



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 2018 – MAY 2019

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? <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 et al (eds.), <i>The Uruguay Round Results: A European Lawyers' Perspective</i> (1995). - M. Crowley, "An introduction to the WTO and GATT," <i>Economic Perspectives</i>, Issue Q IV (2003), pp. 42-57. - C. VanGrasstek, <i>The History and Future of the World Trade Organization</i>, (2013), pp. 39-80.
BORDER MEASURES		
2	11 Oct.	<p><u>Tariffs</u></p> <p>Principle: Tariffs exceeding the rate bound in a 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 1994 - 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 1994. ▪ The negotiation and renegotiation of tariff bindings under Article XXVIII 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>, Fourth Edition (2017), pp. 415-473. - F. Roessler, <i>Essays on the Legal Structure, Functions & Limits of the World Trade Order</i>, Cameron May (2000), pp. 95-107. - 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 1994</i>.
3	18 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 1994 - 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>, Fourth Edition (2017), pp. 454-457.

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		<ul style="list-style-type: none"> - WTO Secretariat, <i>Guide to the Uruguay Round Agreements</i>, Kluwer Law International (1999), pp. 110-115.
4	25 Oct.	<p><u>Restrictions</u></p> <p>Principle: Quotas and other non-tariff restrictions are prohibited.</p> <ul style="list-style-type: none"> ▪ Article XI of the GATT 1994 - 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>, Fourth Edition (2017), pp. 480-498. - R. Santana & L. A. Jackson, "Identifying non-tariff barriers: evolution of multilateral instruments and evidence from the disputes (1948–2011)", <i>World Trade Review</i> (2012) Vol. 11, Issue 3, pp. 462-478.
THE PRINCIPLE OF NON-DISCRIMINATION: NATIONAL TREATMENT		
5	1 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 1994 - General principle. ▪ Article III:2 of the GATT 1994 - 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>, Fourth Edition (2017), pp. 341-399. - F. Roessler, "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>Journal of World Trade</i> (2003), Vol. 37, Issue 4, pp. 771-781.

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6	8 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 1994 - 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.
7	15 Nov.	<p>Review session: border measures and national treatment</p>
THE PRINCIPLE OF NON-DISCRIMINATION: MOST-FAVOURED-NATION TREATMENT		
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 1994 - General most-favoured-nation (MFN) obligation. ▪ Article XIII of the GATT 1994 - Non-discriminatory application of quantitative restrictions and tariff quotas. ▪ Article XVII of the GATT 1994 - 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>, Fourth Edition (2017), pp. 307-325, 493.
GENERAL EXCEPTIONS		
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 1994 - Free trade areas and customs unions. ▪ Understanding on Article XXIV of the GATT 1994 - 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>, Fourth Edition (2017), pp. 671-688, 692-694. - C. Chase, A. Yanovich, J. Crawford and P. Ugaz, "Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements – Innovative or Variations on a Theme?", WTO Working Papers (2013), pp. 46-52.

No.	Date	Subject
10	6 Dec.	<p><u>Security and 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 1994 - 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>, Fourth Edition (2017), pp. 618-623. - R. Alford, "The Self-Judging Security Exception", <i>Journal Articles</i> (2011), pp. 697-759.
End of the year break		
11	17 Jan. 2019	<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 1994.</p> <ul style="list-style-type: none"> ▪ Article XX of the GATT 1994 - General Exceptions. ▪ The jurisprudence of the Appellate Body on Article XX 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>, Fourth Edition (2017), pp. 544-605. - D. Regan, "The Meaning of 'Necessary' in GATT Article XX and GATS Article XIV: The Myth of Cost-Benefit Balancing," <i>World Trade Review</i> (2007) Vol. 6, Issue 3, pp. 347-369. <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 their moot court submissions during the rest of the course. There will be an oral hearing during the 2 May 2019 class and the Panel will deliver its report during the end-of-course lunch on 23 May 2019.</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 <u>31 January 2019</u> to submit any requests for clarification of the facts by email to secretariat@acwl.ch.
12	24 Jan.	<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 1994.</p> <ul style="list-style-type: none"> ▪ Article XX of the GATT 1994 - General Exceptions. ▪ The jurisprudence of the Appellate Body on Article XX of the GATT 1994.

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		<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 <u>31 January 2019</u> to submit any requests for clarification of the facts by email to secretariat@acwl.ch.
13	31 Jan.	Review session: the principle of non-discrimination and general exceptions
14	7 Feb.	<p><u>Moot Court Exercise</u></p> <ul style="list-style-type: none"> - 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 29 March 2019.
TBT MEASURES		
15	14 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. ▪ 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>, Fourth Edition (2017), pp. 883-932. - M. Alcover and A. M. Garcés, "The Interpretation of 'Treatment No Less Favourable Under Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement: A Comparative Analysis'", <i>Global Trade and Customs Journal</i> (2016) Vol. 11, Issue 9, pp. 360-368. - A. Sanchez and K. Aneno, "Article 2.2 of the TBT Agreement: More Complicated than Necessary?", <i>Global Trade and Customs Journal</i> (2016), Vol. 11, Issue 9, pp. 369-377. - G. Marceau and J. Trachtman, "A Map of the World Trade Organization Law of Domestic Regulation of Goods: The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade", <i>Journal of World Trade</i> (2014), Vol. 48, Issue 2, pp. 351–432.

No.	Date	Subject
16	21 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"> - L. Chea and F. Piérola "The Question of Private Standards in World Trade Organization Law", <i>Global Trade and Customs Journal</i> (2016) Vol. 11, Issue 9, pp. 388-395. - V. Pogoretsky and T. Yanguas, "From Standard-Takers" to "Standard-Makers": Developing and Least-Developed Countries' Perspectives in the Harmonization of Technical Regulations through International Standards", <i>Global Trade and Customs Journal</i> (2016), Vol.11 Issue 9, pp. 378-387.
SPS MEASURES		
17	28 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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Fourth Edition (2017), pp. 935-990. - R. Cunningham, "The ABC of GMOs, SPS & the WTO: An analysis of the application of the Agreement on Sanitary and Phytosanitary Measures within the context of biotechnology and international trade", <i>Southern Cross University Law Review</i> (2005) Vol. 9, pp. 19 – 37.
18	7 March	Review session: TBT measures and SPS measures
19	14 March	<p><u>General obligations related to subsidies</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>

No.	Date	Subject
		<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. ▪ 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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Fourth Edition (2017), pp. 769-877. - ACWL, <i>The WTO Law on Subsidies</i>.
20	21 March	<p><u>Fisheries subsidies</u></p> <ul style="list-style-type: none"> ▪ The mandate to negotiate fisheries subsidies negotiations. ▪ The disciplines currently under negotiations (illegal, unreported and unregulated fishing (IUU), overfishing and overcapacity). ▪ Issues of transparency (notification). ▪ Options for the placement of a potential agreement on fisheries subsidies within the WTO legal framework. <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - A. Tipping, "Building Comprehensive and Effective WTO Rules on Fisheries Subsidies", Information Note published by ICTSD (2018). - C. Schmidt, "Issues and Options for Disciplines on Subsidies to Illegal, Unreported and Unregulated Fishing", Reference Paper published by ICTSD (2017).
AGRICULTURAL PRODUCTS		
21	28 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"> - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Fourth Edition (2017), pp. 867-877. - D. Blandford, "The World Trade Organization Agreement on Agriculture and World Food Security" <i>Penn State Journal of Law & International Affairs</i> (2015), Vol. 3, Issue 2, pp. 156-167. <p><u>Reminder: Moot Court Exercise</u></p> <p>Complainant, Respondent and Third Party teams file their written submissions (by email to secretariat@acwl.ch) by 29 March.</p>

No.	Date	Subject
22	4 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"> - J. Glauber, "Unfinished Business in Agricultural Trade Liberalisation", publication by Australian Government (2016).
23	11 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.
24	2 May	<p><u>Moot Court Exercise – Panel Meeting with the Parties (at the WTO)</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.
SPECIAL AND DIFFERENTIAL TREATMENT		
25	9 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(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 1994 – 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>, Fourth Edition (2017), pp. 687-688. - L. Bartels, "The WTO Enabling Clause and Positive Conditionality in the European Community's GSP Program", <i>Journal of International Economic Law</i> (2003), Vol. 6 Issue 2, pp. 507-532.

No.	Date	Subject
26	16 May	Review session: subsidies, agricultural products and special and differential treatment
27	23 May	<u>Concluding Lunch</u> <ul style="list-style-type: none"> ▪ Moot Court Panel presents its report. ▪ Conclusion of the course.
	20 June	Exam review session (tentative)
	25 June	First date for the optional exam for the delegates (tentative)
	27 June	Second date for the optional exam for the delegates (tentative)

Make-up classes:

- 1) Tuesday 30 Oct. 2018: Border measures
- 2) Tuesday 27 Nov. 2018: Internal measures and the principle of non-discrimination
- 3) Tuesday 5 Feb. 2019: General exceptions
- 4) Tuesday 12 March 2019: TBT measures and SPS measures
- 5) Tuesday 26 March 2019: Subsidies
- 6) Tuesday 14 May 2019: Agricultural products and special and differential treatment