

History of the WTO\GATT system

- Following World War II, the victor nations sought to create institutions that would eliminate the causes of war.
- Their principles were to resolve or prevent war through the United Nations and to eliminate the economic causes of war by establishing three international economic institutions.

Bretton Woods System

- The three institutions were:
 - The International Monetary Fund (IMF)
 - The World Bank
 - The International Trade Organization (ITO)
 - The 3 were known as the Bretton Woods, the New Hampshire resort where the agreement occurred
- The economic philosophy of these Bretton Woods institutions was classical economic neoliberalism

The General Agreement on Tariff and Trade (GATT)

- The U.S. Congress did not object to the establishment of the World Bank and the IMF but refused to agree to the ITO on the grounds that it would cede too much sovereignty to an international body.

GATT, 1947

- Because the ITO was stillborn the provisional agreement for the ITO, the *General Agreement on Tariffs and Trade* (GATT) became the agreement and the organization for establishing and enforcing, through dispute settlement, the international trade rules.
- In 1995 this *agreement* on trade in goods became the World Trade *Organization*.

GATT, 1947

- The GATT was very successful in lowering tariffs, the then existing major barrier to free trade.
- The first five rounds of multilateral trade negotiation succeeded in lowering tariff barriers substantially. This shifted protectionism to non tariff barriers. (NTB)

GATT, 1947

- The GATT accomplished these goals through:
 - multilateral negotiations
 - dispute settlement
 - However the dispute settlement mechanism was very weak in that a losing party could simply block the adoption of an adverse decision.

GATT Rounds

(Multilateral Trade Negotiations)

- **First five rounds** reduced average trade weighted tariff from 50 to 12%
- **Kennedy Round** dealt with problems of Developing Countries (special and differential treatment) Part IV, Art. 36-38
- **Tokyo Round** dealt with non trade barriers produced the antidumping and subsidies agreement and general system on preferences

Uruguay Round (Eighth Round)

- The Eighth Round, known as the **Uruguay Round**
 - established the World Trade Organization
 - amended GATT, 1947 to become GATT, 1994 which governs trade goods adding 12 side agreements to GATT, 1994.

Uruguay Round (Eighth Round)

- The Uruguay Round Agreements greatly expanded the GATT Agreement on Trade in *Goods* by adding:
 - General Agreement on Trade in *Services* (GATS)
 - Agreement on Trade-Related Aspects of *Intellectual Property* (TRIPS)

Uruguay Round (Eighth Round)

The GATT 1994 added three side agreements pertain to agriculture

- Agreement on Agriculture
- Agreement on Application of Sanitary and Phytosanitary Measures (SPS)
- Agreement on Technical Barriers to Trade (TNT)

Dispute Settlement Understanding

- The Dispute Settlement Understanding (DSU) establishes a three tiered formal adjudication process to resolve trade disputes.
- Normally a complaining Member challenges the legality of a “measure” as violative to the WTO.

Dispute Settlement Understanding

- An *ad hoc* Panel of 5 trade law experts, who are not nationals of the parties decides the factual & legal issues and makes a recommendation on the measure;
- The parties may appeal the Panel's decision to the WTO Appellate Body, a permanent body of 7 trade law experts.
- The Appellate Body decision is then automatically adopted by the WTO Dispute Settlement Body (DSB) unless rejected by consensus of the WTO Members.

Dispute Settlement Understanding

- The WTO DSU Procedures (p. 56)
 - 1. WTO Member seeks establishment of a panel after unsuccessful consultations.
 - 2 Director General establishes a panel
 - 3 Panel receives evidence and written arguments from parties

Dispute Settlement Understanding

- 4 Panel makes a recommendation with the WTO Dispute Settlement Body automatically adopts unless there is a unanimous consensus against adoption.
- 5. Parties may appeal questions of law to the Appellate Body
- 6. The DSB through the panel and Appellate Body oversee implementation.

Implementation of the ruling

- If the panel or Appellate Body finds a measure inconsistent with the GATT it shall recommend that the Member concerned bring the measure into conformity therewith. (DSU Art. 19:1)
- Within 30 days of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions with respect to implementation of the recommendation. (DSU Art. 21:3)

Violation complaint remedies

- Compensation and the suspension of concessions are temporary measures in case the recommendations are not implemented within a reasonable period of time. (Art. 22(1)) However neither is preferred to full implementation of a recommendation to bring a measure into full conformity the agreement. (Id.)
- Compensation is voluntary and if granted shall be consistent with the covered agreements. (Art. 22:1)

Violation complaint remedies

- But if the Member fails to bring the inconsistent measure into compliance such Member shall if so requested negotiate with the complaining party "with a view to developing mutually acceptable compensation."
- If no such agreement is reached "any party having invoked the dispute settlement procedure may request authorization from the DSB to *suspend the application to the Member concerned of concessions or other obligations under the covered agreements.*" (Art. 22:2)

Agreement on Sanitary & Phytosanitary Measures (SPS)

- The SPS deals with:
 - Food safety
 - Animal health standards
 - Plant health standards
- The SPS does not set the standards.
- It encourages members to use international standards, but allows them to set their own.

SPS Standards

- The SPS identifies 3 standard-setting organizations (“the three sisters”)
 - Codex Alimentarius Commission
 - –Food safety
 - International Office of Epizotics (OIE)
 - – Animal heath
 - International Plant Protection Convention (IPPC)

The goal of the SPS

- The SPS seeks to strike a difficult balance between:
 - Helping governments protect consumers; and animal and plant health against known dangers & potential hazards
 - Avoiding the use of health and safety regulations as protectionism in disguise

WTO\SPS

Appellate Body Cases

- The WTO Appellate Body has ruled on three cases and in each case has found the SPS Measure violative of the SPS

Agreement

- Beef Hormone Case
- Australian Salmon
- Japanese Agriculture

Agreement on Technical Barriers to Trade (TBT)

- “Labeling requirements as they apply to a product, process or production method” are included in the definition of technical regulations provided by the TBT.
- While the SPS & the TBT are supposed to be mutually exclusive they are similar.

Agreement on Technical Barriers to Trade (TBT)

The SPS focuses on scientific justification
& risk assessment

The TBT focuses relies on
nondiscrimination test,

Agreement on Technical Barriers to Trade (TBT)

- The SPS focuses on scientific justification and risk assessment
- The TBT focuses on
 - Non discrimination
 - Prohibition of technical regulations that are more trade restrictive than necessary to attain a legitimate objective

GMOs & the WTO

- The issue of genetic modification has been discussed in the WTO Committee on Technical Barriers to Trade in response to the mandatory labeling requirements imposed by the European Union on its trading partners.

The EU & GMOs

- Europeans have faced multiple food safety or animal health disasters
 - Mad cow disease (BSE); foot & mouth disease; dioxin, numerous cases of microbial contamination
- The EU has imposed a de facto moratorium on the approval of new, genetically modified varieties of agricultural products.
- Additionally, the EU Commission announced new labeling and tracing rules.

The EU & GMOs

Labeling & Tracing rules

- The labeling rules require that all food and feed derived from GMOs, whether or not the genetic alteration is detectable, bear a GMO label.
- The tracing rules require extensive documentation of the GMO history in the commodity chain.

The EU & GMOs

Labeling & Tracing rules

- There are sound arguments that the EU regulations violate the WTO SBS or TBT.
 - They do not appear to be scientifically based
 - They may be more trade restrictive than necessary
- However the US has not yet challenged these. They may be essential for the EU public and to gain approval of GMO imports.

The Fourth (Doha) Ministerial Conference (Nov. 2001)

- The WTO Ministerial has decided to launch a new round of negotiation. With respect to SPS & TBT the following issues are to be discussed. It is possible that the SPS or TBT will be amended but appears unlikely. Rather more implementary agreements are likely in several areas.

The New Round of WTO Trade Negotiations

- Areas under the discussion
 - Equivalence
 - Under certain conditions an importing country must recognize an exporting country's measures as equivalent to its own.
 - Advance warning of new regulations
 - Developing countries insistence of “Special & differential treatment”

The New Round of WTO Trade Negotiations

- Other areas under the discussion
- The relationship between
 - existing WTO rules & specific trade obligations
 - Multilateral Environmental Agreements (MEAs), e.g. the Montreal Biosafety Protocol
- Tracing and Labeling laws such as the European Union's

Precautionary Principle

- The dispute over Beef Hormones raises the question of whether the SPS adequately protects consumers or animal & plant health
- A phrase that has emerged in the debate is the “precautionary principle”, a kind of safety first approach.
 - The SPS gives limited recognition to this principles. Some want it strengthened. The US does not.