



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

ACWL COURSE ON
WTO LAW AND JURISPRUDENCE
PART I - BASIC PRINCIPLES OF WTO LAW

OCTOBER 2012 – MAY 2013

Proposed Programme

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No.	Date	Subject
INTRODUCTION		
1	4 Oct.	<p><u>Introductory Session</u></p> <ul style="list-style-type: none"> ▪ Objectives and format of the course. ▪ How did we get here? From Havana to Doha in forty minutes. ▪ Legal structure of the WTO Agreement and the hierarchy of WTO agreements. ▪ Where do I find WTO law and jurisprudence?
BORDER MEASURES		
2	11 Oct.	<p><u>Tariffs – First Session</u></p> <p>Principle: Tariffs exceeding the rate bound in the Member's schedule of concessions and charges other than ordinary customs duties on bound items are prohibited.</p> <ul style="list-style-type: none"> ▪ Article II of the GATT - Schedule of Concessions. ▪ The rules on customs duties and other charges on importation set out in Articles II:1(b), II:2(a) and III:2 of the GATT. ▪ Exercises. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 398-422. - ACWL, <i>The Rules on Customs Duties and Other Charges on Importation set out in Articles II:1(b) II:2(a) and III:2 of the GATT</i>, Course on WTO Law and Jurisprudence, Basic Principles of WTO Law, Sessions 2, 4 October 2012.
3	18 Oct.	<p><u>Tariffs – Second Session</u></p> <ul style="list-style-type: none"> ▪ The negotiation and renegotiation of tariff bindings under Articles XXVIII and XXVIII <i>bis</i> of the GATT. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 423-424. - F. Roessler, <i>Essays on the Legal Structure, Functions & Limits of the World Trade Order</i>. Cameron May (2000), pp. 95-107.
4	25 Oct.	<p><u>Customs valuation, fees and formalities</u></p> <p>Principles: Tariffs shall be levied on the basis of the transaction value. Fees must be commensurate with the cost of services rendered.</p> <ul style="list-style-type: none"> ▪ Objectives and structure of the Customs Valuation Agreement. ▪ Methods to determine the customs value. ▪ <i>Colombia – Ports of Entry</i>. ▪ <i>Thailand – Customs and Fiscal Measures on Cigarettes</i>.

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		<ul style="list-style-type: none"> ▪ Article VIII of the GATT - Fees and formalities connected with importation and exportation. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 429-432. - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law International (1999), pp. 110-115.
5	1 Nov.	<p><u>Restrictions</u></p> <p>Principle: Import quotas and other non-tariff restrictions are prohibited.</p> <ul style="list-style-type: none"> ▪ Article XI of the GATT - General prohibition of quantitative restrictions. ▪ Article 4 of the Agreement on Agriculture - Restrictions applied to imports of agricultural products. ▪ Article 11 of the Agreement on Safeguards - Voluntary export restraints and similar measures. ▪ Articles 2 and 3 of the Agreement on Import Licensing Procedures - Automatic and non-automatic import licensing procedures. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 441-457. - R. Santana & L. A. Jackson, <i>Identifying non-tariff barriers: evolution of multilateral instruments and evidence from the disputes (1948–2011)</i>, <i>World Trade Review</i> 11: 3 (2012), pp. 462-478.
INTERNAL MEASURES		
6	8 Nov.	<p><u>General national treatment obligation – First Session</u></p> <p>Principle: Imported products must be accorded treatment no less favourable than that accorded to like domestic products.</p> <ul style="list-style-type: none"> ▪ Article III:1 of the GATT – The general principle. ▪ Article III:2 of the GATT - National treatment obligation with respect to internal taxation. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 326-364. - F. Roessler, <i>Beyond the Ostensible – A Tribute to Professor Robert Hudec's Insights on the Determination of the Likeness of Products Under the National Treatment Provisions of the General Agreement on Tariffs and Trade</i>, <i>Journal of World Trade</i> 37:4 (2003), pp. 771-781.

No.	Date	Subject
7	15 Nov.	<p><u>General national treatment obligation – Second Session</u></p> <p>Principle: Imported products must be accorded treatment no less favourable than that accorded to like domestic products.</p> <ul style="list-style-type: none"> ▪ Article III:4 of the GATT - National treatment obligation with respect to all laws and regulations affecting the sale, purchase, transportation, distribution or use of products. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - As above.
THE PRINCIPLE OF NON-DISCRIMINATION		
8	22 Nov.	<p><u>Scope of the principle of non-discrimination</u></p> <p>Principle: When applying restrictive border measures, Members shall treat like products equally irrespective of their origin.</p> <ul style="list-style-type: none"> ▪ Article I:1 of the GATT - General most-favoured-nation (MFN) obligation. ▪ Article XIII of the GATT - Non-discriminatory application of quantitative restrictions and tariff quotas. ▪ Article XVII of the GATT - Non-discrimination in respect of purchases and sales by state trading enterprises. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 308-318, 450-455.
9	29 Nov.	<p><u>The non-discrimination exception for regional trade agreements</u></p> <p>Principle: Discrimination within the framework of regional trade arrangements is permitted.</p> <ul style="list-style-type: none"> ▪ Article XXIV of the GATT - Free trade areas and customs unions. ▪ Understanding on Article XXIV - Criteria and procedures for the review of free trade areas and customs unions. ▪ Paragraph 2(c) of the Enabling Clause - Trade arrangements between developing countries. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 652-662. - T. Brink, <i>Which WTO Rules Can a PTA Lawfully Breach? Completing the Analysis in Brazil – Tyres</i>, <i>Journal of World Trade</i> 44:4 (2010), pp. 813-846. - Appellate Body Decision in <i>Turkey – Textiles</i>. - K. Chase, <i>Multilateralism compromised: the mysterious origins of GATT Article XXIV</i>, <i>World Trade Review</i> 5:1 (2006), pp. 1-30. - G. Marceau, <i>The Adoption of the "Best Practices" for Regional and Free Trade</i>

No.	Date	Subject
		<p><i>Agreements in APEC: A Road Towards More WTO-Consistent Regional Trade Agreements?</i>, in Y. Taniguchi, A. Yanovich, J. Bohanes (eds.), "The WTO in the Twenty-first Century, Dispute Settlement, Negotiations, and Regionalism in Asia", Cambridge University Press (2007), pp. 409-422.</p>
GENERAL EXCEPTIONS		
10	6 Dec.	<p><u>Foreign policy exceptions</u></p> <p>Principle: Members may suspend their trade relations with another Member to protect their essential security interests and may reserve the right not to apply the WTO Agreement to new Members.</p> <ul style="list-style-type: none"> ▪ Article XXI of the GATT - Security exceptions. ▪ Article XIII of the WTO Agreement - Non-application of multilateral trade agreements between particular Members. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 628-632.
11	13 Dec.	<p><u>Public policy exceptions – First Session</u></p> <p>Principle: Measures inconsistent with the basic provisions of the GATT may be justified if taken to achieve one of the ten public policy purposes listed in Article XX of the GATT.</p> <ul style="list-style-type: none"> ▪ Article XX of the GATT - General Exceptions. ▪ The jurisprudence of the Appellate Body on Article XX. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 598-624. - Appellate Body Decisions in <i>US – Gasoline</i>, <i>US – Shrimp</i>, <i>Korea – Beef</i>, <i>Brazil – Tyres</i> and <i>Dominican Republic – Cigarettes</i>. <p><u>Moot Court Exercise</u></p> <p><i>This exercise will examine issues related to the basic principles of WTO law. Participants will work on moot court submissions during the rest of the course. There will be an oral hearing during the 25 April 2013 class and the Panel will deliver its report during the end-of-course lunch on 23 May 2013.</i></p> <ul style="list-style-type: none"> ▪ Circulation of facts. ▪ Course participants and ACWL lawyers sign up for complainant, respondent, third party and panel teams. ▪ Teams will have until 17 January 2013 to submit any requests for clarification of the facts.

No.	Date	Subject
12	17 Jan. 2013	<p><u>Public policy exceptions – Second Session</u></p> <p>Principle: Measures inconsistent with the basic provisions of the GATT may be justified if taken to achieve one of the ten public policy purposes listed in Article XX of the GATT.</p> <ul style="list-style-type: none"> ▪ Article XX of the GATT - General Exceptions. ▪ The jurisprudence of the Appellate Body on Article XX. <p><i>Recommended reading:</i> As above.</p> <p><u>Reminder: Moot Court Exercise (for those that did not attend the last lecture)</u></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 the end of this session to submit any requests for clarification of the facts (send these in advance by email to secretariat@acwl.ch).
13	24 Jan.	<p><u>Moot Court Exercise</u></p> <ul style="list-style-type: none"> ▪ Any requested clarifications of the facts will be given to the teams at the start of this session. ▪ 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 28 February 2013.
TBT AND SPS MEASURES		
14	31 Jan.	<p><u>Technical regulations, standards and conformity assessment procedures – First Session</u></p> <p>Principle: A Member may not use technical regulations, standards or conformity assessment procedures so as to create unnecessary obstacles to trade.</p> <ul style="list-style-type: none"> ▪ Article 2 of the TBT Agreement – Technical Regulations and Standards. ▪ Recent Appellate Body decisions on Articles 2.1, 2.2 and 2.4 of the TBT Agreement. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - Appellate Body Decisions in the <i>US – Tuna II</i>, <i>US – Clove Cigarettes</i> and <i>US – COOL</i>. - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law International (1999), pp. 71-77. - G. Marceau and J. Trachtman, <i>The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade</i>, <i>Journal of World Trade</i>, 36:5 (2002), pp. 811-881.

No.	Date	Subject
15	7 Feb.	<p><u>Technical regulations, standards and conformity assessment procedures – Second Session</u></p> <p>Principle: A Member may not use technical regulations, standards or conformity assessment procedures so as to create unnecessary obstacles to trade.</p> <ul style="list-style-type: none"> ▪ Article 4 of the TBT Agreement – Preparation, Adoption and Application of Standards. ▪ Article 5 of the TBT Agreement - Conformity Assessment Procedures. ▪ Relationship of the TBT Agreement with the GATT 1994 and the SPS Agreement. ▪ Are private and commercial standards disciplined under WTO law? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - As above. - ACWL, <i>Private and Commercial Standards and the SPS/TBT Agreements</i>, Course on WTO Law and Jurisprudence, Basic Principles of WTO Law, Session 11, 13 December 2012.
16	14 Feb.	<p><u>Moot Court Exercise</u></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 28 February 2013.
17	21 Feb.	<p><u>Sanitary and phytosanitary measures</u></p> <p>Principle: WTO Members shall ensure that their SPS measures are applied only to the extent necessary to protect human, animal or plant life or health.</p> <ul style="list-style-type: none"> ▪ Basic requirements set out in the SPS Agreement: <ul style="list-style-type: none"> - Articles 2 and 5 - SPS measures must be based on a risk assessment, sufficient scientific evidence, or applied provisionally. - Article 5.5 - The level of protection shall not be determined in an arbitrary manner. - Article 5.6 - SPS measures shall not be more trade-restrictive than required. - Article 8 - Members shall administer their control, inspection and approval procedures in an efficient and transparent manner. ▪ Relationship of the SPS Agreement with Article XX(b) of the GATT 1994. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law International (1999), pp. 62-64. - Appellate Body Decisions in <i>EC – Hormones</i>, <i>Australia – Salmon</i>, <i>Japan – Varietals</i>, <i>EC – GMOs</i> and <i>Australia – Apples</i>.

No.	Date	Subject
SUBSIDIES		
18	28 Feb.	<p><u>General obligations related to subsidies – First Session</u></p> <p>Principles: (1) Subsidies contingent upon export performance or the use of domestic over imported products are prohibited. (2) Members should not cause through the use of any subsidy adverse effects to the interests of other Members.</p> <ul style="list-style-type: none"> ▪ Articles 1 and 2 of the SCM Agreement - Definition of a subsidy. ▪ Article 3 and 4 of the SCM Agreement - Prohibited subsidies. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law International (1999), pp. 90-103. - ACWL, <i>The WTO Law on Subsidies</i>, Course on WTO Law and Jurisprudence, Basic Principles of WTO Law, Sessions 14 and 15, 31 January 2013. - Appellate Body Decisions in <i>Canada – Autos</i> and <i>EC – Aircraft</i>. <p><u>Moot Court Exercise</u></p> <p>Complainant, Respondent and Third Party teams file their written submissions (by email to secretariat@acwl.ch).</p>
19	7 March	<p><u>General obligations related to subsidies – Second Session</u></p> <ul style="list-style-type: none"> ▪ Articles 5 - 7 of the SCM Agreement – Permitted yet actionable subsidies. ▪ Article 8 of the SCM Agreement - Non-actionable subsidies. ▪ Developing countries and the SCM Agreement. ▪ Relationship between the SCM Agreement and the Agreement on Agriculture. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - As above. - Appellate Body Decision in the <i>US – Cotton Subsidies</i> and <i>Brazil – Aircraft</i>.
20	14 March	<p><u>Moot Court Exercise</u></p> <ul style="list-style-type: none"> ▪ Complainant, respondent and third party teams meet with lawyers to prepare opening statements/rebuttal submissions. ▪ Panel team meets with lawyers to prepare questions for the parties.
21	21 March	<p><u>Agricultural Products – First Session</u></p> <p>Principle: In respect of agricultural products, Members may accord export subsidies and apply domestic support measures within the limits of their reduction commitments.</p> <ul style="list-style-type: none"> ▪ Scope of application of the Agreement on Agriculture ▪ Export subsidy disciplines under the Agreement on Agriculture. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law

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		<p>International (1999), pp. 51-62.</p> <ul style="list-style-type: none"> - Appellate Body Decisions in <i>EC – Sugar Subsidies</i> and <i>US – Cotton Subsidies</i>. <p><u>Moot Court Exercise</u></p> <ul style="list-style-type: none"> ▪ Part of the session will be used to permit the parties to meet with lawyers to complete prepare opening statements/rebuttal submissions.
22	11 April	<p><u>Agricultural Products – Second Session</u></p> <ul style="list-style-type: none"> ▪ Market access disciplines under the Agreement on Agriculture. ▪ Domestic support disciplines under the Agreement on Agriculture. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - As above. - Appellate Body Decision in <i>Chile – Price Band</i> and <i>EC – Poultry</i>.
SPECIAL AND DIFFERENTIAL TREATMENT		
23	18 April	<p><u>Tariff preferences for and among developing countries</u></p> <p>Principle: Developing countries may be accorded, and may accord each other, preferential tariff treatment.</p> <ul style="list-style-type: none"> ▪ Paragraph 2(a) of The Enabling Clause - The General System of Preferences. ▪ Paragraph 2(c) of the Enabling Clause - "South-South" preferential arrangements. ▪ Paragraph 2(d) of the Enabling Clause - Special treatment for least-developed countries. <p><u>Non-reciprocity in trade negotiations</u></p> <p>Principles: (1) Developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. (2) Developing countries expect their capacity to make contributions to improve with the progressive development of their economies.</p> <ul style="list-style-type: none"> ▪ Part IV of the GATT - Trade and Development. ▪ Paragraphs 5 - 8 of the Enabling Clause - Principles governing trade negotiations. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche, <i>The Law and Policy of the World Trade Organization, Cases and Materials</i>, Cambridge University Press (2005), pp. 679-682. - Appellate Body Decision in <i>EC – Tariff Preferences</i>
24	25 April	<p><u>Moot Court Exercise</u></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.

No.	Date	Subject
25	2 May	<p data-bbox="316 241 1054 275"><u>Moot Court Exercise – Panel Meeting with the Parties</u></p> <ul data-bbox="376 304 1477 409" style="list-style-type: none"> <li data-bbox="376 304 1477 371">▪ Participants present their oral statements as complainant, defendant and third party teams to the Moot Court Panel. <li data-bbox="376 376 1023 409">▪ Panel questions the parties on their submissions.
CONCLUSION		
26	23 May	<p data-bbox="316 566 564 600"><u>Concluding Lunch</u></p> <ul data-bbox="376 640 890 707" style="list-style-type: none"> <li data-bbox="376 640 890 674">▪ Moot Court Panel presents its report. <li data-bbox="376 678 743 707">▪ Conclusion of the course.