



Advisory Centre on WTO Law
Centre Consultatif sur la Législation de l'OMC
Centro de Asesoría Legal en Asuntos de la OMC

COURSE ON WTO

DISPUTE SETTLEMENT PROCEDURES

9 October 2008 – 2 April 2009

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NO	DATE	SUBJECT
INTRODUCTION		
1	9 October 2008	<p>Introduction</p> <ul style="list-style-type: none"> ▪ Objectives and format of the training course. <p>The history and basic features of the DSU</p> <ul style="list-style-type: none"> ▪ A brief history of dispute settlement procedures in the GATT and the WTO. ▪ The basic features of the current procedures. ▪ A brief comparison of the key features of the DSU with features common to domestic legal systems. ▪ An evaluation of the use of the DSU by developing countries.
INITIATING A COMPLAINT UNDER THE DSU		
2	16 October	<p>Choosing among dispute settlement procedures</p> <ul style="list-style-type: none"> ▪ The DSU as a step to achieving solutions: the benefits of negotiating in the shadow of dispute settlement proceedings. ▪ Should you use the WTO dispute settlement procedures or the procedures under a regional trade agreement? ▪ Alternatives to panel proceedings: practical considerations in making the choice between good offices, mediation, conciliation and arbitration.
3	23 October	<p>Making effective use of the DSU</p> <p>Legal and procedural considerations that should be taken into account in deciding whether to proceed to dispute settlement.</p> <ul style="list-style-type: none"> ▪ Can you achieve your objective through the DSU: What remedies does the DSU provide to the complainant? What are the alternatives of the respondent after having lost the case? ▪ The missing cases: what disputes are commonly not brought to the WTO? ▪ What the provisions of WTO law cannot be effectively enforced through DSU procedures?
4	30 October	<p>Initiating a Complaint under the DSU (1)</p> <ul style="list-style-type: none"> ▪ Which legal instruments can be invoked in the WTO dispute settlement system? <ul style="list-style-type: none"> - A bilateral agreement. - A ministerial declaration. - A multilateral environmental agreement. - A mutually agreed solution. ▪ Which matters can be raised before a panel? Causes of action under Article XXIII of the GATT. <ul style="list-style-type: none"> - Violation of obligations under a covered agreement. - Non-violation/situation complaints. - The concept of nullification and impairment.

<p>5</p>	<p>6 November</p>	<p>Initiating a Complaint under the DSU (2)</p> <ul style="list-style-type: none"> ▪ What is a "measure"? ▪ Which measures can be challenged? <ul style="list-style-type: none"> - Terminated or future measures. - Discretionary legislation prior to its application. - Measures taken during the course of the proceedings. ▪ Whose measures can be challenged? <ul style="list-style-type: none"> - Measures by sub-federal governments. - Measures by private entities, such as export or import cartel arrangements. - Measures by the organs of the WTO.
<p>6</p>	<p>13 November</p>	<p>Consultations</p> <ul style="list-style-type: none"> ▪ Role of consultations: to resolve a dispute or assist complainant to prepare its case? ▪ Drafting a request for consultations. ▪ The difference between Article XXII and XXIII consultations. ▪ Preparing advance questions. ▪ Composing delegations, the role of lawyers. ▪ Use of information obtained during consultations. ▪ Third parties in consultations. ▪ Dos and don'ts: Checklist of issues to avoid during consultations.
<p>7</p>	<p>20 November</p>	<p>Establishment and Composition of Panels and Panel Procedures</p> <ul style="list-style-type: none"> ▪ How to draft the panel request. ▪ Relationship between consultations and panel request. ▪ Identification of the specific measures at issue. ▪ Avoiding disputes on terms of reference of the panel. ▪ Dos and don'ts: Common mistakes to avoid in drafting panel requests. ▪ Panel selection: criteria for panelists; criteria for chair; seeking a "balanced" panel; whether to seek sectoral expertise; whether to exclude non-governmental nationals of disputing or third parties; rights of developing country Members; role of Secretariat; role of Director General. ▪ Panel procedures: issues to consider <ul style="list-style-type: none"> - Preliminary rulings. - Business Confidential Information. - Amicus Briefs. - "Open" Hearings. ▪ Dos and don'ts: Checklist of issues.

LITIGATING BEFORE PANELS AND THE APPELLATE BODY		
8	27 November	<p>Presenting Your Case Before a Panel (1)</p> <p>Interpretation of WTO law</p> <ul style="list-style-type: none"> ▪ What principles of treaty interpretation can you invoke? ▪ What is the role of precedent in WTO law?
9	04 December	<p>Presenting Your Case Before a Panel (2)</p> <ul style="list-style-type: none"> ▪ How is the burden of proof distributed between the parties? ▪ What evidence do you need to adduce? <ul style="list-style-type: none"> - economic studies. - access to information. - adverse inferences. - domestic law. ▪ What is the most effective use you can make of experts?
10	11 December	<p>Presenting Your Case Before a Panel (2) (cont'd)</p> <ul style="list-style-type: none"> ▪ How is the burden of proof distributed between the parties? ▪ What evidence do you need to adduce? <ul style="list-style-type: none"> - economic studies. - access to information. - adverse inferences. - domestic law. ▪ What is the most effective use you can make of experts?
11	15 January 2009	<p>Presenting Your Case before the Panel (3)</p> <p>The Perspective of the Complainant</p> <ul style="list-style-type: none"> ▪ Drafting submissions. ▪ First and rebuttal submissions. ▪ The facts: telling the story convincingly. ▪ Requesting preliminary rulings. ▪ Legal argument. ▪ Collecting and presenting exhibits. ▪ Oral argument. ▪ Answering questions from the panel. ▪ Managing multiple complaints. ▪ Judicial economy. ▪ Interim review. ▪ Special considerations in trade remedies cases.

12	22 January	<p>Presenting Your Case before the Panel (4)</p> <p>The Perspective of the Respondent</p> <ul style="list-style-type: none"> ▪ Presenting a defence before a panel. ▪ Countering the complainant convincingly. ▪ Affirmative defences and rule/exception distinction. ▪ Using Article XX as a defence. ▪ Defences that are frequently used without success.
13	29 January	<p>Appellate Review Proceedings</p> <ul style="list-style-type: none"> ▪ What can be appealed? - Scope of appellate review (distinction between facts and law, completing the legal analysis). ▪ Appeals related to Article 11 of the DSU. ▪ Drafting a notice of appeal/other appeal: checklist of issues. ▪ Should you cross-appeal? ▪ Drafting submissions. ▪ Advocacy at the Appellate Body and responding to questions by the Appellate Body division: avoiding the pitfalls. ▪ Completing the analysis
14	05 February	<p>Participating in a case as a third party</p> <ul style="list-style-type: none"> ▪ Seeking to join consultations – what is a "substantial trade interest"? ▪ What are the different third-party rights at the consultations, panel and appellate stages? ▪ Drafting effective third-party submissions. ▪ Third participant and third party status at the Appellate Body. ▪ What is the role of third parties in proceedings under Article 21.5 and Article 22.6?
15	12 February	<p>Participating in a case as a third party (continued)</p> <p><u>Moot Court Exercise: Circulation of case, distribution of tasks</u></p>
16	19 February	<p>Participating in a case as a third party (continued)</p> <p>Settling Disputes and Suspending Proceedings</p> <ul style="list-style-type: none"> ▪ Suspending dispute settlement proceedings: <ul style="list-style-type: none"> - Article 12.12 of the DSU. - Withdrawal of notice of appeal. - Can you "suspend" a case after a report has been circulated? ▪ Settlements/Mutually Agreed Solutions: <ul style="list-style-type: none"> - Negotiating mutually agreed solutions. - The content of a mutually agreed solution - Legal effects under WTO law. - How to notify a mutually agreed solution to the DSB.

POST-LITIGATION: IMPLEMENTATION AND RELATED ISSUES		
17	26 February	<p>Determining the implementation period</p> <ul style="list-style-type: none"> ▪ Negotiations on the compliance period under Article 21.3(b). ▪ Arbitration on the compliance period: <ul style="list-style-type: none"> - The arbitration process and what you need to demonstrate. - Key arbitral decisions under DSU Article 21.3(c). ▪ Can there be more than one implementation period? ▪ Surveillance by the DSB. <p><u>Moot Court Exercise: Written submission of Respondent</u></p>
18	05 March	<p>Determining compliance under Article 21.5 of the DSU</p> <ul style="list-style-type: none"> ▪ Negotiating a sequencing agreement where there is a dispute on a measure taken to comply. ▪ What is a "measure taken to comply"? ▪ Challenging compliance in "as applied" disputes. <p><u>Moot Court Exercise: Written submission of Complainant and Third Party</u></p>
19	12 March	<p>Suspension of concessions and other obligations: Article 22.6 of the DSU</p> <ul style="list-style-type: none"> ▪ When to negotiate compensation under Article 22.1. ▪ When to request authorisation to "retaliate" under Article 22.2. ▪ Principles and procedures. ▪ Preparation of the "retaliation list". ▪ How to determine "equivalence" in the suspension of concessions. ▪ Securing the lifting of "retaliation" when a Member believes it has brought itself into conformity with its WTO obligations.
20	19 March	<p><u>Moot Court Exercise: Panel hearing</u></p>
21	26 March	<p><u>Moot Court Exercise:</u></p> <ul style="list-style-type: none"> ▪ Circulation of Panel report ▪ Discussion of Moot Problem ▪ Discussion on any other questions arising from the previous sessions
22	2 April	<p>Luncheon</p> <ul style="list-style-type: none"> ▪ Evaluation of the course