

Some key concepts

- Border measures – tariffs and quantitative restrictions
- Tariffs – income vs. payment for services
 - Customs duties
 - Countervailing duties
 - Antidumping duties
 - Safeguards duties
- Cooperation
 - Free trade area
 - Customs union
 - Regional economic integration organization



A brief look at the rules



- Duties on imports vs. on exports
- Ad valorem vs. specific
 - Why could specific tariffs be needed?
- MFN (art. I) vs. preferential (art. XXIV)
- Tariffs and fees
 - Art. II:1(b) and Understanding: «other duties or charges» -> Schedule of concessions
 - Art. II:2
 - a) Border tax adjustment
 - b) CVD / anti-dumping duties
 - c) Payment for services (art. VIII)
 - Art. VII – the problem of «ad valorem» duties

Historical development

- The importance of tariffs for government revenue, foreign exchange and infant industries
 - Developed countries vs. developing countries
- Starting point and rounds of negotiations
 - Transforming quantitative restrictions to tariffs
 - Transforming specific duties to ad valorem duties
 - Gradual reduction of tariffs
 - «Sensitive sectors» – agriculture, textiles, airplanes – reflecting developed countries priorities
- The Doha Round
 - From the Millennium Round to the Doha Round
- Is there an emerging issue of export tariffs?

The legal framework

- Classification of products
 - The Harmonised System (HS) Convention
 - The role of the UN
- Recent members – accession protocols
- The duty to negotiate – GATT art XXVIII bis and XXXVII:1
 - Bound tariffs vs. applied tariffs
 - Note: mentions also exports
 - Establishment of negotiation mandates – product-by-product vs. multilateral procedures (formula, sectorwise)

The Doha Round

Declaration, para. 16: We agree to negotiations which shall aim, by **modalities** to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of **tariff peaks, high tariffs, and tariff escalation**, as well as **non-tariff barriers**, in particular on products of export interest to developing countries. **Product coverage** shall be comprehensive and without a priori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through **less than full reciprocity in reduction commitments**, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994 ...

Tariff negotiations

- Bilateralism vs. multilateralism
 - «Modalities» – the use of coefficients
- Product-by-product vs. general
- Tariff concessions vs. applied tariffs
- Reciprocity vs. MFN
 - Exemption from reciprocity in favour of developing countries (art. XXXVI:8 and XVIII section A)
 - Exemption from both: Enabling Clause and General System of Preferences (GSP, see GATT 1994 para. 1(b)(iv))
 - Role of IMF and World Bank «structural adjustment»



Legal nature of negotiation result

- Article II
- Must keep within obligations under WTO
- Interpretation of schedules
 - ↗ Burden of proof
 - ↗ «legitimate expectations»
 - ↗ HS Convention
 - ↗ State practice
- “non-violation nullification or impairment”
 - ↗ GATT art. XXIII:1(b) and (c), and DSU art. 26



Implementation

- Valuation of goods for customs purposes
 - GATT art. VII and Agreement
 - "actual value" – market value,
 - starting point "transaction value"
- Determining the origin
 - Agreement: work in progress! Agreement on preferential treatment of LDCs
 - Value added
 - Change i tariff classification
- Control
- New circumstances
 - Renegotiations: art. XXVIII



Emerging export tariffs?

- Corresponding to «tariff escalation»
- Purpose: build domestic industry
- Not covered by schedules
- Art. VIII – fees and formalities connected with exportation
- The role of accession protocols
 - The case of China and export of “rare earth”, see cases 394 and 431