

WTO Law on Anti-Dumping & Safeguard Measures

Semester: Spring Semester- FS 2022

Root Number: 446635

ECTS: 3

Lecturers: Edwin Vermulst & Fernando Piérola

Dates: 31 January – 4 February 2022

Room: This is a hybrid course. This course will be held on-site at the World Trade Institute and online on Zoom.

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 *Ukraine – Ammonium nitrate*, *EU – Biodiesel (Indonesia)* and *EU – Footwear* as counsel for the Ukraine, 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

Fernando Piérola represents governments in WTO disputes (including disputes on safeguard measures and other trade remedies), before panels, the Appellate Body, arbitrators and other dispute resolution means. He is Senior Counsel at the Advisory Centre on WTO Law (ACWL). He also serves as an arbitrator in investor-state disputes and disputes under regional trade agreements. Mr. Piérola was a trade remedies investigator involved in anti-dumping, countervailing duty and safeguard investigations (Peru). He has published a book on WTO safeguards ("The Challenge of Safeguards in the WTO", Cambridge University Press (2014),) two books on WTO dispute resolution and several articles on international trade, dispute resolution and trade remedies. He is a regular guest lecturer at the WTI, the Europa Institute of the University of Saarland, the Europa Institute of the University of Zurich, the University of Lausanne and the Catholic University of Peru. He is a former MILE student (MILE 1, 2000-2001). He obtained his law degree from the Catholic University of Peru, a MBA from the University of Geneva and a doctoral degree in economic law from the University of Bern.

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, 5 February 2022, 16:00 and to be submitted latest at 16:00 on 6 February 2022.
- 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
31 Jan	Monday	10:00 - 12:00	Edwin Vermulst	Incoterms, Customs, Dumping
		13:00 - 15:00	Edwin Vermulst	Determination of Dumping
1 Feb	Tuesday	10:00 - 12:00	Edwin Vermulst	Determination of Dumping
		13:00 - 15:00	Edwin Vermulst	Determination of Dumping
2 Feb	Wednesday	10:00 - 12:00	Edwin Vermulst	Dumping-Procedures
		13:00 - 15:00	Fernando Piérola	Safeguards
3 Feb	Thursday	10:00 - 12:00	Fernando Piérola	Safeguards
		13:00 - 15:00	Fernando Piérola	Safeguards
4 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	
5 Feb	Saturday	Due 16:00	Take-home assignment	

MONDAY, 31 JANUARY 2022

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, 1 FEBRUARY 2022

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, 2 FEBRUARY 2022**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:

- International trade regulation and safeguard measures in this context.
- Definition of WTO safeguard measures and applicability of WTO rules
- Contextual basis: unforeseen developments and the effect of GATT obligations

Compulsory Reading Material:

- Article XIX of the GATT 1994
- WTO Agreement on Safeguards
- Díaz, N. & Piérola, F. "Rules on Safeguard Measures" in: *Encyclopaedia of International Economic Law* (Edward Elgar Publishing, Cheltenham: 2017).
- Appellate Body Report, *Indonesia – Safeguard on Certain Iron or Steel Products* (WT/DS490/AB/R, WT/DS496/AB/R), paras. 5.15 - 5.71.
- Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric* (WT/DS415/R)(paras. 7.23 – 7.91).
- 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, *Argentina – Safeguard on Footwear* (WT/DS121/AB/R), section V.
- Appellate Body Report, *US – Steel Safeguards* (WT/DS248/AB/R), section V.
- Panel Report, *Ukraine – Passenger Cars* (WT/DS468/R), section 7.2.
- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapter 2.

Optional Reading Material:

- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapter 1, 4.

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

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

Topics:

- Import Increase
 - General analytical rules
 - Cumulation (for AD and CVD investigations)
- Injury
 - Definition of domestic industry and like domestic product
 - Demonstration of injury, threat of injury and material retardation
-

Compulsory Reading Material:

- Appellate Body Report, Argentina – Safeguard on Footwear (WT/DS121/AB/R), section VII.
- 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.

Optional Reading Material:

- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapters 5 and 6.

- 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 4 FEBRUARY 2022

Lecturer: Fernando Piérola

Subject:

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

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.
- 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.
- 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 7 and 8.

Optional Reading Material:

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