

Lesson 2

Chapter 6, pg. 20

- The country of Patria, a (developed) member of the WTO believes that Protectio, a (developing) WTO Member, is engaged in an ongoing violation of WTO rules by **not sufficiently protecting the rights of Patria copyright holders** (contrary to WTO minimum standards on intellectual property enshrined in the TRIPS Agreement, discussed in Chapter 21).
- In an effort to bring Protectio in line with its TRIPS Agreement obligations, Patria has decided to **cut off all of its development aid to Protectio**. Is **this a violation of WTO obligations**? Explain why or why not.
The only way is to go through the whole procedure. Protectio has applied a preferential treatment.
- Assuming that this unilateral action would be a violation of WTO obligations, **what options does Patria have to end Protectio's violation**? Go through the procedure of the WTO agreement.
- Assuming that Protectio is, indeed, violating the TRIPs Agreement (and knows it), what would you recommend that they do **in response to Patria's threat to pursue a remedy at the WTO**? Reach a consensus in the phase before the panel.
- Patria has filed a request for consultations at the WTO. Protectio has responded by hiring a **prominent private law firm based in Washington, D.C.** When the hearing before the panel begins, Patria objects to the presence of the private lawyers, stating that **"the WTO is an organization among states, and only government officials are eligible to participate in these legal proceedings."** How successful will Patria be with this objection?
There is a possibility of private lawyers to be part of the delegations.
- **You have been approached by the Writers for Copyright Association (WCA). They want to submit an amicus brief in the case in favor of the copyright protections that they, too, believe Protectio has violated. What advice would you give them about how to get their brief accepted? What is your view on how the AB should handle amicus briefs in general? (skip this one)** It is also possible for non-governmental organizations to ask the implementation of their report in support of the position of one of the two parties in the panel.
- Now suppose that the panel and the AB have ruled in favor of Patria and found Protectio to be violating its TRIPs obligations. Furthermore, Protectio has refused to come into compliance and the "reasonable period" for implementation has passed. **What provisions permit Patria to retaliate by suspending its own concessions, and how must it determine the details and magnitude of that retaliation?**
Art XXII, part 2.
Temporary Measures:
 - A compensation agreement. It is not a final agreement settling the dispute. But it avoids that the winning party continues to suffer damages.
 - The suspension of concessions or other obligations (unilateral counter measures)
 - Characteristics: i) Previously authorized, ii) proportional to the damage, iii) submit it to arbitratio

The tariffication principle

- What difficulties linked to the internationalization of your business you will have to face? Transport costs, safe arrival of the product, distribution rules, offices in the USA.
- Do you expect to find obstacles in accessing the US market? If yes, why? Tariffs (custom duties) that you will have to pay at the border, the importation of the good could be banned, introduction of quotas (only a certain amount of pasta is admitted in the year), origin rules. Internal regulations may create issues for international trading.
- Introduction
 - We said that GATT aims to liberalize trade through common rules, based on the **general principles of**: reciprocity and non-discrimination (favorite nation and = national product once crossed the border).
 - Other principles and rules which contribute to complete the system are **the tariffication principle, the ban on quantitative restrictions**.
 - States never would have signed the WTO agreements if this had meant to renounce the adoption of measures aimed at protecting the national economy.
- Market access restrictions:

Border measures (imagines being at the airport):

 - i) Tariffs (duties)
 - ii) Import bans, quotas **non-tariff barriers**

Behind the border measure (the good has already entered the country):

 - i) Taxes, regulations **non-tariff barriers**

Governments have used **behind the border measures** to discriminate national products from international ones. The international ones become too expensive to be bought by consumers. Therefore, there wouldn't be a real liberalization of international trade. That's why the WTO doesn't imitate itself to border measures.
- Legal boxes for market access restrictions: Different measures get different legal treatments. For example, the following measures get the following legal treatment.
 - Tariffs** (GATT, art II): Allowed, but regulated (once they are set, government should stick to them. There is a specific procedure to change them)
 - Import quotas** (GATT, art XI): banned
 - Non-discriminatory sale taxes** (GATT, art III): allowed. Sale taxes applied to imported products are prohibited only if applied in a discriminatory way.
- **Tariffs**
 - Tax on imports, collected by the importing country, and paid for by foreign exporters or domestic importers, but ultimately, at least partially, carried forward into higher consumer prices in the importing country.
 - **Tariffs are not ruled out** by the **GATT** (1947. WTO is GATT+more).
 - On the contrary, since tariffs are **more transparent** and **easier to monitor measures**, they are **the only means Member States should use to protect domestic economy**.
 - Contrary to **internal regulation** (behind the border measures)

- The **WTO** system, then, **seeks** to get a **reduction of tariff barriers** through **gradual and reciprocal tariff negotiations** among Members (Negotiating Rounds). Till now, we have had 9 rounds of negotiations.
- Who are tariffs regulated?
 - **Most-Favoured-Nation-MFN Principle**, (GATT Article I): The **duty resulting from the multilateral negotiating** process is called the «**consolidated duty**» or «bound tariff rate», and it's **automatically extended** to all the **Members of the Organization**.
 - Normally, not all States are involved, but just the countries whose economy depends more in that product.
 - Each Member State publishes its bound tariffs rates in its Schedule.
 - All these **Schedules form part of the GATT** (are **binding** on Members).
- Schedule of Concessions (GATT, Article II):
 - Each contracting party shall accord to the commerce of the other contracting parties' **treatment no less favorable than that provided for in** the appropriate Part of the appropriate Schedule annexed to this Agreement. (**bound tariff rate**).
 - **The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation** into the territory to which the Schedule 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**.
 - The **consolidated duty** serves as a ceiling value: Members **can apply lower duties** (applied tariff rate)
 - The consolidated duty can be modified:
 - i) **Multilaterally**, in the negotiating rounds.
 - ii) **Unilaterally**, but through **consultation with Members which have substantial interest in such concessions and who have the right to respond** withdrawing «**substantially equivalent concessions**» (Article XXVIII).
(ejemplo: EU sube duties de manzanas americanas, USA responde poniendo tarifas más altas a olivas importadas de EU)
- Classification of duties
 - **Ad valorem duties**: they are calculated as a percentage of the value of the imported producto
 - **Specific duties**: not based on value, but on weight, volume or quantity.
 - From 1948 to our days, average duties have been reduced from 40% to less than 5%.
 - Duties are applied on a MFN basis, but Part IV of GATT allows negotiations between developed and **developing countries** to deviate from the principle of reciprocity.
 - When they offer a trade concession, developed countries shouldn't expect reciprocity from developing countries.

- **Other duties:** it is possible to add to the consolidated duties other duties if they are **written down in the schedule** or **imposed together with other measures applied in the border**.
- **Examples:** An imposition on imports applied as a contribution on the lunch costs of custom officials. An imposition on imports of raw meat equivalent to the cost the importing State is bearing for the medical inspection of the products.
- Is it possible to apply a duty exceeding the ceiling bound under Article II? Yes, but only in some specific cases:
 - **a charge equivalent to an internal tax** imposed consistently with the provisions of paragraph 2 of Article III (non-discrimination in the relationship between imported and national goods) in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part.
 - any **anti-dumping or countervailing duty** applied consistently with the provisions of Article VI.
 - fees or **other charges commensurate with the cost of services rendered**.
 - **safeguard duties** under GATT Article XIX.
- To apply rules such as tariffs effectively, I must determine the origin of goods correctly, the value of the good (for ad valorem duties).
- How to determine the **ORIGIN of a product?** (It may fall under a preferential agreement)
 - Rules of origin:
 - i) Substantial **transformation criterion**
 - ii) Change of **tariff classification** (I can change tariff when the good is transformed to another product)
 - iii) **Ad valorem percentage criterion** (where did the raw material undergo a treatment that added the highest value to the good)
 - Why is it important to determine the origin of a product? Geographical unions might get preferences/ lower duties between them.
- How to determine the **value of the product** to be imported? the value is the «**transaction value**, that is the **price actually paid or payable for the goods when sold for export to the country of importation**»
- Harmonized System Treaty
 - Tariffs are not regulated by WTO.
 - This Treaty is not one of the trade treaties administered by the WTO; it was signed in the **World Customs Union Organization**.
 - Tariff negotiations have been greatly facilitated by the consensus of all Members to use the classification of products of the Harmonized System (HS) Treaty as a basis for their Schedules of Concessions.
 - The HS lists and classifies all products, giving a number or digit to each product or tariff line. Fewer digits correspond to broader product categories (up to 6 digits).

- How should treaties be interpreted?
 - **Article 31 of the Vienna Convention on the Law of Treaties- VCLT:** treaties must be interpreted «in accordance with **the ordinary meaning to be given to the terms of the treaty in their context** and in the light of their object and purpose».
 - **Article 32 VCLT:** «recourse may be had to **supplementary means of interpretation**, including the preparatory works and the circumstances of its conclusion, in order to **confirm the meaning resulting from the application of Article 31**, or to **determine the meaning when the interpretation according to Article 31:** (a) Leaves the meaning ambiguous or obscure; or (b) Leads to a result which is manifestly absurd or unreasonable.»
- Tramontana chocolate duties:

Problem: *Tramontanan chocolate duties*

Tramontana's Schedule:

Chocolate	bound duty	10% <i>ad valorem</i> ;
since 1995	applied duty	5%
since 2007	applied duty	8%

+ minimum specific duty of US \$ 1 per Kg when prices dip below a given threshold

«*Other duties and charges*»: a 5% duty on all imports to provide for catering to custom duty officials' meals

Recently added and **not in the Schedule**: a duty on all imports of food products to create a fund to deal with possible financial crises in the country's banking sector

- Chapter 7, pg. 25:

Tramontana, an original member of the WTO, has bound its customs duties on imports of chocolate at 10 percent ad valorem. Tramontana's applied duty rate for chocolate was set in 1995 at 5 percent. In 2007, however, this applied rate was increased to 8 percent. When world prices of chocolate dip below a certain amount, Tramontana imposes a minimum specific duty of US \$1 per kg. In addition, Tramontana's schedule states under "other duties or charges" that a 5 percent ad valorem duty will be levied on all imports (including chocolate imports) to provide for catering to Tramontana customs officials during their lunch breaks. Finally, Tramontana recently decided to impose a 0.1 percent "additional duty" on all imports of food products, receipts of which are put in a stabilization fund that Tramontana plans to use to deal with possible financial crises in its banking sector. No reference to this "additional duty" is made in Tramontana's schedule. Consider the following questions:

1. If you are a Swiss or Belgian chocolate exporter to Tramontana, what duties will you have to pay at Tramontana customs for 1,000 kg of chocolate invoiced at US \$5 per kg? What duties will you pay in the event this US \$5 price is below the reference price used for the minimum specific duty to be triggered?

$$8\%1000+5\%1000+0.1\times 1000=$$

Then I would have to add 1000 \$

2. In both scenarios, list the applicable GATT provisions for each element of the total duty to be paid and assess whether any of the applicable duties violate GATT rules. More specifically:

a. Is the change in 2007 from a 5 percent applied rate to an 8 percent applied rate a violation of GATT? No, because the bound (techo) is 10%.

b. Is the imposition by Tramontana of a specific duty a per se violation of its ad valorem tariff binding for chocolate? If not, could it still be found to violate GATT? The bound rate should always be respected. If applying the specific duty the total is below the 10%, then its legal.

c. What GATT provisions apply to the 5 percent catering duties and the 0.1 percent stabilization duties? Are any of these provisions violated? What is the importance of Tramontana scheduling, or not scheduling, these duties as "other duties or charges" under GATT Article II:1(b), second sentence?

Fees or **other charges commensurate with the cost of services rendered** are legal. But, in this case is not legal since the duty is not quantified in a correct way. Not linked to the real cost of the service.