

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
DEGREE OF MASTER OF LAWS BY COURSEWORK - 2023/24
2nd SEMESTER END EXAMINATION

International Economic Law (TLLM 12312)
(Three Hours)

Total number of questions: 04

Answer any **Three** questions
(Candidates will be penalized for illegible handwriting.)

01. Institutions and agreements aimed at promoting free trade, ensuring investment protection, and safeguarding financial stability oblige states to facilitate economic integration and growth. However, these institutions and agreements have posed significant challenges to state sovereignty and regulatory autonomy, considerably impacting the classic concepts and principles of international law. A proper balance between these competing interests remains crucial in international economic law and governance.

Do you agree with this statement? Support your answer with relevant authorities from various branches of international economic law.

(20 Marks)

02. Answer **both** (a) and (b).

(a) '[a] world without an effective World Trade Organization (WTO) not only threatens the processes of economic liberalization but would also mean the absence of a multilateral institution capable of governing international economic life.'

Joshua Meltzer, 'State Sovereignty and the Legitimacy of the WTO' (2004-5) 26 U. Pa. J. Int'l L. 693.

In light of the above statement, critically evaluate the main functions of the WTO and their contribution towards governing and driving economic globalization. Support your answer with relevant examples.

(12 Marks)

(b) In 2024, Restoria enacted a mandatory graphic health warning regulation aimed at eliminating all types of decorative and promotional elements on tobacco packaging and labelling. Several member countries of the World Trade Organization challenge this regulation, arguing that it is incompatible with trademark provisions of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and the provisions of the Agreement on Technical Barriers to Trade (TBT). These countries are considering invoking the WTO dispute settlement mechanism to resolve this issue.

Assume that you are an independent trade law expert. Advise these countries whether they can use the WTO dispute settlement mechanism, and if so, the process that they need to follow. Support your answer with relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

(08 Marks)

3. Answer **both** (a) and (b).

(a) Within the Fintech industry, leads for innovation and security do not go hand in hand. By proactively tackling financial crime risks, implementing compliance standards and increasing awareness, Fintech can ensure sustainable growth and foster trust among their customers and stakeholders.

Critically analyze the above statement in the context of the adequacy of Sri Lankan law in addressing illicit commercial activities. Support your answer with suitable examples.

(12 Marks)

(b) Sri Lanka had an unprecedented track record of non-default on foreign debt despite facing socio-economic vulnerabilities. However, the country is currently grappling with economic turmoil following the sovereign debt crisis.

In light of the above statement, analyze the circumstances surrounding this economic turmoil with reference to the economic development milestones of Sri Lanka, its debt profile, and the various types of loans it sought.

(08 Marks)

4. Zara Gold Limited (Zara) is a mining company incorporated in Nevada. The company has sought permission to develop a gold mine site in Bolona, a developing country, using open pit techniques. In January 2023, Zara began the process of securing the necessary permits and approvals to operate its mining project in Bolona. In accordance with the domestic law of Bolona, Zara conducted the environmental and cultural impact assessment to obtain the necessary permits and approvals to operate the mining project, using the open pit techniques. In addition, Zara assessed the potential effects of this mining project on ancient indigenous

Bolonian religious and cultural sites near the proposed gold mine. However, the proposed mining project was not well-received by the Bolonian civil society, especially the Native Bolonian community.

While conducting environmental and social assessments, the Bolonian government adopted stringent environmental and social standards which will apply to future mines in the area, including Zara's mining project. These higher standards were included due to the proximity of the proposed gold mining projects to Native Bolonian religious and cultural sites, and the large scale of the upcoming project using open pit techniques. According to the new regulations, gold mining in the proposed site can only proceed if the area is completely backfilled. Additionally, the regulations mandate that the site must be restored. As a result, the open pit production process that Zara initially planned to use is no longer permitted. These new requirements have a significant impact on the potential profits of Zara's project.

Therefore, in May 2024, Zara initiated an international arbitration at the International Centre of Settlement of Investment Disputes (ICSID) based on the bilateral investment treaty (BIT) between Nevada and Bolona. Zara claimed that the Bolonian government's new measures, which preclude the use of a type of mining previously permitted, violate the country's obligation. Furthermore, the BIT stipulates that any measures without compensation are tantamount to expropriation.

Assume that the Bolona government has appointed you as a legal adviser. Prepare a legal opinion discussing the merits of Zara's allegation and possible defences available to Bolona to deny the liability under international (investment) law to compensate the claimant investor.

(20 Marks)
