GATT PILLARS

RECALL THE FOUR PILLARS

Idea of four pillars within GATT/WTO system:

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

CONSIDER WTO VIDEO AS PRINCIPLES ACROSS DIFFERENT AGREEMENTS, IDEA ALMOST OF CONSTITUTIONAL PRINCIPLES
NTBs +

DEFINITIONS

1. What is a tariff? Where have we seen it before?

2. What is a non-tariff barrier, and why are they not the same creature in GATT/WTO eyes?

3. What is “fair trade” opposed to, “unfair trade” or something else? Why?
GATT AS CONST

LOOK AT ARTICLES X & XI, RE TRANSPARENCY & ELIMINATION OF QUANTITATIVE RESTRICTIONS

GATT 1947 AGREEMENT

Look at Art X generally on transparency (now commonly considered a rule of law & accession problem as with China), but also Article XI general prohibition on quantitative restrictions (e.g., quotas)
GATT ARTICLE X(1)

LOOK AT ARTICLES X, RE TRANSPARENCY PARA. 1

Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. [obligation to formalize govt process]

Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. [obligation to tell of govt to govt agreements]
GATT ARTICLE X(2)

LOOk AT ARTICLES X, RE TRANSPARENCY PARA. 2

No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

[but what is the meaning of publish?]
(a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article [X].
[why a concern about rule application?]

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters.
[why separation & how implemented?]
GATT ARTICLE X+

LOOK AT ARTICLES X, RE TRANSPARENCY

1. Current Article X application is typically biggest question in formal WTO accession negotiations. Why?

2. Why does anyone care about this with China, for instance, and how does this fit in with non-tariff barriers NTBs? What is an NTB?
GATT ARTICLE X+

LOOK AT ARTICLES X, RE TRANSPARENCY (CONT’D)

3. What is the picture of the economic system behind Article X?

4. How would you apply Article X in negotiations for a former Socialist state, or even a state claiming to follow syariah economic principles, or even UUD art 33 (Keluargaan)?
5. Is this transparency solely to preserve the benefit of reciprocal tariff negotiation bargains, or is it possible to integrate with international economic system without?

6. What is the interpretation of rules & transparency in EC-Brazil Poultry proceedings, transparency in general terms or in the individual transaction?
GATT ARTICLE XI(1)

LOOK AT ARTICLES XI, RE TRANSPARENCY PARA. 1

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

[What is different about a quota as opposed to a tariff in economic terms? How does this relate to your picture of the economy? What of the political economy of tariffs vs. quotas?]
GATT ARTICLE XI(2)

LOOK AT ARTICLES XI, RE TRANSPARENCY PARA. 2
MYRIAD OF EXCEPTIONS

2(a) Export prohibitions temporarily applied to prevent or relieve critical shortages of foodstuffs [or other essential products]

[What can Indonesian students explain about crude palm oil export taxes and bans? Why were they enacted, and why should WTO/GATT care about exports?]

2(b&c) [Import restrictions agri products in conjunction with govt regs to limit like domestic product]

[Is this consistent with picture of markets otherwise seemingly behind transparency?]
ANALYSIS OF 1980s STEEL IN US VERSUS KRAKATOA STEEL

1. What happened in 1980s steel proceedings in US, and what were the direct and indirect effects projected for protection of the steel industry? How was this analyzed by CBO and other parties?

2. Is the analysis comparable for Indonesian circumstances, and what has happened with Krakatoa Steel (SOE/BUMN)?

ULTIMATELY, WHAT IS THE PICTURE OF SOEs/BUMNs IN GATT/WTO, AND IS IT CONSISTENT WITH PICTURE OF MARKETS?
QUOTA ANALYSIS II

ANALYSIS OF VERs & CASES

1. Strong push in 1980s towards “voluntary” limitations or VERs, eventually largely prohibited in 1994 under Art XI

2. Separately, Sugar panel (1989) decision that Art II schedules could not avoid Art XI quant restrictions bar
QUOTA ANALYSIS III

BOP & LDC EXCEPTION

1. Remember nat’l accounts, current account deficits & BOP? Can impose quotas temporarily for BOP purposes under Art XII (imminent)

2. Art XVIII:B recognizes LDCs as special case for exception (but what is an LDC versus a developing country?)
MANAGED TRADE (1)

ISSUES OF MANAGED AND FAIR TRADE PARTICULARLY BETWEEN US & JAPAN IN 1980s-90s (SEMI-CONDUCTORS & CARS)

1. Factual background of 1980s disputes re semi-conductors, cars and failures to sell in exporters home markets (so-called structural impediments initiative).

2. Why could GM not sell cars in Japan, claims pro and contra? Why not IBM selling chips?

UNDERLYING ISSUES OF WHETHER AND HOW TO ACHIEVE “FAIR TRADE,” WHAT IS IT?
MANAGED TRADE (2)

ISSUES OF MANAGED AND FAIR TRADE PARTICULARLY BETWEEN US & JAPAN IN 1980s-90s (SEMI-CONDUCTORS & CARS) CONT’D


4. How to treat the idea of administrative guidance versus strict regulation?

UNDERLYING ISSUES OF WHETHER AND HOW TO ACHIEVE “FAIR TRADE,” WHAT IS IT?
FOR INDON STUDENTS

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INDONESIANS HAVE JOINED US & NOW PROJECTS