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WTO AND TRADING BLOC

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General Agreement on Tariffs and Trade (GATT):

Establishment: GATT was established in 1947 as a multilateral agreement among countries to promote international trade by reducing tariffs and trade barriers.

Principles: GATT operated on principles such as non-discrimination (most-favored-nation treatment), reducing trade barriers, and promoting negotiations to resolve trade disputes.

Rounds of Negotiations: GATT went through several rounds of negotiations, such as the Uruguay Round, where member countries discussed and negotiated trade issues, leading to the gradual reduction of tariffs and the expansion of trade liberalization.


World Trade Organization (WTO)

Establishment: The WTO was officially established on January 1, 1995, succeeding GATT. The creation of the WTO was part of the Uruguay Round negotiations.

Functions: The WTO serves as an international organization that regulates and facilitates international trade. It provides a forum for negotiating trade agreements, handling trade disputes, and monitoring the implementation of agreements.

Principles: The WTO operates on similar principles as GATT but includes additional agreements covering services, intellectual property, and dispute resolution mechanisms.

Most-Favored-Nation (MFN) Principle: The MFN principle, which ensures that countries treat each other equally, is a fundamental element of both GATT and the WTO.



Participants as of 2016

163 Members, 21 observers

Trade Rounds:

Uruguay Round

This round (1986-1994) led to the creation of the WTO and resulted in significant agreements, including the Agreement on Agriculture, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the establishment of the WTO Dispute Settlement Body.

Doha Development Agenda

Launched in 2001, this round aimed to address issues related to developing countries, agriculture, and various trade barriers. Progress in this round has been challenging.

- Both GATT and the WTO have established mechanisms for resolving trade disputes between member countries. The dispute settlement process provides a structured way to address issues and conflicts arising from alleged violations of trade agreements.
- Overall, the GATT/WTO system plays a crucial role in facilitating international trade, promoting fair competition, and providing a platform for negotiation and dispute resolution among its member countries.

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WTO System- General Structure

Annex 1 A = Multilateral agreements on trade in goods (MATG):

These are comprehensive agreements that cover various aspects of trade in goods among WTO member countries. They include negotiations and commitments related to tariffs, non-tariff barriers, and other trade-related issues.

Annex 1 B = General Agreement on Trade in Services (GATS):

GATS is a key component of the WTO, focusing on the liberalization of trade in services. It establishes principles and rules for the fair and transparent treatment of services in international trade.

Annex 1 C = TRIPs (Trade-related Aspects of Intellectual Property):

TRIPs is an agreement that sets international standards for the protection of intellectual property rights. It addresses issues such as patents, copyrights, trademarks, and trade secrets.

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WTO System- General Structure

Annex 2 = Dispute Settlement Understanding (DSU):

DSU provides the framework for the resolution of disputes between member countries. It establishes procedures and mechanisms for addressing alleged violations of WTO agreements and settling trade-related conflicts.

Annex 3 = TPRM (Trade Policy Review Mechanism):

TPRM is a process where member countries periodically review and discuss each other's trade policies and practices. It promotes transparency and facilitates an understanding of each country's trade policies.

Annex 4 = Plurilateral Trade Agreements:

These are optional agreements that certain WTO members can choose to join. Unlike the multilateral agreements, participation in plurilateral agreements is not obligatory for all members. Examples include the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft.

WTO Annex 1 A: Multilateral Agreements on Trade in Goods (MATG)

* Agreement concerning
agriculture, textiles &
clothing

GATT 1994:

GATT stands for the General Agreement on Tariffs and Trade.

GATT 1994 incorporates GATT 1947 and includes "understandings," which are rules for interpretation.

SPECIFIC AGREEMENTS:

- Customs Valuation
- Rules of Origin
- Import Licensing
- SPS (Sanitary and Phytosanitary Measures)
- TBT (Technical Barriers to Trade)
- Safeguards
- ADA (Agreement on Agriculture)
- SCM (Subsidies and Countervailing Measures)

WTO Annex 1 A: Multilateral Agreements on Trade in Goods (MATG)

Not yet in force, Trade
Facilitation Agreement
2014

COUNCIL FOR TRADE IN GOODS:

This is the institutional body responsible for overseeing matters related to trade in goods within the WTO framework.

INSTITUTIONAL FRAMEWORK

•No Direct Effect Generally:

- WTO agreements generally do not have direct effect in national legal systems.
- Harmonious interpretation with EU secondary law and other treaties is encouraged.

•Legal Cases:

- Examples of legal cases include C-149/96 (Portugal v. Council) and C-377/02 (Van Parys).
- Effect is not direct in the EU but may have implications within EU-Member States (C-66/18).

•ECJ Review of Conformity:

- The European Court of Justice (ECJ) reviews conformity with WTO law of EU decisions in specific cases:
 - a) When a measure intends to implement WTO obligations (ECJ in C-70/87 Fediol).
 - b) When a measure refers explicitly to specific provisions of WTO law (ECJ in C-69/89 Nakajima).

BASIC PRINCIPLES OF GATT

There are four parts to this principles

1. Non-Discrimination Rules
2. Market Access rules
3. Taking into account other values and Interests
4. Rules on Unfair trade practices (Dumping, Subsidies)

I. Non-Discrimination Rules:

1. Most Favored Nation (MFN):

1. All countries must be treated as the "most favored nation."
2. Any advantage given to one country in terms of trade must be extended to all GATT members.

2. National Treatment:

1. After import, non-discrimination principles apply.
2. Imported goods should be treated the same as domestically produced goods (national treatment).

BASIC PRINCIPLES OF GATT

II. Market Access Rules:

1. Tariff Restrictions:

- a) Trade restrictions should primarily take the form of tariffs (customs duties).
- b) Gradual Reduction: Tariffs are expected to be lowered gradually through negotiations.

2. Quantitative Restrictions:

- a) In principle, quantitative restrictions (limitations on the quantity of goods) are prohibited (Art. XI of GATT).

3. Non-Tariff Barriers (NTB):

- a) Barriers with equivalent effect to quantitative restrictions are, in principle, prohibited (Art. XI of GATT).
- b) This includes non-tariff barriers that may hinder trade.

III. Taking Into Account Other Values and Interests:

1.Exceptions and Rules:

- a) GATT recognizes that there are situations where trade restrictions may be necessary.
- b) Specific exceptions are outlined, allowing countries to take measures to protect certain values and interests.

2.Promotion of Harmonization:

- a) There's an encouragement for the harmonization of national regulations to facilitate smoother international trade.

3.Waivers:

- a) Waivers are available, including a broad waiver for developing countries.
- b) Waivers provide temporary relief from certain GATT obligations under specific circumstances.





IV. Rules on Unfair Trade Practices (Dumping, Subsidies):

1.Dumping:

- a. GATT addresses the issue of dumping, where a country exports goods at a lower price than what it charges domestically. Anti-dumping measures may be applied.

2.Subsidies:

- a. GATT contains rules regarding subsidies to prevent unfair advantages in international trade.
- b. Measures are in place to address subsidies that distort international trade.



Most Favored Nation (MFN)

The Most Favored Nation (MFN) principle, as outlined in Article I of the General Agreement on Tariffs and Trade (GATT), means that if a country gives a special advantage or privilege to a product from one country, it has to give the same advantage to the same kind of product from all other countries.

The principle applies to customs duties, charges related to imports and exports, and methods of levying such duties. It also covers rules and formalities related to imports and exports.

Any advantage, favor, privilege, or immunity granted to a product from one country must be given immediately and unconditionally to the same product from all other countries.

Waivers for Developing Countries:



Waivers, adopted with a qualified majority of member states, allow exceptions to the MFN principle. Developing countries often benefit from wide waivers.

Art. XXIV: Customs Unions and Free Trade Areas:



MFN rules do not apply to customs unions and free trade areas.

Stand-Still Principle:

Once a customs union or free trade area is established, restrictions in relation to third countries should not be greater than the average individual measures before the union was formed

Recognition Procedure:



Regional trade agreements (RTAs), like customs unions or free trade areas, must go through a recognition procedure by the Committee on Regional Trade Agreements (CRTA).

Examples include EU-Canada CETA, EU-Singapore FTA, EU-Vietnam FTA, and ongoing negotiations like EU-US TTIP and ASEAN-New Zealand FTA.

Liberalization Requirement:



For an exception to apply, substantially all trade in goods must be liberalized between the member states of the customs union or free trade area.

In simpler terms, this means that the MFN principle ensures equal and unconditional treatment for all countries in certain aspects of trade. However, there are exceptions for customs unions and free trade areas, provided they meet certain conditions like liberalizing trade among member states. The EU, for instance, applies the MFN principle fully to only a limited number of countries.

Result in Relation to EU:



The MFN principle applies in full only to about nine countries concerning the EU.

Art. XXVIIIbis GATT 1994: Tariff Negotiations



No Prohibition of Customs Duties:
Art. XXVIIIbis of GATT 1994 does not prohibit customs duties but requires negotiations for tariff concessions.

Doha Round:
Doha Round, the 9th round of negotiations, involved reciprocal concessions where all states concede advantages of the same order.

Maintaining MFN Principle:
Concessions resulting from negotiations apply to all contracting states, maintaining the Most Favored Nation (MFN) principle.

Negotiation Technique:
Linear tariff reductions are negotiated.
Formula for general reductions plus "negative lists" of exceptions.

Harmonizing Customs Regulations – Valuation Rules:

1.WTO Valuation Agreement:

- a) In 1981, a Valuation Code was established, now known as the WTO Valuation Agreement (Art. VII GATT 1994 and 2 specific agreements).
- b) Customs duties are typically charged ad valorem, meaning as a percentage of the goods' value.

2.Transaction Value:

- a) The value used for customs duties is the transaction value, which is the net price at the border.
- b) Rules define evidence of the price, usually the invoice or, if not available, the contract.

3.Adjustments to Purchase Price:

- a) Adjustment and splitting up of the purchase price are allowed to determine the net price.
- b) Adjustments include deductions for connected services, transport after importation, discounts, etc.

4.Exceptional Cases:

- a) In exceptional cases, the transaction value can be rejected, such as in sales between connected enterprises or when an artificial price is suspected, involving issues of transfer pricing.

WTO Agreement on Rules of Origin (ROO):

1.No Harmonization Yet:

- a) The WTO Agreement on Rules of Origin (ROO) aims to determine the origin of products for tariff and trade purposes.
- b) As of now, there is no harmonization of these rules.

Art. XI GATT: Prohibition of Non-Tariff Barriers (NTB):

1.Quantitative Restrictions Prohibition:

- 1. Art. XI GATT prohibits quantitative restrictions (quotas, etc.) on import or export and other non-tariff barriers with equivalent effect.

2.General Exceptions (Art. XX):

- 1. General exceptions include protection of the balance of payments (Art. XII/XVIII), safeguards (Art. XIX), etc.

3.Specific Exceptions in Art. XI:

- 1. Temporary export restrictions of essential products are permitted in cases of shortage.
- 2. Import restrictions on agricultural and fishery products as part of a subsidizing policy are allowed.
- 3. Restrictions following international agreements on basic products (commodities) are permitted.

4.State Trading Enterprises:

- 1. Prohibition implies that state trading enterprises may not circumvent the prohibition by using an import monopoly.

Annexed Agreements on Non-Tariff Barriers:

1.Import Licensing Procedures:

1. The Agreement on Import Licensing Procedures (1979/1994) simplifies import licensing procedures.

2.Textile & Clothing Rules:

1. Rules on Textile & Clothing were covered by the Multifibre Arrangement (MFA) in 1974, replaced by the Agreement on Textile and Clothing (ATC) in 1994, and finally terminated on December 31, 2004.

3.Voluntary Export Restraints (VERs):

1. Voluntary export restraints (VERs) negotiated bilaterally since 1988 are considered incompatible with GATT.

Plurilateral Agreements:

1.Government Procurement:

1. A plurilateral agreement on government procurement is outlined separately.

Plurilateral Agreements with All WTO Members as MFN:

1. Information Technology Agreement (ITA):

1. Plurilateral 1996 Information Technology Agreement (ITA) involves around 70 states, cutting tariffs on information technology products.
2. An agreement reached in 2015 extended the scope of the ITA.

2. Environmental Goods Agreement:

1. Negotiations began in 2014 for a plurilateral agreement on trade in "environmental goods," potentially involving mainly the EU, Norway, Switzerland, the USA, Canada, China, Japan, Korea, Australia, and New Zealand.

"National" Treatment Principle:

Principle of National Treatment (Art. III GATT):

- a) Once imported, foreign products must be treated as national products and receive "national treatment."
- b) Applies to internal taxes or other fiscal charges and other regulations affecting the internal sale, offering for sale, transportation, distribution, use, etc.

Justification for Unequal Treatment:

- a) States often justify unequal treatment by claiming that the products are different. However, "like products" must be treated equally.

Criteria for Likeness:

- a) The Appellate Body of the WTO has developed criteria for determining likeness, as seen in the Asbestos case (Appellate Body report of April 5, 2001).

US - Clove Cigarettes Dispute (2012):

- a) The dispute between the US and Clove Cigarettes in 2012 examined the concept of likeness between clove cigarettes and menthol cigarettes.

Government Procurement Agreement (GPA):

1. GATT Exception for Government Procurement:

- a) GATT itself permits countries to limit government procurement to national products.

2. GPA Plurilateral Agreement:

- a) Annex 4 contains a separate plurilateral agreement, the GPA, which goes further by excluding discrimination based on nationality for significant government purchases of goods and services.
- b) Parties include EU Member states, USA, Canada, Japan, NZ, Singapore, and others. Developing countries are not part of the GPA, but China and Australia may join.

3. New GPA Agreement (2012):

- a) A new GPA, agreed upon in 2012 through the "Protocol Amending the Agreement on Government Procurement," came into force on April 6, 2014.

4. Scope of Application:

- a) Applies to purchases above a threshold (typically 130,000 SDR - IMF drawing rights, with higher thresholds for local governments and certain utilities).
- b) Expanded scope of application regarding the entities making the purchases and the types of products, with lower thresholds.

1. Reciprocal Agreements:

- a) More an accumulation of bilateral agreements based on reciprocity.

2. Tendering Procedures:

- a) Detailed rules on tendering procedures to provide foreign enterprises with a fair chance.
- b) Includes provisions for publicity, non-partisan description, and an obligation to award the contract to the most advantageous tender.

3. Economic "Compensation":

- a) Economic compensation may only be considered under certain conditions.

4. Control and Legal Protection:

- a) Contains rules on control and legal protection.

General Exceptions (Art. XX GATT):



Requirements for an

Exception:

An exception under Art. XX GATT requires a connection to one of the listed grounds and must not amount to arbitrary or unjustifiable discrimination or a disguised restriction of international trade.

Main Grounds for Exceptions (Art. XX):

- (a) Necessary to protect public morals.
 - (b) Necessary to protect human, animal, or plant life or health.
 - (d) Necessary to secure compliance with rules not inconsistent with GATT, especially intellectual property rights.
- Protection of national artistic, historical, or archaeological treasures.
- (g) Related to the conservation of exhaustible natural resources.
- Pursuance of agreements on basic products (commodities), temporary export restrictions for essential products, etc.

Harmonization Measures:

Various agreements aim to harmonize rules related to exceptions, primarily the SPS and TBT Agreements. These agreements impose stricter obligations on states than the general GATT framework.

Harmonization Measures Related to Exceptions: SPS Agreement (Sanitary and Phytosanitary Measures):

1.Objectives of SPS Agreement:

1. Measures may be taken to protect animal or plant life or health but "only to the extent necessary," based on scientific principles and sufficient scientific evidence.

2.Risk Management:

1. Risk management includes the precautionary principle, allowing provisional measures even without sufficient evidence, with an obligation to seek additional information and periodically review the measures.

3.Non-Discrimination:

1. Measures must be non-discriminatory; different treatment requires justification.

4.International Standards:

1. Measures should be based on international standards, guidelines, and recommendations, with the "three sisters" (IPPC, OIE, Codex Alimentarius Commission) setting these standards.

Harmonization Measures Related to Exceptions: TBT Agreement (Technical Barriers to Trade):

1.Scope of TBT Agreement:

Addresses technical barriers related to quality, composition, packaging, and control of goods, among others.

2.Non-Discrimination Principle:

Technical regulations and standards must not create unnecessary obstacles to international trade, and they may not be discriminatory (MFN and national treatment principles).

3.Examples of TBT Issues:

Examples include US Country-of-origin-labelling requirements (COOL), which imposed burdens on imported parts, leading to disputes and eventual adjustments by the US Congress.

4.Legitimate Aims:

Legitimate aims for technical barriers include protection of health and environment, prevention of deceptive practices, and national security.

5.International Standards Presumption:

Rules deviating from international standards are presumed to be unnecessary.

6.Procedural and Substantive Obligations:

Rules not based on international standards need to comply with procedural and substantive obligations, including prior publication (code of good practice annexed to the TBT).

National Security Exception (Art. XXI GATT):

1. Security Exception:

1. Art. XXI GATT provides an exception for the protection of national security.
2. Covers areas like purchases for a military establishment.
3. There is no particular regulation of this exception.

Balance of Payments Exception (Art. XII GATT):

1. Balance of Payments Protection:

1. Art. XII GATT, along with the Understanding of 1994, allows for protection of the balance of payments.
2. Requires proportionality and consultation with the International Monetary Fund (IMF) on the measures.
3. Preference given to tariff measures; quantitative measures require specific justification.

Safeguard Measures (Art. XIX GATT):

1. Economic Emergency Exception (Art. XIX):

- a) Art. XIX GATT allows for safeguard measures in case of an economic emergency.
- b) Temporary measures can be implemented in the event of an unforeseen increase in the import of certain products causing serious injury to domestic industry.
- c) Conditions include temporariness, non-discrimination, and procedural requirements like investigations and duties.
- d) More detailed rules are outlined in the Agreement on Safeguards, but it does not apply to agricultural products.
- e) Measures directed against a single country are only exceptionally permitted.

Exceptions for Agriculture:

1. General Exceptions:

- a) Exceptions for agricultural products include:
 - i. No prohibition or restriction of export subsidies.
 - ii. Quantitative restrictions are, in principle, permitted.

2. Agreement on Agriculture (1994):

- a) The Agreement on Agriculture serves as a framework for negotiations.
- b) The goal is "tariffication," converting all quantitative restrictions into tariff restrictions.

3. Export Subsidies Commitment:

- a) Commitment to reduce export subsidies, with a decision to abolish them in 2015.

4. Categories of Domestic Support Measures:

- a) Three categories or "boxes" of domestic support measures: green box (permitted), yellow box (subject to reduction commitments), and blue box (permitted on production limitation conditions).

5. Further Commitments:

- a) Further commitments were made in 2004 and beyond.

6. Doha Round Disagreement:

- a) In the Doha Round, there was disagreement concerning domestic support for food, particularly between the US and India.
- b) India questioned the actual calculation of the "Aggregate Measure of Support," which represents allowed domestic subsidies.

Exceptions for Developing Countries



Historical Background:
GATT's Part IV on "trade and development" in 1964/1966 included non-enforceable obligations, emphasizing best efforts for the development of developing countries.



Principles (since 1968):
Non-reciprocal and non-discriminatory tariff preferences for manufactured and semi-finished products from developing countries.



General System of Preferences (GSP):
Introduced in 1971 (Tokyo Round) with a waiver allowing preferential treatment for developing countries. Graduation rule aims to gradually abolish preferential treatment.



Effectiveness and Limitations:
GSP's impact is limited due to exclusions (e.g., agricultural products). Graduation rule has led to reduced preferences for newly industrialized countries.

EU General System of Tariff Preferences (GSP):

- Framework (GSP 2012):

- Preferential tariffs for goods in four categories.
- GSP+ status offers further reductions in exchange for commitments on various issues.

- Emergency Safeguard Clause:

- Includes a safeguard clause for emergency situations.

- Graduation Principle:

- Least developed countries receive zero tariffs on "everything but arms" (EBA).

- 2012 Changes:

- Beneficiary countries reduced from 176 to 89, with an annual review.
- No longer applicable to certain countries (e.g., China, Thailand) as of January 2015.

Agreements on Basic Products (Commodities):

- Conditions for Exception:

- Exception to GATT rules under Art. XX(h) GATT under specific conditions.

- General Purpose:

- Import and export restrictions for stabilizing market conditions in certain commodities.

- Forms:

- Informal agreements through consultative bodies and formal market regulations through multilateral agreements between producing and consuming countries.
- UNCTAD aims for an integrated program for basic products agreements.

GATT & Competition Law (Trade Defense):

- Liberalization of Trade & Competition:

- GATT and Codes indirectly address competition issues, including measures against dumping and state aids.
- More extensive competition law in the EU (e.g., prohibition of State Aid with exceptions).

GATT & Anti-Dumping Agreement (ADA):

- Rules (Art. VI GATT + ADA 1994):

- Art. VI GATT with the 1994 Anti-Dumping Agreement (ADA) determines conditions for taking anti-dumping measures.

- Requirements:

- Definition of "dumping" and conditions for material injury or threat to domestic industry.
- Procedural requirements for prior investigation, rights of defense, and access to information.

- Authorized Sanctions:

- Authorized sanctions include anti-dumping duties not exceeding the dumping margin.
- Provisional measures during investigations are allowed.

GATT & Subsidies and Countervailing Measures (SCM):

- Rules (Art. VI & XVI GATT + SCM Agreement 1994):
 - Art. VI and XVI GATT along with the SCM Agreement determine prohibited subsidies and conditions for countervailing measures.
- Definition of Subsidies:
 - Broad definition covering any state aid, domestic or for export.
- Authorized Countervailing Measures:
 - Countervailing measures allowed against prohibited and actionable subsidies.
 - Three categories: red list (prohibited), yellow list (actionable), and green list (non-actionable).





Trade Defense Institutions:

1. Decision-Making Bodies:

- a) Anti-dumping and anti-subsidy measures are decided by national (or Union) bodies.
- b) In the EU, provisional measures are decided by the Commission, and definitive measures require the EU Council's decision.

Trade in Services:

1. GATS Scope:

- a) General Agreement on Trade in Services (GATS) applies to any service except in the exercise of governmental functions.
- b) Four modes of supply activities include cross-border supply, consumption abroad, commercial presence (establishment), and presence of natural persons.

GATS Basic Rules:

1. Principles Comparable to GATT:

- a) Most-Favored-Nation (MFN) treatment for all member states with exceptions for regional integration.
- b) Prohibition of six types of quantitative measures and similar practices (Art. XVI).
- c) National treatment for like services and suppliers.

2. Transparency Duty:

- a) Member states are obliged to inform about rules affecting services.

3. Progressive Liberalization:

- a) Ongoing negotiations for further liberalization.

GATS Annexes:

1. Exemptions and Special Cases:

- a. Annex II: Exemptions from the MFN principle specified by member states.
- b. Annex on the Movement of Natural Persons: GATS doesn't apply to migration measures.
- c. Annexes on air transport services, financial services, and telecommunications, each with specific allowances or limitations.

Limited Current Commitments:



Current commitments under GATS are minimal.

Doha Development Agenda (DDA):



Commenced in 2001 but faced challenges and deadlock, leading to the collapse of the DDA in 2008.

Draft Agreements:



Draft disciplines on domestic regulation and ongoing negotiations for a plurilateral agreement known as the "International Trade in Services Agreement" (TISA) initiated by the EU and around 22 other countries.

WTO DSU (Dispute Settlement Understanding):



Jurisdiction and Access:

Compulsory and exclusive jurisdiction limited to states.

Private parties can lobby their member state to lodge a complaint.

Procedure Stages:

Consultation, panel procedure, appellate review, adoption of reports, monitoring, and follow-up by the Dispute Settlement Body (DSB).

WTO DSU - Sanctions:



Remedies for Breach:

If a party fails to comply, the DSB may authorize the complainant to retaliate proportionally.

Possible measures include suspending trade concessions in the same or different sectors, including suspension under different agreements like TRIPS (cross-retaliation).

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