

The Law on Anti-Dumping & Safeguard Measures

Semester: Spring Semester- FS 2025

Root Number: 446635

ECTS: 3

Lecturers: Edwin Vermulst & Fernando Piérola

Dates: 27 January – 31 January 2025

Room: Seminar Room 115, First Floor, Main Building, Hochschulstrasse 4, 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 academics 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 200 cases. He is, among others, the trade counsel of the World Federation of Sporting Goods Industry [WFSGI].

Mr. Vermulst was a WTO Panelist 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 2024, 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 ten years.

Fernando Piérola

Fernando is an international lawyer and arbitrator of Peruvian and Swiss nationality, with a large experience in national, regional and multilateral proceedings, including trade remedy investigations and international disputes. He started his career at the regional level (General Secretariat of the Andean Community) to become later the legal adviser to Peru's trade remedies commission. Since 2002, he acts as counsel in WTO disputes and provides advice on WTO law to countries from all over the world. He forms part of arbitration rosters in several free-trade agreements and has acts as an arbitrator or a member of annulment committees in numerous investor-State disputes. He teaches at the Catholic University of Peru, the WTI and the University of Saarland, Germany. He has written two books on WTO safeguard rules ('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) and two books on WTO dispute settlement in Spanish language. He has university degrees in law, business management and international economics.

Diego Fuentes (economic assistant to Fernando Piérola)

Diego is a Peruvian economist with extensive experience in trade remedies investigations and policy analysis. Diego has worked for the Peruvian trade remedies authority for over ten years. Between 2017 and 2022, he was appointed economic advisor to said authority and its representative in WTO dispute settlement procedures related to the imposition of anti-dumping and countervailing measures. He has been a member of the international trade negotiations division of the Ministry of Foreign Trade and Tourism of Peru and has participated in various negotiation processes for the signing of free trade agreements, on issues related to market access, customs and trade facilitation, investment in infrastructure and transportation. He has a master's degree in International Economics from the Erasmus University Rotterdam and an economics degree from the Pontifical Catholic University of 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 anti-dumping 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, 31 January 2025, 16:00 and to be submitted latest at 17:00 on 1 February 2025 to masters.wti@unibe.ch.
- 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
27 Jan	Monday	10:00 - 12:00	Edwin Vermulst	Incoterms, Customs, Dumping
27 Jan	Monday	13:00 - 15:00	Edwin Vermulst	Determination of Dumping
28 Jan	Tuesday	10:00 - 12:00	Edwin Vermulst	Determination of Dumping
28 Jan	Tuesday	13:00 - 15:00	Edwin Vermulst	Determination of Dumping
29 Jan	Wednesday	09:00 - 11:00	Edwin Vermulst	Dumping - Procedures
29 Jan	Wednesday	13:00 - 15:00	Fernando Piérola	Product and Import Analysis Laptops will be necessary
30 Jan	Thursday	10:00 - 12:00	Fernando Piérola	Injury Determination Laptops will be necessary
30 Jan	Thursday	13:00 - 15:00	Fernando Piérola	Injury Determination /Causation Laptops will be necessary
31 Jan	Friday	10:00 – 12:00	Fernando Piérola	Safeguard-specific Requirements Laptops will be necessary
31 Jan	Friday	13:00 – 15:00	Fernando Piérola	Multilateral Monitoring and Rebalancing
1 Feb	Saturday	Due 17:00	Take –home Assignment	

MONDAY, 27 JANUARY 2025

Lecturer: Edwin Vermulst

Subject:

Dumping

Topics:

- Incoterms
- Interplay customs and trade laws
- Fair vs. unfair trade
- The determination of dumping
- History and introductory concepts
- Export price

Compulsory Reading Material:

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

Optional Reading Material:

- Van den Bossche, P., Zdouc, W., *The Law and Policy of the World Trade Organization*, Cambridge: Cambridge University Press, fifth edition 2022, Chapter 11, pp. 754-783.

TUESDAY, 28 JANUARY 2025**Lecturer: Edwin Vermulst****Subject:**

Dumping

Topics:

- The determination of dumping (continued)
- Normal value calculation methods
- Comparison between normal value and export price
- Zeroing

Compulsory Reading Material:

- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, Chapter 1.
- DS473, Appellate Body report, *EU – Anti-Dumping Measures on Biodiesel from Argentina*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm

Optional Reading Material:

- Van den Bossche, P., Zdouc, W., *The Law and Policy of the World Trade Organization*, Cambridge: Cambridge University Press, fifth edition 2022, Chapter 11, pp. 754-783.

WEDNESDAY, 29 JANUARY 2025**Lecturers: Edwin Vermulst and Fernando Piérola****Morning session: 10:00-12:00
Lecturer: Edwin Vermulst****Subject:**

Dumping - Procedures

Topics:

- Initiation
- Investigation
- Due process rights
- Measures

Compulsory Reading Material:

- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, Chapter 3.
- DS156, Panel Report, *Guatemala – Definitive Anti-Dumping Measure on Grey Portland Cement from Mexico*,
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds156_e.htm

Optional Reading Material:

- Van den Bossche, P., Zdouc, W., *The Law and Policy of the World Trade Organization*, Cambridge: Cambridge University Press, fifth edition 2022, Chapter 11, pp. 805-835.

Afternoon session: 13:00-15:00
Lecturer: Fernando Piérola (and Diego Fuentes)

Subject:

Product and Import Analysis

Topics:

- Product analysis and product definition
- Period of investigation
- Data collection and data processing (filtering, country-specific and cumulated imports)
- Trend analysis (relative and absolute increases)
- Explaining the import analysis in a determination

Compulsory Reading Material:

- Articles VI and XIX of the GATT 1994, Articles 3.1-3.3 of the Anti-Dumping Agreement, Articles 15.1-15.3 of the SCM Agreement, Article 2.1 of Agreement on Safeguards
- Piérola-Castro, F. *WTO Agreement on Safeguards and Article XIX of the GATT*, Cambridge University Press, 2022, chapter 2, **only sections 3.2-3.3.**
- Commission Implementing Regulation (EU) 2019/159 of 31 January 2019, imposing definitive safeguard measures against imports of certain steel products, **only sections 2-3.**
- Panel Report, *European Union – Safeguard Measures on Certain Steel Products*, **only section 7.5.**

Optional Reading Material:

- Appellate Body Report, *Argentina – Safeguard on Footwear* (WT/DS121/AB/R), section VII.B.1.
- Appellate Body Report, *US – Steel Safeguards* (WT/DS248/AB/R), section VI.
- Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric* (WT/DS415/R), section VII.D.3.
- Panel Report, *Ukraine – Passenger Cars* (WT/DS468/R), section 7.2.
- Piérola, F. *The Challenge of Safeguards in the WTO*, Cambridge University Press, 2014, chapters 3 and 5.

THURSDAY, 30 JANUARY 2025

Lecturer: Fernando Piérola (and Diego Fuentes)

Subject:

Injury Determination and Causation

Topics:

- Definition of the domestic industry and the like (or directly competitive) product
- Analysis of industrial performance indicators
- Evaluation of the threat of injury
- Margin of injury
- Price analysis (price undercutting, price suppression, price depression)
- Causation (affirmative test)
- Non attribution

Compulsory Reading Material:

- Article VI and XIX of the GATT 1994, Articles 3-4 of the Anti-Dumping Agreement, Articles 15-16 of the SCM Agreement 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.
- Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice* (WT/DS295/AB/R), section V.

Optional Reading Material:

- Vermulst, E., *The WTO Anti-Dumping Agreement*, Oxford: Oxford University Press, 2005, chapter "Injury".
- 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, 31 JANUARY 2025

Lecturer: Fernando Piérola (and Diego Fuentes)

Subject:

Safeguards

Topics:

- Unforeseen developments and the effect of GATT obligations
- Application of safeguard measures
- Domestic investigation, transparency and due process
- Multilateral monitoring and notifications
- Rebalancing

Compulsory Reading Material:

- Article XIX of the GATT 1994, Articles 1, 3, 5 – 13 of the Agreement on Safeguards.
- Díaz, N. & Piérola, F. "*Rules on Safeguard Measures*" in: Encyclopedia of International Economic Law, Edward Elgar Publishing, 2017.

Optional Reading Material:

- Piérola-Castro, F. *WTO Agreement on Safeguards and Article XIX of the GATT*, Cambridge University Press, 2022, chapters 1, 2 (sections 3.1, 4 and 5), 5, 7 and 8.
- 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, *United States – Steel or Aluminum Products* (WT/DS544/AB/R), section 7.7.
- 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, *United States – Safeguard on Photovoltaic Products* (WT/DS562/R), section 7.2.
- 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, *Korea – Dairy Products* (WT/DS98/AB/R), section IV.
- 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.