



WTO Law

Class 4: Tariffs – Quotas

Ferrara 2018

Dr. Holger Hestermeyer

Shell Reader in International Dispute Resolution, King's College London

Today 's Program

- Structure of the GATT
- Quantitative Restrictions
- Tariff Bindings
- MFN

GATT

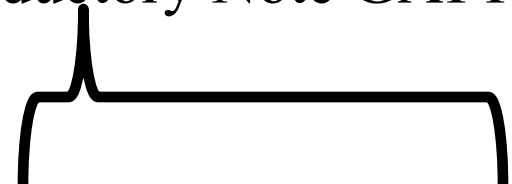
WTO Agreement



Annex 1A: GATT 1994



Para. 1 (a) Introductory Note GATT 1994



GATT 1947

Structure of the GATT



Classification

Valuation

Tariffs

Internal Laws and Regulations

Administrative Fees / Conditions

Internal Taxes

Quantitative Restrictions

Structure of the GATT

Obligation (e.g. I, III, XI)

EXCEPTIONS:

Art. XX

Art. XXI

Waiver

Border measures

- What is a tariff? (customs duty)
 - Charge
 - Due because of importation (market access conditional on payment) (not: time)
 - Purpose: revenue, protection
- What is a quota
- WTO approach to them (Art. II, XI)

Quantitative Restrictions

- Government measure
- Relevant *measure*
- Effect



Quantitative restrictions

- Wording of Art. XI
- Prohibition
 - Quota (NOT tariff rate quota)
 - Import licensing (not automatic licensing)
 - BROAD wording -> Others (mixing regulation, minimum import prices, trade balancing requirements; measures affecting opportunities for importation (DR – Cigarettes); *de jure and de facto* (presence of tanners' representatives in customs inspection for exports of hides -> in the end no de facto restriction Argentina Hides) restrictions on ports of entry were found to be relevant measure
 - Not needed: actual impediment to trade
- Obligation to notify secretariat (including justification)
 - Aren't they illegal? many exceptions to ban

Export quotas

- Reasons for EQ
- Article XI-XIII GATT
- Argentina—Hides and Leather (panel report 2001): representatives of Argentine leather tanning industry present during customs clearings for export = de facto export restriction? (-) (but Art. X: 3(a) violated: confidentiality of information not guaranteed)
- China—Raw Materials (AB report 2012)
 - Art XI:2 “The provisions of paragraph 1 [...] shall not extend to the following: (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party”.
 - Burden of proof?
 - China failed to demonstrate

Tariffs

- Ad valorem (preferable) / NAV
- MFN / preferential (-> need to determine origin)
- Where to find them? In national customs tariff (WCO / WTO), note: ITA
- Negotiations *XXVIIIbis* (note: reciprocity (SDT), MFN)
 - In tariff rounds (Dev C average 40% down to 3.8 on industrial p)
 - Product-by-product (request list, offer list, principal supplier-importer negotiate)
 - Formula approach (linear v non-linear (larger cuts to higher t))
 - Bound v actual tariff
- GATT provisions
 - Art. II:1 (a) and (b), modification/withdrawal Art. XXVIII:1
 - Understanding
- Schedules (four parts: MFN, preferential, non-tariff, agriculture)

Tariffs

■ Customs (Re)Classification

- No specific WTO rules
- WCO Harmonised System
 - Context under Art. 31(2)(a)VCLT (EC-Chicken Cuts)

Tariff Bindings

87.02

Motor vehicles for the transport of ten or more persons, including the driver.

- 8702.10 - With compression-ignition internal combustion piston engine (diesel or semi-diesel)
- 8702.90 - Other

87.03

Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars.

- 8703.10 - Vehicles specially designed for travelling on snow; golf cars and similar vehicles
- Other vehicles, with spark-ignition internal combustion reciprocating piston engine :
 - 8703.21 -- Of a cylinder capacity not exceeding 1,000 cc
 - 8703.22 -- Of a cylinder capacity exceeding 1,000 cc but not exceeding 1,500 cc
 - 8703.23 -- Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc

Tariff Bindings: Bound Rates

Bound Concessions at the HS 6-digit subheading level United States HS 1996

Source: Based on the Consolidated Tariff Schedules database (CTS).

HS subhdg	Binding Status (B/U)	Number of TL	Number of AV duties	Average of AV Duties
(1)	(2)	(3)	(4)	(5)
870321	B	1	1	2,5
870322	B	1	1	2,5
870323	B	1	1	2,5
870324	B	1	1	2,5
870331	B	1	1	2,5

Tariff Bindings: Applied Rate

Data on MFN Applied Tariff and Imports

United States 2007 (HS 2007)

Source: Based on notifications to the Integrated Database (IDB).

HS subhdg	MFN Applied Tariff		
	Number of TL	Number of AV duties	Average of AV Duties
(1)	(2)	(3)	(4)
870321	c1	1	2,5
870322	1	1	2,5
870323	1	1	2,5
870324	1	1	2,5
870331	1	1	2,5

Example: EU v. US – IT products

- 3. Participants shall meet periodically(...) to review the product coverage (...), with a view to agreeing, (...), whether in the light of technological developments, (...), the Attachments should be modified to incorporate additional products (...).
- Products Annex B: **Flat panel displays** (including LCD (...), Plasma and other technologies) for products falling within this agreement, (...) **Monitors** : display units of automatic data processing machines (...) not capable of receiving and processing television signals (...) without assistance of a central processing unit of a computer as defined in this agreement. The agreement does not, therefore, cover televisions, including high definition televisions.

Tariffs

- **Customs Valuation (Art VII GATT + CVA)**
 - Transaction value (art 1), of identical goods (art 2), of similar goods (art 3)
 - Deductive value (art 5), computed value (art 6), reasonable means of valuation (art 7)