



Overview of the WTO

WTO/ ECOWAS TRADE POLICY WORKSHOP

Lagos, Nigeria

23-25 July 2014



Overview of the WTO



Objectives:

- *Overview of the WTO, its functions and basic principles*

Programme:

- WTO role & functions
- WTO institutional and legal framework

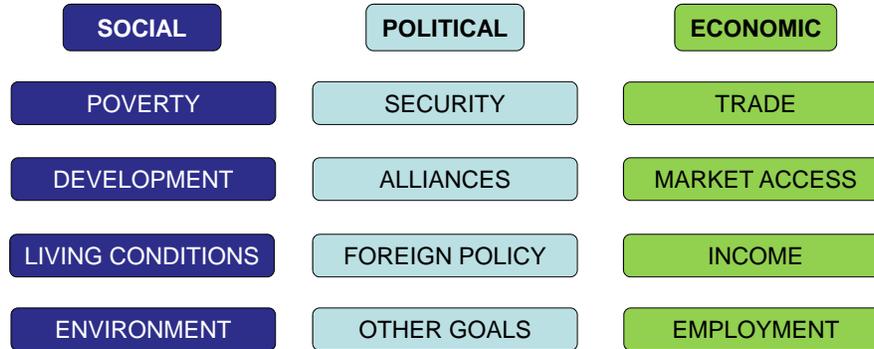


Trade and the WTO: why trade?



Why trade?

"No nation was ever ruined by trade" – B. Franklin



Trade and the WTO



From GATT to WTO

- Post-world war II consensus: political security through economic security
- Trade relations based on agreed rules – General Agreement on Tariffs and Trade (GATT – 1947)
- From provisional agreement to international organizations – (WTO - 1 January 1995)
- From 23 to 159 Members



(GATT – 1947)



(WTO – today)

WTO: What is it?



An international Organization:

- Organization created by the Marrakesh Agreement
- *Sui generis* organisation (independent from the United Nation system)
- Replaces the GATT (created in 1947)



WTO: its objectives ?

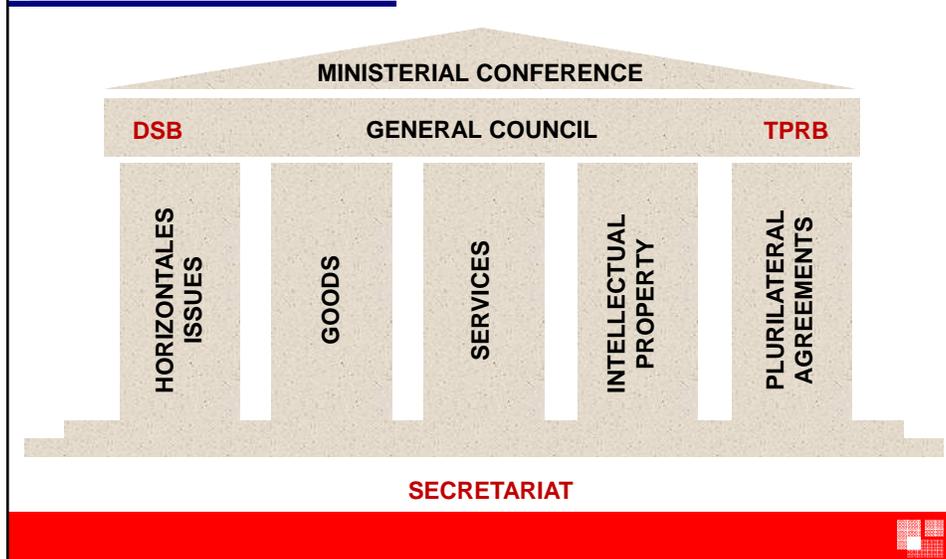


WTO Objectives:

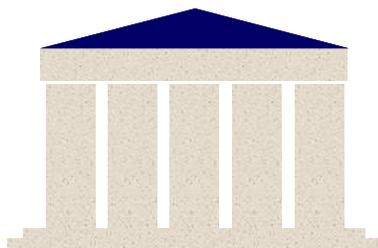
- Raising standards of living
- Ensuring full employment
- Ensuring growth of real income and demand
- Expanding production and trade
- Sustainable development
- Protection of the environment



WTO: institutional structure

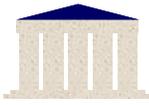


WTO: institutional structure



MINISTERIAL
CONFERENCE
Every two years

*Art. IV – There shall be a Ministerial Conference composed of representatives of all the Members....it shall carry out the **functions of the WTO** and take actions necessary to this effect. It shall have the authority to **take decisions on all matters** under any of the Multilateral Agreements...*



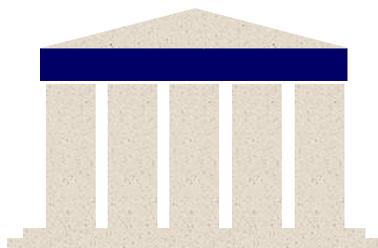
Ministerial Conferences



- Bali, 3-6 Dec 2013: *accession of Yemen, Bali Package*
- Geneva, 15-17 Dec 2011: *accession of Montenegro, Russia Fed, and Samoa*
- Geneva, 30 Nov – 2 Dec 2009: *“Regular” Ministerial Conference*
- Hong Kong, China – Dec 2005: *HK Declaration*
- Cancun, Mexico – Sept 2003: *Mid-term review – no results*
- Doha, Qatar – Sept 2001: *Launch of the DDA*
- Seattle, US – Nov-Dec 1999: *Attempt to launch a “Millennium Round”*
- Geneva – May 1998: *Declaration on Electronic Commerce*
- Singapore – Dec 1996: *New Issues: Investment, Competition, Trade Facilitation, (Transparency in) Government Procurement*

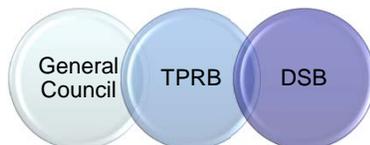


WTO: institutional structure

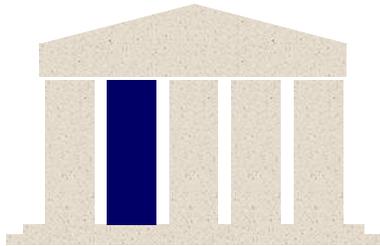


General Council

Carries out functions of Ministerial Conference in between Ministerial Conferences



WTO: institutional structure



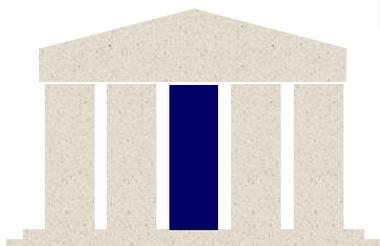
Council for Trade in Goods
Oversees the functioning of
Annex 1A

Council for Trade in Goods

- Market Access
- Agriculture
- Sanitary and Phytosanitary Measures
- Technical Barriers to Trade
- Subsidies and Countervailing Measures
- Antidumping
- Safeguards
- Customs valuation
- Rules of origin
- Import Licensing Procedures
- TRIMS



WTO: institutional structure



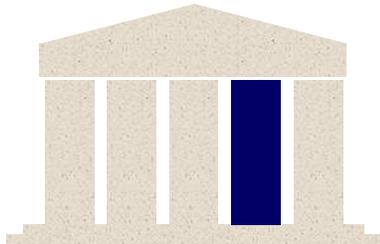
Council for Trade in Services
Oversees the functioning of
Annex 1B

Council for Trade in Services

- COMMITTEES:**
- Trade in Financial Services
- Specific Commitments
- WORKING GROUPS:**
- Domestic Regulation
- GATS Rules



WTO: institutional structure



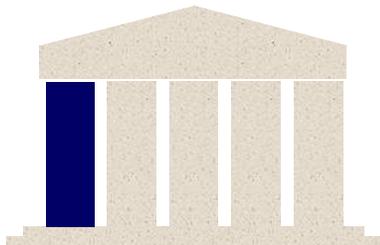
TRIPS Council

Council for Trade-Related
Aspects of Intellectual
Property Rights (TRIPS)

Oversees the functioning of
Annex 1C



WTO: institutional structure



Committees and Working
Groups reporting directly to
the General Council

Committees

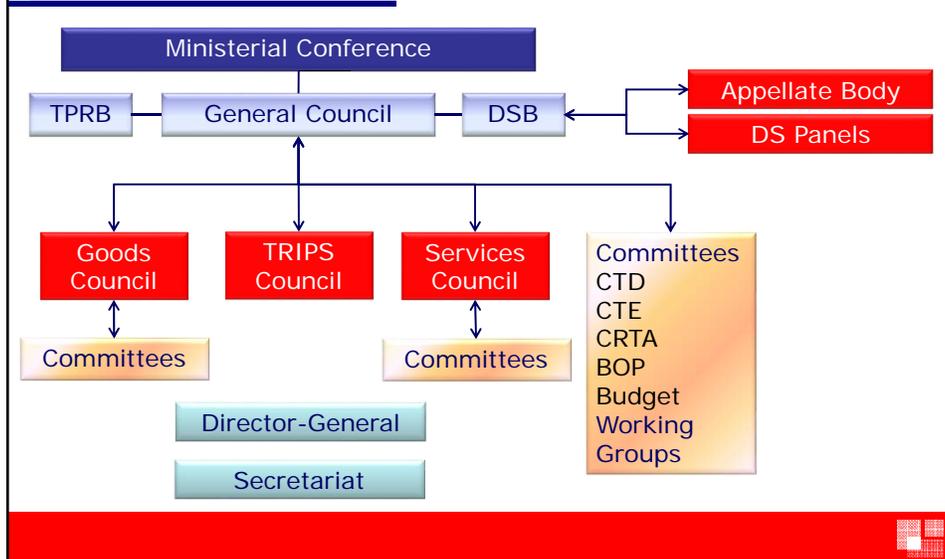
- Trade & Environment
- Trade & Development
- Regional Trade Agreements
- Balance of Payment
- Budget Finance and Administration

Working Groups

- Accessions (WGs)
- Trade, Debt and Finance
- Trade and Transfer of Technology



WTO: institutional structure



WTO: its functions



WTO Functions:

- Administer and implement the WTO agreements
- Administer Settlement of Disputes
- Administer Trade Policy Review Mechanism
- Cooperation with other International Organizations (Coherence)
- Forum for trade negotiations
- *[Technical Assistance to developing countries]*



WTO: its functions



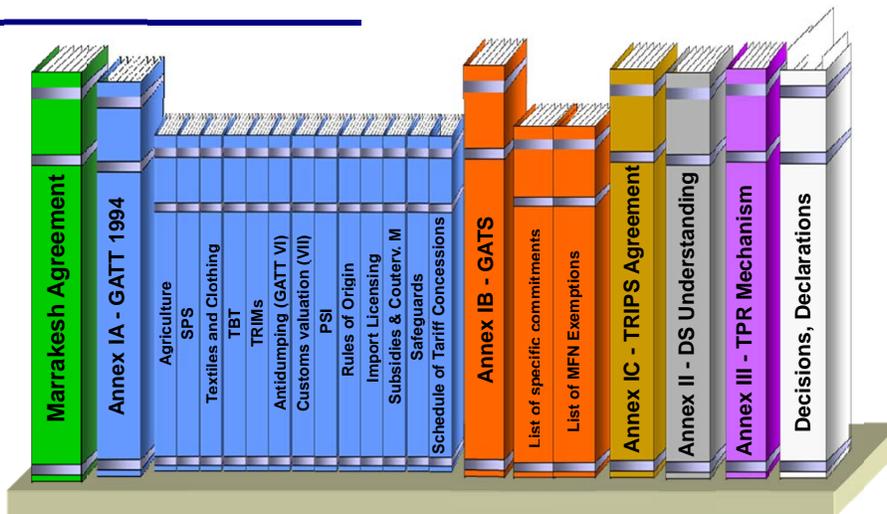
Administer and implement the WTO agreements

500 pages of (Agreements) Rules/ 23,000 pages of Commitments



A set of International Trade Rules agreed by Members through Negotiations

WTO: legal texts



WTO: its functions



Administer Settlement of Disputes



- Trade relations often involve conflicting interests.
- Agreements often need interpreting.
- The way to settle these differences is through a neutral procedure based on an agreed legal foundation.



WTO: its functions



Administer TPR



- Ensures transparency of Members' trade policies
- Contributes to the predictability of the MTS



WTO: its functions



Forum for Trade Negotiations

Article III:2 Marrakesh Agreement

"The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference



Multilateral Trade Negotiations



The GATT years

Year	Place/Name	Topics covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-61	Geneva (Dillon Rnd)	Tariffs	26
1964-67	Geneva (Kennedy Rnd)	Tariffs & AD	62
1973-79	Geneva (Tokyo Rnd)	Tariffs, NTBs & "framework Agreements"	102
1986-94	Geneva (Uruguay Rnd)	Marrakesh Agreement	123



Multilateral Trade Negotiations



The WTO years: evolution of WTO framework

□ Decisions and Declarations (few examples)

- 1996 Singapore ministerial conference
 - Singapore Topics: Trade Facilitation, Investments, Competition, Transparency in Government Procurement
 - « Information Technology » Initiative
- 1998 Geneva ministerial conference
 - Electronic Commerce (work programme and moratorium on tariffs)
- 1999 Seattle ministerial conference
- 2001 Doha ministerial conference
 - Doha Development Agenda



Doha Development Agenda



WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001: Doha Ministerial Declaration

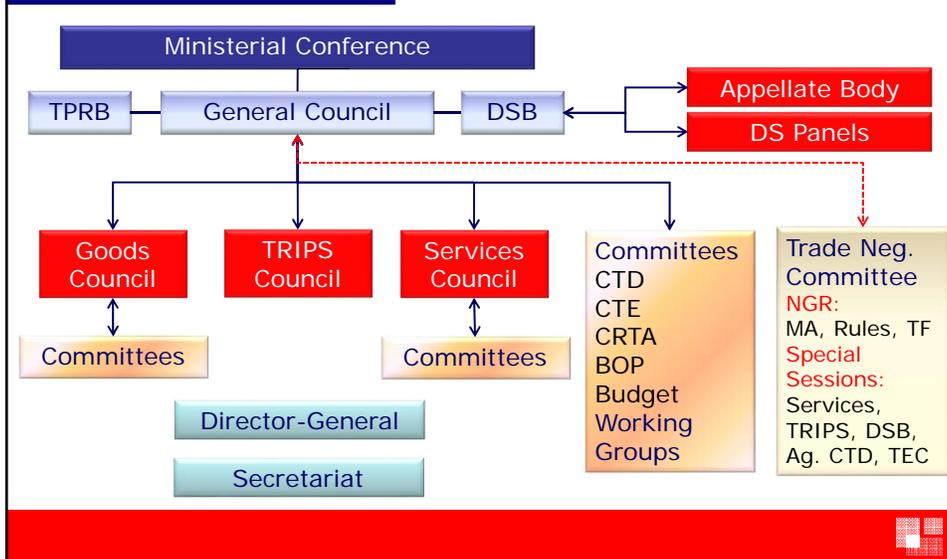
•Nov. 2001 - Definition of the negotiating mandate: Agriculture, NAMA, Services, TRIPS, Trade Facilitation, Trade and Environment, Dispute Settlement, Development issues, Rules

•Feb. 2002 – Trade Negotiations Committee: establishment of the structure and the main principles for the negotiation

- Single Undertaking and Consensus Decision Making
- Special and Differential Treatment
- Less than Full Reciprocity
- Transparent and Inclusive Negotiating Process



DDA: Negotiating structure



Doha Development Agenda



Key Objectives:

- Reforming agricultural subsidies
- Ensuring that trade liberalization respects the need for sustainable economic growth in developing countries
- Improving developing countries' access to global markets for their exports

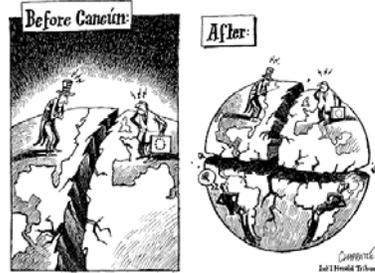


Doha Development Agenda



Milestones:

- Cancun (Sept. 2003)
- July Package (WT/L/579)
- Hong Kong (WT/MIN(05)/DEC)
- “Resumption and failures”
- MC9, Bali, December 2013



Doha Development Agenda



MC9: The Bali Package

Three main parts:

- **Part I:** Regular Work under the General Council
- **Part II:** Doha Development Agenda
- **Part III:** Post-Bali Work



Doha Development Agenda



MC9: The Bali Package – Part II

Outcome: Agreement on 10 DDA Related Texts

- Trade Facilitation
- Agriculture
- General Services
- Public Stockholding for Food Security purposes
- TRQ Administration
- Export Competition
- Cotton
- Development and LDC Issues
- Duty Free Quota Free Market Access
- Preferential Rules of Origin
- Operationalization of LDC Services Waiver
- S&D Monitoring Mechanism



Doha Development Agenda

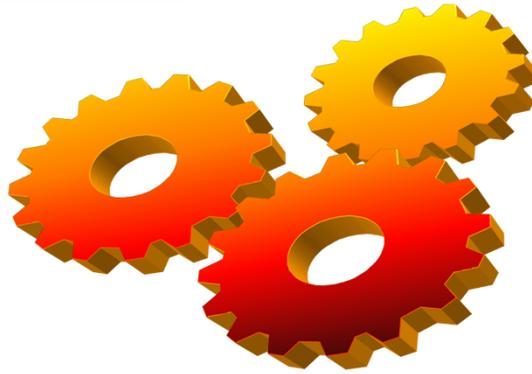


Why such a difficult journey?

- Large number of issues, each with large number of sub-topics
- High Level of Ambition and Complexity
- Larger Number of Players
- Complications arising from economic crisis
- Single Undertaking



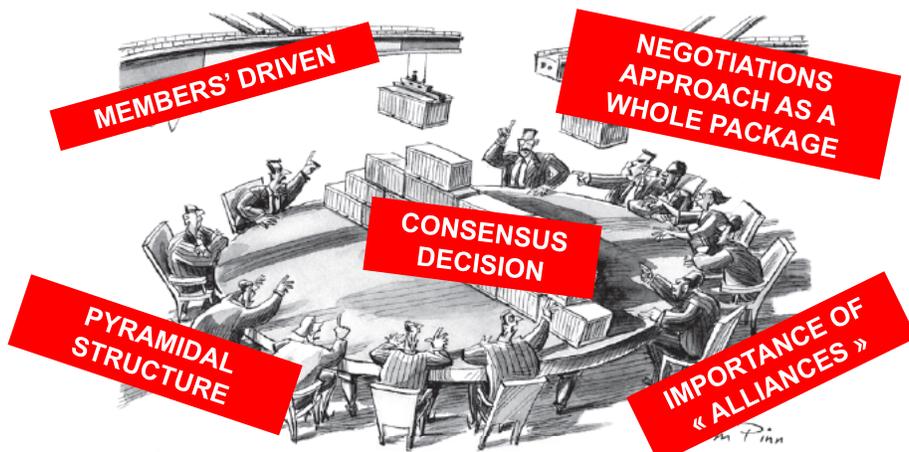
WTO: how does it work?



- Decision Making and Basic Principles



WTO: How does it work?



WTO OMC



WTO: how does it work?



A cross-cutting and consistent architectural approach underpinning the MTS

- **Disciplines and basic principles (obligations)**
 - Aimed at facilitating market access (*e.g. tariff bindings, prohibition of quantitative restrictions*), and
 - countering trade discrimination (*e.g. MFN & National Treatment*)
- **Attenuated or modulated by a complex system of exceptions and derogations (rights)**



Basic Principles: obligations



Absence of discrimination

- Most favoured Nation Principle (MFN)
- National treatment Principle

Provisions related to Market Access

- Respect of Bindings (goods and services)
- Prohibition of quantitative restrictions (quotas)

Fair trade

- Possibility to respond to unfair trade practices (*e.g. dumping and subsidization*)

Transparency - (notification, TPR)



WTO: Basic Principles



The Rights (derogations and exceptions)

- WTO agreements grant to WTO Members the possibility to derogate from the basic principles, ***under specific circumstances and specific conditions***
- These rights constitute therefore *derogations to or exceptions* from the basic principles



WTO: Basic Principles



The Rights (derogations and exceptions)

- ❑ **Trade Remedies**
 - Safeguard Measures
 - Antidumping Measures
 - Countervailing Measures
- ❑ **General Exceptions**
 - General exception
 - Security exception
- ❑ **Preferences and Derogations**
 - Regional integration
 - Waivers
 - Special and differential treatment

Obligations: Non-Discrimination



- ❑ The “elimination of discriminatory treatment in international trade relations” is a chief objective of the WTO (Preamble to the WTO Agreement)

- ❑ Two basic rules of non-discrimination in WTO law:

- MFN-treatment obligation
- National treatment obligation

Pervasive obligations: MFN and national treatment obligations contained in GATT, GATS and TRIPS



Obligations: Non-Discrimination



- ❑ The essence of the non-discrimination obligations under the GATT 1994 is that:

- “...like products should be treated equally, irrespective of their origin” (AB Report, EC – Bananas III)



- ❑ The non-discrimination obligations protect:

- expectations of equal competitive opportunities between “like” imported products (MFN) and between imported and “like” domestic products (national treatment)



Obligations: Non-Discrimination



MFN and national treatment are both fundamental non-discrimination obligations but the points of comparison to establish discriminatory treatment of “like” products are not the same:

- ❑ MFN (prohibits discrimination between ‘like’ imported products) – Article I:1 of the GATT 1994
- ❑ National treatment (prohibits discrimination against imported products compared to ‘like’ domestic products) – Article III of the GATT 1994



Obligations: Non-Discrimination



❑ MFN

Article I:1

“... any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country **shall be accorded immediately and unconditionally to the like product** originating in or destined for the territories of all other Member.”

Obligations: Non-Discrimination



□ MFN

- **Article I:1 – Prohibits discrimination between like products originating in or destined for different countries**
 - Each trading partner gets the best treatment accorded to any other trading partner
 - Object and purpose: “...to prohibit discrimination among like products originating in or destined for different countries” (*Canada – Autos*)
 - **N.B.: MFN also applies in respect of treatment afforded to non-WTO Members**



Obligations: Non-Discrimination



□ MFN: Analytical Elements

- Is the measure covered by Article I:1?
- Does the measure confer an “advantage”?
- Are the products concerned “like products”?
- Is the “advantage” accorded “immediately and unconditionally” to the “like products” of all Members?



Obligations: Non-Discrimination



❑ MFN: Analytical Elements (Coverage)

❑ Article I:1 covers a very broad range of measures:

- **Border measures and internal measures**
 - e.g. customs duties, fees and charges, method of levying such charges, rules and formalities, etc.
- **Origin-neutral & facially discriminatory measures (de jure vs de facto)**
- **Covers bound and unbound tariffs**



Obligations: Non-Discrimination



❑ MFN: Analytical Elements (Advantage)

❑ A measure that creates 'more favourable competitive opportunities' or affects the commercial relationship between products of different origins (Panel Report, EC – Bananas III)

❑ Examples:

- Import duty exemption (EC – Bananas)
- Advance import declaration requirement (Colombia – Ports of Entry)
- Access to certification procedures for eligibility to import poultry products (US – Poultry)



Obligations: Non-Discrimination



- MFN: Analytical Elements (Like products)**
 - “like” products: a ubiquitous concept under the GATT 1994: Arts. I, II, III, VI, IX, XI, XIII, XVI, and XIX**
 - Accordion of “likeness”**
 - Criteria for assessing “likeness” (Report of the Working Party on Border Tax Adjustments; subsequently developed by Panels and the Appellate Body)**
 - **physical characteristics of the products**
 - **end uses of the products**
 - **consumer preferences in relation to the products**
 - **tariff classification of the products**



Obligations: Non-Discrimination



- MFN: Analytical Elements (Unconditionally)**
 - “unconditionally”: An advantage cannot be made conditional on any criteria that discriminate with respect to the origin of the products**



Obligations: Non-Discrimination



- ❑ **MFN: Exercise**

- ❑ **Alba, Vanin, and Tristat are WTO Members, but Ruritania is not.**

Can Alba impose a tariff of 5% on watches imported from Ruritania, and 10% on watches imported from Vanin, and Tristat?



Obligations: Non-Discrimination



- ❑ **National Treatment: GATT Article III**

- ❑ **It applies to:**

- ❑ *internal tax measures – Article III:2*
- ❑ *internal regulatory measures - Article III:4*



Obligations: Non-Discrimination



□ National Treatment: GATT Article III

- The purpose of Article III is to avoid protectionism in the application of internal tax and regulatory measures
- Article III obliges Members of the WTO to provide equality of *competitive conditions* for imported products in relation to domestic products.
- The intention of the drafters of the Agreement was clearly to treat the imported products in the same way as the like domestic products once they had been cleared through customs.

(Appellate Body Report, Japan – *Alcoholic Beverages II*, p. 16)



Obligations: Non-Discrimination



□ National Treatment: Art. III architecture

- Article III:1 – General Principle (Internal measures must not be applied so as to afford protection to domestic production (SATAP))
- Article III:2 (first sentence) - prohibits taxation of imported products “in excess of” that applied to domestic “like” products
- Article III:2 (second sentence and Ad Article III) - prohibits *dissimilar taxation of directly competitive and substitutable (DCS)* imported and domestic products so as to afford protection to domestic production (SATAP)
- Article III:4 - In respect of *internal regulations*, imported products must be accorded “*treatment no less favourable*” than that accorded to “like” domestic products



Obligations: Non-Discrimination



□ National Treatment

□ Art. III:2, first sentence - (Internal taxation of like products)

The products of the territory of any Member imported into the territory of any other Member shall not be subject, directly or indirectly, to **internal taxes** or other internal charges of any kind **in excess of** those applied, directly or indirectly, to **like domestic products**.

□ Art. III:2, first sentence: analytical elements

- Whether the imported and domestic products are **like products**
- Whether the imported products are taxed **in excess** of the domestic products (**strict benchmark**)
- Actual trade effects of a measure are irrelevant



Obligations: Non-Discrimination

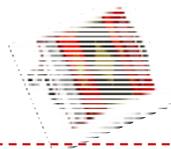


□ National Treatment: like products

Accordion of "likeness"

□ Criteria

1. physical characteristics
2. end uses
3. consumer preferences
4. tariff classification



- Accordion of likeness is narrowly squeezed – but not limited to "identical" products
- Products that present very similar physical characteristics may not be "like" if their competitiveness or substitutability is low;
- Products that present certain physical differences may still be considered "like" if such physical differences have a limited impact on the competitive relationship
- Narrowly squeezed accordion – products that are perfectly substitutable or close to being so.



Obligations: Non-Discrimination



□ National Treatment

- **Art. III:2, second sentence** - (Tax discrimination of directly competitive or substitutable products)

“Moreover, no Member shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner **contrary to the principles set forth in paragraph 1**”

Note Ad Article III

A tax conforming to the requirements of the first sentence of para. 2 would be considered to be inconsistent with the provision of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a **directly competitive or substitutable product which was not similarly taxed.**



Obligations: Non-Discrimination



□ National Treatment

- **Art. III:2, second sentence** – analytical elements
(*Japan – Alcoholic Beverages II*)

- Whether the imported and domestic products are **directly competitive or substitutable (DCS)**
- Whether these products are **not similarly taxed**
- Whether **dissimilar taxation** is applied so as to afford protection to domestic producers



Obligations: Non-Discrimination



□ National Treatment



□ Art. III:2, second sentence – meaning of DCS

- Like products are a subset of DCS products: all “like” products are DCS but not all DCS products are “like”. DCS products broader than “like” products
- DCS products – interchangeable; “alternative ways of satisfying a particular need or taste”
- Perfect substitutability is not required. Instead, high, but imperfect, degree of substitutability is required
- Current as well as latent demand must be examined (competition in the marketplace is a dynamic, evolving process)



Obligations: Non-Discrimination



□ National Treatment



□ Art. III:2, 2nd sentence – “not similarly taxed”

- Less strict than the “in excess of” standard – tax differential has to be more than de minimis
- Art. III:2, 2nd sentence - “so as to afford protection to domestic production”
 - Not a question of protective intent but a question of protective application.
 - Protective application of a measure can most often be discerned from the design, architecture, and revealing structure of the measure.
 - The very magnitude of a tax differential may be evidence of the protective application of a tax measure.



Obligations: Non-Discrimination



□ National Treatment



□ Art. III:4

(Internal regulations applied to foreign products and like domestic products)

“The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded **treatment no less favourable** than that accorded to **like products of national origin** in respect of all laws, regulations and requirements **affecting their internal sale**, offering for sale, purchase, transportation, distribution or use. ...”



Obligations: Non-Discrimination



□ National Treatment



□ Art. III:4 – Analytical Elements

(Internal regulations applied to foreign products and like domestic products)

- Whether the measure is a **law, regulation or requirement** covered by Article III:4
- Whether the imported products and domestic products are **'like'** products
- Whether the imported products are accorded **less favourable treatment**



Obligations: Non-Discrimination



□ National Treatment

□ Exercises

Alba, Vanin, and Tristat are WTO Members:

- Can Alba apply a 5% sales tax on locally produced watches and a 6% sales tax on watches imported from Vanin and Tristat?

If Alba only produces pocket watches and not wrist watches:

- can it apply a 5% tax on pocket watches and a 6% tax on wrist watches?

Alba requires that imported watches be sold at certain department stores:

- Is such a requirement consistent with the GATT1994?



Obligations related to Market Access



MARKET ACCESS



Obligations related to Market Access



Quantitative Restrictions

GATT Article XI:1

“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any Member on the importation of any product of the territory of any other Member or on the exportation or sale for export of any product destined for the territory of any other Member.”

- “The prohibition...is a reflection that tariffs are GATT’s border protection of choice. [QRs] impose absolute limits on imports, while tariffs do not. In contrast to MFN tariffs which permit the most efficient competitor to supply imports, [QRs] usually have a trade-distorting effect, their allocation can be problematic and their administration may not be transparent”



Obligations related to Market Access



Quantitative Restrictions

GATT Article XI - exceptions

- GATT Article XI:2(a) (Critical shortage of foodstuffs or other essential products)
- GATT Article XI:2(b) (Removal of a temporary surplus of a like domestic product for which the imported product can be directly substituted)
- GATT Article XI:2(c) (Agricultural products and fish)
- GATT Article XII (BOP measures)
- Agreement on Textiles and Clothing (Progressive integration)
- Others: safeguards, general and security exceptions, waivers



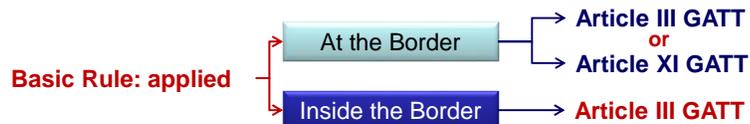
Obligations related to Market Access



QRs: Border vs Internal measures

Article III (Ad) - Taxes or charges collected at the border

Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which **applies to an imported product and to the like domestic product** and is collected or enforced in the case of the imported product at the time or point of importation, **is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement** of the kind referred to in paragraph 1, and is accordingly **subject to the provisions of Article III**.



Obligations related to Market Access



QRs: Exercise

Alba, Vanin, and Tristat are WTO Members

- Can Alba impose a ban on imports of fresh tuna and frozen lamb meat from Vanin?

Tristat bans the production, sale, importation and exportation of asbestos and asbestos-containing products.

- Which principle of the GATT 1994 is the measure inconsistent with?

Obligations related to Market Access



□ Tariff Bindings

□ What is “Tariff Bindings?”

- A commitment not to raise the customs duty on a certain product above an agreed level.

□ Where are they found?

- Schedule of concessions – annexed to Marakesh Protocol to the GATT 1994.
- Constitute an integral part of the GATT 1994 (Article II:7).

□ Legal disciplines on tariff bindings

- Articulated in Article II of the GATT 1994
- Applies to “Ordinary customs duties” (Article II:1(b), 1st sentence) and “other duties and charges” (Article II:1(b), 2nd sentence)



Obligations related to Market Access



□ Tariff Bindings



- **Art. II 1(a)**: “Each [*Member*] shall accord to the commerce of the other [*Member*] **treatment no less favourable** than that provided for in the appropriate Part of the appropriate **Schedule** annexed to this Agreement”
- **Art. II 1(b)**: The products (...) shall, on their importation into the territory to which the schedules relates, and subject to the terms, conditions or qualifications set forth in that Schedule, **be exempt** from ordinary customs duties **in excess of those set forth and provided therein**



Obligations related to Market Access



□ Tariff Bindings



□ Relationship between Articles II:1(a) and (b)

- “Paragraph (a) of Article II:1 contains a general prohibition against according treatment less favourable to imports than that provided for in a Member’s Schedule.
- Paragraph (b) prohibits a specific kind of practice that will always be inconsistent with paragraph (a): that is, the application of ordinary customs duties in excess of those provided for in the Schedule” (Argentina – Textiles and Apparel)



Obligations related to Market Access



□ Tariff Bindings

□ Protection of Tariff Bindings: Articles II

- In principle, Article II:1(b), first sentence, does not prevent the application of a type of duty different from the type provided for in a Member’s Schedule.

□ Bound vs. Applied Tariffs

□ Other duties and charges

- A residual category encompassing charges on imports that are not ordinary customs duties in the strict sense
- Disciplined by Article II:1(b), second sentence – to prevent circumvention of the rule on ordinary customs duties



Obligations related to Market Access



□ Tariff Bindings

□ Other duties and charges *cont.*

- “other duties or charges, shall be recorded in the Schedules...annexed to GATT 1994 against the tariff item to which they apply” (Understanding on the Interpretation of Article II:1(b) of the GATT 1994)
- A Member may not apply “other duties and charges” that are **not recorded** in their Schedules and **in excess** of the level recorded in their Schedules

□ Certain taxes and charges may be applied in addition to customs duties

- Charges equivalent to internal tax on “like” domestic product in accordance with Article III:2 (i.e., border tax adjustment)
- Anti-Dumping or Countervailing Duties II:2(b)
- Fees “Commensurate” with the Costs of Services Rendered – Article II:2(c) and Article VIII:1



Obligations related to Market Access



□ Tariff Bindings: exceptions

- **GATT Article II:1(b) (Other Duties and Charges – as recorded in schedules)**
- **GATT Article II:2 (Internal Tax, Anti-Dumping or Countervailing Duty, Customs Fees)**
- **GATT Article XXVIII (Modifications of Concessions)**
- **Marrakesh Agreement Article IX:3 (Waiver)**



Obligations related to Market Access



□ **Tariff Bindings: exercise**

- Alba, Vanin, Medatia and Tristat are WTO Members, but Ruritania is not. In its Schedule, Alba has bound its tariffs on watches at 15%.
- Can Alba customs authorities impose a tariff at a rate other than 15%



Obligations: Transparency



□ **Transparency**

- Prompt Publication
- Prior Notification
- Fair Application
- Independent Review
- Information Points



WTO: Basic Principles



The Rights:

- Exceptions
- Derogations
- Preferences



WTO: Basic Principles



The Rights

- ❑ Trade Remedies
 - Safeguard Measures
 - Antidumping Measures
 - Countervailing Measures
- ❑ General Exceptions
 - General exception
 - Security exception
- ❑ Preferences and Derogations
 - Regional integration
 - Waivers
 - Special and differential treatment

The Test



- 1 MEasure
- 2 GOvernmental
- 3 VIolation of a BP
- 4 EXception

WTO: Basic Principles



General Exceptions

- General exception

GATT Article XX

- Security exception

GATT Article XXI



The Rights: Exceptions



□ GATT Article XX - General exception

- Underlying principle: In certain **specific situations**, and under **certain conditions**, the WTO rules and obligations **shall not prevent Members from taking certain measures** (which otherwise would be illegal) in order to pursue legitimate non-trade policy objectives.
- **Role of the Article XX:**
 - Trade liberalization, market access and non-discrimination rules may conflict with other important societal values and interests
 - Article XX reconciles trade liberalization, market access and non-discrimination rules with the need to protect and promote societal values and interests

The Rights: Exceptions



❑ GATT Article XX - General exception

• **Art. XX: Chapeau**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures ...:



The Rights: Exceptions



❑ GATT Article XX - General exception

• **Art. XX: sub-paragraphs**

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importation or exportations of gold or silver;
- (d) necessary to secure compliance with laws not inconsistent with GATT provisions;
- (e) relating to products of prison labour;
- (f) imposed for the protection of national treasures (artistic, historic or archaeological);
- (g) relating to conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of an intergovernmental commodity agreement;
- (i) materials necessary to ensure essential quantities to a domestic processing industry;
- (j) essential to the acquisition or distribution of products in general or local short supply.



The Rights: Exceptions



□ GATT Article XX - General exception

- **Nature of the exception**
 - Conditional – invocation is conditional upon a violation of an obligation under the GATT;
 - Limited – the exceptions concern a closed list of policy objectives
- **Two tiered test**
 - Does the measure fall within one of the exceptions listed in Article XX (a)-(j)?
 - If yes, does it satisfy the “chapeau”?
 - arbitrary or unjustifiable discrimination
 - disguised restriction on international trade



The Rights: Exceptions



□ GATT Article XXI - Security exception

Nothing in this Agreement shall be construed:

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any **action which it considers necessary for the protection of its essential security interests**
 - (i) relating to fissionable materials or the derived materials;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its **obligations under the United Nations Charter** for the maintenance of international peace and security.



The Rights: Exceptions



□ Exercise

Vanin only allows imports of "high quality" lamb by importers who has obtained a certification from a particular foreign government. Alba brought a complaint to the WTO.

- What inconsistency of the GATT1994 could Alba allege?
- How would Vanin defend its case?
- How would Alba respond to Vanin's defense?

The Rights: Preferences & Derogations



Preferences & Derogations

- S&D
- Enabling Clause
- Waiver
- RTAs



Basic Principles: S&D



- The main instruments of special and differential treatment in the current framework:
 - (1947) GATT, Article XVIII, Section C – Infant industry
 - (1965) Part IV of the GATT – Trade and development
 - (1979) Enabling Clause - Differential treatment and non-reciprocity
 - The Uruguay Round
 - Specific provisions (S&D)
 - Decision on LDCs



Basic Principles: S&D



- The principle: Modulate the obligations deriving from the WTO Agreements to take account of the special circumstances of the developing countries.
 - A cross-cutting concept put into practice in different ways:
 - Longer transitional and implementation periods for the developing countries (e.g. TRIPS Agreement, Art. 65.2, and Agreement on Agriculture, Art. 15.2, respectively);
 - exemption from certain obligations (e.g. Agreement on Safeguards, Art. 9.1; SCM Agreement, Art. 27.2);
 - for tariff concessions, flexibility regarding the principle of reciprocity (Art. XXXVI:8 of the GATT 1994; July 2004 Package, Annex B relating to market access for non-agricultural products);
 - preferential access to developed country markets under the Generalized System of Preferences (GSP);
 - and more...



Basic Principles: S&D



□ Enabling Clause (Decision of 1979)

- Tariff preferences (unilateral) granted by developed countries in favour of developing countries (Generalized System of Preferences - GSP)
- More favourable treatment in respect of non-tariff measures
- Regional arrangements between developing countries (reduction / elimination of customs duties and other restrictive trade regulations)
- Special treatment for least developed countries (LDCs)



Basic Principles: S&D



□ Enabling Clause (body of the text)

1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.
 2. The provisions of paragraph 1 apply to the following:
 - (a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences*
- Footnote 3 of the Enabling Clause

As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non discriminatory preferences beneficial to the developing countries" (BISD 18S/24)



Basic Principles: Waivers



❑ Marrakesh Agreement, Art. IX:3

In **exceptional circumstances**, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements...



Basic Principles: Waivers



❑ Marrakesh Agreement, Art. IX:3

- Decision by consensus, in practice (Marrakesh Agreement, Art. IX:1)
 - The decision must specify (Marrakesh Agreement, Art. IX:4):
 - The exceptional circumstances;
 - the terms and conditions governing application of the waiver;
 - the date on which the waiver expires;
 - annual review of the waiver.
- *Examples of waivers:*
 - *Lomé conventions, Cotonou Agreement, AGOA etc*



Thank you

