



INTERNATIONAL TRADE

An overview of our World Trade Organisation practice



EVERYTHING MATTERS

INTRODUCTION



An overview of our World Trade Organisation Practice

DLA Piper's World Trade Organisation (WTO) Practice provides government and corporate clients with advice, capacity-building assistance and representation on all aspects of the multilateral trading system, including WTO dispute settlement proceedings, accession negotiations, compliance matters and the Doha Round of trade negotiations.

INTRODUCTION

Our WTO Practice comprises highly experienced international trade and investment lawyers, economists and professors, along with former trade ministers and other senior government officials. Collectively, members of our practice have:

- Participated in more than 50 WTO (and 60 GATT) dispute settlement proceedings as private litigators, government attorneys or adjudicators.
- Participated in the accession negotiations of numerous WTO applicant countries, including Saudi Arabia, China and Russia.
- Helped implement into domestic law more than a dozen member countries' WTO commitments.
- Represented 11 WTO members in the Tokyo, Uruguay and Doha rounds of negotiations on each of the WTO's main councils and committees.

Members of our WTO Practice have experience and expertise relating to all significant WTO agreements. We have researched, drafted and presented arguments relating to all of the WTO's 15 substantive agreements, except the Agreement on Pre-shipment Inspection, about which there has been no dispute. Our expertise covers not only the basics - MFN and national treatment provisions, antidumping, subsidies and safeguards - but also areas in which very few attorneys have significant expertise, such as:

- Services
- Trade-Related Intellectual Property Rights (TRIPs)
- Agriculture
- Sanitary and Phytosanitary Measures (SPS)
- Technical Barriers to Trade (TBT)
- GATT General Exceptions, including those that justify environmental measures

OUR SERVICES

DLA Piper's multi-disciplinary WTO Practice is truly global. Located principally in London, Washington DC and Brussels, our professionals liaise with colleagues in offices throughout the world. We have a reputation for providing clients with outstanding service that draws upon our in-depth knowledge of WTO law and policy; our practical experience of how WTO rules are negotiated, implemented and enforced; and our relationships with the WTO Secretariat and member country trade administrations. We combine a deep knowledge of the technical, legal and economic aspects of WTO issues with unmatched government affairs expertise to achieve the best possible result for each client.

WTO ACCESSION

Countries wishing to join the WTO must navigate an extensive accession process that involves a complex series of bilateral and multilateral negotiations, as well as significant restructuring of domestic legal regimes. The steps that acceding countries must take include:

- Describing all aspects of their trade and economic policies that relate to the rules of the WTO.
- Negotiating their terms of accession multilaterally in Working Party meetings and bilaterally with all interested WTO members.
- Jointly drafting with the WTO Secretariat's Accessions Division the Protocol of Accession, the Working Party Report and related schedules, which detail the commitments they will undertake when joining the WTO.
- Ensuring their domestic legal regimes conform with their WTO obligations.

The accession process is complex and has taken anywhere between three and fifteen years and five months to complete. Countries looking for an efficient, balanced and successful outcome, can profit greatly from specialist advice.

Similarly, sizable companies located in acceding countries, or with a significant interest in an acceding country, are advised to seek early advice on the consequences of, and opportunities arising from,

accession. This advice should identify ways to influence the terms of accession, so as to ensure the most favourable outcomes possible for their businesses.

Members of our Practice have participated in the accession negotiations of China, Kazakhstan, Russia, Saudi Arabia, Taiwan, the Ukraine and Vietnam as either legal advisors to the applicant country's senior technical negotiator or as representatives of WTO members in the Working Party or bilateral negotiations with the applicant country.

For clients involved in the WTO accession process, we can provide technical support and strategic legal and political advice from start to finish. We can provide the full range of services, including:

- Analysis identifying the implications and requirements of WTO membership. We can consider a country's entire economy, a specific sector or an individual company.
- Advice for companies on WTO procedures and decision-making processes, and on how to lobby their governments to ensure the best possible outcome from the accession negotiations.
- A full strategic analysis of the negotiations that identifies all the legal, regulatory and policy issues likely to be raised during Working Party meetings and bilateral negotiations.
- Training sessions for negotiators that cover the format, conduct and dynamics of the multilateral and bilateral negotiations (both formal and informal) and demonstrate successful negotiating techniques.
- Legal and policy advice on how to handle the accession negotiations and influence WTO members to maximise the chances of obtaining a positive outcome and avoid negotiating delays.
- Assistance drafting the Protocol of Accession, the Working Party Report and related schedules.
- Legal advice concerning institutional reform and the drafting of implementing legislation.

- Analysis and impact assessments of a final accession agreement, identifying the opportunities and risks that have been created for the entire economy, a specific sector or an individual company.

IMPLEMENTATION AND COMPLIANCE

Once a country has acceded to the WTO, it must ensure that all new and existing legislation complies with WTO rules and its Protocol of Accession.

For clients interested in WTO compliance, DLA Piper's WTO Practice can provide:

- Comprehensive assessments of draft laws, regulations and policies to ensure they comply with WTO obligations, including advice on modifications that may be necessary to achieve WTO compatibility.
- Advice on effecting any necessary changes, including assistance drafting implementing legislation.
- Advice on how to notify regulatory changes to relevant WTO committees.
- Assistance regarding the regular reviews conducted by the Trade Policy Review Body.
- Assessments of the risks associated with non-compliance.

We have significant experience helping clients with implementation and compliance matters. Members of the team have:

- Assisted several recently acceded WTO members on the full range of actions necessary to implement their accession commitments and comply with WTO obligations.
- Assisted a recently acceded WTO member to identify and fulfil its various notification commitments.
- Advised a WTO member on a WTO-compatible regime for environmental taxation.
- Helped a WTO member develop and implement a WTO-compatible SPS compliance programme for its horticultural sector.

- Advised a multinational mining company on the WTO compatibility of a member's decision to increase utility prices for certain types of customers.
- Helped draft legislation to dismantle a state-owned enterprise of questionable WTO compatibility.
- Advised a WTO member on the compatibility of product standards legislation with the TBT Agreement.
- Briefed the European Commission (EC) on the impact of a WTO ruling relating to public health and the environment.
- Advised the EU Council of Ministers on the WTO compatibility of EU security measures.
- Designed a WTO-compatible system for tariff quota administration following Taiwan's accession to the WTO.
- Advised an international charity on the WTO compatibility of the UK's Renewable Transport Fuel Obligation and the EU's Carbon Trading Scheme.
- Advised an association of European local authorities on the scope for regulatory preferences in government procurement decisions.
- Advised a multinational provider of financial information services on WTO members' GATS schedules.
- Produced a study for the EC examining the compatibility of the Universal Postal Union's rules and procedures with WTO rules, in particular, the GATS.

WTO DISPUTE SETTLEMENT

Disputes arise when a WTO member adopts a measure which a fellow member considers to be contrary to WTO rules. If consultations fail to resolve the disagreement, a formal dispute settlement procedure can be initiated. A member found to be in breach of a WTO agreement is obliged to conform its measure to the rules, provide acceptable compensation or face retaliation from the complaining party. The stakes involved for all parties to the dispute are usually high. Countries and companies

wishing to exercise their rights for maximum effect, or minimise their exposure, need effective legal and political counsel.

DLA Piper provides the full range of services in each stage of a dispute. We provide various levels of assistance up to and including full representation throughout the dispute settlement process. We have litigated cases conducted in each of the official WTO languages. Our services include:

- Preparing comprehensive assessments of draft and existing measures to determine whether or not they comply with WTO obligations.
- Conducting training and preparing background briefings on the processes and practices involved in a WTO dispute settlement case.
- Preparing submissions and advising clients on all procedural aspects of a dispute.
- Presenting oral arguments on behalf of governments before panels and the Appellate Body.
- Assisting with implementation and arbitrations.
- Developing media strategies to enable clients to manage the public debate surrounding WTO cases.
- Identifying where changes are necessary to conform domestic measures to a WTO ruling.
- Developing and implementing lobbying strategies to assist clients' efforts to remove products of interest from WTO members' draft retaliation lists.

DLA Piper has a well-earned reputation for providing first-class WTO dispute settlement services. Two of our leading WTO attorneys – Chris Parlin and David Christy – were the first private lawyers to present a WTO member's case to a panel and the Appellate Body, serving as part of the member's official delegation. Miriam Gonzalez has unmatched experience in litigating cases involving services obligations. Claudia Orozco has extensive experience as a trade counsellor, litigator and adjudicator, having served as a panellist in eight significant dispute settlement cases. Our lawyers

frequently represent governments and industries, presenting positions as accredited members of government delegations. We have been the counsel of choice for many WTO members, including Argentina, Brazil, Canada, Indonesia, Japan, Korea, New Zealand, Poland and St. Lucia (Caribbean ACP States).

Members of the team have participated in more than 50 WTO (and 60 GATT) dispute settlement proceedings as government attorneys, private litigators or adjudicators. We have represented complainants, respondents and third parties, and have participated in every stage of a WTO dispute, from consultations, to Panel and Appellate Body proceedings, to Article 21.3, Article 21.5, Article 22.2 and Article 22.6 arbitrations and appeals thereof.

Claudia Orozco served as the Chairperson or as a panellist adjudicating the following disputes:

- Chairperson: *Canada–Measures Relating to Exports of Wheat and Treatment of Imported Grain* (DS276).
- Chairperson: *US–Section 129(c)(1) of the Uruguay Round Agreements Act* (DS221).
- *Canada–Continued Suspension of Obligations in the EC - Hormones Dispute* (DS321).
- *US–Continued Suspension of Obligations in the EC - Hormones Dispute* (DS320).
- *Argentina–Safeguard Measures on Imports of Footwear* (DS121).
- *EC–Measures Affecting Imports of Butter* (DS72).
- *Australia–Measures Affecting the Importation of Salmonids* (DS21).
- *Australia–Measures Affecting Imports of Salmon* (DS18).

In addition, Claudia pleaded before the panel and Appellate Body in:

- *EC–Regime for the Importation, Sale and Distribution of Bananas* (DS27).
- *Canada–Patent Protection of Pharmaceutical Products* (DS114).

Miriam Gonzalez played a key role in representing European interests in a number of significant cases, including:

- *Canada–Measures Affecting Film Distribution Services* (DS117).
- *Canada–Patent Protection of Pharmaceutical Products* (DS114).
- *US–Foreign Sales Corporation* (DS108).
- *Belgium–Measures Affecting Commercial Telephone Directory Services* (DS80).
- *Japan–Procurement of a Navigation Satellite* (DS73).

Chris Parlin and David Christy have litigated, on behalf of WTO member governments, many of the largest and most important cases to date, including:

- *US–Definitive Safeguard Measures on Imports of Certain Steel Products* (DS248/249/251-54/258/259/274).
- *US–Continued Dumping and Subsidy Offset Act of 2000* (DS217/234).
- *Chile–Price Band System and Safeguard Measures Affecting Agricultural Products* (DS207).
- *US–Anti-Dumping Measures on Certain Hot-Rolled Steel Products* (DS184).
- *US–Anti-Dumping Act of 1916* (DS162).
- *EC–Measures Affecting Asbestos and Products Containing Asbestos* (DS135).
- *Thailand–Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland* (DS122).
- *US–Anti-Dumping Duty on DRAMs from Korea* (DS99).
- *Indonesia–Measures Affecting the Automotive Industry* (DS54/55/59/64).
- *EC–Regime for the Importation, Sale and Distribution of Bananas* (DS27).

In addition, members of our WTO Practice have advised member governments, sub-central governments and private-sector stakeholders in the following disputes:

- *EC and Its Member States–Tariff Treatment of Certain Information Technology Products* (DS377).
- *Mexico–Definitive Countervailing Measures on Olive Oil from the European Communities* (DS341).
- *US–Reviews of Countervailing Duty on Softwood Lumber from Canada* (DS311).
- *US–Investigation of the International Trade Commission in Softwood Lumber from Canada (Softwood Lumber VI)* (DS277).
- *Venezuela–Import Licensing Measures on Certain Agricultural Products* (DS275).
- *EC–Customs Classification of Frozen Boneless Chicken Cuts* (DS269/286).
- *US–Subsidies on Upland Cotton* (DS267).
- *US–Final Dumping Determination on Softwood Lumber from Canada (Softwood V)* (DS264).
- *US–Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada (Softwood Lumber IV)* (DS257).
- *US–Provisional Anti-Dumping Measure on Imports of Certain Softwood Lumber from Canada* (DS247).
- *EC–Conditions for the Granting of Tariff Preferences to Developing Countries* (DS246).
- *US–Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* (DS244).
- *US–Anti-Dumping Duties on Silicon Metal from Brazil* (DS239).
- *US–Preliminary Determinations with Respect to Certain Softwood Lumber from Canada (Softwood Lumber III)* (DS236).

- *Canada–Export Credits and Loan Guarantees for Regional Aircraft* (DS222).
- *EC–Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil* (DS219).
- *US–Anti-Dumping and Countervailing Measures on Steel Plate from India* (DS206).
- *US–Definitive Safeguard Measures on Imports of Circular Welded Carbon-Quality Line Pipe from Korea* (DS202).
- *US–Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand* (DS177).
- *EC–Anti-Dumping Duties on Imports of Cotton-Type Bed Linens from India* (DS141).
- *Canada–Certain Measures Affecting the Automobile Industry* (DS139).
- *Canada–Patent Protection of Pharmaceutical Products* (DS114).
- *Canada–Measures Affecting the Importation of Milk and the Exportation of Dairy Products* (DS103).
- *US–Measure Affecting Government Procurement* (DS95).
- *Brazil–Export Financing Programme for Aircraft* (DS46).
- *EC–Regime for the Importation, Sale and Distribution of Bananas* (DS27).

WTO DOHA ROUND NEGOTIATIONS

As the principal objective of the WTO is to gradually liberalise international trade, members agree to more ambitious commitments in each successive round of WTO negotiations. The Doha Round, whilst at a standstill, presents important opportunities and risks, and hence warrants regular monitoring and input. Once members have agreed on modalities (the broad negotiating framework and formulas), the round is likely to progress relatively quickly as countries look to apply the general rules to their own markets. This phase is crucial for countries and companies wishing to influence the final

outcome for specific products in specific markets. Timely and effective lobbying during this phase will be key.

We have substantial experience in this area. Members of our WTO Practice have advised numerous corporations and represented eleven WTO members in the Tokyo, Uruguay and Doha rounds of trade negotiations. We can provide clients interested in the Doha Round with a full range of services, including:

- Tailored background briefings on the status of the negotiations that identify and evaluate relevant legal, regulatory and policy issues and assess the implications of the talks for specific governments, sectors and companies.
- Persuasive argumentation, position statements and detailed lobbying plans to enable governments, negotiating groups and companies to influence the talks.
- Guidance on how to maximise negotiating leverage by forming strategic alliances.
- Counsel and technical assistance during the drafting of revised schedules of commitments and implementing legislation.
- Analysis of the impact of the final agreements and members' revised schedules, which will enable countries and companies to identify newly created opportunities and risks.

CAPACITY BUILDING AND TRAINING SERVICES

As a supplement to our WTO-related services, DLA Piper lawyers provide member governments and interested industries with WTO-related training. Our training courses cover the full range of subjects, from strategies for negotiations and dispute settlement proceedings to substantive areas such as the MFN and National Treatment principles, Antidumping and Safeguards Measures, Agriculture, SPS, TBT, Services and TRIPS.

Members of DLA Piper's WTO Practice have decades of experience serving as Adjunct Professors of Law teaching WTO and related trade issues. In addition, practice

members have conducted capacity building and training sessions for WTO members such as China, Paraguay, Saudi Arabia, Taiwan and Trinidad and Tobago. We have also conducted regional training for officials from Central America.

WHY CHOOSE DLA PIPER

Our clients tell us they appreciate:

- Our relationship-driven approach – we listen closely to our clients to understand their needs and build longterm relationships. Our internal client service ethic is driven by our values and our commitment to our people.
- Our business focus – we understand the commercial, managerial and personal challenges our clients and their people face every day and their need for competitive advantage.
- Our broad service capability – by providing a wide range of legal services, we can support our clients with their strategic and operational business plans. For important business issues, day by day and year on year, we apply our technical skills and the best current thinking to ensure the best possible outcome.
- Our local knowledge – our lawyers are established in their local legal and business environments. This allows us to provide clients with the same dedicated approach to service and quality across every office and jurisdiction.
- Our single-source legal support – DLA Piper delivers the services and value clients need, wherever they choose to do business.

ABOUT DLA PIPER

DLA Piper is one of the largest legal practices in the world. We have over 3,700 lawyers based in 67 offices in 29 countries across Asia, Europe, the Middle East and the United States. We maintain strategic alliances with nine independent law firms throughout Australasia and Africa.

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DLA Piper is an international legal practice, the members of which are separate and distinct legal entities. For further information please refer to www.dlapiper.com/structure. A list of offices can be found at www.dlapiper.com.

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WTO PRACTICE OUR TEAM

DLA Piper's WTO Practice comprises highly experienced international trade and investment lawyers, economists and professors, along with former trade ministers and other senior government officials. The senior members of our team include:

Miriam Gonzalez

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Miriam Gonzalez is a former Senior Advisor to two EU External Relations Commissioners on matters related to the WTO and the EU's relationships with the US, the Middle East, the Mediterranean countries and Latin America. Miriam was the Head of DG Trade's WTO Services Team and the EU's lead negotiator at the WTO for energy, telecommunications, electronic commerce, construction and postal services. Miriam has advised the EU on numerous WTO and bilateral dispute settlement cases and represented it in the accession negotiations of various countries, including China and Saudi Arabia.

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Chris Parlin, former Assistant US Trade Representative, was the lead US negotiator on the WTO Dispute Settlement Understanding and the Agreement on Subsidies and Countervailing Measures. At USTR, Chris litigated over 60 GATT cases. Since entering private practice, he has represented members in over 20 WTO dispute settlement proceedings. Chris was the first private attorney to represent a WTO member in panel and Appellate Body proceedings. With David Christy, he led the technical team advising Saudi Arabia during its WTO accession and implementation efforts. He is an Adjunct Professor of Law at Georgetown University.

Claudia Orozco

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Claudia Orozco is a former Head of Foreign Investment and Minister Counsellor in Geneva for the Colombian Government. She represented Latin America in the Textiles Monitoring Body and, for six years, served as Colombia's legal counsellor and representative on the WTO Antidumping, Safeguards, Rules of Origin, Agriculture and SPS committees. She was Colombia's counsellor on China's accession and was responsible for Dispute Settlement, handling two cases, including the bananas dispute against the EC. Claudia has been a WTO Panellist in eight significant cases to date. Her understanding of developing countries led her to create the Advisory Centre on WTO Law.

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David Christy has represented the governments of Argentina, Brazil, Canada, Indonesia, Jamaica, Japan, Korea, Poland, Saudi Arabia, St. Lucia (ACP States) and Taiwan in WTO negotiations and dispute settlement proceedings. With Chris Parlin, David was the first private attorney to represent a WTO member in panel and Appellate Body proceedings. He advised Saudi Arabia on WTO accession, and China, Saudi Arabia and Taiwan on implementation. David publishes frequently on WTO and related issues and has served as an Adjunct Professor of Law at Georgetown University since 1998.

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Mike Pullen, a leading international trade and competition lawyer, is Special Advisor to the Egyptian Government on trade and competition regulation and former Senior Advisor to the Government of Lithuania on its parallel accession to the WTO and EU. Mike sits on the boards of the UK Middle East Association; the Saudi-British Business Council and the Egyptian-British Business Council.

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Sarah Salmond formerly served as the New Zealand Government representative on the WTO Agriculture and SPS committees, an agricultural trade consultant at the OECD; and Manager of International Trade and CAP at the UK Food and Drink Federation. Sarah has substantial experience with agricultural, SPS and related trade issues. She represented New Zealand in the accession negotiations of Russia and Taiwan.

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Kate Mueller, former Assistant General Counsel at the Office of the US Trade Representative, advised the US Government on several WTO disputes relating to trade remedies, preferences, customs matters and import licensing. Kate handled the textiles and apparel portfolio during the final phasing out of quotas under the WTO's Agreement on Textiles and Clothing.

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John Forrest is the UK Government's former lead negotiator on the GATS and the services aspects of bilateral investment treaties. John represented the UK in the accession negotiations of Russia, Ukraine, Vietnam and Kazakhstan, and has advised various companies and trade associations on WTO dispute settlement proceedings.

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Rt. Hon Baroness Liz Symons of Vernham Dean is a former Deputy Leader of the UK House of Lords and UK Minister of International Trade and Investment, Defence Procurement and the Middle East. Baroness Symons is a leading figure in shaping EU trade policy and has been involved in the negotiation of various trade agreements, including the launching of the Doha Round.

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Professor Dr. Geert van Calster specialises in advising clients on international trade law matters, including compliance with the GATT, and the TBT, SPS and SCM agreements. He lectures on international trade law and economics at the University of Leuven in Belgium and at Oxford University in the UK.

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Jack Levy advises clients on WTO issues, trade remedies, customs matters, export controls and sanctions. He represented Canadian softwood lumber producers in WTO dispute settlement proceedings and in negotiations for a binational settlement agreement. In addition, Jack has litigated before NAFTA panels, and the US International Trade Commission, the Department of Commerce and the Court of International Trade.

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Dr. Flemming Moos specialises in advising clients on the international trade law aspects of data protection, e-commerce, information technology and telecommunications. He has particular expertise with WTO/GATS law relating to the establishment of commercial websites, copyright and other content licensing, hosting agreements and domain disputes.

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