



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 – WTO LAW ON SERVICES, INTELLECTUAL PROPERTY, TRADE REMEDIES, AND OTHER DISCIPLINES

13 OCTOBER 2016 – 1 JUNE 2017

Proposed Programme



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No	Date	Subject
INTRODUCTION		
1	13 Oct. 2016	<p><u>Introductory Session</u></p> <ul style="list-style-type: none"> ▪ Objectives and format of the course ▪ Doing research: Where do I find WTO law and jurisprudence? ▪ From the ITO to the WTO: The historical origin and structure of the WTO Agreements ▪ The hierarchy of WTO agreements <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	20 Oct.	<p><u>Overview of Basic GATT Principles</u></p> <ul style="list-style-type: none"> ▪ Most-favoured nation (MFN) obligation: Articles I:1 and XIII of the GATT 1994 ▪ Exceptions to the MFN obligation: Article XXIV of the GATT 1994 and the Enabling Clause ▪ National treatment (NT) obligation: Articles III:2 and III:4 of the GATT 1994 ▪ Border measures: tariff bindings under Article II of the GATT 1994 ▪ Quantitative restrictions: Article XI:1 of the GATT 1994 ▪ Exceptions under Articles XX and XXI 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. 317-330, 350-403, 445-453, 481-495, 545-582, 595-599
SOURCES OF WTO LAW		
3	27 Oct.	<p><u>Sources of WTO Law / Rule-making in the WTO</u></p> <ul style="list-style-type: none"> ▪ Ministerial Declarations and Decisions ▪ Multilateral interpretations under Art. IX:2 of the WTO Agreement ▪ Waivers under Art. IX:3 of the WTO Agreement ▪ Amendments under Art. X of the WTO Agreement ▪ Accession Protocols and Working Party Reports ▪ "Other decisions of the CONTRACTING PARTIES to the GATT 1947" within the meaning of paragraph 1(b)(iv) of the GATT 1994 ▪ "Decisions, procedures [or] customary practices" within the meaning of Article XVI:1 of the WTO Agreement <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - V. Hughes, "WTO rule-making: WTO Accession Protocols and jurisprudence" in Dadush U., Osakwe C., (eds.), <i>WTO Accessions and</i>

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		<i>Trade Multilateralism: Case Studies and Lessons from the WTO at Twenty</i> (2015).
TRADE IN SERVICES		
4	3 Nov.	<p><u>Trade in Services I: Overview of the GATS</u></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></p> <ul style="list-style-type: none"> - N. Munin, <i>Legal Guide to the GATS</i> (2010), pp. 7-11, 59-85, 105-124, 217-250, 303-318, 337-379
5	10 Nov.	<p><u>Trade in Services II: Substantive Obligations in the GATS</u></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></p> <ul style="list-style-type: none"> - 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
6	17 Nov.	<p><u>Trade in Services III: Understanding Schedules of Commitments</u></p> <ul style="list-style-type: none"> ▪ How to read Schedules of Commitments ▪ <i>China – Measures Affecting Electronic Payment Services</i> DS413 ▪ <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> DS285 ▪ <i>Argentina – Measures Relating to Trade in Goods and Services</i> DS453 <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - N. Munin, <i>Legal Guide to the GATS</i> (2010), pp. 125-146
7	24 Nov.	Review Session: Trade in Services (Sessions 4-6)
8	1 Dec.	<p>Moot Court: Introductory session</p> <ul style="list-style-type: none"> ▪ The WTO dispute settlement process ▪ Drafting submissions ▪ Litigation techniques <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</i>

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		<i>Trade Organization</i> , Third Edition (2013), pp. 244-298
INTELLECTUAL PROPERTY		
9	8 Dec.	<p><u>TRIPS I: Overview</u></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 etc.) <p><i>United States – Section 211 Omnibus Appropriations Act of 1998 DS285</i> <i>Canada – Term of Patent Protection DS170</i> <i>United States – Section 110(5) of the US Copyright Act DS160</i> <i>Canada – Patent Protection of Pharmaceutical Products DS114</i></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
End-of-Year Break		
10	12 Jan. 2017	<p><u>TRIPS II: Substantive Rules</u></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 DS174, DS290</i></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) (as above) - P. Van den Bossche and W. Zdouc, <i>The Law and Policy of the World Trade Organization</i>, Third Edition (2013), pp. 952-1002 (as above) - G.E. Evans & M. Blakeney 'The protection of geographical indications after Doha: Quo Vadis?' <i>Journal of International Economic Law</i> 9(3) (2006) pp. 575-614 <p><u>Moot Court Exercise</u></p> <p><i>This exercise will examine issues related to this year's topics. Participants will work on moot court submissions during the rest of the course. There will be an oral hearing during the 4 May 2017 class and the Panel will deliver its report during the end-of-course lunch on 1 June 2017.</i></p>

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		<ul style="list-style-type: none"> - Circulation of facts. - Course participants and ACWL lawyers sign up for complainant, respondent, third party and panel teams.
11	19 Jan.	<p><u>TRIPS III: Public Policy Issues</u></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 DS199</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. 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
12	26 Jan.	<p><u>TRIPS IV: Enforcement</u></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 DS362</i></p> <p><i>EU and a Member State – Seizure of Generic Drugs in Transit DS408, DS409</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. 1002-1007

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13	2 Feb.	Review Session: TRIPS (Sessions 9-12)
14	9 Feb.	Moot Court Session (to prepare submissions)
TRADE REMEDIES		
15	16 Feb.	<p><u>Trade Remedies I: Overview and Procedures</u></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> <ul style="list-style-type: none"> - 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
16	23 Feb.	<p><u>Trade Remedies II: Understanding Dumping</u></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 / China's Protocol of Accession <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. 673-695
17	2 March	<p><u>Trade Remedies III: Subsidies and Countervailing Duties</u></p> <ul style="list-style-type: none"> ▪ Quick recap of SCM and AoA law on subsidies ▪ Export processing zones ▪ 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
18	9 March	<p><u>Trade Remedies IV: Agreement on Safeguards</u></p> <ul style="list-style-type: none"> ▪ Background

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		<ul style="list-style-type: none"> ▪ Substantive standards: unforeseen developments, increasing imports, serious injury, etc. ▪ Other requirements ▪ <i>Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric</i> DS415, DS416, DS417, DS418 ▪ <i>Argentina – Measures Affecting the Importation of Goods</i> DS438, DS444, DS445 <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. 606-632 - P. Mavroidis, <i>Trade in Goods</i> (2008) pp. 365-384
19	16 March	<p><u>Trade Remedies V: Injury and Causation</u></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> DS337 <i>Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala</i> DS331 <i>United States – Investigation of the International Trade Commission on Softwood Lumber from Canada (Softwood Lumber VI)</i> 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
20	23 March	Review Session: Trade Remedies (Sessions 15-19)
TRIMS / IMPORT LICENSING		
21	30 March	<p><u>TRIMS and Import Licensing</u></p> <p>TRIMS Agreement:</p> <ul style="list-style-type: none"> ▪ Background and structure ▪ Illustrative list of TRIMS ▪ The TRIMS Agreement in the jurisprudence <p><i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program</i> DS412, DS426</p> <p>Agreement on Import Licensing Procedures:</p> <ul style="list-style-type: none"> ▪ Main obligations ▪ Agreement on Import Licensing Procedures in the jurisprudence <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. 495-497

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TRADE FACILITATION		
22	6 April	<p><u>The Trade Facilitation Agreement</u></p> <ul style="list-style-type: none"> ▪ Background ▪ Main obligations under the TFA ▪ The relationship between the Trade Facilitation Agreement (TFA) and other WTO Agreements ▪ The TFA and dispute settlement <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - A. Eliason, <i>The Trade Facilitation Agreement – Episode IV: A New Hope for the World Trade Organization</i> (2014) - J.M. Finger, 'The WTO Trade Facilitation Agreement: Form without Substance Again?', in <i>Journal of World Trade</i> (2014) 1279 - 1287. - S. Hamanaka, 'WTO Agreement on Trade Facilitation: Assessing the Level of Ambition and Likely Impacts', in <i>Global Trade and Customs Journal</i> (2014) pp. 341 – 351 - N. Neufeld, 'The Long and Winding Road: How WTO Members Finally Reached a Trade Facilitation Agreement', <i>WTO Staff Working Paper ERSD-2014-06</i> (2014) - J. Pauwelyn, A. Guzman, J. Hillman, <i>International Trade Law</i> (2016), pp. 767-768
Spring Break		
23	27 April	Moot Court (to prepare for the hearing)
24	4 May	Moot Court Hearing
GOVERNEMENT PROCUREMENT AND STEs		
25	11 May	<p><u>Rules on Government Procurement and State Trading Enterprises</u></p> <ul style="list-style-type: none"> ▪ The Government Procurement Agreement 1994 and the revised Government Procurement Agreement 2014 ▪ Article III:8 of the GATT ▪ Article XVII of the GATT - Non-discrimination in respect of purchases and sales by state trading enterprises <p><i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program DS412, DS426</i> <i>Korea – Measures Affecting Government Procurement DS163</i></p> <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - Understanding on the Interpretation of Article XVII of the GATT 1994 - 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 - A. Reich, 'The New Text of the Agreement on Government Procurement: an Analysis and Assessment', in <i>Journal of International Economic Law</i> (2009) pp. 989 – 1022

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26	18 May	Review Session: TRIMs, Import Licensing, Government Procurement and State Trading Enterprises (Sessions 21, 22 and 25)
Break		
27	1 June	End-of-Course Luncheon <ul style="list-style-type: none"><li data-bbox="528 510 1190 544">▪ Presentation of the report of the Moot Court panel
	15/22 June	Optional Exam