

WTO Law on Anti-Dumping & Safeguard Measures

Semester: Spring Semester- FS 2023

Root Number: 446635

ECTS: 3

Lecturers: Edwin Vermulst & Fernando Piérola

Dates: 30 January – 3 February 2023

Room: Silva Casa Auditorium, World Trade Institute, Hallerstrasse 6, 3012 Bern

Audience:

- Trade remedies authorities and practitioners; industry representatives, traders and people involved in investigations; government officials involved in trade matters; diplomatic representatives; officers of inter-governmental organizations and NGOs; trade law scholars; general audience interested in trade remedies' issues
- Master of Advanced Studies of International Law and Economics (MILE) Students
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe
- Students from different universities across Switzerland

Course Description

This first part of a two weeks' course on international trade remedies is comprised of lectures and studies that cover the disciplines on anti-dumping and safeguard measures in the WTO legal system. The course covers both substantive and procedural aspects from a practical perspective, taking into account the interest of the main stakeholders usually involved in these matters, e.g. the authorities of the country applying these regulations, domestic producers, exporters, importers, industrial consumers and the government of the affected exporters. This course is relevant for individuals working in government, industry, law practice, NGOs, and academia who have an interest in trade remedy issues.

Lecturers

Edwin Vermulst

Edwin Vermulst has practiced international trade and EU law and policy since 1987 and is a founding partner of VVGB Advocaten. He is a member of the Brussels bar A-list. Mr. Vermulst graduated from the University of Utrecht in 1983 and received LL.M and SJD degrees from the University of Michigan Law School in 1984 and 1986.

Mr. Vermulst specializes in the representation of multinationals, governments, trade associations, exporters and importers in EU and WTO trade remedies and customs proceedings and has been involved in more than 150 cases. He is, among others, the trade counsel of the World Federation of Sporting Goods Industry [WFSGI].

Mr. Vermulst was a WTO Panellist in *Mexico – HFCS* and has been involved in various WTO dispute settlement proceedings as a member of the delegation, most recently in *China – Anti-Dumping and Countervailing Duty Measures on Wine*, *Ukraine – Ammonium nitrate* and *EU – Biodiesel (Indonesia)*. He has co-authored nine books, including landmark comparative analyses of the anti-dumping systems of Australia, Canada, the EU and the US with Professor John Jackson in 1989 and of rules of origin in 1994, and numerous articles. The second edition of his book on EU Anti-Dumping Law and Practice was published in October 2010 by Sweet & Maxwell. His book on the WTO Anti-Dumping Agreement was published in 2006 by Oxford University Press.

Mr. Vermulst is the Editor-in-Chief of the Journal of World Trade. He is a member of the Faculty of the World Trade Institute in Bern and of the EPLO program in Athens and a member of the Advisory Board of ECIPE, the European Centre for International Political Economy. Mr. Vermulst is invariably selected as a top trade practitioner by the leading legal directories such as Legal500, Who's Who Legal and Chambers. Chambers Global 2022, for example, ranked him as a Star individual. Who's Who Legal Trade and Customs nominated him as the trade lawyer of the year for eight years.

Fernando Piérola

Since 2002, Fernando Piérola represents governments in WTO disputes, before panels, the Appellate Body, arbitrators and in the context of other dispute resolution means. He is Senior Counsel at the Advisory Centre on WTO Law (ACWL) in Geneva, Switzerland. He is also an arbitrator in investor-state disputes (ICSID) and in disputes under regional trade agreements. He was a trade remedy investigating authority in Peru, and conducted anti-dumping, countervailing duty and safeguard investigations. He has published two books on WTO safeguards ('WTO Agreement on Safeguards and Article XIX of GATT. A Detailed Commentary', Cambridge University Press (2022); 'The Challenge of Safeguards in the WTO', Cambridge University Press (2014), 2015 Inter-American Bar Association Best Book Award) and two books on WTO dispute settlement in Spanish. He holds a doctoral degree in economic law conferred by the University of Bern; a Master's degree in Business Administration from the University of Geneva; a Master's degree in International Law and Economics (MILE) from the World Trade Institute, and his law degree from the Catholic University of Peru. For domestic law, he is a qualified attorney in Peru.

Learning Objectives

- Students should understand the role of anti-dumping and safeguard measures in international trade regulation.
- Students should be able to identify the key similarities and differences between AD and safeguards, both in terms of their objectives and practical application.
- Students should obtain a sense of how anti-dumping and safeguard investigations are conducted.
- Students should understand the basics of dumping margin calculations and of how determinations of material/serious injury are made.

Assessment

- Students' knowledge will be assessed on the basis of an open book, take home exam which needs to be completed on an individual basis. The exam will consist of essay questions.
- Take home assignment made available on Friday, 3 February 2023, 16:00 and to be submitted latest at 16:00 on 4 February 2023 to masters@wti.org.
- One question from Edwin Vermulst, carries 50% weight in the final course grade
- One question from Fernando Pierola, carries 50% weight in the final course grade

Course Overview

| Date | Day | Time | Lecturer/s | Topic |
|--------------|-----------------|------------------|------------------------------|-----------------------------|
| 30 Jan | Monday | 10:00 - 12:00 | Edwin Vermulst | Incoterms, Customs, Dumping |
| 30 Jan | Monday | 13:00 - 15:00 | Edwin Vermulst | Determination of Dumping |
| 31 Jan | Tuesday | 10:00 - 12:00 | Edwin Vermulst | Determination of Dumping |
| 31 Jan | Tuesday | 13:00 - 15:00 | Edwin Vermulst | Determination of Dumping |
| 1 Feb | Wednesday | 09:00 - 11:00 | Edwin Vermulst | Dumping - Procedures |
| 1 Feb | Wednesday | 13:00 - 15:00 | Fernando Piérola | Safeguards |
| 2 Feb | Thursday | 10:00 - 12:00 | Fernando Piérola | Injury |
| 2 Feb | Thursday | 13:00 - 15:00 | Fernando Piérola | Causation |
| 3 Feb | Friday | 10:00 - 12:00 | Fernando Piérola | Causation |
| 3 Feb | Friday | 13:00 - 15:00 | Fernando Piérola | Safeguards (continuation) |
| 4 Feb | Saturday | Due 16:00 | Take –home Assignment | |

MONDAY, 30 JANUARY 2023

Lecturer: Edwin Vermulst

Subject:

Dumping

Topics:

- Incoterms
- Customs and trade laws
- The determination of dumping

Compulsory Reading Material:

- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, Chapter 1
- Appellate Body report, *EU – Biodiesel (Argentina)*

Optional Reading Material:

- Czako, J., Human, J. and Miranda, J., *A Handbook on Anti-Dumping Investigations*, Cambridge: Cambridge University Press, 2003.

TUESDAY, 31 JANUARY 2023

Lecturer: Edwin Vermulst

Subject:

Dumping

Topics:

- The determination of dumping (continued)

Compulsory Reading Material:

- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, Chapter 1.

Optional Reading Material:

- Czako, J., Human, J. and Miranda, J., *A Handbook on Anti-Dumping Investigations*, Cambridge: Cambridge University Press, 2003.

WEDNESDAY, 1 FEBRUARY 2023**Lecturers: Edwin Vermulst and Fernando Piérola****Morning session: 10:00-12:00****Lecturer: Edwin Vermulst****Subject:**

Dumping - Procedures

Topics:

- Procedures

Compulsory Reading Material:

- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, Chapter 3.

Optional Reading Material:

- Czako, J., Human, J. and Miranda, J., *A Handbook on Anti-Dumping Investigations*, Cambridge: Cambridge University Press, 2003.

Afternoon session: 13:00-**15:00 Lecturer: Fernando
Piérola****Subject:**

Safeguards

Topics:

- The safeguard mechanism in international trade regulation
- Definition of a WTO safeguard measure and applicability of WTO rules
- Unforeseen developments and the effect of GATT obligations
- Increase in imports

Compulsory Reading Material:

- Article XIX of the GATT 1994 and the WTO Agreement on Safeguards
- Appellate Body Report, *Indonesia – Safeguard on Certain Iron or Steel Products* (WT/DS490/AB/R, WT/DS496/AB/R), paras. 5.15 - 5.71.
- Appellate Body Report, *Argentina – Safeguard on Footwear* (WT/DS121/AB/R), section V.
- Appellate Body Report, *Korea – Dairy Products* (WT/DS98/AB/R), section IV.
- Appellate Body Report, *US – Steel Safeguards* (WT/DS248/AB/R), section V.
- Panel Report, *Ukraine – Passenger Cars* (WT/DS468/R), section 7.2.
- Panel Report, *United States – Safeguard on Photovoltaic Products* (WT/DS562/R), Section 7.2.
- Piérola-Castro, F. *WTO Agreement on Safeguards and Article XIX of the GATT*, Cambridge University Press, 2022, chapters 1, 2 and 16.

Optional Reading Material:

- Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric* (WT/DS415/R)(paras. 7.23 – 7.91).
- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapters 2, 4, 5, 8 and 13.
- Díaz, N. & Piérola, F. "Rules on Safeguard Measures" in: *Encyclopedia of International Economic Law*, Edward Elgar Publishing, 2017.

THURSDAY, 3 FEBRUARY 2022**Lecturer: Fernando Piérola****Subject:**

Safeguards - Injury and Causation in Trade Remedies Investigations (general)

Topics:

- Significance of injury for trade remedies
- Price analysis (price undercutting, price suppression, price depression)
- Cumulation of injury (for anti-dumping and anti-subsidy investigations)
- Lesser duty rule
- Definition of domestic industry based on the like domestic product

Compulsory Reading Material:

- Article VI and XIX of the GATT 1994, Articles 3 and 4 of the WTO Anti-Dumping Agreement, Articles 15 and 16 of the WTO Agreement on Subsidies and Countervailing Measures and Articles 2 and 4 of the Agreement on Safeguards
- Piérola-Castro, F. WTO Agreement on Safeguards and Article XIX of the GATT, Cambridge University Press, 2022, chapter 4.
- Vermulst, E., The WTO Anti-Dumping Agreement, Oxford: Oxford University Press, 2005, chapter "Injury".

Optional Reading Material:

- Panel Report, *Ukraine – Passenger Cars* (WT/DS468/R), section 7.3.
- Appellate Body Report, *US – Lamb* (WT/DS177/AB/R, WT/DS178/AB/R), sections V and VI.
- Appellate Body Report, *US – Wheat Gluten* (WT/DS166/AB/R), section IV.

FRIDAY 3 FEBRUARY 2022

Lecturer: Fernando Piérola

Subject:

Causation / Safeguards (continuation)

Topics:

- Causation, including positive causal link and non-attribution (general)
- Application of safeguard measures
 - Extent, form, duration and reviews
 - Parallelism
- Domestic investigation, transparency and due process requirements
- Multilateral control:
 - Article 12 consultations and rebalancing measures
 - The Committee on Safeguards
 - WTO dispute settlement on safeguard measures

Compulsory Reading Material:

- Article VI and XIX of the GATT 1994, Articles 3 and 4 of the WTO Anti-Dumping Agreement, and Articles 15 and 16 of the SCM Agreement.
- Piérola-Castro, F. *WTO Agreement on Safeguards and Article XIX of the GATT*, Cambridge University Press, 2022, chapters 3, 4, 5, 7 and 8.

Optional Reading Material:

- Appellate Body Report, *US – Lamb* (WT/DS177/AB/R, WT/DS178/AB/R), section VII.
- Appellate Body Report, *US – Wheat Gluten* (WT/DS166/AB/R), sections V and VI.
- Appellate Body Report, *US – Steel Safeguards* (WT/DS248/AB/R), sections VII and VIII.
- WTO Committee on Safeguards, Factual report under Article 13.1(e) of the Agreement on Safeguards by the Chairperson of the Committee on Safeguards, G/L/1276-G/SG/191.
- WTO Committee on Safeguards, Annexes to the Factual report of the Chairperson of the Committee on Safeguards, G/L/1276/Add.1-G/SG/191/Add.1.