

Chapter 7 - Trade in Goods

A. HISTORY OF CONTEMPORARY INTERNATIONAL TRADE LAW

1. The General Agreement on Tariffs and Trade

- a. Created in 1947 at Geneva.
- b. GATT was both a framework of rules and an institution.
 - 1) The rules defined the way trade relations were conducted between contracting states.
 - 2) The institution was:
 - a) A forum for trade negotiations.
 - b) A mechanism for modifying and enforcing the GATT rules.

2. Multilateral Trade Negotiations (MTNs)

- a. "Rounds" held regularly by the GATT contracting states to negotiate trade concessions.
 - 1) First five rounds (from 1947 to 1962) were devoted almost exclusively to tariff reductions.
 - 2) Latter rounds expanded their agendas to non-tariff matters and the drafting of non-tariff codes.
 - a) The Kennedy Round (1962-1967).
 - b) The Tokyo Round (1973-1979).

3. The Uruguay Round (1986-1994) was concerned with:

- a. Creating a new World Trade Organization.
- b. Adopting new special agreements (e.g., agriculture).
- c. Expanding the GATT principles to new fields (e.g., services and intellectual property).

4. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations

- a. Provided for the World Trade Organization to come into existence on January 1, 1995.

- b. The Final Act is made up of three parts:
 - 1) The formal Final Act — a one-page umbrella agreement that introduces the other two parts.
 - a) Requires signatories to submit the second part to the appropriate authorities for ratification.
 - b) Requires signatories to adopt the third part.
 - 2) WTO Agreement and its Annexes.
 - 3) Ministerial Declarations and Decisions agreed to during the course of the negotiations.
- c. Structure of the WTO.
 - 1) The main organs of the WTO are:
 - a) Ministerial Conference.
 - 1] Meets at least every other year.
 - 2] Has four standing committees:
 - a] Trade and development.
 - b] Balance-of-payments restrictions.
 - c] Budget, finance, and administration.
 - d] Trade and environment.
 - b) General Council.
 - 1] Also functions as the WTO's:
 - a] Dispute Settlement Body.
 - b] Trade Policy Review Body.
 - 2] Responsible for making arrangements for effective cooperation with other IGOs.
 - c) Council for Trade in Goods.
 - d) Council for Trade in Services.
 - e) Council for Trade-Related Aspects of Intellectual Property Rights.
 - 2) Other: Secretariat headed by a Director-General.
- d. Decision Making within the WTO.
 - 1) Decision making is by consensus.
 - a) Consensus defined: The making of a decision by general agreement and in the absence of any voiced objection.

- b) If consensus cannot be reached: decisions are made by a simple majority vote.
 - 1] Each member has one vote.
 - 2] The European Union has the number of votes that its member states have that are WTO members.

Reading 7-1. The WTO from Seattle to Doha to Hong Kong (and Beyond)

- e. Dispute Settlement — see Chapter 3.
- f. Trade Policy Review.
 - 1) WTO Agreement establishes a Trade Policy Review Mechanism.
 - a) Trade Policy Review Board (TPRB) is the WTO's auditor.
 - 1] Carries out periodic reviews of the trade policies and practices of member states.
 - 2] Prepares an annual overview of the international trading environment.

B. THE GATT 1994

1. Changes from the GATT 1947

- a. Changes in text are mainly in terminology.
 - 1) “Member” replaces “contracting party.”
 - 2) The WTO or its Ministerial Conferences are substituted for “Contracting Parties.”

2. Purpose of the GATT Rules

- a. To give WTO member states:
 - 1) Equal access to markets.
 - 2) Reciprocity in trade concessions.
 - 3) Transparent and stable trading conditions.
- b. Ultimately to progressively liberalize world trade.

3. Direct Effect

- a. Some GATT provisions are directly effective.

- 1) Defined: Individuals (in addition to other signatories) may rely on GATT provisions to challenge the actions of a contracting state.
- 2) Provisions that are directly effective: Those that prohibit a state from taking action contrary to the General Agreement are directly effective.
 - a) Individuals may only challenge provisions that require a contracting state to take some positive action if the state adopts implementing legislation authorizing such a challenge.

Case 7-1. Finance Ministry v. Manifattura Lane Marzotto, SpA

4. **Nondiscrimination:** International trade should be conducted without discrimination
 - a. The basic “principle” of GATT.
 - 1) Given expression in the articles as the “most-favored-nation” rule and the “national treatment” rule.
 - b. The Most Favored Nation Rule: Requires each contracting party to apply its tariff rules equally to all other parties.
 - 1) General exceptions to the MFN rule.
 - a) Contracting states may take actions to counter dumping and subsidization.
 - b) Contracting states may join together to create customs unions and free trade areas.
 - c) Contracting states may restrict imports to protect public health, safety, welfare, and national security.
 - 2) Special exceptions for developing contracting states.
 - a) Generalized System of Preferences (GSP) allows developing countries to export all (or nearly all) of their products into a participating developed country on a nonreciprocal basis.
 - b) South-South Preferences allows developing countries exchange tariff preferences among

themselves without extending the same preferences to developed countries.

- c. The National Treatment Rule: Requires a country to treat products equally with its own domestic products once they are inside that border.
 - 1) Definition: “‘National treatment’ by a state means according to the nationals of another state treatment equivalent to that which the state accords to its own nationals.”
 - a) Interpretation: Products must be treated equally vis-à-vis their “content”; they may not be discriminated against because of the way in which they were made.

Case 7-2. Japan — Taxes on Alcoholic Beverages

- 2) Exceptions:
 - a) Contracting states may maintain preferences that existed at the time they became signatories of the GATT.
 - b) Contracting states may discriminate in the procurement of goods by government agencies.
 - c) Contracting states may discriminate in the payment of subsidies to domestic producers.
 - d) Contracting states may discriminate in the screening of domestically produced movies.

5. Protection through Tariffs: Contracting parties may only protect their domestic industries through the use of tariffs

- a. Forbidden actions:
 - 1) Use of quotas and other quantitative restrictions that block the function of the price mechanism (Art. XI).
 - 2) Tariffs be collected “at the time or point of importation” (Art. II).
 - a) Purpose: To ensure that internal taxes are not disguised as tariffs.

- b. Exceptions — member may impose:
 - 1) Temporary export prohibitions or restrictions to prevent or relieve critical shortages of foodstuffs or other essential products.
 - 2) Import and export restrictions related to the application of standards or regulations for classifying, grading, or marking commodities.
 - 3) Quantitative restrictions on imports of agricultural and fisheries products to stabilize a member state's national agricultural markets.
 - 4) Reasonable quantitative restrictions to safeguard a member state's balance of payments.
 - 5) Quantitative restrictions to further the economic development of a developing member state.

6. Transparency: Governments of WTO member states must disclose to the public, and to other governments, the rules, regulations, and practices they follow in their domestic trade systems

7. Simplification: The members are obliged to work toward simplifying their import and export formalities

a. Customs Classification.

1) 1950 *Convention on Nomenclature for the Classification of Goods in Customs Tariffs*.

a) Convention established the so-called Brussels "Harmonized System" (HS).

1] Goods are defined along a spectrum from raw to processed, with those being more fully processed subject to the highest tariff rates.

2] There is a schedule of about 900 tariff headings.

a] Each heading is interpreted through explanatory notes and classification opinions published and regularly updated by the CCC.

b] The notes and opinions are commonly incorporated into the tariff interpretation rules used by states that have adopted the HS.

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