



Advisory Centre on WTO Law

Centre Consultatif sur la Législation de l'OMC

Centro de Asesoría Legal en Asuntos de la OMC

ACWL TRAINING PROGRAMME ON WTO LAW AND JURISPRUDENCE

PART III

WTO DISPUTE SETTLEMENT PROCEDURES

13 October 2011 – 29 March 2012



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No	Date	Subject
1	13 October 2011	<p>Introductory Session</p> <ul style="list-style-type: none"> ▪ Objectives and format of course ▪ The history and basic features of the DSU ▪ Developing-country experience with the DSU <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 6-11, 15-16, 171-174. - F. Roessler and P. Gappah 'A re-appraisal of non-violation complaints under the WTO Dispute Settlement Procedures' in P.F.J. Macrory et al (eds.) <i>The World Trade Organization: Legal, Economic and Political Analysis, Volume I</i> (2005). - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp. 12-16 , 109-115.
2	20 October	<p>Making effective use of the WTO dispute settlement procedures</p> <ul style="list-style-type: none"> ▪ Can you achieve your objectives through the DSU? ▪ Should you opt for WTO dispute settlement or RTA dispute settlement? ▪ What remedies does the DSU provide to the complainant? ▪ What provisions of WTO law cannot be effectively enforced through DSU procedures? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - F. Piérola and G. Horlick, <i>WTO Dispute Settlement and Dispute Settlement in the 'North-South' Agreements of the Americas: Considerations for Choice of Forum</i>, <i>Journal of World Trade</i> 41(5) (2007), pp. 885-908. - F. Roessler 'The Scope of WTO Law Enforced Through WTO Dispute Settlement Procedures' in M. E. Janow et al. (eds.), <i>The WTO: Governance, Dispute Settlement, and Developing Countries</i> (2008). - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 262-265. - P. Gallagher, <i>Guide to Dispute Settlement</i>, Kluwer Law International World Trade Organization (2002), pp. 47-52.
3	27 October	<p>Initiating a complaint under the DSU (1)</p> <ul style="list-style-type: none"> ▪ Sources of a legal claim in WTO dispute settlement proceedings ▪ Which legal instruments can be invoked in WTO dispute settlement proceedings and in what capacity? ▪ Practical considerations in making the choice between panels and good offices, mediation, conciliation or arbitration <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge

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		<p>University Press (2004), pp. 21-35, 49-79.</p> <ul style="list-style-type: none"> - ACWL, <i>Alternative Dispute Resolution Mechanisms Under the DSU</i>, Background Note for ACWL Training Course, Session 2, 27 October 2011.
4	3 November	<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 <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 21-35.
5	10 November	<p>Consultations</p> <ul style="list-style-type: none"> ▪ Role of consultations: to resolve a dispute or assist the 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 <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 86-94. - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp.43-47.
6	17 November	<p>Requesting the establishment of a Panel and its composition</p> <ul style="list-style-type: none"> ▪ How to draft the panel request ▪ Relationship between the consultations and panel request ▪ Identification of the specific measures at issue ▪ Avoiding disputes on terms of reference of the panel ▪ 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 the Director General

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		<ul style="list-style-type: none"> ▪ Panel procedures: issues to consider <ul style="list-style-type: none"> - Preliminary rulings - Business Confidential Information - Amicus Briefs - "Open" Hearings <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 94-115, 135-143. - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp.47-53.
7	24 November	<p>Presenting your case before a Panel (1)</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? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 116-135, 143-152.
8	1 December	<p>Presenting your case before a Panel (2)</p> <ul style="list-style-type: none"> ▪ The full Panel process - in a table <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? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 49-84. - C. M. Valles, <i>Treaty Interpretation: A Move Away From Rigid Approach?</i>, Presentation for the <i>WTO Law and Jurisprudence Training Course</i>, 1 December 2011. - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp. 90-91.

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9	8 December	<p>Interpretation of WTO law (cont'd)</p> <ul style="list-style-type: none"> ▪ What principles of treaty interpretation can you invoke? ▪ What is the role of precedent in WTO law?
10	12 January 2012	<p>Presenting your case before a 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 <p><i>Reminder: Moot Court Exercise (for those that did not attend the last lecture)</i></p> <ul style="list-style-type: none"> ▪ Circulation of facts ▪ Course participants sign up for complainant, respondent, third party and panel teams ▪ Teams have until 17 January 2012 to submit any requests for clarification of the facts (send these in advance by email to carol.lau@acwl.ch)
11	19 January	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Any requested clarifications of the facts will be given to the teams <p>Presenting your case before a 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 the rule/exception distinction ▪ Defences that are frequently used without success <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - F. Piérola, <i>Practical Considerations for Trade Remedies Disputes at the National and World Trade Organization Levels, Part 4: How to Act in WTO Disputes on Trade Remedies</i>, Global Trade and Customs Journal (2007),

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		pp. 209-216.
12	26 January	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Complainant, respondent and third party teams meet with lawyers to prepare written submissions ▪ Panel team meets with lawyers to prepare an outline of its report ▪ Complainant, respondent and third party teams will file their written submissions by 23 February 2012
13	2 February	<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 ▪ The problem of the lack of remand <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 210-233. - F. Piérola 'The Question of Remand Authority for the Appellate Body' in A. D. Mitchell (ed.), <i>Challenges and Prospects for the WTO</i> (2005). - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp.63-74. - P. Gallagher, <i>Guide to Dispute Settlement</i>, Kluwer Law International World Trade Organization (2002), pp. 36-41.
14	9 February	<p>Participating in a dispute 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? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 109-111, 219-220, 277-278.

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15	16 February	<p>Settling and Suspending Disputes</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 <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 221-222. - F. Piérola, <i>Some Thoughts on How to Make a WTO Mutually Agreed Solution Meaningful</i>, <i>Global Trade and Customs Journal</i> (2008), pp. 81-83. - F. Piérola, <i>Can Transaction Costs Explain the Lack of Negotiated Settlements in WTO Dispute Resolution?</i>, <i>Global Trade and Customs Journal</i> (2008), pp. 147-148. - P. Gallagher, <i>Guide to Dispute Settlement</i>, Kluwer Law International World Trade Organization (2002), pp. 19-22.
16	23 February	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Complainant, Respondent and Third Party teams file their written submissions (by email to carol.lau@acwl.ch) <p>Determining the Reasonable Period of Time to implement under Article 21.3 of the DSU</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 factors relevant in arbitral decisions under DSU Article 21.3(c) ▪ Can there be more than one implementation period? ▪ Surveillance by the DSB <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 234-247. - R. Hansen and D. McRae 'Reconciling the International and the Domestic: the Reasonable Period of Time Under Article 21.3 of the DSU' in M. E. Janow et al. (eds.), <i>The WTO: Governance, Dispute Settlement, and Developing Countries</i> (2008)

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		<p>- WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp.76-78.</p>
17	1 March	<p>Disputes regarding compliance under Article 21.5 of the DSU</p> <ul style="list-style-type: none"> ▪ The context and basic principles ▪ The "sequencing" problem ▪ Operational challenges: <ul style="list-style-type: none"> - Who can request Article 21.5 proceedings? - What is a "measure taken to comply"? - What claims or issues can be raised? ▪ DSU reform? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 247-258. - J. E. Kearns and Steve Charnovitz, <i>Adjudicating Compliance in the WTO: A Review of DSU Article 21.5</i>, Journal of International Economic Law (2002), pp. 331-352.
18	8 March	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Complainant, respondent and third party teams meet with lawyers to prepare opening statements ▪ Panel team meets with lawyers to prepare questions for the parties
19	15 March	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Participants present their oral statements as complainant, defendant and third party teams to the Moot Court Panel
20	22 March	<p>Suspension of concessions and other obligations under Article 22 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 ▪ Cross-retaliation in IPRs and services <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 266-278.

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		- P. Gallagher, <i>Guide to Dispute Settlement</i> , Kluwer Law International World Trade Organization (2002), pp. 47-52.
21	29 March	Concluding Session - Lunch <ul style="list-style-type: none">▪ Moot Court Panel renders its report▪ Evaluation of the course