International Law*, 3 ed, 2006

MARTINUS NIJHOFF

Footer, M, *An Institutional and Normative Analysis of the World Trade Organisation*, 2005
Stoll, P, Schorkopf, F *WTO – World Economic Order, World Trade Law*, 2005
Wolfrum, R, ed, *WTO-Trade Remedies* 2008
Wolfrum, R (ed), *WTO – Trade in Goods*, 2009
Wolfrum, R (ed), *WTO – Trade in Services*, 2009
Busche, J (ed), *WTO – Trade-related Aspects of Intellectual Property Rights*, 2008
Head, J, *The Future of the Global Economic Organisations*, 2005

HART PUBLISHING

Joerges, C and Petersmann, E, *Constitutionalism, Multilevel Trade Governance and Social Regulation*, 2006
Lester, S, *World Trade Law – Text, Cases and Commentary* 2008
Picker, C (ed), *International Economic Law*, 2008

CAMBRIDGE UP

Van den Bossche, *The Law and Policy of the World Trade Organisation , Text, Cases and Materials*, 2 ed, 2008
Jackson, J *Sovereignty, the WTO and Changing Fundamentals of International Law*, 2006

EDWARD ELGER PUBLISHING

Bentley, P (ed), *Anti-dumping and Countervailing Action*, 2007
Kelly, T, *The Impact of the WTO – The environment, Public Health and Sovereignty*, 2007

ROUTLEDGE-CAVENDISH

Fountoulakis, C (ed), *International Sales Law*, 2006
Carr, I, *International Trade Law*, 3 ed, 2005
Zeller, B, *CISG and the Unification of International Trade Law*, 2006

Relevant Websites

American Society for International Law – guide to internet resources
www.asil.org/resource

APEC – materials
www.apec.org.au

ASIL guide to Electronic Resources for International Law
<http://www.asil.org/resource/pill.html>

Australia – Australian material
www.dfat.gov.au

Australian Law Reform Commission 1996 *Legal Risk in International Transactions*
<http://www.austlii.edu.au/au/other/alrc/publications/reports/80/ALRC80.html>

Update to Guide to International Trade Law Resources on the Internet
<http://www.1lrx.com/features/trade2.htm>

EU – material
www.europa.eu.net

Eye on International Business Law
<http://www.laweye.de/>

Georgetown University's Institute of International Economic Law – on WTO
www.law.georgetown.edu/iiel/

GlobalEdge (Michigan State University) – trade links
<http://globaledge.msu.edu>

New York University – WTO/GATT links
www.law.nyu.edu/library/wto_gatt.html

OECD – materials
<http://www.oecd.org>

Pace University – International Trade Law and the CISG
<http://cisg.law.pace.edu>

International Trade Forum, Click on “Trade Law for Business”
<http://www.tradeforum.org>

International trade strategies – commentaries
www.tradestrategies.com.au

Juris International (Includes text of conventions, more than 160 model contracts, WTO Agreements etc)
<http://www.jurisint.org>

Lex Mercatoria – conventions, rules, links
www.lexmercatoria.org

NAFTA – materials
www.nafta-sec.alena.org

Transnational Law Database – bibliography, *lex mercatoria*
www.tldb.de

TMC Asser Institute – extensive coverage of international law topics
www.asser.nl

UNCITRAL – UNICITRAL materials

www.uncitral.org

UNIDROIT – private international law topics
www.unidroit.org

University of Chicago – links to topics
www.lib.uchicago.edu/-llou/forintl.html

University of Kent – links
<http://library.kent.ac.uk/library/lawlinks/>

University of Western Australia – links
www.law.ecel.uwa.edu.au/intlaw/international_trade_law.htm

US Trade Rep – US trade policy, cases
www.ustr.gov/index.html

World Trade Law – international trade law links
www.worldtradelaw.net NB SUBSCRIPTION SERVICE AVAILABLE THROUGH LIBRARY LAW DATABASES

Worldlii – WTO material
www.worldlii.org

[World Trade Organisation – WTO materials](http://www.wto.org)
www.wto.org

The online law databases available through the university homepage are very useful. These include:

Case Base facilitates searches for Australian legal materials, and provides links to these. (If a case is not available through one of the commercial reports try the parallel BC..... link.)

Hein Online is for searching journal articles.

LexisNexis AU is for searching local primary (cases, legislation) and secondary (articles) materials.

LexisNexis affords a facility for searching for primary and secondary materials from a number of jurisdictions. Although it focuses on US materials it is also a good source for materials from other jurisdictions.

Westlaw international also provides a trans jurisdictional search facility for primary and secondary materials.

Some tips for using these databases – click the Natural Language option; key in fewer rather than more words, so as to provide a wider net for searches (for example, take one distinctive word in the title of a case, if the full title does not get a hit); use AND or & in order to narrow a search (for example, waiver & arbitration will ensure that documents retrieved contain both words).

Worldtradelaw.net –World Trade Organisation dispute resolution materials.

TECHNOLOGY USED AND REQUIRED

- Not applicable

UNIT WEB PAGE

- To be advised
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- Material will be uploaded to Blackboard – which will be accessible from the unit webpage

LEARNING OUTCOMES

This unit aims to develop an appreciation of the nature and role of international trade law, an understanding of its legal framework, and the instruments and institutions that underpin its operations. It aims to develop an understanding of the interpretation of the international instruments and the domestic laws that adopt these, and of the interrelationship between international and domestic law. Students should be aware of legal problems arising from international trade and the principles relevant to their resolution and the dispute resolution mechanisms that are available to their resolution. Students should develop an understanding of strategies that can be taken by international traders to minimise the possibility of conflict arising. More generally the unit will conduce to an understanding of the competing policies and interests underlying the world trade system and its continuing evolution.

GRADUATE CAPABILITIES

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop the capabilities the University's graduates will need to develop to address the challenges, and to be effective, engaged participants in their world.

This unit contributes to this by developing the following graduate capabilities:

- 1 Discipline Specific Knowledge and Skills*
- 2 Critical, Analytical and Integrative Thinking
- 3 Problem Solving and Research Capability
- 4 Creative and Innovative
- 5 Effective Communication
- 6 Engaged and Ethical Local and Global citizens
- 7 Socially and Environmentally Active and Responsible

- 8 Capable of Professional and Personal Judgement and Initiative
- 9 Commitment to Continuous Learning
- 10 The ability to generate research outputs that will create new knowledge

TEACHING AND LEARNING STRATEGY

The class time will be spent reviewing and discussing the materials identified for reading, in light of unit objectives. Classes will take the form of interactive seminars. Students are encouraged to read ahead of class.

SCHEDULE OF TOPICS

1 INTRODUCTION

Concept of international law (including international trade law). Is international law really state law? Adoption of international rules models into state law. Scope of international trade law. Distinction between soft and hard rules regimes. UNIDROIT Principles of International Commercial Contracts, and the *lex mercatoria*.

MG Chap 2, M Chap 1

2 & 3 THE WORLD TRADE ORGANISATION

Examines World Trade Organisation (WTO) and the General Agreement on Tariffs and Trade (GATT), a regime known collectively as WTO-GATT.

MG Chap 7,

4 INTERNATIONAL COMMERCIAL CONTRACTS; INCOTERMS

4.1 International Commercial Contracts

UN Convention on Contracts for the International Sale of Goods (“CISG”, also known as the Vienna Convention).

MG Chap 1, BB Chap 2, M Chaps 2, 3

4.2 Incoterms 2010 – Interpretation of Trade Terms

Reviews the current edition of the International Chamber of Commerce’s Incoterms – the International Rules for the Interpretation of Trade Terms.

5 INTERNATIONAL CARRIAGE OF GOODS BY SEA

Reviews the regimes (such as The Hague Rules and the Hamburg Rules) governing the international transport of goods by sea.

MG Chap 4, BB Chap 2, M Chap 3

6 INTERNATIONAL CARRIAGE OF GOODS BY AIR AND LAND

Reviews the international transportation of goods by air (Warsaw Convention, Guadalajara Convention, Montreal Convention), rail and road.

MG Chap 5, BB Chap 1,

7 FINANCING EXPORTS – LETTERS OF CREDIT

Reviews the financing of exports, focusing on letters of credit and UCP600 (current version of the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits).

MG Chap 6, BB Chap 3, M Chap 4

8 ANTI-DUMPING AND COUNTERVAILING MEASURES REGIMES

Examines the anti-dumping regime (pivoting on Art VI of GATT, in conjunction with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade) and the parallel subsidies and countervailing measures regime (Agreement on Subsidies and Countervailing Measures).

MG Chap 8, BB Chap 4, M

9 INTERNATIONAL COMMERCIAL ARBITRATION

Overviews arbitration as a means for resolving international commercial disputes.

MG Chap 10, M Chap 13

10 TRADE IN INTELLECTUAL PROPERTY

Examines the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights 1994).

MG Chap 9, M Chap 8,

RESEARCH AND PRACTICE

- This unit uses research by Macquarie University researchers (references)
- This unit uses research from external sources (references)
- This unit gives you practice in applying research findings in your assignments
- This unit gives you opportunities to conduct your own research

RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

The default assessment scheme is set out below.

Students may propose an alternative individual assessment scheme for approval – please consult the lecturer. This option will be discussed in the first class.

	Assessment Task 1	Assessment Task 2	Assessment Task 3
Title/Name	Class participation	Problem-solving assignment	Critically reflective essay
Description (<i>including length or similar if applicable</i>)		2500-3000 words	2500-3000 words
Due date			
% Weighting	5	47.5	47.5
Grading method - marking criteria/ standards - expectations in relation to presentation - referencing requirements	Students' participation in class will be assessed by reference to the quality of contribution. This element of assessment is aimed at encouraging comprehensive reading and reflection upon the unit content and the testing of issues through	See under Grades, below Use footnotes to indicate sources, and include a bibliography. The use of headings and subheadings as appropriate is recommended as this will assist organisation of the analysis. This assignment is due by 5pm	See under Grades, below Use footnotes to indicate sources, and include a bibliography. The use of headings and subheadings as appropriate is recommended as this will assist organisation of the analysis. This assignment

	Assessment Task 1	Assessment Task 2	Assessment Task 3
	discussion. Students may choose to give a class presentation.	Monday 25 April 2011	is due by 5pm Monday 13 June 2011
Submission method		Lecturer, or W3A438	Lecturer, or W3A438
Feedback (<i>type, method, date</i>)	After class participation		
Estimated student workload (hours)	For participation, 4 hours	50	50
Learning outcomes assessed			
1	Understanding of role and nature of international trade law	Understanding of role and nature of international trade law	Understanding of role and nature of international trade law
2	Understanding of the legal framework of international trade law	Understanding of the legal framework of international trade law	Understanding of the legal framework of international trade law
3	Skill at interpretation of relevant instruments	Skill at interpretation of relevant instruments	Skill at interpretation of relevant instruments
4	Understanding of legal problems arising in international trade	Understanding of legal problems arising in international trade and their resolution, by focusing on a hypothetical case	Understanding of legal problems arising in international trade
5	Understanding of dispute minimisation and resolution strategies and mechanisms	Understanding of dispute minimisation and resolution strategies and mechanisms	Understanding of dispute minimisation and resolution strategies and mechanisms
6	Understanding of policy issues underlying the international trade system	Understanding of policy issues underlying the international trade system	Understanding of policy issues underlying the international trade system
Graduate capabilities assessed	Knowledge and skills specific to the discipline	Knowledge and skills specific to the discipline	Knowledge and skills specific to the discipline
2	Critical and	Critical, analytical	Critical, analytical

	Assessment Task 1	Assessment Task 2	Assessment Task 3
	thinking	and integrative thinking	and integrative thinking
3	Effective oral communication	Effective written communication	Effective written communication
4		Problem solving and research capacity	Problem solving and research capacity
5			The ability to generate research outputs that will create new knowledge

Essay topics will be uploaded to Blackboard.

Requests for extensions of time for the submission of essays will need to be justified, for example by appropriate medical grounds.

ACADEMIC HONESTY

The nature of scholarly endeavour, dependent as it is on the work of others, binds all members of the University community to abide by the principles of academic honesty. Its fundamental principle is that all staff and students act with integrity in the creation, development, application and use of ideas and information. This means that:

- all academic work claimed as original is the work of the author making the claim
- all academic collaborations are acknowledged
- academic work is not falsified in any way
- when the ideas of others are used, these ideas are acknowledged appropriately.

Further information on the academic honesty can be found in the Macquarie University Academic Honesty Policy at http://www.mq.edu.au/policy/docs/academic_honesty/policy.html

GRADES

Macquarie University uses the following grades in coursework units of study:

HD - High Distinction

D - Distinction

CR - Credit

P - Pass

F - Fail

Grade descriptors and other information concerning grading are contained in the Macquarie University Grading Policy which is available at:

<http://www.mq.edu.au/policy/docs/grading/policy.html>

GRADING APPEALS AND FINAL EXAMINATION SCRIPT VIEWING

If, at the conclusion of the unit, you have performed below expectations, and are considering lodging an appeal of grade and/or viewing your final exam script please refer to the following website which provides information about these processes and the cut off dates in the first instance. Please read the instructions provided concerning what constitutes a valid grounds for appeal before appealing your grade.

http://www.businessandconomics.mq.edu.au/for/new_and_current_students/undergraduate/admin_central/grade_appeals.

SPECIAL CONSIDERATION

The University is committed to equity and fairness in all aspects of its learning and teaching. In stating this commitment, the University recognises that there may be circumstances where a student is prevented by unavoidable disruption from performing in accordance with their ability. A special consideration policy exists to support students who experience serious and unavoidable disruption such that they do not reach their usual demonstrated performance level. The policy is available at:

http://www.mq.edu.au/policy/docs/special_consideration/procedure.html

STUDENT SUPPORT SERVICES

Macquarie University provides a range of Academic Student Support Services.

Details of these services can be accessed at <http://www.student.mq.edu.au>.

IT CONDITIONS OF USE

Access to all student computing facilities within the Faculty of Business and Economics is restricted to authorised coursework for approved units. Student ID cards must be displayed in the locations provided at all times.

Students are expected to act responsibly when utilising University IT facilities. The following regulations apply to the use of computing facilities and online services:

- Accessing inappropriate web sites or downloading inappropriate material is not permitted. Material that is not related to coursework for approved unit is deemed inappropriate.
- Downloading copyright material without permission from the copyright owner is illegal, and strictly prohibited. Students detected undertaking such activities will face disciplinary action, which may result in criminal proceedings.

Non-compliance with these conditions may result in disciplinary action without further notice.

Students must use their Macquarie University email addresses to communicate with staff as it is University policy that the University issued email account is used for official University communication.