GATT Obligations:

Article I (MFN), II (Bound Rates), III (National Treatment), XI (QRs), XX (Exceptions) and XXIV (FTAs)

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GATT - Structure

- Article I: Most Favored Nation (MFN)
- Article II: Schedules of Concessions
- Article III: National Treatment (NT)
- Article VI: Anti-Dumping and Countervailing Duties
- Article VII: Customs Valuation
- Article XI: Elimination of Quantitative Restrictions
- Article XII: Balance of Payment Exceptions
- Article XVI: Subsidies
- Article XX: General Exceptions
- Article XXI: Security Exceptions
- Article XXIV: Customs Unions and Free Trade Areas
- Article XXVIII: Modifications of Schedules
- Part IV: Trade and Development
Art. I:1

- With respect to customs duties and charges 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 of 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, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other Members.
The MFN Principle: The 3 Tier Test

1. Whether the government measure at issue confers a trade advantage of the kind covered by Article I:1 GATT

2. Whether the products concerned are like products

3. Whether the advantage at issue is granted immediately and unconditionally to all like products concerned.
The MFN Principle: “any advantage”

- Any advantage granted by any WTO member to any country

- Little debate about the kind of measures covered by Article I (1) GATT

- Both panels and AB have established that it casts a very wide net: 
  
  *Canada-Autos*
The MFN Principle: Like Products

- The concept of ‘like products’, while found in different provisions, not defined in the GATT

- Basic criteria for determining ‘likeness’ on a case-by-case basis:
  - the properties, nature and quality of the products
  - the end-uses of the products
  - consumers' tastes and habits
  - the tariff classification of the products
MFN: “immediately and unconditionally”

- The granting of a trade advantage within the meaning of Article I (1) GATT may not be subject to reciprocity or made conditional on whether a Member has a certain legislation or undertakes a certain action:

  *Indonesia-Autos*

  *Canada-Autos*
Exercise

- A, B, C and D are WTO Members and Z is not

- Could A's customs authorities levy a customs duty of 10% for imported pocket watches originating in C, while levying a lower customs duty of 5% for imported pocket watches originating in B?
Exercise

A, B, C and D are WTO Members and Z is not

Could A levy a customs duty of 5% for Z’s watches while applying a 10% rate watches originating in B, C and D?
Exercise

- A, B, C and D are WTO Members and Z is not

Could A levy a 5% duty for pocket watches from B, C and D and a 100% duty for Z’s pocket watches?
Like Products?
Exceptions

- GATT Art. I:2-4  (Historical Preferences)
- GATT Art. IV(c)  (Cinematographic Films)
- GATT Art. XX  (General Exception)
- GATT Art. XXIV:3  (Frontier Traffic)
- GATT Art. XXIV:5  (Free-Trade Areas and Customs Unions)
- GATT Art. XXI  (Security Exception)
- “Enabling Clause”  (1979 Decision)
- Marrakesh Agreement Art. IX:3  (Waivers)
Art. III:1 (General Principle)

Members recognise that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of Products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.
Art. III:2, first sentence
(Tax discrimination of like products)

The products of the territory of any Member imported into the territory of any other Member shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.
Art. III:2, second sentence
(Tax discrimination of directly competitive or substitutable products)
Moreover, no Member shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

Ad Art. III:2
A tax conforming to the requirements of the first sentence of para. 2 would be considered to be inconsistent with the provision of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.
National Treatment: Art. III GATT 1994

**Article III: 2 GATT, first sentence** *(Canada-Periodicals)*:

- Whether the imported and domestic products are **like products**
- Whether the imported products are **taxed in excess of the domestic products**

**Article III: 2 GATT, second sentence** *(Japan-Alcoholic Beverages II)*:

- Whether the imported and domestic products are **directly competitive or substitutable**
- Whether these products are **not similarly taxed**
- Whether **dissimilar taxation** is applied so as to afford protection to domestic producers
National Treatment: Art. III GATT 1994

Consistency with Article III:2 GATT

Article III:2, first sentence

Like Products (Basic Criteria)

No *de minimis* Tax Differential Permitted

Article III:2, second sentence

Directly Competitive/Substitutable Products (Basic Criteria + Competitive Conditions)

More than *de minimis* Tax Differential to be inconsistent
Exercise

- A, B, C and D are WTO Members and Z is not

Could A impose a sales tax of 5% on domestically produced pocket watches while applying a sales tax of 6% on imported pocket watches from C and D?
Exercise

- A, B, C and D are WTO Members and Z is not

- What if the 6% sales tax only applies to imported pocket watches from Z?
National Treatment: Art. III GATT 1994

Art. III:4
(Domestic regulation discriminating against like foreign products)

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. …
National Treatment: Art. III GATT 1994

- For a violation of Article III:4 GATT, three elements must be established (*Korea-Various Measures on Beef*):

1. Whether the measure at issue is a **law, regulation or requirement** covered by Article III:4 GATT
2. Whether the imported and domestic products are ‘**like products**’
3. Whether the imported products are accorded **less favourable treatment**
A new law in country A requires that pocket watches imported and sold in A have a minimum of 10% ‘local content’.

Is this compatible with the NT-obligation under GATT?
'Like Products’ in Article III GATT

The Accordion Analogy

Japan – Alcoholic Beverages
EC-Asbestos

Article III:2, 1st sent.
'Like Products’
Basic Criteria

Article III:4
'Like Products’
Basic Criteria
+ Competitive Relationship

Article III:2, 2nd sent.
'Dir. Competitive Products’
Basic Criteria
+ Conditions of Competition
Exercise

• A prohibits advertisement of foreign pocket watches.

Should the consistency of this prohibition with GATT rules be examined under Article III:2 or Article III:4?
Exceptions to National Treatment

- GATT Art. III:8(a) (Government Procurement)
- GATT Art. III:8(b) (Production Subsidies)
- GATT Art. III:10 and Art. IV (Cinematographic films)
- GATT Art. XX (General Exception)
- GATT XXI (Security Exception)
- Marrakesh Agreement Art. IX:3 (Waiver)
Tariff bindings: The Legal instruments

- **Tariff Bindings:** *an agreed level of market access*

- **GATT 1994 - Art. II: l(a)**

  “Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.”

**Plus:**

Marrakesh Protocol and schedules of commitments
## Schedules

<table>
<thead>
<tr>
<th>(1) HS 1996 Nomenclature</th>
<th>(2) Product Description</th>
<th>(3) Bound Rate 1/4/96 - 31/3/97</th>
<th>(4) Applied Rates</th>
<th>(5) Internal Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2208.20</td>
<td>Brandy (50° or higher)</td>
<td>308.00 Y/litre</td>
<td>193.20 Y/litre</td>
<td>(40°) Y 982.30/litre</td>
</tr>
<tr>
<td></td>
<td>Brandy (Other)</td>
<td>364.00 Y/litre</td>
<td>227.90 Y/litre</td>
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<tr>
<td>2208.30</td>
<td>Whiskies:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bourbon</td>
<td>19.6%*</td>
<td>13.7%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rye</td>
<td>22.4%</td>
<td>15.7%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other (over 50° or higher)</td>
<td>330.40Y/litre</td>
<td>207.20 Y/litre</td>
<td>(40°) Y 982.30/litre</td>
</tr>
<tr>
<td></td>
<td>Other (Other)</td>
<td>274.40Y/litre</td>
<td>172.50Y/litre</td>
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<tr>
<td>2208.40</td>
<td>Rum and Tafia</td>
<td>36%</td>
<td>Free/20.2% **</td>
<td>(38°) Y 377.23/litre</td>
</tr>
<tr>
<td>2208.50</td>
<td>Gin and Genever</td>
<td>29.2%**** or 128.33 Y/litre (whichever is the less)</td>
<td>19.6% or 86.20 Y/litre (whichever is the less)</td>
<td>(38°) Y 377.23/litre</td>
</tr>
<tr>
<td>2208.60</td>
<td>Vodka</td>
<td>26.7%***</td>
<td>17.9%</td>
<td>(38°) Y 377.23/litre</td>
</tr>
<tr>
<td>2208.70</td>
<td>Liqueurs and Cordials</td>
<td>210 Y/litre</td>
<td>141.10 Y/litre</td>
<td>(40°) Y 328.76/litre</td>
</tr>
<tr>
<td>ex 2208.90</td>
<td>Shochu</td>
<td>26.7% ***</td>
<td>17.9%</td>
<td>A (25°) Y 155.70/litre B (25°) Y 102.10/litre</td>
</tr>
</tbody>
</table>

** Annual percentage reduction: approximately 2.4%  
** Intended for use in distilling alcohol for making alcoholic beverages through the continuous still: for the “pooled quota” (free); other (17.9%)  
*** Annual percentage reduction: approximately 2.7%  
**** Annual percentage reduction: approximately 2.9%  
N.B.: For applied rates for whiskies, rum and tafia, gin and genever, vodka, liqueurs, and shochu, we use rates valid from 1/4/1995 to 31/3/1996.  
Source: Columns (1) - (4): WTO Secretariat; Column (5): paragraph 2.3 of the Descriptive Part.
**Tariff bindings in the Uruguay Round**

Percentages of tariff lines bound before and after the Uruguay Round

<table>
<thead>
<tr>
<th>Category</th>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed countries</td>
<td>78</td>
<td>99</td>
</tr>
<tr>
<td>Developing countries</td>
<td>21</td>
<td>73</td>
</tr>
<tr>
<td>Transition economies</td>
<td>73</td>
<td>98</td>
</tr>
</tbody>
</table>

*(These are tariff lines, so percentages are not weighted according to trade volume or value)*
Tariff bindings : Exceptions

- GATT Art. II:1(b) (Other Duties and Charges - ODCs)
- GATT Art. II:2 (Internal Tax, Anti-Dumping or Countervailing Duty, Customs Fees)
- GATT Art. XXVIII (Modifications of Concessions)
- Marrakesh Agreement Art. IX:3 (Waiver)
For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules.

For Developed country Members: Reduction in 6 years (6 equal rate annual reductions)

For Developing country Members: Reduction in 10 years (10 equal rate annual reductions)

For Least Developed country Members: No Reduction
No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of the territory of any other Member or on the exportation or sale for export of any product destined for the territory of any other Member.
Prohibition of QRs: Exceptions

- GATT Art. XIX : Safeguards
- GATT Art. XI:2(a) : Critical Shortage of Foodstuffs or Other Essential Products
- GATT Art. XI:2(b) : Removal of a Temporary Surplus of a Like Domestic Product for which the Imported Product can be Directly Substituted
- GATT Art. XI:2(c) : Agricultural Products and Fish -- Agreement on Agriculture (Tariffication)
- GATT Art. XX : General Exceptions
- GATT Art. XXIV:5 : RTAs
- GATT Art. XXI : Security Exception
- Marrakesh Agreement Art. IX:3 : Waivers
- Agreement on Textiles and Clothing (Progressive Integration)
Non-discrimination in the administration of Quantitative Restrictions: GATT Art. XIII

**Rules on non discrimination**

If applied, restrictions must be non-discriminatory.

**Rules on Distribution of Trade**

In principle, allocation of QRs as close as possible to the expected shares that could have been obtained in the absence of such restrictions.

**Rules on Import Licensing**

*These Rules are also applicable to Tariff Quotas*
Internal Measures v. Border Measures

- At times difficult to distinguish: Would an import ban (applied at the border) of a product because it fails to meet certain health or consumer protection requirements, equally applicable to like domestic products, be subject to Article III GATT, or Article XI GATT?

- **Basic Rule:**

<table>
<thead>
<tr>
<th>Applied at the Border</th>
<th>Applied inside the Border</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article II GATT</td>
<td>Article III GATT</td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>Article XI GATT</td>
<td></td>
</tr>
</tbody>
</table>
Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article III.
General Exceptions: GATT Art. XX

Sample Exceptions

(a) necessary to protect public morals

(b) necessary to protect human, animal or plant life or health

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement ...

(f) imposed for the protection of national treasures or artistic, historic or archaeological value

(g) relating to conservation of exhaustible natural resources...
General Exception: GATT Art. XX

“Chapeau”

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:”
General Exception: GATT Art. XX

Analysis

1. Does the measure fall within one of the exceptions listed in Article XX?

2. If yes, does it satisfy the “chapeau”?
   => arbitrary discrimination?
   => unjustifiable discrimination?
   => disguised restriction on trade?
Security Exception

Art. XXI GATT

Nothing in this Agreement shall be construed:

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
   (i) relating to fissionable materials or the derived materials;
   (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
   (iii) taken in time of war or other emergency in international relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
Regional integration: “building-block or stumbling block?”
Regional integration

Evolution in number of Regional Trade Agreements in the world, 1949-2009

- Notified RTAs (goods, services & accessions)
- Inactive RTAs
- Cumulative RTA notifications
- Cumulative active RTAs
Regional integration

RTAs in force, by type of agreement

- 82% FTA
- 11% Customs Union
- 7% Partial Scope

Legend:
- FTA
- Customs Union
- Partial Scope
Regional integration

Notified RTAs
Under Negotiations/Signed
Proposed
Regional integration

GATT Art. XXIV

(FTAs and customs unions)

“Enabling Clause” (1979 Decision)

Regional or global arrangements between “less-developed countries” (reduction / elimination of tariffs and NTMs)
Regional integration

Types of agreements covered by Article XXIV:

• Free-Trade Areas
• Customs Unions
• Interim agreements

Conditions:

• “Substantially all trade” among Members
• “Not on the whole more trade-restrictive” towards non-Members
• Limited transition period
“Enabling Clause” (1979 Decision), paragraph 2 (c)

Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another.
Regional integration – GATT Article XXIV

Review by the Committee on Regional Trade Agreements (CRTA)

• More than 250 agreements notified
• Many open questions ....

Negotiations under the DDA: aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.
Thank You