SOUR GRAPES:
SIMULATING A WTO DISPUTE SETTLEMENT CASE

by

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ABSTRACT

This project has two purposes. The first is to provide readers with a descriptive overview of a simulation of a World Trade Organization (WTO) dispute settlement case (being European Communities – Measures Affecting Wine Imports). The simulation took place in a graduate level international trade course. Secondly, and arguably more importantly, the purpose of this project is to examine the usefulness and effectiveness of simulations as a teaching tool in international studies classes. Simulations are one of three interactive learning techniques that provide unique benefits not realized through traditional teaching methods. This project provides an overview of the WTO dispute settlement mechanism, discusses the actual dispute that was simulated and describes how the classroom simulation unfolded. The final analysis is conducted under the guise of four questions. Was the simulation an accurate reflection of what actually takes place? What significance did the simulation have for students of Canadian trade policy? Did the simulation contain the five major components as recommended by the literature? And, was the simulation effective? The final question uses a behaviour-content matrix, based on Bloom and Krathwohl’s Taxonomies for the Writing of Educational Objectives. It is informed by interviews with the course instructor, student questionnaire responses and the author’s own personal assessment as both a student who took the course and as a professional who works in the trade law field.
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>DFAIT</td>
<td>Department of Foreign Affairs and International Trade</td>
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<td>DSB</td>
<td>Dispute Settlement Body</td>
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<td>DSU</td>
<td>Dispute Settlement Understanding</td>
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<td>EU</td>
<td>The European Union</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>ICONS</td>
<td>International Communication and Negotiation Simulations Project</td>
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<td>MFN</td>
<td>Most Favoured Nation</td>
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<td>NT</td>
<td>National Treatment</td>
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<td>OIV</td>
<td>Organization of Vine and Wine</td>
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<td>TBT</td>
<td>Technical Barriers to Trade (Agreement on)</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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CHAPTER ONE
INTRODUCTION AND OVERVIEW

People love to play games. Like others, I find them to be stimulating, challenging and, quite simply, a lot of fun. Perhaps this is why I found an international trade course I recently took to be so enjoyable. Instead of the usual essays and exams, the course syllabus called for two simulations and a case study. My interest was immediately piqued. Added to this, I realized that one of the simulations emulated a World Trade Organization (WTO) dispute settlement case. As I happen to be employed in the Trade Law Bureau at the Department of Foreign Affairs and International Trade (DFAIT) and assist with dispute settlement cases for a living, I quite naturally became very interested in this particular simulated event. How close would it be to the real thing? What could be learned from it?

Simulations are part of an active or experiential learning approach to teaching. While most of the literature tends to consider this approach in a favourable light, Jeffrey Lantis (Secretary of the Active Learning in International Affairs Section of the International Studies Association) points out that “scholars interested in the use of role playing simulations... are aware that few comprehensive studies confirm their experiences (and convictions) that such exercises are truly effective.”¹ He claims that we should “carefully consider how to move beyond observation, class discussions and written evaluations to a more rigorous assessment of these

means of instruction." This project will attempt to conduct such an assessment, using a WTO dispute settlement simulation as an example.

Before examining the WTO simulation in detail, the types of active learning approaches currently utilized in the international studies field will be reviewed. These include not only simulations and games, but also case studies and technological aids. A literature review will then be conducted, with a focus on some of the positive and negative benefits arising out of this type of approach. Major components recommended for a successful simulation will then be discussed. Finally, the manner in which technology has impacted on the use of simulations - with respect to both research and design - will be considered.

The third chapter introduces the WTO simulation and provides background information pertaining to WTO dispute settlement. The simulation itself took place during the fall of 2002 at the Norman Paterson School of International Affairs in Ottawa. The course was entitled “The Politics and Institutions of International Trade,” and was taught by Michael Hart. The class consisted of 23 graduate level students. At least four of the students worked for the federal government in some capacity; three of them (including me) in junior level positions at the Department of Foreign Affairs and International Trade. Most

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3 Michael Hart worked for many years with the Department of Foreign Affairs, where he was a member of the Canadian team that first prepared and then negotiated the Canada-US Free Trade Agreement. He is currently the Simon Reisman Chair of the Norman Paterson School of International Affairs at Carleton University, and is a founding director at the Centre for Trade Policy and Law in Ottawa. Mr. Hart has published extensively on trade policy matters.
of the other students expressed interest in pursuing careers in the foreign service or policy work. The dispute settlement case simulated, *European Communities - Measures Affecting Wine Imports (Complaint by Argentina)*,\(^4\) was an actual dispute that had been notified to the WTO but had not yet been proceeded with at the time of the simulation.\(^5\) This chapter not only puts the case into context of the WTO, but also describes the simulation exercise and highlights some of the legal arguments that were raised and discussed.

Chapter four attempts to conduct a “rigorous assessment” of the simulation as a means of instruction. In particular, it examines four questions: Was the simulation an accurate reflection of what happens in the WTO? What significance did it have for students of Canadian trade policy? Did it contain the major components as specified in the literature? And, finally, was the simulation effective? The final analysis utilizes a behaviour-content matrix, based on Bloom and Krathwohl’s Taxonomies for the Writing of Educational Objectives,\(^6\) to draw out different types of learning that might have occurred as a result of participating in the simulation. Given my participation in the course and my particular occupation and expertise, the standard of face validity has been applied. Participant observation was also utilized.

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\(^4\) Hereinafter referred to as the “*EU - Wine*” case.

\(^5\) The case remains unlitigated at the time of completion of this project.

\(^6\) Hereinafter referred to as “Bloom's taxonomy”.
CHAPTER TWO
LITERATURE REVIEW

In a book entitled The New International Studies Classroom: Active Teaching, editors Lantis, Kuzman and Boehrer focus upon three types of experiential learning approaches, being: 1) simulations and games; 2) the case method; and 3) technological aids. All three approaches offer a number of unique benefits not available to students via traditional teaching methods. This chapter reviews these techniques and explores some of the benefits and drawbacks resulting there from. It also outlines the major components required for holding a simulation, as well as considers some of the impacts technology has had.

Three Experiential Learning Approaches

Simulations, which are essentially role-playing exercises or games used to model contemporary global politics, emerged in tandem with the international studies discipline in North America during the 1950's. Debuting first as war games, simulations later evolved into a research tool used to calculate outcomes as a result of various actions. As the discipline has changed, so has the use of simulations. Now, as negotiations have become a leading mechanism for international relations, simulations have become popular means for teaching about them. While the simulation examined in this project was tailored to reflect a

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7 Jeffrey S. Lantis, Lynn M. Kuzman and John Boehrer (eds), The New International Studies Classroom: Active Teaching, Active Learning (Boulder, Co.: Lynne Rienner Publishing, 2000), p. 11.

World Trade Organization dispute rather than a negotiation, we will see that one of the many perks of simulations is their versatility.

The most common type of simulation is that conducted in a classroom, however, there are a number of other popular examples. Simulations such as Model United Nations, Model European Union and Model Organization of American States involve groups of students from different universities gathering face-to-face to simulate a variety of forums. There are also various simulation exercises available that have been developed around certain topics, focus on a geographical location or represent specific international bodies, some offered on larger scales than others.9 The advent of the computer age has allowed for the evolution of another type of simulation which is gaining in popularity, that being computer assisted simulations. These will be discussed shortly when we look at the use of technological aids as interactive teaching tools.

The second active learning approach set out by Lantis et al. is the case method. The practice of using authentic situations to invoke learning is well established in other disciplines; however, its growing use in international studies is relatively new. Part of the new-found interest can be attributed to the Pew Charitable Trust, which generously funded scholars from Canada and the United States to write and to teach cases. In particular, in the early 1990s, the Trust sponsored 120 prominent teachers to participate in intensive case study workshops at Harvard’s Kennedy School of Government. Upon returning to their

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9 Starkey & Blake provide a relatively extensive list at p. 539.
campuses, they began to apply the case method and have spread enthusiasm for it. The case method makes use of succinct accounts of pivotal events to engage students in interactive discussion. By putting students in the decision-maker’s shoes, cases are “one way to help students develop confidence in their ability to think”. They serve not only to teach students about important events, decisions, negotiations, etc., but also help students develop analytical skills by allowing them to wrestle with the dilemmas, issues, and implications of a real situation.

The third active learning approach that has been gaining popularity in the international studies classroom is the use of technology. Technological aids can range from interactive computer usage to video conferencing to movies, documentaries and TV news segments. Technology can be and is often combined with the two techniques outlined above. While the use of technology is arguably the newest of the three active learning approaches, it has not received the unequivocal blessing of the discipline.

Computer assisted simulations provide the opportunity for participants to use telecommunications technology to interact with each other from different locations. The Internet has allowed for two types of computer assisted simulations to evolve. Starkey & Blake distinguish them as: “(a) second generation exercises, built around the ‘computerization’ of older, popular simulations; and (b) a new breed of simulations that use

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11 Ibid, p. 22.

12 Ibid, p. 5.
technology to add previously unavailable dimensions to the simulation process."¹³ primarily in the form of large scale simulation groups. These latter simulations are considered to be superior to the traditional research-style computer simulations (which offered only a specified number of outcomes) as it is argued that "[h]umans are still much more able than machines to deal with uncertainty, with value-laden decision-making, and with complex problem solving."¹⁴

**ICONS Project**

While there are a number of examples of large scale computer assisted simulation groups in existence,¹⁵ a significant portion of the literature tends to focus on the University of Maryland’s ICONS (International Communication and Negotiation Simulations) Project. ICONS evolved in the 1980s and was one of the earliest programs to make use of computer networking as a forum for simulation. Today, ICONS can be accessed by colleagues or peers around the world. Participants "represent decision makers and negotiate solutions to pressing problems. Current simulations focus on military security, economic development, human rights, and the environment, among other issues. ICONS staff can also create simulations for a specific audience or event."¹⁶ ICONS is available to high school students; however, university students are the ideal audience. Simulations conducted by this latter

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¹⁵ Starkey & Blake provide an extensive, albeit not exhaustive listing at p. 541.

¹⁶ ICONS Project Website, located at: http://www.icons.umd.edu/.
group (a short one lasting three weeks and a traditional one being five) consist of students from all over the world.\textsuperscript{17} In the international studies field, this program is arguably the most technologically advanced. It nevertheless bears a great deal of criticism compared to more conventional methods.\textsuperscript{18}

One of the most striking features of ICONS (especially compared to a classroom or other face-to-face simulation), is the fact that all communication is done with the use of a keyboard. Joyce Kaufman has noted that this creates a number of unique features, some positive and some negative. First, traditional biases and prejudices are minimized as students do not know who they are negotiating with or where they are from. Second, “important aspects of international negotiations tied to direct contact, including body language and the ability to ask for immediate clarification” don’t exist.\textsuperscript{19} Third, opportunities for informal negotiation (a meeting in the hallway, a conversation over lunch, etc.) are absent. Additionally, there are no opportunities to make a verbal argument or present a proposal. And, finally, partly because of the lengthy time frame, students have the ability to think of their answers and carefully draft them before sending. Despite these features, Kaufman concludes that computer assisted simulations still have value. The most important aspect to consider is whether or not the exercise meets its educational goals and objectives.


\textsuperscript{18} For example, see the discussion on the role of technology set out by Brigid A. Starkey and Elizabeth L. Blake, “Simulation in International Relations Education,” \textit{Simulating and Gaming} 32 (2001): p. 540.

\textsuperscript{19} Ibid, Kaufman, p. 63.
**Benefits/Drawbacks of Classroom Simulations**

The remainder of this chapter focuses on features pertaining to the use of classroom simulations as a teaching tool, bearing in mind, however, that many of these features also apply to other active teaching methods. With respect to benefits derived from the use of simulations, one of the most obvious is the opportunity for students to make a connection between theory and practice. Lowry notes that making the connection "between the theoretical and institutional material [students] have studied and the policy concerns and preferences of the countries they will represent..." is often "the most difficult aspect of the course for some."²⁰ Part of this difficulty stems from the fact that preparing for a simulation requires not only researching but, more importantly, understanding. Instead of learning about (and sometimes simply memorizing) facts and theory in a vacuum, students need to put a particular situation and problem into perspective. They need to think about possible resolutions and be ready to justify their position and subsequent responses during the simulation as the situation warrants. Such a subjective understanding is virtually impossible to impart through conventional teaching methods.²¹

There are many other benefits that students can derive from participating in a simulation. Their research not only becomes better ingrained, but also lessons they learn tend

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to remain with them as these lessons come from their own experience.\textsuperscript{22} Jeffrey Lantis cites a study of retention conducted by Smith & Boyer which found that "while students recall only 10\% of what they read and 20\% of what they hear, they remember 90\% of their actions and statements combined."\textsuperscript{23} In addition to retention benefits, students typically tend to do more research than necessary. Lowry observes that students put extra effort into researching as they cannot predict in advance exactly what they will need to know. They also do not want to appear unintelligent before their peers.\textsuperscript{24}

Group work, where students collaborate their efforts into a joint approach to a problem, is another benefit. Kaufman notes that "[w]hile working in groups, students learn quickly that they do not all see their country's policy on an issue the same way, nor do they agree on a negotiating strategy to follow during the simulation."\textsuperscript{25} In addition, some group members invariably work harder than others, creating internal conflicts which must be resolved. Teams must learn how to solve (or live with) these internal conflicts while at the same time mediating and negotiating external ones.\textsuperscript{26} Learning to handle such group


\textsuperscript{23} Jeffrey S. Lantis, Lynn M. Kuzman and John Boehrer (eds), \textit{The New International Studies Classroom: Active Teaching, Active Learning} (Boulder, Co.: Lynne Rienner Publishing, 2000), p. 43.


\textsuperscript{26} Ibid, p. 66.
dynamic situations provides students with a sense of some of the real workplace challenges that do transpire.

The written work can also be viewed as a benefit. In many instances, students are preparing documentation similar to that which they will be expected to use when they start their careers. Briefing notes, position papers, memos to the minister and, in the case at hand, WTO submissions, are all instruments of the diplomatic arena. Participating in a simulation provides an opportunity for students to develop and make use of these tools of the trade and gain practical experience with them. This opportunity is seldom available with traditional teaching methods.

A final benefit that must be noted is that simulations work “in no small measure because they are fun.”27 Simulations mentally engage students, who typically welcome the opportunity to participate in a refreshingly non-traditional learning environment. They motivate student involvement and encourage interaction and intellectual risk-taking.28 Many students look forward to donning the caps of the professionals they may one day become. They also enjoy testing their skills and abilities in a relatively relaxed and non-threatening environment.

While simulations do offer a host of benefits, they are not without their drawbacks. Kaufman, in her article entitled “Using Simulation as a Tool to Teach About International Negotiation,” weighs the benefits against the drawbacks. She cautions that simulations must


be used as a means and not an end, that they are only as strong as the weakest team, and that they are unlikely to portray a completely accurate reflection of reality. These and other drawbacks, such as grading difficulties, free-riding problems and other evaluation issues, all need to be weighed against the conviction that simulations can “teach important lessons more effectively than other approaches”.

**Major Components of a Simulation**

Jeffrey Lantis identifies five major components for designing a successful simulation. These are: 1) educational objectives; 2) specific roles; 3) background information; 4) rules of procedure; and 5) a debriefing period for discussion and reflection.

Clear goals and objectives are stressed by a number of authors as a foremost consideration for making simulations work. The goal of a simulation is usually not to teach students how to become international negotiators (or whatever role they happen to be playing); rather, it should be a means to convey other educational objectives. Objectives will vary based on course content, subject matter, level of study and expectations, but should be clearly set out so that appropriate guidance is provided to students. As Kaufman notes,

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30 Ibid.


often “the success of the experience will depend upon the faculty who frame the experience, as well as the students who must prepare for it.”

Simulations should provide for specific roles for students to take on, while maintaining flexibility for students to choose. Lantis recommends helping students with suggestions for researching their roles once they have been assigned. Students also should be provided with enough background information so as to allow them to prepare for and facilitate the simulation exercise effectively. In addition, a solid rules structure helps to “guide participants toward the educational objectives” and to “simplify and order the decision-making process.” The final component, debriefing, is also stressed as a very important element. Not only does it provide closure and an opportunity to discuss experiences, but it has been noted that “experiential learning frequently occurs after, rather than during, an exercise.”

**Simulations and the Internet**

The advent of the Internet has been a very important technological change with respect to simulations in the international studies field. Today, students have an unprecedented ability to access material and documents heretofore unavailable to them. Where once they had to rely on books and other secondary sources available in libraries, they

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36 Ibid, p. 46.
now have a world of current, primary material at their fingertips. They also have the benefit of instantaneous communication with officials, bureaus, embassies and the like through electronic means. Students can not only access material from different perspectives and cultures, but are afforded a “much richer inquiry into the issues... and a deeper simulation experience.”

Access to the Internet has also expanded the ability for instructors to design simulations previously unattempted. As we will see, the WTO dispute settlement simulation would have been difficult to facilitate only a decade ago as expeditious access to relevant information simply was not possible. Despite this new research tool, however, traditional methods have not become redundant. Students are cautioned to ensure that what they find on the Internet is from a reliable source. In addition, sometimes a telephone call, an in-person visit or a trip to the library can provide insight and answers impossible to gain from a computer. Much as experiential learning approaches enhance traditional methods, so computer research should be viewed in the same manner.

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CHAPTER THREE
THE WTO DISPUTE SETTLEMENT CASE

The purpose of this chapter is to provide a descriptive overview of the WTO dispute settlement simulation that will serve as the basis for the analysis in the following chapter. This chapter will consist of three main sections. The first section will examine the WTO dispute settlement mechanism as a whole. The next section will look at the simulated EU-Wine case. Pertinent aspects will be drawn out as they pertain to some of the legal arguments and issues covered by the students. Finally, we will look at and follow the various steps of the simulation, paying particular attention to the preparation required and the actual class in which the simulation took place.

The WTO and the Dispute Settlement Understanding (DSU)

The WTO came into being on January 1, 1995. Having replaced the GATT (General Agreement on Tariffs and Trade), the WTO represents a permanent system of trading rules and obligations which are now institutionalized by a charter. In addition to creating agreements in many new areas, one of the most distinguishing features of the WTO is its expanded dispute settlement mechanism. This mechanism is governed by the Understanding on Rules and Procedures Governing the Settlement of Disputes (commonly referred to as the Dispute Settlement Understanding or DSU). It is available to all 145 Members and serves to

enforce the various rules and agreements that have been entered into.\textsuperscript{40} The DSU is administered by a dispute settlement body (DSB), which consists of representatives of all members of the WTO. The DSB meets approximately once a month, more frequently if special requests are made. It has the authority to “establish panels, adopt panel and appellate body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements.”\textsuperscript{41}

A country belonging to the WTO is bound by its multitude of agreements, and must ensure conformity of domestic laws with its international obligations. When a trade dispute between two members arises and no diplomatic resolution can be found, adherence to international obligations can be scrutinized under the microscope of the WTO by utilizing the provisions of the DSU. A WTO dispute settlement case officially begins when a country lodges a formal complaint by filing a Request for Consultations (Request). Among other things, a Request sets out the provisions which the complaining party feels the responding party has violated. The most recent complaint against Canada was filed by the United States last December with respect to \textit{Canadian Measures Relating to Exports of Wheat and Treatment of Imported Grain} (the \textit{Canada - Wheat} case). Once a Request is filed, parties to a dispute are required to engage in formal consultations. Should settlement not be achieved

\textsuperscript{40} With the exception of the \textit{Plurilateral Trade Agreements} to which all Members do not necessarily belong.

\textsuperscript{41} \textit{Understanding on Rules and Procedures Governing the Settlement of Disputes}, Article 2.1.
during this process (which is customary as diplomatic negotiations have usually already been occurring), at the next meeting of the DSB the aggrieved party normally asks that a panel be established to hear the dispute. The United States made such a request in the Canada - Wheat case on March 31, 2003, and a panel was established.

A panel usually consists of three individuals who have achieved a high level of expertise in trade law. Once a panel is formed, a timeline for the proceedings is drafted and distributed. A substantial portion of a party’s argument is presented to the panel by way of written briefs. In addition, there are provisions for the parties to meet with the panel and make oral presentations. These meetings take place at the WTO in Geneva and it is this type of a hearing that our classroom simulation reflected. As the WTO works on the basis of consensus, panels set out their recommendations and rulings in the form of a written report. These reports must then be adopted by the DSB as a whole. Ideally, reports are issued within six months from the date of panel composition, but it is not unusual for this notional deadline to be breached.

The following is a chart which shows how many reports have been adopted during the lifetime of the GATT compared to the WTO:

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42 Article 8 of the WTO’s Understanding on Rules and Procedures Governing the Settlement of Disputes sets out the rules pertaining to the composition of panels.

43 Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 12(8).
Looking at the number of reports adopted, one can see that dispute settlement activity in the WTO is greater than it was in the GATT. Some of the reasons for this are increased membership, a broadening of the subject matter covered by the agreements, and a growing acceptance of the WTO’s ability to resolve disputes. While success is not guaranteed, a study of the GATT disputes did find that 88% had been successfully resolved.\(^{46}\)

Recognizing that compliance is sometimes an issue, the DSU not only contains provisions for an appeal process, but also contains time limitations for implementation and provisions for a compliance hearing, if necessary.\(^{47}\) Fortunately, compliance is a problem in relatively few of the disputes.\(^{48}\) For the most part, the dispute settlement mechanism works

\[\text{AGREEMENT} \quad \text{AGE} \quad \text{REPORTS ADOPTED}\]

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<td>General Agreement on</td>
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\(^{48}\) Canada’s most notable involvement with compliance proceedings is in the aircraft financing dispute cases with Brazil. Having won its first case against Brazil, an arbitration panel determined in August 2000 that Canada was authorized to take trade-related countermeasures in the sum of $2.1 billion. To date, Canada has failed to take any action. In a subsequent but related case, Brazil was recently authorized to take similar action in the amount of $385 million. The parties are currently trying to negotiate a diplomatic solution.
remarkably well considering both the volume of disputes and the voluntary nature of the WTO.\footnote{As of February 25, 2003, there have only been 11 Appellate Body and panel compliance reports adopted by the DSB. [Dispute Settlement Body - Annual Report (2003) - Overview of the State of Play of WTO Disputes: Feb. 25, 2003, p. ii.]}  

\textbf{The EU – Wine Case}  

As mentioned, the dispute settlement case simulated in the course I took was \textit{European Communities - Measures Affecting Wine Imports}.\footnote{Within the WTO, the European Union is still referred to as the European Communities (EC), their name upon joining. For the balance of this paper, however, the term “EU” will be used.} This dispute was brought by the Republic of Argentina against the EU by way of a Request for Consultations filed September 12, 2002.\footnote{The Request for Consultations (WTO Document No. WT/DS263/1) is attached as Appendix 1.} To date, Argentina has yet to advance its case by asking the DSB to establish a panel. For the purposes of the simulation, students were to assume that consultations had taken place and failed, and that the DSB had established a panel.

At issue in the dispute is Council Regulation EC 1493/1999 and Commission Regulation (EC) No. 883/2001, which pertain to oenological practices and to trade in wine between the countries of the EU and other countries. In particular, the first Council Regulation, among other things: a) restricts imports of wine made with malic acid; and b) restricts imports of wine acidified to a level in excess of 2.5 g/l. The problem at hand stems from the fact that grapes grown in higher elevations and colder climates (such as Canada and some European countries) typically have an elevated level of naturally occurring acid, which enhances flavour. Grapes from warmer regions (such as Argentina) often need additional acidification when made into wine. As Argentina uses malic acid (among other types) to

acidify its wine, and acidifies in excess of 2.5 g/l (to a maximum of 3.8 g/l), it felt that the EU had erected a technical barrier to imports into the European market. In addition, Commission Regulation 883/2001 contains provisions for exemptions to these regulations, which were granted to some WTO members, but not others.

In its Request document, Argentina set out four specific ways in which it felt the EU had violated its WTO obligations, citing clauses from both the General Agreement on Tariffs and Trade (GATT 1994)\(^5\) and the Agreement on Technical Barriers to Trade (the “TBT Agreement”). Argentina raised two issues that are central to the ambit of international trade as a whole: Most Favoured Nation (MFN) and National Treatment (NT). These concepts have become cornerstones of the international trading system and are reflected in most of the new agreements adopted under the WTO. MFN essentially means that treatment which is accorded to one member country must be extended to all other member countries. In this case, the EU had granted a number of exemptions (from the terms of the regulation), which Argentina felt was in violation of MFN obligations. However, (as was revealed during the simulation), the WTO also contains provisions for allowing certain exemptions (from MFN) if members belong to free trade agreements with each other.

The concept of National Treatment relates to the idea that once an imported product is inside a member’s border, it is to receive the same treatment (good or bad) as a domestic product. This argument was not pursued during the simulation as we were not privy to the

\(^5\) The GATT 1994 is the 1947 GATT Agreement and its subsequent Understandings. This Agreement still forms an integral part of the WTO.
reason for its inclusion in the Request. Argentina also raised an argument pertaining to special and differential treatment for developing countries.

In addition to the GATT arguments, Argentina’s primary complaints fell under the provisions of the newer Agreement on Technical Barriers to Trade (TBT Agreement). Its first argument (as set out in the Request), was that the EU regulation is more trade restrictive than necessary. I should note at this point that as cases and appeals have been heard and adopted, the WTO has developed a system of precedents that are used with respect to certain provisions of the various agreements. WTO decisions carefully lay out the reasoning used by a panel and/or appellate body. In many cases these reasonings are referred to as “tests” that are applied in subsequent cases. The argument pertaining to “more trade restrictive than necessary,” provides a good example of one of these tests. Let us examine this particular argument a little more closely, and consider it in light of the case at hand.

The “more trade restrictive than necessary” argument is made pursuant to Article 2.2 of the TBT, which reads:

> Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.
The established test for this particular article was first used in a case brought by Canada against the EU with respect to asbestos. The panel in that case proceeded to consider the following steps in arriving at its determination:

(a) there must first be a legitimate objective;

(b) the technical regulation must not be more trade restrictive than necessary to fulfill this legitimate objective; and

(c) the risks non-fulfillment would create must be taken into account.

Needless to say, determining a legitimate objective is not an easy issue. Not only can a member argue the list of objectives as set out in Article 2.2, but it can also create some of its own. In addition, logic would dictate that a respondent would set forth a number of objectives, hoping that at least one of them would be found legitimate. If a panel can determine that there is indeed one (or more) legitimate objectives, then the next stage of the argument is considered, which is whether or not the technical regulation in question is more trade restrictive than necessary to fulfill the legitimate objective(s). Essentially, the question of whether there are other ways (especially less trade restrictive ways) of fulfilling the objective(s) is considered. Finally, a panel must consider what the risks would be if the regulation were not in place. Usually, members will have a risk assessment report prepared by an expert in the field in question. As one can imagine, litigation surrounding Article 2.2

of the TBT itself is an onerous task. Arguments become very complex and technical, requiring a great deal of time and attention to detail. In summary, Argentina argued that the regulation did not have a legitimate objective, that it was more trade restrictive than necessary and that the risks of non-fulfillment were minimal.

Looking at another argument made by Argentina, that there are international standards the EU should be following, provides some insight into the issue of growing linkages between domestic (in this case, the EU) and international (in this case, the Organization of Vine and Wine [OIV]) policies. With respect to winemaking, resolutions adopted by the OIV allow for the use of malic acid, among others. The OIV also allows for acidification of wines to a level of 4.0 g/l. The actual clause under examination in the international standards argument, Article 2.4 of the TBT, states that:

> Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

The simple wording of this article gives fodder to debate. Following the example of previous panels, a number of questions must be considered: Were the EU regulations technical? Are the OIV resolutions relevant international standards? What exactly does “or

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54 This example also serves to illustrate the difficulties that can arise with the wording of an agreement. On a number of occasions, negotiators are forced to leave sections of agreements purposefully vague (usually because consensus cannot be reached). In many cases, these are the sections panels have before them at hearings. Such ambiguities have led some to question whether it is the members that are stipulating the terms of the agreement or the panel/appellate body that is given the job of interpreting them.
their completion is imminent” mean, given (in this case) that the EU regulation in question took effect two months prior to the OIV resolutions being passed? What does “as a basis for” mean? Again, what are the objectives of the regulation? Are they legitimate? Do the international standards provide the best means of fulfilling them?

The Class Simulation

As students embarking on a simulation of a dispute settlement hearing of this case, we were faced with an onerous task. Having been provided with a good theoretical framework for understanding the WTO arena and some of the rules of the game through traditional teaching methods,55 we were then given Argentina’s Request document and split into three groups: one representing Argentina; one representing the EU; and one representing the panel/secretariat. I chose to be a part of the secretariat as I had never had an opportunity to view a panel proceeding from such a venue. I also wanted to take advantage of my ability to be a participant observer. The rules for the simulation were circulated shortly thereafter.56

It is the next phase, the research and written documents phase that will now be focused on as it presented, in my view, the greatest challenge and, arguably, the greatest learning opportunity. After all, not only did we need to take Argentina’s Request document and try to understand what was at the heart of the dispute, but we also had to take on a role in litigating the case - not an easy task, even in the real world!

Deciding what to research required both teamwork and logical thinking. As the

55 This simulation took place during the last four weeks of class. At this point, we also had the benefit of participating in an earlier simulation, being a quadrilateral meeting of trade ministers. During the preparations for this simulation, we also conducted a case study of another WTO dispute.

56 A copy of the rules is attached as Appendix 2.
complaint dealt with winemaking regulations, the first thing to do was to gain a rudimentary understanding of policies governing oenological practices. A good start was locating pertinent documents, being the EU regulations in question, together with the OIV resolutions, and any other regulations or resolutions that might be referred to therein. We also needed to find out which countries were provided exemptions to the regulations and locate the appropriate documentation (usually bilateral free trade agreements).

Next, we needed to study the clauses of the WTO agreements that Argentina felt the EU had violated. We also needed to find out whether previous panel or appellate bodies had adjudicated on these particular clauses in the past and, if so, to ascertain what was determined. We also needed to understand a little about the winemaking industries in both Argentina and the EU, and look at past trade patterns.

The Argentine team had to prepare and circulate their brief first. This entailed conducting their research, formulating their legal arguments, and drafting a brief in a format comparable to that used in the WTO. The EU team, shortly after receiving Argentina’s brief, then had an additional few days to prepare their responding brief with appropriate arguments and in an appropriate format. Both country teams then had to prepare their opening statements and rebuttals. In the meantime, the panel-secretariat team needed to scrutinize the briefs carefully, ensuring that the arguments of both parties were fully understood. The team members needed to understand the legal issues that existed and draw some preliminary conclusions given that the rules of the simulation required them to issue a

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57 Copies of the briefs and panel report have not been appended due both to length (Argentina’s 18 pages, the EU’s 15 pages, and the panel report’s 22 pages) and lack of permission.
preliminary ruling at the end of the simulation. In addition, the panel/secretariat team needed to formulate a list of questions to be asked at the hearing.

The simulation itself took place only days after the EU’s brief had been circulated. It lasted the duration of one class, a three hour period. Students dressed in standard business attire to help maintain character. After a brief introduction by the chair of the panel, Argentina, and then the EU, presented their opening arguments. Each team was then provided with an opportunity to rebut. Both teams divided their opening statements into sections so that team members were provided with an opportunity to speak. Both teams’ oral presentations reflected much of what was written in their briefs. Rebuttals followed, presented by the remaining team members. It quickly became apparent that certain individuals on each team were designated spokespersons for different areas. The rebuttal phase lasted approximately 40 minutes, and a number of issues were touched upon, although not always resolved. After a break, the panel asked its prepared questions. A number of clarifications it had identified had already been addressed. The questions outstanding typically advanced the legal issues, delving further into some of the tests used in WTO law.

At the end of the simulation, the panel and secretariat engaged in a short, private session before returning to render a preliminary decision. A complete version of the panel’s report, including background, a summary of the parties’ arguments, and the panel’s findings with reasons, was prepared and circulated the week following the simulation.

A short debriefing was held at the end of the simulation and a more extensive debriefing took place at the beginning of the following class. While students by no means
did a perfect job with this case (difficult, even in the real world), they certainly had a rare opportunity to experience what a WTO panel proceeding is like.

The simulation represented forty percent of the overall grade for the course. Fifteen percent of this was based on the team’s efforts, ten percent was based on an individual’s contribution to the simulation exercise and the balance was based on an individual assignment. In this case, each student wrote an article, for an appropriate newspaper, reporting on the results of the hearing.

It will be interesting to see whether this case proceeds in the WTO or whether it settles. Certainly, if the case does proceed and results in a panel report, I know I will be eager to see how close our arguments (and the decision) came to the real thing. The following chapter contains a comparison of the simulation to what really happens in the WTO. It also evaluates the simulation exercise as a means of instruction.
Simulations are more often conducted than evaluated. However, Jeffrey Lantis made a valid assertion when he stressed that we should not simply assume simulations and other active learning techniques are effective pedagogical tools. Unfortunately, there is little available in the international studies simulation literature that provides guidance pertaining to evaluation issues. Lantis suggests establishing control groups, such as two similar classes utilizing different teaching techniques, to compare results. Perhaps if the learning objectives are similar this might be an option. He also recommends further study into the claim that simulations promote better retention of knowledge.\(^58\) Judith Torney-Purta is one of the few authors that addresses evaluation as it relates to the ICONS Project. She claims that one of the most important aspects of evaluation is “finding or designing measures that closely match the objectives of the project.”\(^59\) Given the essence of learning that occurred in our simulation, and Torney-Purta’s claim, I felt it necessary to create my own method of evaluation.

This chapter embarks on an exploration of a number of questions, and uses the WTO simulation as a model for considering the answers. The first question evaluates whether the simulation was a valid reconstruction by asking whether it was an accurate reflection of what happens in the WTO. The second question attempts to assess the significance of the subject


\(^{59}\) Judith Torney-Purta, “Evaluating Programs Designed to Teach International Content and Negotiation Skills,” *International Negotiation* 3 (1998) pg. 82.
matter for students of Canadian trade policy. The last two questions focus on how the simulation performed as a teaching tool in this course. Did it contain the major components for a simulation as set out in the literature? Finally, and most importantly, was the simulation effective? This last question relies upon a behaviour-content matrix based on Bloom’s taxonomy to set out some of the skills and abilities students should have gained as a result of participating in the simulation.

**The Simulation as an Accurate Reflection of Reality**

The first question to consider is whether the simulation was an accurate reflection of what really happens in the WTO. This question has a number of aspects to it. With respect to the preparation and background work, the simulation was a fairly accurate representation of a WTO process. When a government decides to take a complaint to the WTO, a legal team must first familiarize themselves with the case. This involves learning about the actual dispute, understanding the industry, conducting research into relevant trade rules and decisions, etc. In addition, the legal issues must be determined. This involves discussions surrounding which provision(s) of which agreement(s) will be relied upon and which arguments will be most beneficial.

The next step, drafting the first submission, is usually done by the legal team well in advance of its due date. The team pools its research and expertise together until a workable draft is complete. In this respect, the background and group work performed by the students was a good approximation of what takes place. In government, however, a draft is usually then shared with industry representatives, officials from other government departments and other departmental members with an interest in the case. Sometimes, in more complex
cases, outside legal counsel are also involved. Subsequent feedback and debate then takes place, which helps to solidify a unitary position, test arguments and make predictions about how the other side might respond.

While the simulation replicated many of the procedural steps that are followed during a dispute settlement hearing, the following table identifies some of the differences:

<table>
<thead>
<tr>
<th>SIMULATION</th>
<th>REALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>One meeting of the parties and the panel</td>
<td>Usually two meetings of the parties and the panel</td>
</tr>
<tr>
<td>Panel questions posed at hearing</td>
<td>Panels questions circulated in writing</td>
</tr>
<tr>
<td>Opening statements same as submission</td>
<td>Opening statements expand arguments</td>
</tr>
</tbody>
</table>

There would be little benefit to extending the classroom simulation into two hearings; however, I feel future simulations should consider rectifying the other two differences. As panel questions usually require very detailed responses, questions are usually circulated to the parties in writing. This provides an opportunity to prepare and research answers. Had this strategy been adopted for this simulation, it would have resulted in a more efficient use of the question period. Early circulation of written questions is recommended for future simulations.

Opening statements tend to not only reflect the general drift of a submission, but also enhance and advance arguments made. The opportunity is often used to respond to some of the issues and arguments raised by the other party’s submission. During the simulation, participants simply read excerpts from submissions. This reduced the interactive element of the process. It also took valuable time away from debates that developed during the latter
portion of the hearing. Clarifying the nature of open statements for future simulations would be recommended.

With respect to the structure and content of the documentation prepared by the teams, I felt the students did an excellent job given their lack of expertise. The submissions looked like WTO documents and Professor Hart indicated that he was impressed with their quality.\textsuperscript{60} The legal issues raised and discussed during the simulation were also very commendable for a group of non-lawyers. The students not only found but also argued and explored a number of the tests which have been developed for certain sections of WTO law. They made and pursued arguments that would take place in such a hearing, and they struggled with issues that were unclear due to ambiguous wording in the TBT Agreement.

At the same time, performances varied. Argentina’s submission was a little rough and equivocal at times, while the EU’s submission was stronger and easier to follow. In addition, the EU team appeared more organized and confident with their legal arguments during the simulation. Whether intentional or not, these elements actually added to the realism.\textsuperscript{61} Developing countries (and countries not accustomed to DSU proceedings) often require legal assistance when litigating a case at the WTO. If they can afford it, they will hire lawyers from another country. A number of legal firms primarily in the United States

\textsuperscript{60} In-class comments, November 20, 2002.

\textsuperscript{61} Argentina is not a country with a significant amount of legal expertise in the WTO, compared to the EU, for example. Prior to the case at hand, Argentina had only requested consultations and formed panels in two other cases (DS35 and DS207). Neither advanced beyond the panel formation stage. On the other hand, Argentina has been the party complained against in five cases which have gone to a panel report. It would appear that Argentina is just beginning to find its wings in the WTO arena. Since requesting consultations in the EU-Wine case in September of 2002, it has requested consultations in three other cases. [Online. Internet. 04Apr.2003. Available: http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm#2001]
and Europe specialize in WTO representation. If they cannot afford it, they will have the WTO provide counsel for them or else struggle along as best they can with their own domestic legal counsel.  

An appropriate level of diplomacy and professionalism were sometimes lacking during the simulation, and students did veer off course at times. In addition, Professor Hart revealed that a few (legal) points had been missed. For example, he indicated that the third prong of the Article 2.2 argument - taking into account the risks non-fulfillment would create - opens the issue of risk assessments. This matter was never once raised during the simulation.

Overall, however, the students came away with a good sense of the types of arguments and issues that come up in such a case. Given the condensed time frame students were facing, together with their lack of expertise, I believe the exercise did an exceptional job of capturing the most important elements of a WTO dispute settlement hearing.

Significance for Students of Canadian Trade Policy

The next issue to consider is what significance the simulation had for students of Canadian trade policy. Again, there are a number of ways in which one can go about answering this question. Obviously, since Canada is a member of the WTO, any knowledge gained with respect to how the WTO works and, in particular, the dispute settlement mechanism works, is beneficial. In addition, revising the DSU is one of the topics under

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62 Article 27.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes foresees additional legal advice and assistance in respect of dispute settlement to developing country Members, and provides that “[t]he Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests.”
discussion at the current Doha Negotiating Round of the WTO. Dispute settlement mechanisms are also starting to be a common component of many regional (and bilateral) trade agreements.

Even though Canada was not a party to the dispute being simulated, it would certainly want to be aware of it. As Canada is a wine exporting country, it has concerns similar to those of Argentina. Canada has been very active in negotiations to promote the export of its wine products. In June, 2001, the EU lifted a ban on imports of Canadian ice wine.63 In December, 2001, Canada signed a Mutual Acceptance Agreement of Oenological Practices with Australia, Chile, New Zealand and the United States.64 Provisions on wine are also contained in some regional and bilateral agreements, such as the one between Canada and Costa Rica.65 In depth knowledge of the issues and oenological practices examined in the simulation are, therefore, very applicable to Canadian trade policy.

In addition, many of the issues that were raised and debated in the simulation are integral to the context in which Canadian trade policy is formed. For example, the WTO agreements contain special provisions and rules with respect to developing countries that Canada, like the EU, must abide by. However, it is sometimes unclear, as debates during the simulation demonstrated, just what boundaries Canada and other members are required to


adhere to when formulating policy. The simulation was also a good example, as mentioned before, of how belonging to a trade agreement such as the WTO impacts on domestic policy. In this case, the TBT Agreement has committed the EU (and other members) to abide by international standards except under special circumstances. Canada, and all other members, must adhere not only to the agreements, but to subsequent interpretations of panels (and appellate bodies), whether they are the offending party in the case or not. Therefore, anyone studying Canadian trade policy would be advised to keep abreast of DSB activity in the WTO.

The simulation was also of significance to students of Canadian trade policy as it demonstrated what occurs when trade disputes erupt and are referred to the WTO for resolution. The simulation provided a good example of what steps and procedures are followed and should assist students in their future careers as they have secured a basic understanding of how the process works. The simulation also helped to convey a sense of the importance of wording in an agreement. As was demonstrated in the review of Articles 2.2 and 2.4 of the TBT Agreement carried out in the preceding chapter, the wording of any phrase or statement contained in a trade agreement can convey certain meanings and even intentional ambiguities and it is important for students of trade policy to understand this. On a number of levels, then, the simulation was very significant for students of Canadian trade policy.

**Presence of Major Components**

The next part of the evaluation will assess how the simulation performed as a teaching tool in this course. The simulation exercise will be reviewed to evaluate whether
recommended components were included. These components were: (1) clear goals and objectives; (2) specific roles; (3) background information; (4) rules of procedure; and (5) debriefing. Lastly, an appraisal of just how effective the simulation was will be carried out.

As mentioned, the first and arguably most important component of a simulation exercise is ensuring there are clear goals and objectives. Professor Hart indicated he wanted students to come away from the course with the following: (a) an understanding of the nature of obligations entered into at the international level; (b) an understanding of how these obligations are reflected in government policy; and (c) an understanding of how governments deal with these issues in dispute settlement (i.e. how certain points are adjudicated to achieve outcomes). These objectives were mentioned to the class on a number of occasions in the weeks prior to the simulation.66 In addition, most if not all of the participants believed that the goals and objectives of the simulation exercise were clear.

With respect to specific roles, students were allowed to choose the team they wished after the nature of the simulation had been explained. For the most part, this was an equitable way of ensuring that most students could choose the role they wished to play. How they were to organize themselves once the groups had formed was part of the group work exercise. As indicated, the nature of this simulation lent itself to students adopting specific areas of expertise (oenological policy, bilateral agreements, specific issues of law, writing and drafting, etc...). The simulation, therefore, certainly provided for specific roles, yet it was up to the students to be involved in defining these roles.

66 They were also verified by Professor Hart in a post-simulation interview held January 8, 2003.
The background information provided included general information on WTO process and the Request for Consultations document filed by Argentina. As far as the case was concerned, students were responsible for extrapolating from the information contained in the Request an appropriate ‘shopping list’ of research tasks. Of particular note in this case is the fact that a great deal of information required for this simulation was easily accessible via the Internet. EU Regulations, OIV Resolutions, and WTO jurisprudence were locatable with little guidance, and students learned how to conduct these practical research chores in the process. This is one area I felt that I and the other government employees had the advantage. We were all accustomed to performing these kinds of tasks in our jobs. Fortunately, at least one of us was on each team and able to assist our fellow classmates if and when necessary. Professor Hart was also duly willing and capable of filling this role.

Professor Hart also circulated a document which he wrote entitled, Dispute Settlement: the WTO’s ‘most individual contribution.’ In addition to providing a concise overview for the students, this document also contained a case study of a timetable in practice in the US - Gasoline Imports case.

The rules of procedure for the simulation were circulated at the same time as the background document. The rules were mapped out in a two page document that set out timelines, requirements for written work, hearing format, etc..., many of the details of which were covered in the preceding chapter of this project.

67 A copy of this document is attached as Appendix 3.

68 See Appendix 2 for a copy of the Rules.
A very short debriefing was held at the end of the simulation. Professor Hart indicated that he thought the simulation was excellent, despite the fact that students sometimes “went off in funny directions” during the hearing and that a few points had been missed. He stressed that the simulation was a good way to get a better sense of the real, practical effect.\textsuperscript{69} A lengthier debriefing was held at the beginning of the following class. It was here that Professor Hart pointed out that the class had missed the critical argument pertaining to risk assessments. He also clarified that the OIV is an international standard setting body (this issue had been debated during the simulation). Some students, especially those on the defending EU team, complained that it was often difficult to come up with good arguments. Professor Hart indicated that this is a common problem in this line of work and that a good skill to learn is the ability to couch arguments in credible terms. Details of some of the other provisions were also discussed, as was the EU’s logic in creating such legislation.

The simulation exercise thus contained all the necessary components identified in the literature review.

**Was the Simulation Effective?**

To determine whether or not the simulation was an effective teaching tool, I will be reviewing the different types of learning that might have occurred. Both behaviour and content (i.e. skills and abilities students should be expected to exhibit combined with subject

\textsuperscript{69} In-class comments, November 20, 2002.
matter contained in the simulation) will be considered. Bloom's taxonomy of behaviours\textsuperscript{70} identifies six basic categories that should be utilized when assessing student learning:

- \textit{Knowledge}, being the ability to recall, recognize, acquire, identify and define.
- \textit{Comprehension}, being the ability to translate, transform, put in own words, rephrase and restate.
- \textit{Application}, being the ability to generalize, choose, develop, organize, use, transfer, restructure and classify.
- \textit{Analysis}, being the ability to distinguish, detect, classify, disseminate, categorize, deduce, contrast and compare.
- \textit{Synthesis}, being the ability to write, tell, produce, constitute, transmit, originate, design and formulate.
- \textit{Evaluation}, being the ability to judge, argue, validate, assess, appraise and decide.

The following sets out a behaviour-content matrix of learning related to the simulation:\textsuperscript{71}

**KNOWLEDGE**

- Students should be able to \textit{identify} the steps involved in a WTO dispute settlement hearing
- Using the Internet, students should be able to \textit{recognize} and \textit{locate} WTO dispute settlement reports
- Students should be able to \textit{recall} key elements, such as which three countries where given exemptions by the EU on wine imports

**COMPREHENSION**

- Students should be able to \textit{explain} what the \textit{EU-Wine} dispute is about
- Students should be able to \textit{put in their own words} how obligations entered into at the international level impact on domestic policy making, how these obligations are reflected in government policy, and how governments deal with these issues in dispute settlement.

\textsuperscript{70} The behaviour-content matrix has been adapted from Gage, N.L. and Berliner, David C., \textit{Educational Psychology} (Boston: Houghton Mifflin Company, 1992), pp. 38-39.

\textsuperscript{71} These are examples only and not intended as an exhaustive list.
APPLICATION

- Students should be able to generalize from specific information on cases to general principles of trade law and organize facts according to these principles.
- Students should be able to transfer group work, problem solving, research and other skills to the workplace.
- When provided with another WTO Request for Consultations document, students should be able to develop a general list of information required and steps that should be followed to take the dispute through to a panel hearing.

ANALYSIS

- Students should be able to compare and contrast the EU – Wine case with other cases that raise similar issues.
- In trade law terms, students should be able to distinguish between a “more trade restrictive than necessary” argument and an “international standards” argument.
- Students should be able to distinguish between the concepts of National Treatment and Most Favoured Nation.

SYNTHESIS

- Working as a group, students were expected to produce a draft WTO document.
- Working independently, students were expected to write a report on the results of the hearing for an appropriate newspaper.

EVALUATION

- Students should be able to validate why they felt Argentina (or the EU) should win this particular dispute.
- Given relevant information contained in a newscast, for example, students should be able to assess the stage of proceedings of other WTO dispute settlement cases.

When applying these categories to what the students learned in the course, I rely upon information gathered through interviews with Professor Hart and responses to questionnaires circulated to the students.72 I also rely on own analysis, both as a student in

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72 Questionnaires were circulated by email to the other twenty-two students in the course. Twelve responses were received: five from the panel/secretariat team; four from the Argentine team; and three from the EU team. A copy of the Questionnaire is attached as Appendix 4.
the course and a professional in the field of international trade law.

The students exhibited a number of the skills outlined above during the simulation. For example, knowledge and comprehension were displayed during the oral parts of the simulation. Students easily recalled relevant steps in the proceedings, they clearly identified the reasons for the dispute and relevant issues raised, and they transformed the research that they did into reasonable and pertinent arguments. Both Professor Hart and I felt that the written work was of very good quality and displayed many aspects of the application, analysis and synthesis components. The written work demonstrated that students could organize and transform a vast amount of information, could utilize available WTO tests, could formulate and produce credible arguments and had the ability to appraise and assess complex issues. Students also expressed the ability to synthesize information, not only in the written work leading up to the hearing and at the hearing itself, but in the individual newspaper article assignment required after the simulation took place.

As noted earlier, there were a number of mistakes made by students during the simulation. This was probably most notable during the three hour oral hearing. On a few occasions arguments went astray, the panel’s questions came across as questionable, and the whole proceeding veered off course. Despite these blunders, it must be recalled that the purpose of a simulation is not to teach students to become international trade law lawyers (or what have you), but to facilitate the achievement of other learning objectives. In this sense, the simulation was generally effective across most if not all of Bloom’s categories.
Torney-Purta suggests that a good way to evaluate the effectiveness of a simulation is to ask the participants directly.\textsuperscript{73} Therefore, one of the questions on the questionnaire of the students was whether they generally felt the WTO simulation had been effective.\textsuperscript{74} Only one student answered negatively. Most responses had an overwhelmingly positive tone. Many students identified the very benefits outlined in the second chapter of this project. Many also outlined skills that were going to assist them in the workplace. One student went so far as to comment that “I honestly think that of all the assignments I’ve been forced to undertake at the university level, this was the most novel and, in the end, the most effective.”

As a result of the questionnaire responses and speaking with Professor Hart, and based on my own personal observations and experiences, I feel that the simulation not only achieved the established goals and objectives, but also facilitated many other aspects of learning such as those set out in the matrix.

Finally, one of the most interesting phenomena to witness was the overall attitude of some of the students with respect to participating in a simulation. While most immediately welcomed the prospect, there were a few who did not see the point of the exercise and even questioned its utility. The transformation that occurred once the simulation was over was invigorating. All students appeared to be pleased with the job they had done and pleased with the results – more importantly, they learned a lot and I think they had fun doing it.

\textsuperscript{73} Judith Torney-Purta, “Evaluating Programs Designed to Teach International Content and Negotiation Skills,”\textit{International Negotiation} 3 (1998) p. 82.

\textsuperscript{74} While I am aware of the possibility of a non-response bias with questionnaire data, having been a participant in the simulation and a part of the class, I feel that the responses received do reflect the general attitude of the class.
CONCLUSION

When I first realized that the international trade course I was about to take contained simulations and a case study, I was excited by the prospect of participating in something fun and unique. Now, having taken the course, I am surprised at just how many different levels of learning actually took place. As outlined in the literature review, the simulation provided students with an opportunity to connect theory with practice, to conduct preparatory research, to work with each other as groups, and to draft documents. In addition, we practiced independent thought as we sorted out what information was required, what arguments would be most suitable, and how to best represent our country (or the panel). We honed oral and writing skills, inter-personal skills, and research skills. We also learned about the WTO dispute settlement mechanism, the EU - Wine case, and finite points of international trade law. And, of course, we learned the objectives set out by Professor Hart.

While it is both my experience and my conviction that this exercise was truly effective, I agree with Jeffrey Lantis that further study is required to verify the proficiency of simulations as a teaching tool. This project has examined a WTO dispute settlement simulation as both a portrayal of the authentic process as well as a model of learning. While it was relatively easy to compare how closely the simulation replicated a real dispute settlement hearing, judging how it performed as a model of learning was a little more difficult. It was determined that the subject matter was relevant to students of Canadian trade policy. In addition, the simulation contained all the necessary components as recommended by the literature. I believe it fulfilled (and surpassed) the learning objectives,
and both Professor Hart and the students who responded to the questionnaire felt the exercise was effective. Students took their roles seriously and seemed to enjoy the experience. Using these factors as our measuring stick, the simulation was successful on all fronts.

Needless to say, further study still needs to be conducted to ensure that the simulation experience is not just a game, but a serious source of learning.
Bibliography


The Marrakesh Agreement Establishing the World Trade Organization.


WTO, Understanding on Rules and Procedures Governing the Settlement of Disputes.

European Communities – measures affecting imports of wine

Request for Consultations by Argentina

The following communication, dated 4 September 2002, from the Permanent Mission of Argentina to the Permanent Delegation of the European Commission and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Government of the Republic of Argentina hereby requests consultations with the European Commission pursuant to Article 14.1 of the Agreement on Technical Barriers to Trade (TBT), Article XXIII.1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 4 of the World Trade Organization (WTO) Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), regarding several EU regulations and other mandatory provisions on oenological practices and on trade in wines.

The Republic of Argentina considers that some provisions contained – although not exclusively – in the following EU regulations, as well as other policies and procedures related to the administration and the common organization of the market in wine, the establishment of authorized oenological practices and the regulation of trade between the countries of the EU and third countries, are inconsistent with the obligations of the European Union under the WTO, either on their face or as applied, as set forth in greater detail below:


Argentina considers that the referred regulations and measures are inconsistent with the following provisions of the Agreement on Technical Barriers to Trade of the GATT 1994, the General Agreement of Tariffs and Trade 1994 itself, and the WTO Agreement:

- Articles 2 and 12 of the Agreement on Technical Barriers to Trade;
- Articles I.1 and III.4 of the General Agreement on Tariffs and Trade (GATT 1994); and
- Article XVI.4 of the WTO Agreement.
Argentina's specific claims related to the regulations establishing the common organization of the European market for wines and to the provisions applicable to trade between the European Union and third countries on this product which include, although not exclusively, those requirements imposed in connection with the process of acidification, are as follows:

1. The European Commission established through Regulation (EC) 1493/1999 a set of requirements regarding oenological practices that are more trade restrictive than they should and could be, creating as a consequence an unnecessary obstacle to trade, in a manner which is inconsistent with European obligations under Art. 2.2 of the Agreement on Technical Barriers to Trade. Moreover, Argentina claims that, the restriction imposed to certain wines irrespective of its origin, as a result of the enforcement and application of Regulation (EC) 1493/1999, is inconsistent too with Article 12.3 of the same Agreement.

2. For the purpose of establishing the oenological practices authorized for the process of acidification of wines, described in Annex IV of Regulation (EC) 1493/1999, the EU Commission did not take into account the Resolutions OENO 3 and 4 of 1999, and OENO 13 and 14 of 2001, acting inconsistently with its obligations under Article 2.4 of the TBT.

3. Pursuant to (the procedure established in) Article 45 of Regulation 1493/1999, the EU has signed bilateral treaties with several WTO Members, benefiting those countries with particular exceptions to the general rule contained in the aforementioned Regulation regarding the acidification of wines with malic acid. The EU has also issued the Council Regulation (EC) No. 1037/2001, providing an specific derogation to the general rule governing authorized oenological practices, for wines produced in the territory of another WTO Member. By so doing, and since those benefits have not been extended to other WTO Members, the EU has acted inconsistently with its obligations under Article 2.1 of the TBT and Article I.1 of the GATT 1994.

4. The EU has also a bilateral agreement with a Member, governing several aspects related to the trade in wine between them. Under this agreement, both parties have the possibility to export to the territory of the other party, wines acidified with malic acid. This is inconsistent with EU obligations under Article III.4 of the GATT 1994.

The Government of the Republic of Argentina reserves the right to request the production of information and documents from the EU, and to raise further factual claims and legal issues during the course of consultations.

The Government of the Republic of Argentina looks forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.
Appendix 2
Simulation Exercise
Dispute Settlement

This simulation involves a dispute between Argentina and the EU regarding EU measures affecting imports of wine. As the policy and factual aspects set out in WTO document WT/DS263/1 (attached) indicate, Argentina believes that certain EU measures are inconsistent with articles 2 and 12 of the TBT Agreement, articles 1.1 and 3.4 of the GATT, and article 16.4 of the WTO, and has asked the EU to enter into consultations. For the purpose of this simulation exercise, we will assume that the consultations will fail, Argentina has requested establishment of a panel, and the WTO's Dispute Settlement Body has set up such a panel. As a result, the simulation will proceed as follows:

- Argentina has the tightest deadline. It will prepare a brief setting out the basis for its complaint and present it to the members of the panel, secretariat and the EU by 13 November. The other two groups, meanwhile, can begin to research and think through the issues they must address based on the factual and policy matters set out in the Argentine complaint, and from information gleaned from the web and other sources. The target should be a brief of about 4,000 to 5,000 words.

- The EU will prepare a brief responding to the Argentine complaint, defending the EU measures as consistent with EU obligations under the WTO and its constituent agreements. That brief will be circulated to the Argentine group and the panel/secretariat by 18 November, in order to give Argentina time to prepare rebuttal arguments, and the panel/secretariat to prepare questions. The target should be a brief of about 4,000 to 5,000 words.

- At the session on 20 November, Argentina will have about 30 minutes to present its case and the EU about 30 minutes to respond. Each side will then have about 15 minutes to rebut the arguments presented by the two sides and the panel will have about 30 minutes to ask questions. At the conclusion of the session, the panel will render its preliminary decision. Throughout the proceedings, the panel will be assisted by the secretariat, but only the panel members can ask questions. The two delegations national can organize who will present and respond to questions as they see fit. During the question and answer period, there is no opportunity for rebuttals, except as provided by the chair or at the request of a delegation. The proceedings have a strong diplomatic background, and thus are not like a court. They are also very polite. There will be time during the session for breaks and consultations.

- The panel/secretariat will prepare a written report as follows: the secretariat members will prepare the first half, setting out the process, the complaint, and the arguments of the two parties. The panelists will prepare the second half, setting out the analysis and the findings. Models are available on the WTO web site. The target should be a brief of about 5,000 to 6,000 words.

- For grading purposes, each group has until 27 November to prepare a final version of its document, making corrections that may prove desirable as a result of the oral proceedings.
Individual assignment

On an individual basis, each member of the class will prepare a report on the results of the dispute settlement case for an appropriate newspaper. Length and format will depend on the newspaper chosen. Deadline: 4 December.

Time line

30 October case begins.
13 November Argentina circulates the preliminary draft of its submission.
18 November The EU circulates the preliminary draft of its submission.
20 November The panel will hold hearings and render a preliminary decision.
27 November All three groups hand in the final version of their briefs/report.
4 December Every member of the class hands in a newspaper article in an appropriate newspaper reporting the results of the panel hearings.

Dramatis Personnae

Group I — Argentina — complaining party
  Ana Renart
  Janna Jessee
  Evan Lewis
  Erin Churchill

Group II — EU — responding party
  Francis MacDonnell
  Greg MacDonald
  Matt Sajkunovic
  Isabelle Faustin

Group III — WTO Panel and Secretariat
  Dean Dalke
  Patty Carson
  Brendan Sutton
  Blayne Haggart

  Maryam Moayed
  Szandra Bereczky
  Jean-Marc Gionet
  Adam Fremeth

  David Perdue
  Tricia Goulbourne
  Josh Lattimore
  Melissa Ramphal

  Khaled Fourati
  Grace Kim
  Simone Gobeil
Dispute Settlement: the WTO’s ‘most individual contribution’

Without a means of settling disputes, the rules-based system would be worthless because the rules could not be enforced. The WTO’s procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case.

First rulings are made by a panel and endorsed (or rejected) by the WTO’s full membership. Appeals based on points of law are possible.

However, the point is not to make rulings. The priority is to settle disputes, through consultations if possible. By July 2000, 32 out of 203 cases had been settled “out of court”, without going through the full panel process.

Principles: equitable, fast, effective, mutually acceptable

WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgements.

Typically, a dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries can declare that they have an interest in the case and enjoy some rights.

A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year — 15 months if the case is appealed. The agreed time limits are flexible, and if the case is considered urgent (e.g. if perishable goods are involved), then the case should take three months less.

The Uruguay Round agreement also made it impossible for the country losing a case to block the adoption of the ruling. Under the previous GATT procedure, rulings could only be adopted by consensus, meaning that a single objection could block the ruling. Now, rulings are automatically adopted unless there is a consensus to reject a ruling — any country wanting to block a ruling has to persuade all other WTO members (including its adversary in the case) to share its view.

Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible.

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1 Sources: [http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm) and [www.wto.org/english/thewto_e/whatis_e/tif_e/disp3_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp3_e.htm).
How long to settle a dispute?

These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

- 60 days Consultations, mediation, etc
- 45 days Panel set up and panelists appointment
- 6 months Final panel report to parties
- 3 weeks Final panel report to WTO members
- 60 days Dispute Settlement Body adopts report (if no appeal)

Total = 1 year (without appeal)

- 60-90 days Appeals report
- 30 days Dispute Settlement Body adopts appeals report

Total = 1 year 3 months (with appeal)

How are disputes settled?

Settling disputes is the responsibility of the Dispute Settlement Body (the General Council in another guise). The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

First stage: consultation (up to 60 days). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.

Second stage: the panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country “in the dock” can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).

Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations. But because the panel’s report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel’s findings have to be based on the agreements cited.

The panel’s final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

The agreement describes in some detail how the panels are to work. The main stages are:

- Before the first hearing: each side in the dispute presents its case in writing to the panel.
• First hearing: the case for the complaining country and defence: the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.

• Rebuttals: the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.

• Experts: if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.

• First draft: the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.

• Interim report: The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.

• Review: The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.

• Final report: A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.

• The report becomes a ruling: The report becomes the Dispute Settlement Body’s ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).

**Appeals**

Either side can appeal a panel’s ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new evidence.

Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days.

The Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.

**The case has been decided: what next?**

Go directly to jail. Do not pass Go, do not collect .... Well, not exactly. But the sentiments apply. If a country has done something wrong, it should swiftly correct its fault. And if it continues to break an agreement, it should offer compensation or suffer a suitable penalty that has some bite.
Even once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed. The priority at this stage is for the losing “defendant” to bring its policy into line with the ruling or recommendations. The dispute settlement agreement stresses that “prompt compliance with recommendations or rulings of the DSB [Dispute Settlement Body] is essential in order to ensure effective resolution of disputes to the benefit of all Members”.

If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeals report. It must state its intention to do so at a Dispute Settlement Body meeting held within 30 days of the report’s adoption. If complying with the recommendation immediately proves impractical, the member will be given a “reasonable period of time” to do so. If it fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation — for instance, tariff reductions in areas of particular interest to the complaining side.

If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the Dispute Settlement Body for permission to impose limited trade sanctions (“suspend concessions or obligations”) against the other side. The Dispute Settlement Body should grant this authorization within 30 days of the expiry of the “reasonable period of time” unless there is a consensus against the request.

In principle, the sanctions should be imposed in the same sector as the dispute. If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement. The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective.

In any case, the Dispute Settlement Body monitors how adopted rulings are implemented. Any outstanding case remains on its agenda until the issue is resolved.

Case study: the timetable in practice
On 23 January 1995, Venezuela complained to the Dispute Settlement Body that the United States was applying rules that discriminated against gasoline imports, and formally requested consultations with the United States.

Just over a year later (on 29 January 1996) the dispute panel completed its final report. (By then, Brazil had joined the case, lodging its own complaint in April 1996. The same panel considered both complaints.)

The United States appealed. The Appellate Body completed its report, and the Dispute Settlement Body adopted the report on 20 May 1996, one year and four months after the complaint was first lodged.

The United States and Venezuela then took six and a half months to agree on what the United States should do. The agreed period for implementing the solution was 15 months from the date the appeal was concluded (20 May 1996 to 20 August 1997). The Dispute Settlement Body has been monitoring progress — the United States submitted “status reports” on 9 January and 13 February 1997, for example.

The case arose because the United States applied stricter rules on the chemical characteristics of imported gasoline than it did for domestically-refined gasoline. Venezuela (and later Brazil) said this was unfair because US gasoline did not have to meet the same standards — it violated the “national treatment” principle and could not
be justified under exceptions to normal WTO rules for health and environmental conservation measures.

The dispute panel agreed with Venezuela and Brazil. The appeal report upheld the panel’s conclusions (making some changes to the panel’s legal interpretation.

The United States agreed with Venezuela that it would amend its regulations within 15 months and on 26 August 1997 it reported to the Dispute Settlement Body that a new regulation had been signed on 19 August.

<table>
<thead>
<tr>
<th>Time (0 = start of case)</th>
<th>Target/actual period</th>
<th>Date</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>1990</td>
<td>US Clean Air Act amended</td>
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<tr>
<td></td>
<td></td>
<td>9/94</td>
<td>US restricts gasoline imports under Clean Air Act</td>
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<tr>
<td>0</td>
<td>“60 days”</td>
<td>23/1/95</td>
<td>Venezuela complains to Dispute Settlement Body, asks for consultation with US</td>
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<tr>
<td>+ 1 month</td>
<td></td>
<td>24/2/95</td>
<td>Consultations take place. Fail.</td>
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<tr>
<td>+ 2 months</td>
<td></td>
<td>25/3/95</td>
<td>Venezuela asks Dispute Settlement Body for a panel</td>
</tr>
<tr>
<td>+ 2 1/2 months</td>
<td>“30 days”</td>
<td>10/4/95</td>
<td>Dispute Settlement Body agrees to appoint panel. US does not block. (Brazil starts complaint, requests consultation with US.)</td>
</tr>
<tr>
<td>+ 3 months</td>
<td></td>
<td>28/4/95</td>
<td>Panel appointed. (31 May, panel assigned to Brazilian complaint as well) Panel meets</td>
</tr>
<tr>
<td>+ 6 months</td>
<td>9 months (target=6+)</td>
<td>10-12/7 and 13-15/7/95</td>
<td>Panel gives interim report to US, Venezuela and Brazil for comment</td>
</tr>
<tr>
<td>+ 11 months</td>
<td></td>
<td>11/12/95</td>
<td>Panel circulates final report to Dispute Settlement Body</td>
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<tr>
<td>+ 12 months</td>
<td></td>
<td>29/1/96</td>
<td>US appeals</td>
</tr>
<tr>
<td>+ 15 months</td>
<td>“60 days”</td>
<td>29/3/96</td>
<td>Appellate Body submits report</td>
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<tr>
<td>+ 16 months</td>
<td>“30 days”</td>
<td>20/5/96</td>
<td>Dispute Settlement Body adopts panel and appeal reports</td>
</tr>
<tr>
<td>+ 22 1/2 months</td>
<td></td>
<td>3/12/96</td>
<td>US and Venezuela agree on what US should do (implementation period is 15 months from 20 May)</td>
</tr>
<tr>
<td>+ 23 1/2 months</td>
<td></td>
<td>9/1/97</td>
<td>US submits first monthly report to Dispute Settlement Body on status of implementation</td>
</tr>
<tr>
<td>+ 31 months</td>
<td></td>
<td>19-20/8/97</td>
<td>US signs new regulation (19th). End of agreed implementation period (20th)</td>
</tr>
</tbody>
</table>
QUESTIONNAIRE

1. What is your age?

2. What is your gender?

3. If you have been involved in simulations before, how many and what kind?

4. What do you feel you’ve learned as a result of participating in this simulation? (Be as exhaustive as you can).

5. Were the goals and objectives of the exercise clear to you and do you feel they were met?

6. Do you feel this was a realistic portrayal of a WTO dispute settlement case? Please elaborate.

7. What career do you hope to pursue?

8. Do you feel you’ve learned tools that will be of assistance in the workplace? Please elaborate.

9. Did you find this teaching method to be effective? elaborate.

10. Do you have any suggestions for improvement?