



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 II – FURTHER PRINCIPLES OF WTO LAW: WTO AGREEMENTS ON SERVICES, INTELLECTUAL PROPERTY, GOVERNMENT PROCUREMENT AND TRADE REMEDIES

3 OCTOBER 2013 – 22 MAY 2014

Proposed Programme



Avenue Giuseppe Motta 31-33
C.P. 132
1211 Geneva 20
Switzerland
Telephone: +41 22 919 21 21
Fax: +41 22 919 21 22
Website: www.acwl.ch

No	Date	Subject
1	3 Oct. 2013	<p>Introductory Session: Evolution and Structure of WTO Law</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? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - F. Roessler 'The Agreement Establishing the World Trade Organization' in J.H.J Bourgeois <i>et al</i> (eds.) <i>The Uruguay Round Results: A European Lawyers' Perspective</i> (1995) - C. VanGrasstek, <i>The History and Future of the World Trade Organization</i>, (2013) pp. 39-80
2	10 Oct.	<p>Review of Basic Principles of WTO Law (Open Markets and MFN)</p> <p>Principle: Members shall provide market access subject only to tariffs and other duties and charges specified in Members' Schedules of Commitments.</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 ▪ Article II of the GATT - Tariff bindings <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) treatment obligation ▪ Article XIII of the GATT - Non-discriminatory application of quantitative restrictions and tariff quotas <p>Relationship of principles governing trade in goods to rules governing trade in services, intellectual property, <i>etc.</i></p> <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 317-330, 445-453, 481-495
3	17 Oct.	<p>Review of Basic Principles of WTO Law (National Treatment and Exceptions)</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

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		<p>respect to internal taxation.</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>Principle: Members have policy space to take GATT-inconsistent measures in certain circumstances.</p> <ul style="list-style-type: none"> ▪ Overview of exceptions under Articles XX and XXI of the GATT <p><i>Recommended reading:</i> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 350-403, 545-582, 595-599</p>
4	24 Oct.	Review Session: Practical Exercises on Understanding Basic Principles of WTO Law (Problems from Classes 2-4)
5	31 Oct.	<p>Trade in Services I: Overview of the GATS</p> <ul style="list-style-type: none"> ▪ The General Agreement on Trade in Services (GATS): <ul style="list-style-type: none"> - Scope - Modes of supply - General obligations and disciplines (Part II): Articles II (MFN), III (Transparency), VI (Domestic Regulation), V (Economic Integration) and XIV (Exceptions), <i>etc.</i> <p><i>Recommended reading:</i> - N. Munin, <i>Legal Guide to the GATS</i> (2010), pp. 7-11, 59-85, 105-124, 217-250, 303-318, 337-379</p>
6	7 Nov.	<p>Trade in Services II – Substantive Obligations in the GATS</p> <ul style="list-style-type: none"> ▪ Specific commitments (Part III): Articles XVI (Market Access), XVII (National Treatment), <i>etc.</i> ▪ Progressive liberalisation (Part IV) <p><i>Recommended reading:</i> - E.H. Leroux 'Eleven Years of GATS Case Law: What Have We Learned?' <i>Journal of International Economic Law</i> 10(4) (2007), pp. 749-793 - N. Munin, <i>Legal Guide to the GATS</i> (2010), pp. 147-216</p>
7	14 Nov.	<p>Trade in Services III – Understanding Schedules of Commitments</p> <ul style="list-style-type: none"> ▪ How to read Schedules of Commitments ▪ <i>China – Measures Affecting Electronic Payment Services</i> WT/DS413 ▪ <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> WT/DS285 <p><i>Recommended reading:</i> - N. Munin, <i>Legal Guide to the GATS</i> (2010), pp. 125-146</p>

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8	21 Nov.	Review Session: Practical Exercises on Trade in Services (Problems from Classes 5-7)
End-of-Year Break		
9	16 Jan. 2014	<p>Rules on Government Procurement and State Trading Enterprises</p> <ul style="list-style-type: none"> ▪ The Government Procurement Agreement ▪ Article III:8 of the GATT ▪ Article XVII of the GATT - Non-discrimination in respect of purchases and sales by state trading enterprises ▪ <i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program</i> WT/DS412, WT/DS426 ▪ <i>Korea – Measures Affecting Government Procurement</i> WT/DS163 <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 509-511, 513 - W.J. Davey, 'Article XVII GATT: An Overview', in T. Cottier & P. Mavroidis (eds), <i>State Trading in the Twenty-First Century</i> (1998), p. 17 - Understanding on the Interpretation of Article XVII of the GATT 1994
10	23 Jan.	<p>TRIPS I: Overview</p> <ul style="list-style-type: none"> ▪ Overview of the TRIPS Agreement: <ul style="list-style-type: none"> - Negotiating history - Nature and scope - Cross cutting rules (National Treatment, MFN <i>etc.</i>) <p><i>United States – Section 211 Omnibus Appropriations Act of 1998</i> WT/DS285 <i>Canada – Term of Patent Protection</i> WT/DS170 <i>United States – Section 110(5) of the US Copyright Act</i> WT/DS160 <i>Canada – Patent Protection of Pharmaceutical Products</i> WT/DS114</p> <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Gervais, <i>The TRIPS Agreement: Drafting History and Analysis</i>, second edition (2003) - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 952-1002 <p>Distribution of Moot Court Problem</p> <p><i>This exercise will examine issues related to issues taught during the course. Participants will work on moot court submissions during the rest of the course. There will be an oral hearing during the 1 May 2014 class and the Panel will deliver its report during the end-of-course lunch on 22 May 2014.</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 <p>Teams will have until 30 January to submit any requests for clarification of the facts.</p>

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11	30 Jan.	<p>TRIPS II: Substantive Rules</p> <ul style="list-style-type: none"> ▪ Substantive rules by IP right: <ul style="list-style-type: none"> - Copyright - Trademarks - Industrial designs - Patents - Confidential information - Geographical Indications: definition, rationale, case of wines and spirits <p><i>European Communities – Protection for Trademarks and Geographical Indications for Agricultural Products and Foodstuffs</i> WT/DS174, WT/DS290</p> <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - As above, plus: G.E. Evans & M. Blakeney 'The protection of geographical indications after Doha: Quo Vadis?' 2006 <i>Journal of International Economic Law</i> 9(3) pp. 575-614
12	6 Feb.	<p>TRIPS III: Public Policy Issues</p> <ul style="list-style-type: none"> ▪ General and developing-country flexibilities ▪ The use of a patent without the authorisation of the right-holder ("compulsory licensing") ▪ TRIPS and Public Health: <ul style="list-style-type: none"> - Doha Declaration on the TRIPS Agreement and Public Health (2001) - The Decision on the Implementation of Paragraph 6 of the Doha Declaration on TRIPS and Public Health (2003) and the experience of Rwanda. - Amendment to TRIPS Article 31 <i>bis</i>, 6 December 2005 ▪ Protection of undisclosed test data <p><i>Brazil – Measures Affecting Patent Protection</i> WT/DS199</p> <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 1010-1013 - Doha Declaration on the TRIPS Agreement and Public Health (2001) WT/MIN(01)/DEC/2 - Decision on the Implementation of Paragraph 6 of the Doha Declaration on TRIPS and Public Health (2003), WT/L/540 - General Council, Minutes of Meeting Held on 25, 26 and 30 August 2003, WT/GC/M/82 - Council for TRIPS, Minutes of Meeting Held on 28 August 2003, IP/C/M/41 - General Council, Amendment to the TRIPS Agreement: Decision of 6 December 2005, WT/L/641 - F.M. Abbott 'The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health' 2005 <i>American Journal of International Law</i> 99 pp. 317-358

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13	13 Feb.	<p>TRIPS IV: Enforcement</p> <ul style="list-style-type: none"> ▪ Section 1 (General obligations) ▪ Section 2 (Civil and administrative procedures) ▪ Section 3 (Provisional measures) ▪ Section 4 (Border measures) ▪ Section 5 (Criminal procedures) <p><i>China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights</i> WT/DS362</p> <p><i>EU and a Member State – Seizure of Generic Drugs in Transit</i> WT/DS408, WT/DS409</p> <p><i>Recommended reading:</i> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 1002-1007</p>
14	20 Feb.	Review Session: Practical Exercises on TRIPS (Problems from Classes 10-13)
15	27 Feb.	Moot Court Session (to prepare submissions)
16	6 March	<p>Trade Remedies I – Overview and Procedures</p> <ul style="list-style-type: none"> ▪ Comparison between anti-dumping measures, countervailing duty measures and safeguard measures ▪ Differing rationales for these measures ▪ Major users and major targets ▪ Procedural Obligations / "Facts Available" <p><i>Recommended reading:</i> - P. Mavroidis, <i>Trade in Goods</i> (2008) pp. 338-364 - J. Viner, <i>Dumping: A Problem in International Trade</i> (1923) pp. 374-380</p>
17	13 March	<p>Trade Remedies II – Understanding Dumping</p> <ul style="list-style-type: none"> ▪ The concept of dumping ▪ The definition of product under investigation and like product ▪ The determination of normal value, constructed value ▪ The determination of export price ▪ Fair comparison – calculation of the dumping margin ▪ The zeroing problem ▪ Non-market economy situations <p><i>Recommended reading:</i> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 673-695</p>

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18	20 March	<p>Trade Remedies III – Injury and Causation</p> <ul style="list-style-type: none"> ▪ The concept of material injury and the assessment of injury factors ▪ The assessment of causal link – price effects, volume effects, other factors ▪ Threat of injury cases <p><i>European Communities – Anti-Dumping Measure on Farmed Salmon from Norway</i> WT/DS337</p> <p><i>Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala</i> WT/DS331</p> <p><i>United States – Investigation of the International Trade Commission on Softwood Lumber from Canada (Softwood Lumber VI)</i> WT/DS277</p> <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 696-712 - E. Vermulst, <i>The WTO Anti-Dumping Agreement</i> (2005) pp. 63-99
19	27 March	<p>Trade Remedies IV: Subsidies and Countervailing Duties</p> <ul style="list-style-type: none"> ▪ Quick recap of SCM and AoA law on subsidies ▪ Calculation of the amount of a subsidy (benchmarks for benefits) ▪ Recurring vs. non-recurring subsidies ▪ The problem of pass-through/public bodies <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - A. Lowenfeld, <i>International Economic Law</i> (2002) pp. 199-241 - WTO, <i>Guide to the Uruguay Round Agreements</i> (1999) pp. 90-102 - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 813-832
20	3 April	<p>Review Session: Practical Exercises on Trade Remedies (Problems from Classes 16-19)</p>
21	10 April	<p>Regional Trade Agreements and WTO Obligations</p> <ul style="list-style-type: none"> ▪ Article XXIV of the GATT/Article V of the GATS ▪ The Enabling Clause ▪ Dispute Settlement Provisions of Regional Trade Agreements <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 648-672
Spring Break		
22	1 May	Moot Court (to prepare for the hearing)
23	8 May	Moot Court Hearing

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24	15 May	<p data-bbox="459 226 783 259">Agreement on Safeguards</p> <ul style="list-style-type: none"> <li data-bbox="528 300 727 333">▪ Background <li data-bbox="528 338 1331 409">▪ Substantive standards: unforeseen developments, increasing imports, serious injury, <i>etc.</i> <li data-bbox="528 414 823 448">▪ Other requirements <li data-bbox="528 452 1406 553">▪ <i>Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric</i> WT/DS415, WT/DS416, WT/DS417, WT/DS418 <p data-bbox="459 598 703 631"><i>Recommended reading:</i></p> <ul style="list-style-type: none"> <li data-bbox="459 636 1370 707">- P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 606-632 <li data-bbox="459 712 1070 745">- P. Mavroidis, <i>Trade in Goods</i> (2008) pp. 365-384
25	22 May	<p data-bbox="459 813 788 846">End-of-Course Luncheon</p> <ul style="list-style-type: none"> <li data-bbox="528 887 1214 920">▪ Presentation of the report of the Moot Court panel
	12/19 June	Optional Exam.