



Drafting Options to Protect Health Policies in Trade & Investment Agreements

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- Andrew Mitchell and Elizabeth Sheargold, “Protecting the autonomy of states to enact tobacco control measures under trade and investment agreements” (2014) *Tobacco Control* - <http://ssrn.com/abstract=2510002>
- Andrew Mitchell & Tania Voon, Expert report on ‘International Investment Law and the WHO Framework Convention on Tobacco Control’ for UNCTAD and the Convention Secretariat of the WHO FCTC (2013).
- Advice to Government.

Overview of Presentation

1. Trade & Investment Law
2. Trade & Investment Law Litigation Against Public Health Measures
3. Options to Minimise Legal Risks
 - Options that control the use of dispute settlement
 - Options that limit the scope or application of trade and investment obligations

1. TRADE & INVESTMENT LAW

Comparison

	International Trade Law	International Investment Law
Multilateral treaty	WTO agreements	None
Bilateral/ plurilateral treaties	~300 preferential trade agreements ('PTAs')	~3000 international investment agreements ('IIAs')

Comparison

	International Trade Law	International Investment Law
Broad objectives	Trade liberalisation in order to promote national and global welfare	Protection of investors and investments in order to encourage foreign investment and thereby economic welfare
Coverage	Goods Services Trade-related intellectual property rights	Investments, including property, goods, shares, intellectual property rights, goodwill

Comparison

	International Trade Law	International Investment Law
Potential complainants re treaty breach	Complaints may be brought by WTO member against WTO member (ie state–state)	Complaints may often be brought by state party against state party (ie state–state) or by private investor against host state (ie investor–state).
Remedies	Prospective: typically reform of a measure found to be WTO-inconsistent (no financial compensation); may include temporary WTO-permitted retaliation through trade sanctions	Retrospective: financial compensation

Potential Positive Impact of Trade and Investment Law on Public Health

- Encourage transfer of health technology and knowledge.
- Increase potential for health care spending as a result of higher economic growth.
- Increase access to a wider range of better and

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