

WTO Law on Border Measures and Trade Facilitation

Semester: Spring Semester- FS 2020

Root Number: 446634

ECTS: 3

Lecturer: Roy Santana

Dates: 20- 24 January 2019

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

Audience:

- Master of Advanced Studies of International Law and Economics (MILE) Students – Optional
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe - Optional
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe – Optional
- MILE a la Carte

Course Description

The course will introduce students to the main international trade rules on market access for trade in goods, focusing on the key border management measures. Students are expected to acquire a thorough understanding of the rules applicable to different forms of border control measures and to appreciate the challenges faced in applying the WTO rules.

The course will focus on the basic border management measures (tariffs, tariff classification, customs valuation, rules of origin, and quantitative restrictions), including the applicable WTO rules, practice and jurisprudence, and will conclude by providing a brief overview of the new Trade Facilitation Agreement. The course will also explore, through focused discussions and practical exercises, the legal and practical implications of issues such as Schedules of concessions, bound tariffs, tariff renegotiations under Article XXVIII, other duties and taxes, tariff rate quotas, non-tariff barriers, prohibitions and restrictions, as well as the manner in which the new agreement on Trade Facilitation Agreement seeks to improve the clearance procedures.

This course will be of particular interest to those interested in private sector trading, government negotiations and regulation. It will also be of particular interest to those working in customs compliance matters or on the export side of companies and those supporting such companies as consultants or via institutions like the Chambers of Commerce.

Lecturer

Roy Santana:

Roy Santana is an expert on tariff and customs matters who has worked for the Market Access Division of the World Trade Organization since 2004, including as Secretary of the Committee on Market Access and the Committee on Customs Valuation. He has also provided support to several negotiations and WTO bodies, including the Committee of Participants of the Information Technology Agreement (ITA), the 2016 expansion of the ITA, the Negotiating Group on Non-Agricultural Products (NAMA), the Environmental Goods Agreement (EGA), and the Trade Facilitation Agreement Facility (TFAF). He has served as a technical liaison in seven disputes under the Dispute Settlement Understanding, contributed to many reports and publications by the WTO Secretariat, and has frequently trained government officials in a number of WTO agreements. Mr. Santana holds an LL.M. in Trade Regulation from New York University (NYU), as well as a degree in Law and a bachelor's degree in Economics from the University of Costa Rica.

Learning Objectives

- To provide a simple and clear introduction to the basic concepts and features of customs law as applied at the border.
- To provide an introduction to the main pillars of customs law, namely: tariff classification, rules of origin and customs valuation.
- To provide participants with practical examples, relevant case law related to customs law concerning various countries and including WTO case law.
- To provide practical training and hands-on experience in the application of the rules on market access for goods in concrete, true-to-life situations.
- To provide a comprehensive understanding of WTO law on market access for goods, and in particular the practice law on tariffs and quantitative restrictions on both imports and exports.
- To provide a brief introduction to the Trade Facilitation Agreement.

Assessment

- Students' knowledge will be assessed on the basis of in-class participation (50%) and an open book, take home exam (50%) which needs to be completed on an individual basis.
- Take home assignment made available on Thursday, 23 January 2020, 16:00 and to be submitted before Friday, 24 January 2020, 20:00

Course Overview

Date	Day	Time	Topic
20 Jan.	Monday	9:00 12:00	Tariffs and tariff classification
		14:00 16:00	Practical exercise
21 Jan.	Tuesday	9:00 12:00	Customs valuation
		14:00 16:00	Rules of origin
22 Jan.	Wednesday	9:00 12:00	WTO Schedules of concessions and their changes
		14:00 16:00	Practical exercise
23 Jan.	Thursday	9:00 12:00	Quantitative restrictions
		14:00 16:00	WTO Trade Facilitation Agreement
24 Jan.	Friday	Due 20:00	Case-study paper/exam (Take-home assessment)

MONDAY, JANUARY 20, 2020

Lecturer: Roy Santana

Subject

- Introduction to tariffs and tariff classification

Topics

- Tariff measures, including tariff rate quotas
- MFN and preferential duties
- Bound tariffs
- Internal taxes
- Other duties and charges
- Tariff classification

Compulsory Reading Material

- Van den Bossche, Peter and Zdouc, Werner, (4th edition, 2017), *The Law and Policy of the World Trade Organization*, Cambridge University Press, Chapter 6 (Tariff barriers), pp. 415-443; 461-471
- World Customs Organization (WCO), *The Harmonized System: A Universal Language for International Trade – 30 Years On (2018)*, pp. 5-33, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/activities-and-programmes/30-years-hs/hs-compendium.pdf?la=en>
- WTO Secretariat, *WTO Analytical Index*, Articles II of the GATT 1994, Jurisprudence (WTO), available at https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art2_jur.pdf

Optional Reading Material

- Santana, Roy (2015), *Options for Defining Products Covered by the Environmental Goods Agreement*, BIoRES, Volume 9, Number 5, available at <https://www.ictsd.org/bridges-news/biores/news/options-for-defining-products-covered-by-the-environmental-goods-agreement>
- Lyons, Timothy, (3rd edition 2018), *EU Customs Law* (Oxford University Press), Chapter 5 (The Common Customs Tariff: Administration and Interpretation)

TUESDAY, JANUARY 21, 2020

Lecturer: Roy Santana

Subject

- Customs Valuation (AM session)
- Rules of Origin (PM session)

Topics

- Customs Valuation
 - Transaction value vs. normal value
 - Authorized adjustments
 - Alternative valuation methods
- Rules of Origin
 - Rationale
 - Wholly obtained goods
 - Methodologies to determine substantial transformation (value-added, change of tariff classification, and product-specific rules)

Compulsory Reading Material

- *Paolo Vergano and Margareta Djordevic, Understanding Rules of Origin - The Coffee Example, International Trade Law & Regulation, Volume 10 Issue 5, September 2004*
- *Sheri Rosenow and Brian J. O'Shea (2010), A Handbook on the WTO Customs Valuation Agreement, Cambridge University Press, First Edition, pp. 1-41 and 94-134.*

Optional Reading Material

- *Santana, Roy (2016), The End of Customs Duties: How far are we from full tariff elimination and what would be the consequences of achieving it?'*, *Revue européenne et internationale de droit fiscal*, N° 2016/2, pp. 165-172
- *Lyons, Timothy, (3rd edition 2018), EU Customs Law (Oxford University Press), Chapter 7 (The Origin of Goods) and Chapter 8 (The Valuation of Goods)*

WEDNESDAY, JANUARY 22, 2020

Lecturer: Roy Santana

Subject

- WTO Schedules of concessions and their changes

Topics

- WTO Schedules of concessions
- Tariff negotiations
- 1980 Procedures for modification and rectification of Schedules
- Article XXVIII of the GATT 1994
- Transposition of WTO concessions

Compulsory Reading Material

- Van den Bossche, Peter and Zdouc, Werner, (4th edition, 2017), *The Law and Policy of the World Trade Organization*, Cambridge University Press, Chapter 6 (Tariff barriers), pp. 436-460
- World Customs Organization (WCO), *The Harmonized System: A Universal Language for International Trade – 30 years on* (2018), pp. 35-37, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/activities-and-programmes/30-years-hs/hs-compendium.pdf?la=en>
- WTO Secretariat, WTO Analytical Index, Articles II and XXVIII of the GATT 1994, Practice (WTO), available at https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art2_oth.pdf and https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art28_oth.pdf

Optional Reading Material

- WTO Secretariat, WTO Analytical Index, Articles II and XXVIII of the GATT 1994, Jurisprudence (WTO), available at https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art2_jur.pdf and https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art28_jur.pdf

THURSDAY, JANUARY 23, 2020

Lecturer: Roy Santana

Subject

- Quantitative restrictions (AM session)
- WTO Trade Facilitation Agreement (PM session)

Topics

- Non-tariff barriers
- Quantitative restrictions; import & export controls
- Articles XI and XIII of the GATT 1994
- Carve outs and exceptions
- Link to the Agreement on Import Licensing Procedures
- Trade Facilitation

Compulsory Reading Material

- Van den Bossche, Peter and Zdouc, Werner, (4th edition, 2017), *The Law and Policy of the World Trade Organization*, Cambridge University Press, Chapter 7 (Non-tariff barriers), pp. 478-498 and Chapter 8 (General and security exceptions), pp. 544-582
- WTO Secretariat (2018), WTO Analytical Index, Article XI of the GATT 1994, Practice (WTO), available at https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_oth.pdf
- WTO Secretariat (2018), WTO Analytical Index, Articles XI and XIII of the GATT 1994, Jurisprudence (WTO); available at https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_jur.pdf and https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art13_jur.pdf
- World Trade Organization (2014), Agreement on Trade Facilitation, WTO document WT/L/940

Optional Reading Material

- Neufeld, Nora (2014), *The Long and Winding Road: How WTO Members Finally Reached a Trade Facilitation Agreement*, World Trade Organization, Staff Working Paper ERSD-2014-06
- WTO Secretariat (2015), *World Trade Report - Speeding up trade: Benefits and challenges of implementing the WTO Trade Facilitation Agreement*, pp. 4-10; 32-54; 66-99

FRIDAY, JANUARY 24, 2020

Take-home assessment