

WTO Law on Anti-Dumping & Safeguard Measures

Semester: Spring Semester- FS 2021

Root Number: 446635

ECTS: 3

Lecturers: Edwin Vermulst & Fernando Piérola

Dates: 1 - 5 February 2021

Room: In response to the COVID-19 pandemic and following the guidelines established by the University of Bern, all courses of the 2021 WTI Winter Academy will only be held online. This course will have live sessions on [Zoom](#).

Audience:

- Government officials; Embassy staff; people working for international organizations; NGOs, industry and in legal practice, or people who have an interest in trade remedy 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 will be comprised of lectures and studies that deal primarily with US and EC Anti-Dumping law and practices, how they relate to WTO law (specifically, the Anti-Dumping Agreement), and the disciplines on safeguards in the WTO legal system. The course will cover 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, the 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 1985 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 TDI and customs proceedings, for example, in the recent anti-dumping and/or anti-subsidy proceedings involving Solar panels, Bicycles, Silicon, Wireless WAN modems, Footwear and many steel cases. He is, among others, the trade counsel of the World Federation of Sporting Goods Industry [WFSGI] and the Federation of European Sporting Goods Industry [FESI].

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 *Ukraine – Ammonium nitrate*, *EU – Biodiesel (Indonesia)* and *EU – Footwear* as counsel for the Indonesian and Chinese governments respectively. 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 2020, for example, ranked him as a Star individual. Who's Who Legal Trade and Customs ranked him as the top trade lawyer for five 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 (Peru) and conducted anti-dumping, countervailing duty and safeguard investigations. He has published a book on WTO safeguards ("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 AD 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 AD 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, 5 February 2021, 16:00 and to be submitted latest at 16:00 on 6 February 2021.
- One question from Edwin Vermulst, carries 50% weight in the final course grade
- One question from Fernando Piérola, carries 50% weight in the final course grade

Course Overview

Date	Day	Time	Lecturer/s	Topic
1 Feb	Monday	10:00 - 12:00	Edwin Vermulst	Incoterms, Customs, Dumping
		13:00 - 15:00	Edwin Vermulst	Determination of Dumping
2 Feb	Tuesday	10:00 - 12:00	Edwin Vermulst	Determination of Dumping
		13:00 - 15:00	Edwin Vermulst	Determination of Dumping
3 Feb	Wednesday	10:00 - 12:00	Edwin Vermulst	Dumping-Procedures
		13:00 - 15:00	Fernando Piérola	Safeguards
4 Feb	Thursday	10:00 - 12:00	Fernando Piérola	Safeguards
		13:00 - 15:00	Fernando Piérola	Safeguards
5 Feb	Friday	10:00 - 12:00	Fernando Piérola	Injury & Causation Determinations in Trade Remedies Investigations Case-Study Paper/Exam
		13:00 - 15:00	Fernando Piérola	
6 Feb	Saturday	Due 16:00	Take-home assignment	

MONDAY, 1 FEBRUARY 2021

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, 2 FEBRUARY 2021

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, 3 FEBRUARY 2021**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:

- Role of safeguard measures in international trade regulation
- Definition of WTO safeguard measures and applicability of WTO disciplines
- Entitlement to impose safeguard measures and evidentiary requirements

Compulsory Reading Material: see below under Thursday session**Optional Reading Material:** see below under Thursday session

THURSDAY, 4 FEBRUARY 2021

Lecturer: Fernando Piérola

Subject:

Safeguards

Topics:

- Domestic investigation, transparency and due process requirements
- Multilateral proceedings related to the imposition of safeguard measures
- Application of safeguard measures, including provisional measures
- Rebalancing measures
- WTO dispute settlement with respect to safeguard measures

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.
- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapters 2, 4, 5, 8 and 13.

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).
- 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.

FRIDAY 5 FEBRUARY 2021

Lecturer: Fernando Piérola

Subject:

Injury and Causation Determinations in Trade Remedies Investigations

Topics:

- Significance of injury for trade remedies as part of the cause of action
- Definition of domestic industry based on the like domestic product
- Demonstration of injury, threat of injury and material retardation, requirements and evidence
- Cumulation of injury (for anti-dumping and anti-subsidy investigations)
- Meaning of causation and its treatment in WTO case law
- Non-attribution of injurious effects to factors other than imports
- Link between the non-attribution analysis and the extent of the trade remedy (safeguard measures)

Compulsory Reading Material:

- Article VI and XIX of the GATT 1994, Article 3 and 4 of the WTO Anti-Dumping Agreement, and the WTO Agreement on Safeguards
- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, chapter "Injury".
- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapters 3, 6, and 7.

Optional Reading Material:

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