

«Non-tariff trade barriers»

- Non-tariff: All except tariffs
 - What about formalities associated with the imposition of tariffs?
 - What about the mixing of tariffs with other measures, such as quantitative elements
 - What about internal (border-adjusted) taxes?
- Trade barriers: When does a measure become a trade barrier?
 - Aim and/or effect? Actual or potential negative effects on trade flows?
 - Burden of proof?
- Trade monitoring database



Relation to non-discrimination

- Core of non-discrimination?
- Additional elements
 - Quantitative restrictions (border measures)
 - Customs formalities (border measures, not in focus)
 - Market access – unnecessary trade barriers
 - Market access – harmonization of technical regulations and standards
- The range of domestic measures covered
 - The issue of «attribution»
- The role of external actors and additional commitments



Quantitative restrictions

- Elimination of quantitative restrictions – GATT Art. XI
- Equally applicable to import and export
- Broad range of measures
 - Minimum import and export prices
 - Restrictions on points of entry
 - Non-mandatory measures covered
 - Also indirect («de facto»)
- The special issue of «sensitive» products
 - Primary products – extending to fish, textiles
- Art. XIII: Non-discrimination, distribution



Scope of the TBT Agreement

- Relationship to GATT, the SPS and GPA (art. 1.4 and 1.5), duty of notification
- Technical regulations (Annex I, EC Sardines)
 - «Mandatory»
- Standards
 - Voluntary, but de facto mandatory(?) National standards vs. international standards
- Conformity assessment procedures
- Processes and production methods
 - Non-product-related, an issue of scope?
- Which actors? Non-governmental?



Non-discrimination, art. 2.1

- Note: only recent case law!
- Same as GATT Arts. I and III?
 - ↗ «Like products»? Too early to tell?
 - ↗ «Treatment no less favourable»?
 - ↗ The fact that GATT Art. XX is not available
 - ↗ Preamble to the TBT Agreement
- Legitimate distinction
- Even-handedness
- US Clove Cigarettes

Unnecessary obstacle, art. 2.2

- Applies also to standards (Annex 3.E) and conformity assessment (art. 5.1.2)
 - Why has it not yet been applied?
- Complex provision: US Tuna case
 1. Trade restrictive – how restrictive?
 2. Legitimate objective – which objectives? Link to measure
 3. Not more trade restrictive than necessary to achieve objective + risk of non-fulfilment



Harmonization, art. 2.4

- Pros and cons of harmonization
- Applies also to standards (Annex 3.F) and conformity assessment (art. 5.4)
- Which standardizing bodies? Open-ended?
 - ↗ ISO and IEC + SPS Agreement bodies
 - ↗ Openness and recognition
- Which standards
 - ↗ State consent/majority decisions? Performance (art. 2.8)
- Used as basis – shifting burden of proof
 - ↗ The presumption art. 2.5.
- Effectiveness and appropriateness of standard



Harmonization – equivalence

- Particularly sensitive under the SPS Agreement
- Conformity assessment procedures
 - Accept conformity assessments conducted elsewhere (TBT arts. 6-9)
- Negotiations (TBT art. 2.7)
 - Bilateral vs. multilateral
- The vulnerability of developing countries

