



Advisory Centre on WTO Law

Centre Consultatif sur la Législation de l'OMC

Centro de Asesoría Legal en Asuntos de la OMC

ACWL TRAINING PROGRAMME ON WTO LAW AND JURISPRUDENCE

PART III

WTO DISPUTE SETTLEMENT PROCEDURES:

REVISED SCHEDULE

12 January 2012 – 29 March 2012



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No	Date	Subject
9	12 January 2012	<p>Presenting your case before a Panel (3)</p> <p>The Perspective of the Complainant</p> <ul style="list-style-type: none"> ▪ Drafting submissions ▪ First and rebuttal submissions ▪ The facts: telling the story convincingly ▪ Requesting preliminary rulings ▪ Legal argument ▪ Collecting and presenting exhibits ▪ Oral argument ▪ Answering questions from the panel ▪ Managing multiple complaints ▪ Judicial economy ▪ Interim review ▪ Special considerations in trade remedies cases <hr style="width: 10%; margin: 20px auto;"/> <p><i>Reminder: Moot Court Exercise (for those that did not attend the last lecture)</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 17 January 2012 to submit any requests for clarification of the facts (send these in advance by email to carol.lau@acwl.ch)
10	19 January 2012	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Any requested clarifications of the facts will be given to the teams <p>Presenting your case before a Panel (4)</p> <p>The Perspective of the Respondent</p> <ul style="list-style-type: none"> ▪ Presenting a defence before a panel ▪ Countering the complainant convincingly ▪ Affirmative defences and the rule/exception distinction ▪ Defences that are frequently used without success <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - F. Piérola, <i>Practical Considerations for Trade Remedies Disputes at the National and World Trade Organization Levels, Part 4: How to Act in WTO Disputes on Trade Remedies</i>, Global Trade and Customs Journal (2007), pp. 209-216.

No	Date	Subject
11	26 January 2012	<p>Moot Court Exercise</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 23 February 2012
12	2 February 2012	<p>Appellate Review Proceedings</p> <ul style="list-style-type: none"> ▪ What can be appealed? Scope of appellate review (distinction between facts and law, completing the legal analysis) ▪ Appeals related to Article 11 of the DSU ▪ Drafting a notice of appeal/other appeal: checklist of issues ▪ Should you cross-appeal? ▪ Drafting submissions ▪ Advocacy at the Appellate Body and responding to questions by the Appellate Body division: avoiding the pitfalls ▪ The problem of the lack of remand <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 210-233. - F. Piérola 'The Question of Remand Authority for the Appellate Body' in A. D. Mitchell (ed.), <i>Challenges and Prospects for the WTO</i> (2005). - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp.63-74. - P. Gallagher, <i>Guide to Dispute Settlement</i>, Kluwer Law International World Trade Organization (2002), pp. 36-41.
13	9 February 2012	<p>Participating in a dispute as a third party</p> <ul style="list-style-type: none"> ▪ Seeking to join consultations – what is a "substantial trade interest"? ▪ What are the different third-party rights at the consultations, panel and appellate stages? ▪ Drafting effective third-party submissions ▪ Third participant and third party status at the Appellate Body ▪ What is the role of third parties in proceedings under Article 21.5 and Article 22.6? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 109-111, 219-220, 277-278.

No	Date	Subject
14	16 February 2012	<p>Settling and Suspending Disputes</p> <ul style="list-style-type: none"> ▪ Suspending dispute settlement proceedings: <ul style="list-style-type: none"> - Article 12.12 of the DSU - Withdrawal of notice of appeal - Can you "suspend" a case after a report has been circulated? ▪ Settlements/Mutually Agreed Solutions: <ul style="list-style-type: none"> - Negotiating mutually agreed solutions - The content of a mutually agreed solution - Legal effects under WTO law - How to notify a mutually agreed solution to the DSB <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 221-222. - F. Piérola, <i>Some Thoughts on How to Make a WTO Mutually Agreed Solution Meaningful</i>, <i>Global Trade and Customs Journal</i> (2008), pp. 81-83. - F. Piérola, <i>Can Transaction Costs Explain the Lack of Negotiated Settlements in WTO Dispute Resolution?</i>, <i>Global Trade and Customs Journal</i> (2008), pp. 147-148. - P. Gallagher, <i>Guide to Dispute Settlement</i>, Kluwer Law International World Trade Organization (2002), pp. 19-22.
15	23 February 2012	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Complainant, Respondent and Third Party teams file their written submissions (by email to carol.lau@acwl.ch) <p>Determining the Reasonable Period of Time to implement under Article 21.3 of the DSU</p> <ul style="list-style-type: none"> ▪ Negotiations on the compliance period under Article 21.3(b) ▪ Arbitration on the compliance period: <ul style="list-style-type: none"> - The arbitration process and what you need to demonstrate - Key factors relevant in arbitral decisions under DSU Article 21.3(c) ▪ Can there be more than one implementation period? ▪ Surveillance by the DSB <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 234-247. - R. Hansen and D. McRae 'Reconciling the International and the Domestic: the Reasonable Period of Time Under Article 21.3 of the DSU' in M. E. Janow et al. (eds.), <i>The WTO: Governance, Dispute Settlement, and Developing Countries</i> (2008) - WTO Secretariat, <i>A Handbook on the WTO Dispute Settlement System</i>, Cambridge University Press (2004), pp.76-78.

No	Date	Subject
16	1 March 2012	<p>Disputes regarding compliance under Article 21.5 of the DSU</p> <ul style="list-style-type: none"> ▪ The context and basic principles ▪ The "sequencing" problem ▪ Operational challenges: <ul style="list-style-type: none"> - Who can request Article 21.5 proceedings? - What is a "measure taken to comply"? - What claims or issues can be raised? ▪ DSU reform? <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 247-258. - J. E. Kearns and Steve Charnovitz, <i>Adjudicating Compliance in the WTO: A Review of DSU Article 21.5</i>, <i>Journal of International Economic Law</i> (2002), pp. 331-352.
17	8 March 2012	<p>Moot Court Exercise</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
18	15 March 2012	<p>Moot Court Exercise</p> <ul style="list-style-type: none"> ▪ Participants present their oral statements as complainant, defendant and third party teams to the Moot Court Panel
19	22 March 2012	<p>Suspension of concessions and other obligations under Article 22 of the DSU</p> <ul style="list-style-type: none"> ▪ When to negotiate compensation under Article 22.1 ▪ When to request authorisation to "retaliate" under Article 22.2 ▪ Principles and procedures ▪ Preparation of the "retaliation list" ▪ How to determine "equivalence" in the suspension of concessions ▪ Securing the lifting of "retaliation" when a Member believes it has brought itself into conformity with its WTO obligations ▪ Cross-retaliation in IPRs and services <p><i>Recommended reading:</i></p> <ul style="list-style-type: none"> - D. Palmeter and P. C. Mavroidis, <i>Dispute Settlement in the World Trade Organization, Practice and Procedure</i>, Second Edition, Cambridge University Press (2004), pp. 266-278. - P. Gallagher, <i>Guide to Dispute Settlement</i>, Kluwer Law International World Trade Organization (2002), pp. 47-52.

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20	29 March 2012	Concluding Session - Lunch <ul style="list-style-type: none">▪ Moot Court Panel renders its report▪ Evaluation of the course