



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 2015 – JUNE 2016

Proposed Programme



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No.	Date	Subject
INTRODUCTION		
1	15 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? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - J. Pauwelyn, <i>The Role of Public International Law in the WTO: How Far Can We Go?</i>, <i>The American Journal of International Law</i>, Vol. 95 (2001), pp. 535-578. - F. Roessler, 'The Agreement Establishing the World Trade Organization' in J.H.J Bourgeois et al (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.
BORDER MEASURES		
2	22 Oct.	<p><u>Tariffs</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. ▪ The negotiation and renegotiation of tariff bindings under Articles XXVIII and XXVIIIbis of the GATT. <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. 420-469. - 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 2015-2016, Basic Principles of WTO Law. - F. Roessler, <i>Essays on the Legal Structure, Functions & Limits of the World Trade Order</i>. Cameron May (2000), pp. 95-107.
3	29 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. ▪ 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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 457-459. - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law International (1999),

No.	Date	Subject
		pp. 110-115.
4	5 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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 480-497. - 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		
5	12 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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 349-402. - 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.
6	19 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.

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7	26 Nov.	Review session: border measures and internal measures
THE PRINCIPLE OF NON-DISCRIMINATION		
8	3 Dec.	<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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 315-334, 491-495.
End of the year break		
GENERAL EXCEPTIONS		
9	14 Jan. 2016	<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. <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. 648-664. - 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. - G. Marceau, <i>The Adoption of the "Best Practices" for Regional and Free Trade Agreements in APEC: A Road Towards More WTO-Consistent Regional Trade Agreements?</i>, in Y. Taniguchi, A. Yanovich, J. Bohanes (eds.), <i>"The WTO in the Twenty-first Century, Dispute Settlement, Negotiations, and Regionalism in Asia"</i>, Cambridge University Press (2007), pp. 409-422. - C. Chase, A. Yanovich, J. Crawford and P. Ugaz, <i>"Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements – Innovative or Variations on a Theme?"</i>, WTO Working Papers (2013), pp. 46-52. - G. Clyde Hufbauer and C. Cimino-Isaacs, <i>"How will TPP and TTIP Change the WTO System?"</i>, <i>Journal of International Economic Law</i> 18 (2015), pp. 679–696. - L. Bartels, S. Silva, H. Hijazi, H. Schloemann, T. Cottier, <i>"Re-Thinking Reciprocity: A New Framework for WTO Disciplines on North-South Regional Trade Agreements"</i>, Working Paper No 2013/20, NCCR Trade Regulation (2013), pp. 3-36. - W.M. Choi, <i>"Legal Problems of making Regional Trade Agreements with Non-WTO-Member States"</i>, <i>Journal of International Economic Law</i> 8:4 (2005), pp. 825–860.
10	21 Jan.	<u>Foreign policy exceptions</u>

No.	Date	Subject
		<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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 595-599. - P. Lindsay, "The Ambiguity of GATT Article XXI: Subtle Success or Rampant Failure?", <i>Duke Law Journal</i> 52:1277 (2003), pp. 1277-1313. <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 28 April 2016 class and the Panel will deliver its report during the end-of-course lunch on 2 June 2016.</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 4 February 2016 to submit any requests for clarification of the facts.
11	28 Jan.	<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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 545-582. <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 4 February 2016 to submit any requests for clarification of the facts (send these in advance by email to secretariat@acwl.ch).
12	4 Feb.	<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.

No.	Date	Subject
		<ul style="list-style-type: none"> ▪ The jurisprudence of the Appellate Body on Article XX. <p><i>Recommended reading:</i> As above.</p>
TBT MEASURES		
13	11 Feb.	<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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 851-891. - 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. <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.
14	18 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.
15	25 Feb.	<p>Review session: the principle of non-discrimination, general exceptions and TBT measures</p>
16	3 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 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 18 March 2016.
SPS MEASURES		

No.	Date	Subject
17	10 March	<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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 894-949.
SUBSIDIES		
18	17 March	<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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 745-849. - ACWL, <i>The WTO Law on Subsidies</i>, Course on WTO Law and Jurisprudence 2015-2016, Basic Principles of WTO Law. <p><u>Reminder: 14 April: Moot Court Exercise</u></p> <p>Complainant, Respondent and Third Party teams file their written submissions (by email to secretariat@acwl.ch).</p>
Spring break		
19	7 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 meets with lawyers to prepare questions for the parties.
20	14 April	<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.

No.	Date	Subject
		<ul style="list-style-type: none"> ▪ 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"> - Same as session 19.
AGRRICULTURAL PRODUCTS		
21	21 April	<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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 835-844.
22	28 April	<p><u>Moot Court Exercise – Panel Meeting with the Parties</u></p> <ul style="list-style-type: none"> - Participants present their oral statements as complainant, defendant and third party teams to the Moot Court Panel. - Panel questions the parties on their submissions.
Break		
23	12 May	<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.
24	19 May	<p>Review session: subsidies, agricultural products and SPS measures</p>
SPECIAL AND DIFFERENTIAL TREATMENT		
25	26 May	<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(d) of the Enabling Clause – Special treatment for least-developed countries. <p><u>Non-reciprocity in trade negotiations</u></p>

No.	Date	Subject
		<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 and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 332-335.
CONCLUSION		
26	2 June	<p><u>Concluding Lunch</u></p> <ul style="list-style-type: none"> ▪ Moot Court Panel presents its report. ▪ Conclusion of the course.