WTO LAW IN THE LIGHT OF ENVIRONMENTAL PROTECTION
- Overview of the WTO’s mandate and institutional structure
- History of the Trade and Environment debate
- The WTO Committee on Trade and Environment
- The Doha mandate on Trade and Environment and the new negotiations for an environmental goods agreement
- The main WTO rules relevant for environmental protection
- Relevant GATT and WTO disputes
- Some examples
- Details for seminar
WTO

“The WTO was born out of negotiations; everything the WTO does is the result of negotiations”

- 1948, the General Agreement on Tariffs and Trade (GATT)
- Over the years GATT has evolved through several rounds of negotiations.
- 1 January 1995 the WTO began life

www.wto.org
Important principles

Most-favoured-nation (MFN): treating others equally

• Under the WTO agreements, countries cannot normally discriminate between their trading partners.

• Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.
National treatment (NT): Treating foreigners and locals equally

• Imported and locally produced goods should be treated equally — at least after the foreign goods have entered the market.

• The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents.
• **freer** — barriers coming down through negotiation;

• **predictable** — foreign companies, investors and governments should be confident that trade barriers (including tariffs and non-tariff barriers) should not be raised arbitrarily; tariff rates and market-opening commitments are “bound” in the WTO;

• **more competitive** — discouraging “unfair” practices such as export subsidies and dumping products at below cost to gain market share;

• **more beneficial for less developed countries** — giving them more time to adjust, greater flexibility, and special privileges.
• 1947 – 56 four rounds; Tariffs
• 1960–1961 Dillon Round; Tariffs
• 1964–1967 Kennedy Round; Tariffs and anti-dumping measures
• 1973–1979 Tokyo Round; Tariffs, non-tariff measures, “framework” agreements
• 1986–1994 Uruguay Round; Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc
• 2001- ? Doha Round; Tariffs, agriculture, cotton, services, TRIPS, trade investment, trade facilities, anti-dumping, subsidies, trade and environment, dispute settlement etc
Agreements

- https://www.wto.org/english/docs_e/legal_e/legal_e.htm
Trade and Environment

• Sustainable development and protection and preservation of the environment are fundamental goals of the WTO.

• They are enshrined in the Marrakesh Agreement, which established the WTO, and complement the WTO’s objective to reduce trade barriers and eliminate discriminatory treatment in international trade relations.

• There is no specific agreement dealing with the environment, under WTO rules members can adopt trade-related measures aimed at protecting the environment provided a number of conditions to avoid the misuse of such measures for protectionist ends are fulfilled.
Committe on Trade and Environment (CTE)

- Was set up in 1994
- The work programme covers a range of relevant issues, from trade and the environment in general, liberalization and trade barriers, taxes, services and intellectual property, etc
- Fisheries, energy efficiency, sustainability etc
Relation between WTO laws on environment and other WTO laws

• Article I and III GATT
• Article XI GATT (quantitative restrictions)
• Article XX GATT
• GATS
• TBT
• SPS
• TRIPS
• SCM (subsidies)
• Agriculture
Art XI General Elimination of Quantitative Restrictions

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 contracting party...

Some exceptions...
Article XX

Article XX: General Exceptions
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:

(a) necessary to protect public morals;

(b) necessary to protect human, animal or plant life or health;

... 

(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

... 

GATT, www.wto.org
Members shall ensure
2.1 that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.
2.2 that technical regulations are not prepared, adopted or applied ... 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. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.
Article 2: Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2. 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...
Dispute Settlement

• Consultations
• Panel (complaining country can ask for a panel to be appointed) Hearing, experts, interim reports etc.
• Appellate body (after appeal by any party) Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new issues. The appeal can uphold, modify or reverse the panel’s legal findings and conclusions.
Disputes

• Mexico – US Tuna (GATT)
• Thailand – Cigarettes (GATT)
• United States – Automobiles (GATT)
• United States – Shrimp (WTO)
• European Communities – Asbestos (WTO)

https://www.wto.org/english/tratop_e/dispu_e/dispu_by_short_title_e.htm
Mexico - US Tuna (GATT)

• If a country exporting tuna to the US cannot prove to US authorities that it meets the dolphin protection standards set out in US law, the US will stop all imports of the fish from that country.

• In 1991, Mexico complained

• The Panel concluded that this did not violate GATT rules because it was designed to prevent deceptive advertising practices on all tuna products, whether imported or domestically produced.

Source: www.wto.org
US – Tuna II

• the Appellate Body found that the amended measure is inconsistent with Article 2.1 TBT
• inconsistent with Articles I:1 and III:4 GATT
• not applied consistently with the chapeau of Article XX GATT

Source: www.wto.org
Thailand - Cigarettes

• Under the 1966 Tobacco Act, Thailand prohibited the importation of cigarettes and other tobacco preparations, while authorizing the sale of domestic cigarettes. Cigarettes were also subject to an excise tax, a business tax and a municipal tax.

• The Panel found that the import restrictions were inconsistent with Article XI:1 and not justified under Article X1:2(c). The import restrictions were not "necessary" within the meaning of Article XX(b). The internal taxes were found to be consistent with Article III:2.

Source: www.wto.org
Three US measures: the luxury tax on automobiles ("luxury tax"), the gas guzzler tax on automobiles ("gas guzzler"), and the Corporate Average Fuel Economy regulation ("CAFE").

First two were consistent with Article III:2 of GATT.

The latter was not justified under Article XX(d).

Source: www.wto.org
The US required that shrimp trawlers use "turtle excluder devices" (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles.

The Panel considered that the ban was inconsistent with Article XI and could not be justified under Article XX.

Source: www.wto.org
EC - Asbestos

• France imposed a ban on asbestos as well as on products that contained it.
• The European Communities justified its prohibition on the grounds of human health protection (Art. XX)
• A violation of Article III but justified under Article XX; the measure could be regarded as one which was "necessary to protect animal, human, plant life or health."

Source: www.wto.org
Doha round

• We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

  • (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;

  • (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and

  • (iii) labelling requirements for environmental purposes.

Source: www.wto.org
Energy efficiency and labelling

• Eco-design and energy labelling.
• Eco-design refers to mandatory requirements that eliminate the least energy efficient products from the market while energy labelling seeks to pull the market towards the most energy efficient products by helping consumers make informed choices.
Labelling

• Labelling is one of the subjects assigned to the Committee on Trade and Environment (CTE).

• The committee is assigned to consider the relationship between the provisions of the WTO’s agreements and the requirements governments make for products in order to protect the environment.

• Relation between CTE and the Technical barriers to Trade Committee?
Issues such as food labelling and energy efficiency standards are covered by the TBT Agreement.
Certifications and labels that tell stories

• **First-party verification** is performed by marketers on their own behalf to promote the positive environmental attributes of their products. [...].

• **Third-party verification** is carried out by an independent source.

• Labeling programs can also be characterized as **positive, negative, or neutral**.

• Third-party environmental labeling programs can be further classified as either **mandatory or voluntary**.

• Adding to this classification approach there are production and environmental sector that also have to be considered (energy, materials, forestry, foods, etc.).
Eco-Labelling

• Life-cycle analysis
• Carbon footprint
Organic food products

Organic is a claim on the production process rather than a claim on the product itself
Organic food label

• There is no harmonized international standard on organic products that all countries use
• There are some differences in the standards such as use of synthetic inputs, fertilizers, plant preservatives, GMO, ionising radiation etc.

Mutual recognition
Equivalence
Harmonization
• Korea's draft regulation on certification procedures for organic processed foods and for raw organic food ingredients (G/TBT/N/KOR/204 and Suppl.1).

• The measure did not appear to envisage equivalence mechanisms, instead requiring all organic foods to either be certified by Korean authorities or by certification bodies accredited by Korean authorities.

• Korea assured delegations that the draft measure will be revised with a view to including provisions for equivalency agreements.
Quiz time!

- Would it be allowed to have higher taxes or customs duties on unhealthy food?
- Would it be allowed to have lower taxes or tariffs on products that are better for the environment? (Cars, food, textile etc)
- Would it be allowed to subsidise products that are better for the environment?

http://tbtims.wto.org/
Bisphenol A

• Bisphenol A (BPA) is used in the manufacture of many everyday objects, such as plastic bottles, food processors and metal food containers.
• France has imposed a ban on BPA due to health risks
• The Constitutional Council has overturned the ban on the use of BPA in food containers destined for the export market. The sale and import of the substance remains prohibited in France itself.