Tariffs Problem

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Introduction

The problem

- Minoria = developed country
- Introduced trade restrictive policies

The issues

- Tariff increase on sensitive goods - textiles, bicycles and cars
- Implications under the WTO and the European Agreement
Overview

1. Tariffs
2. WTO /GATT rules
3. Implications for Minoria
4. Cases
Tariffs: General Background Information

- **Defined as:** a financial charge or tax on imported goods - triggered when the obligation to pay accrues upon entry into the customs territory
  - Neither defined under GATT 1994
- **Types of tariffs:** *ad valorem* (duty based on the value of the good) v. *non-ad valorem* customs (i.e., duties based on quantity or composition or nature of goods)
- **Purpose:** source of income for governments or protecting domestic products
- **Effectiveness:** from GATT 1947, 8 rounds of trade negotiations successfully reduced the average duty of developed-country Members on industrial products from 40% *ad valorem* to 3.8%
- **Modalities:** negotiations have moved from a product-by-product approach to a multilateral approach
How GATT 1994 Applies to Tariffs

- Does **NOT** prohibit imposition of customs duties on imports (unlike the general prohibition on quantitative restrictions)
  - Relative transparency
  - Lack of effect in restricting supply (textiles, cars and bikes in Minoria)
- **Article I:1**: MFN treatment obligation
- **Article XXVIII bis**: calls upon WTO Members to negotiate the reduction of customs duties on a “reciprocal and mutually advantageous basis”
- **Article XXXVI:8 of Part IV** (‘Trade and Development’): reciprocity does not apply to the full extent to tariff negotiations between developed- and developing-country Members - the principle of *relative* reciprocity applies
WTO rules on custom duties relate primarily to the protection of tariff concessions agreed to in the context of tariff negotiations.

-Tariff concessions or bindings set out in Member’s Schedule of Concessions: must always be consistent with the basic GATT obligations.

Article II GATT: 1 (a.) Members shall accord in the products imported from others members treatment no less favourable than the provided for in their Schedule.

Article II GATT: 1 (b) Products may not be subjected to customs duties above the tariff concessions.

-> Ways around tariff concessions: modification and withdrawal

WTO law also provides rules on the manner in which customs duties must be imposed, this leading to:

- Det. of proper classification of the imported goods
- Det. of the customs value of the imported good
- Det. of the origin of the imported good
Other duties and charges on imports

Tariff barriers on imports can also take the form of other duties and charges; financial charges or taxes other than ordinary customs duties charged on imported products due because of their importation.

-> Regulation: GATT 1994 only allows it if such duties or charges are not in excess of the recorded level on the Members’ schedule.

-> Some exceptions: financial charges equivalent to an internal tax, fees or other charges matching with, e.g., the cost of the services provided, etc.
Implications on Minoria

Minoria’s schedule of commitment under the **WTO:**

- **TEXTILES:**
  - Bound rate: 0 - 35% *ad valorem*
  - Average rate of 6%
  - Applied tariffs on average are 2%

- **CARS:**
  - Average of 30% ->0% for electric cars (applied tariff is the same)

- **BICYCLES:**
  - Average 0% (applied tariff is the same)

Minoria’s schedule of commitment under the **Economic Union of Western Countries:**

- TEXTILES, CARS and BICYCLE tariffs bound to 0%

- A preferential trade agreement (PTA)
Implications on Minoria

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→ Increase up to 35%

→ renegotiate or leave at 30%

→ renegotiate and potentially compensate
Implications on Minoria

Renegotiation of the **Economic Union of Western Countries** agreement to increase tariffs

- A preferential trade agreement (PTA)

Should Minoria pull out of the agreement?

Eg US exiting the Trans Pacific trade agreement in 2017 so they can increase tariffs against China

- Result: WTO rules still apply to shredded agreements
Case studies

- **SPAIN - TARIFF TREATMENT OF UNROASTED COFFEE: Report of the Panel adopted on 11 June 1981 L/5135 - 28S/102**: the Panel suggested that the CONTRACTING PARTIES request Spain to take the necessary measures in order to make its tariff régime for unroasted coffee conform to Article I:1.

- **EUROPEAN COMMUNITIES – CONDITIONS FOR THE GRANTING OF TARIFF PREFERENCES TO DEVELOPING COUNTRIES**: Key panel found that the tariff advantages under the drug arrangements were inconsistent with art I:1 GATT: as the tariff advantages were accorded only to products originating in the 12 beneficiary countries, and not to the like products originated in all other members; including India. The Appellate Body agreed with the Panel that the Enabling Clause is an “exception” to GATT Art. I:1, and concluded that the Drug Arrangements were not justified under para. 2(a) of the Enabling Clause.
ARTICLE I: GATT

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation of any kind imposed on or in connection with importation or exportation of any kind imposed on or in connection with importation or exportation of any kind imposed on or in connection with importation or exportation of any kind imposed on or in connection with importation or exportation of any kind imposed on or in connection with importation or exportation of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, privilege, or immunity granted by any contracting party to any product originating in or destined for any territory of another country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

ENABLING CLAUSE para. 1.2(a) Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential treatment to developing countries, without according such treatment to other contracting parties.

Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences.
Conclusion

The result of being a WTO member:
- Agree to open market for goods/services
- Binding commitments – custom tariff rates or promises not to create/raise tariffs
- In developed countries rates charged and bound are usually the same

Changing a binding:
- Only after negotiating with trading partners – compensation for loss of trade