INT’L TRADE LAW
BASIC GATT PILLARS II

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Unit Five

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GATT PILLARS

RECALL THE FOUR PILLARS

Idea of four pillars within GATT/WTO system:

1. Most Favored Nations [last week]
2. National Treatment [this week]
3. Trade Liberalization (negotiated tariff reductions in trade rounds)
4. Non-Tariff Barriers & “Fair Trade”

CONSIDER WTO VIDEO AS PRINCIPLES ACROSS DIFFERENT AGREEMENTS, IDEA ALMOST OF CONSTITUTIONAL PRINCIPLES
GATT AS CONST

LOOK AT ARTICLES III, RE NATIONAL TREATMENT

GATT 1947 AGREEMENT

Subparts:

III(1) Internal taxes & other laws applied to afford protection of domestic production

III(2) Internal taxes & charges not in excess of those on domestic goods
LOOK AT ARTICLES III, RE NATIONAL TREATMENT (CONT’D)

GATT 1947 AGREEMENT

Subparts:

III(3) 1947 grandfather clause pending conversion into tariff bindings

III(4) MFN-equivalent language on internal goods & regulation
NAT’L TREAT II

LOOK AT ARTICLES III, RE NATIONAL TREATMENT (CONT’D)

GATT 1947 AGREEMENT

Subparts:

III(5) No internal quantitative regulations re incorporating domestic products

III(6) 1948 grandfather clause re quantitative restrictions
NAT’L TREAT III
LOOK AT ARTICLES III, RE NATIONAL TREATMENT (CONT’D)

GATT 1947 AGREEMENT

Subparts:

III(7)  No internal quantitative regs distributing proportions among external sources of supply

III(8)  Exclusion for govt procurement & subsidies
NAT’L TREAT IV

LOOK AT ARTICLES III, RE NATIONAL TREATMENT (CONT’D)

GATT 1947 AGREEMENT

Subparts:

III(9) Limitations on price controls, which may affect external producers/imported goods

III(10) Exclusion for cultural goods (films meeting Art IV recs)
Japan had differential taxes on imported high proof beverages and local shochu (4-7 times brown, 2/3 white beverages)

Decision on Art III(2), interpretation implicitly of like product, competition requirements (in light of Art III (1))
JAPAN ALCOHOL II

LEADING ARTICLE III PROCEEDINGS
(CONT’D)

Japan Alcoholic Beverages (1996)

Why the discussion of Vienna Convention & treaty interpretation initially?
Japan Alcoholic Beverages (1996)

Art III(1) general statement that internal taxes and other internal charges, and laws, regulations and requirements affecting [laundry list] as interpretive gloss

Art III(2) & test elements
a. *Like products* 1st sentence (tests?), in excess of taxation (seems absolute)
b. *Directly competitive or substitutable products* 2nd sentence (tests?), *not similarly taxed* (seems de minimis test), so as to afford protection (but not intent, analysis of structure & application of measure)
How to analyse environmental problems like Danish bottles case in EU, or US treatment of non-refundable bottle taxes, plus bottles vs cans?

How about analysis of investment preferences (Canadian Foreign Investment Review Act, Art III (4)), or US Tobacco Legislation (marketing accessments & support for US tobacco price program if used too much “non-domestic” tobacco, Art III(5))?
CULTURAL GOODS

ARTICLE III LIMITS

Are cultural goods somehow different under Art III text?

Laws about minimum local content in magazines, on television, etc.

What about newer media (webcasting, etc.)?

WHAT IS AT STAKE AND WHO CARES?