

Environmental Protection and WTO Rules

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Abstract

1. Background for applying environmental measures under WTO rules
2. GATT
3. TBT Agreement
4. SPS Agreement

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WTO Agreements and Environmental Measures

Environmental Measures can be taken under:

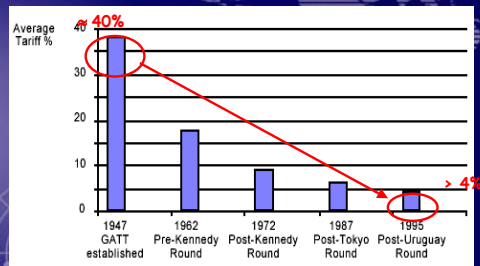
Agreement on Technical Barriers to Trade (TBT)

Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)

Article 20 of the General Agreement on Tariffs and Trade (GATT)

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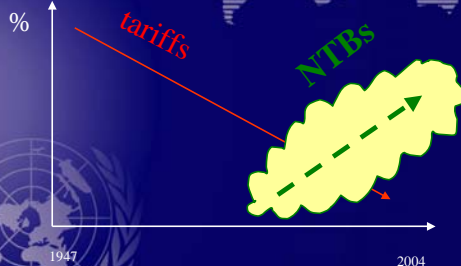
Concerns with Using Environmental Measures



Overall, import weighted tariff on Industrial products

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Concerns with Using Environmental Measures [2]



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Concerns with Using Environmental Measures [3]

Why is there a market access issue?

growing

NTBs

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Concerns with Using Environmental Measures [4]

Definition?

NTBS



Guiding Principles of WTO



No Discrimination between

"like products"

Treatment of imported products no less favourable than imported products



"like products"
"treatment no less favourable"

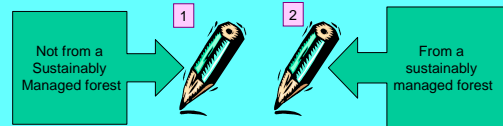
Concept of "like products"

(Border Tax Adjustments Framework)

- (i) the properties, nature and quality of the products (the physical properties of the products)
- (ii) the end-uses of the products
(the extent to which the products are capable of serving the same or similar end-uses)
- (iii) consumers' tastes and habits
(the extent to which consumers perceive and treat the products as alternative means of performing particular functions in order to satisfy a particular want or demand)
- (iv) the tariff classification of the products
(the international classification of the products for tariff purposes)

Concept of "like products" [2]

Are these products alike?



- Same **physical** characteristics
- Same **end-use**
- Same **tariff** classification
- Perfectly **substitutable**

CTF Other Issues Related to Applicability

PPMs = processes and production methods:

"... the way in which products are manufactured or processed and natural resources extracted or harvested"



(OECD, 1997)

Distinguish:

- non-product related PPMs that do not affect the product characteristics;
- product-related PPMs that do bear on product characteristics

Examples nprPPMs: animal welfare, organic agricultural production ...

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Basic WTO Principles 13

Non-discrimination

**Article I:
Most Favoured Nation**

**Article III:
National Treatment**

**Article XI:
Prohibition of quantitative
restrictions**

WTO Members must *treat equally* "like products" originating in or destined for the territory of all other Members

WTO Members must not discriminate between *imported and domestic* "like products"

No prohibitions or restrictions (other than duties, taxes or other charges such as quotas, import or export licences) allowed on the import or export of any product

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Article XX Exception 14

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 contracting party of measures:

- 2 (b) necessary to protect **human, animal or plant life or health**;
- 1 (g) relating to the **conservation of exhaustible natural resources**, if such measures are made effective in conjunction with restrictions on domestic production or consumption;

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Sequence of Steps in Applying Exceptions under Article XX 15

Sequence of steps (*Gasoline, Shrimp I*):

- 1- Inconsistency with WTO rules?
- 2- Does the measure qualify for one of the exceptions? ("provisional justification")
- 3- Does it pass the test of the chapeau?
(*"a heavier task..." (Gasoline)*)

It is usually not the measure itself that is at stake, but the manner in which the measure is actually applied

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Importance of the Chapeau of Article XX 16

"The purpose and object of the introductory clauses of XX is the *prevention of abuse of the exceptions...*" (AB, *Gasoline*)

"... the chapeau is but one expression of the principle of *good faith.*" (AB, *Shrimp I*)

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Importance of the Chapeau of Article XX [2] 17

3 requirements under chapeau:

- 1 No arbitrary discrimination
- 2 No unjustified discrimination
- 3 No disguised restriction on international trade

All 3 must be satisfied

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Importance of the Chapeau of Article XX [3] 18

- 1 Arbitrary discrimination
- 2 Unjustified discrimination
- 3 Disguised restriction on international trade

Relevant criteria:

- Serious effort to negotiate (with the objective of concluding bilateral/multilateral agreements for the achievement of a certain policy goal)
- Flexibility of the measure (in taking into account conditions prevailing in exporting countries; "comparable effectiveness")

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Environmental Disputes under the GATT Agreement of WTO

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9 cases:

6 under GATT:

- US-Canadian Tuna
- Canada-Salmon and Herring
- Thailand-Cigarettes
- US-Tuna (Mexico)
- US-Tuna (EEC)
- US-Automobiles

3 under WTO:

- US-Gasoline
- US-Shrimp followed by US-Shrimp Article 21.5 procedure
- EC-Asbestos



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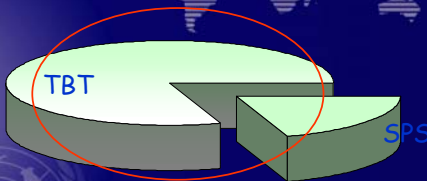
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TBT Agreement

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Applicability of TBT Agreement

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TBT Agreement is applicable to:

"1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement."

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Example: Textile and Clothing Exports

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"Unnecessary obstacles" **Article 2.2 (TBT)**
(technical regulations)

"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." (emphasis added)

"Legitimate objective"

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What are Legitimate Objectives?

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List of legitimate objectives is only indicative "inter alia"

- National security requirements;
- The prevention of deceptive practices;
- Protection of human health or safety, animal or plant life or health;
- **The Environment.**

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SPS Agreement

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What is Covered by the SPS Agreement?

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to protect:

human or animal life

human life

animal or plant life

a country

from:

risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs;

plant- or animal-carried diseases (zoonoses);

pests, diseases, or disease-causing organisms;

damage caused by the entry, establishment or spread of pests

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Necessity Test Required Under SPS Agreement

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Article 2.2 (SPS)

“Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent **necessary** to protect human, animal or plant life or health, is **based on scientific principles** and is not maintained without sufficient scientific evidence, except as provided for in Article 5 under provisional measures.”

Necessity test

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Sequence of Steps for Necessity Test under SPS

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1 Measure must be necessary, based on scientific justification

2 Scientific justification needs to be tested through risk assessment

3 Where relevant scientific information is insufficient, provisional SPS measure can be taken. Members shall however seek additional info for a more objective risk assessment and review the SPS measure within a reasonable period of time.

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