



University of Vienna
School of Law
Winter Semester 2016

Course Title: Introduction to WTO Law: Institution and System of Dispute Settlement

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I.) Course Description and Objectives

This course focuses on the World Trade Organization (WTO) as a *modern institution* – structure, organs, legal status, decision-making, relations with other organizations etc., its basic *principles and rules for the conduct of multilateral trade* by WTO Members – and on its unique dispute settlement system – structure, phases, causes of action, remedies, implementation and enforcement.

Since 1995 the WTO provides a multilateral “common institutional framework for the conduct of trade relations among its Members”, a new legal basis for the international movement of goods, services (GATS), trade –related investments (TRIMS) and intellectual property rights (TRIPS). Furthermore, the WTO occupies a central role in shaping the international trading environment regarding trade-related areas such as environmental protection, human rights, health, labor standards, multilateral competition and investment rules.

However, an important goal of the WTO is to substitute a mechanism of collective surveillance and enforcement of multilateral standards to the display and unilateral use of might by powerful states.

This underscores the particular importance of the procedural rules contained in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The course will analyze and explain the essential characteristics of this system of dispute settlement, including its new ground breaking feature of an appellate instance. It also seeks to familiarize participants with the special skills required for dealing with WTO case law, panel and Appellate Body Reports.

II.) Course Outline

I. Introduction to the WTO as a legal framework for world trade

1. Concept, functions, policies of International Economic Law
2. Trade Theory and Policy, Free Trade v. Protectionism
3. The WTO Agreement

II. GATT/WTO: An institutional Profile

1. History: From the ITO to the GATT
2. The International Organisation - WTO
 1. WTO: Structure of the Agreement
 2. Scope, Status and Functions of the WTO
 3. Organizational Structure
 - a. Ministerial Conference
 - b. General Council, Sectoral Councils
 - c. Subsidiary bodies
 - d. DG, DDGs(4), Secretariat
 4. Decision-Making
 5. Membership, Accession, Withdrawal
 - a. Memorandum on the Foreign Trade Régime
 - b. Bilateral negotiations
 - c. Protocol of Accession
 6. The Doha Development Round

III. WTO Dispute Settlement

1. GATT Dispute Settlement

1.1. Sources

Articles XXII, XXIII GATT

Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, 28 Nov. 1973, 26S/210

Understanding on Rules and Procedures Governing the Settlement of Disputes and Surveillance (DSU) 1994, applicable to "covered agreements" and disputes under the MTO Agreement but subject to special rules and procedures if these differ.

Decision of the CPs of 5 April 1966 contains special rules for DCs (BISD 14S/18)

1.2. Historical Note: Geneva-Tokyo-Montreal-Marrakesh

- (1) Shortcomings, special regimes
- (2) Intermittent codification of fragmented practice

2. WTO Dispute Settlement

2.1. The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes 1994 (DSU)

- (1) General characteristics
 - a. Single integrated DS system
 - b. Rule-orientation, judicialization
 - c. Institutional unity, specialisation
 - d. Status of DCs
- (2) Key concepts

2.2. Panel procedure (see hand-outs/diagrams).

- (1) Consultations

- (2) Causes of action, remedies
- (3) Formation, mandate, function of panels
- (4) Phases of the panel process:

- a. Consultative

Optional good offices, conciliation, mediation

- b. Procedural steps

- Interim Review
- Adoption of panel report by DSB
- Appellate review
- Adoption of appellate report by DSB

- c. Implementation, Surveillance

- Compensation
- Retaliation

- (5) Recourse to Arbitration

2.3. Appellate Body procedure

2.4. Dispute settlement reform

III.) Required Reading

GATT Analytical Index, Guide to GATT Law and Practice, 2 vols.

J.H. Jackson, Sovereignty, the WTO and changing Fundamentals of international law.

Michael Trebilcock & Robert Howse, The Regulation of International Trade, Routledge, 3d ed., 2005.

John H. Jackson, William J. Davey and Alan O. Sykes, Legal Problems of International Economic Relations - Cases, Materials and Text, 4th ed., 2002 (abbreviated: Jackson).

Peter van den Bossche, The Law and Policy of the World Trade Organization, Text, Cases and Materials, 2nd ed., CUP, 2008.

Friedl Weiss (ed.), Improving WTO Dispute Settlement Procedures: Issues and Lessons From the Practice of Other International Courts and Tribunals, Cameron/May, London 2000.

Harald Hohmann (ed.), Agreeing and Implementing the Doha Round of the WTO, CUP, 2008.

WTO website, <http://www.wto.org>.

IV.) Assessment Method

Written examination (2 hrs), active participation in class, possibly class presentation (30 mins. max).

