Training activity for THAILAND

Ministry of Foreign Trade

Fundamentals and recent trends in WTO dispute settlement

to take place on 28, 29 and 30 July

REvised draft programme

Day one

Session 1 (Morning)

before coffee:

BASIC PRINCIPLES OF THE GATT/WTO – condensed in 1.5 hour

Basic market access rules

* Tariff negotiations and commitments (art II)
* Most-favoured Nation principle (ART I)
* Import and export restrictions under the GATT 1994 (art XI)
* Internal taxation and regulatory measures under the GATT 1994 (Art III)

Exceptions

* Safeguards (XIX, XII, XVIII)
* General exceptions (art XX)
* The security exception (Art XXI)
* RTA (Art XXIV)

Development

* Art XVIII
* Part IV and the Creation of UNCTAD
* The Enabling Clause (and the right to condition)
* WTO and the S&D phenomena

CASES: mainly on art III, XI on export duties, XX and GSP and conditions: Japan – Taxes on alcoholic beverages, Family Allowances, Indonesia – National Car, China – Raw Material/Rare Earths, US – Gasoline, US – Shrimps, BZ – Retreaded Tyres, EC – GSP,

AFTER COFFEE:

From the GATT to WTO

* The UR round grand deal: Textiles + Agriculture vs IP
* GATT 1947-GATT 1994 – a new agreement, not an amended GATT
* A new preamble and the new goal of sustainable development
* The WTO is a Single Undertaking

Session 2 (end of morning and afternoon) – the dsb and its functionning

Function and the role of the DSB

* Decision-making process in the DSB – which decisions are taken by negative consensus and which are not
* The Rules of Procedure for meetings of the DSB – different types of meetings and how such meetings are set up and why special meetings are called.
* How the DSB airgrams are set out and who has the right to place items on the Agenda.
* The record of the DSB and its importance for Members
* The DSB and the multilateral surveillance system
* What is the role of the Secretariat and the Chairperson in assisting Members to resolve procedural issues prior to the adoption of the Agenda
* Types of procedural problems raised by Members in relation to the DSU provisions

The DSU and its new principles

* GATT practices are continued
* The DSU is a lex specialis system
* Prohibition of unilateral measures
* The panel process follows that under the GATT

Current crisis

* Crisis in the Appellate Body – no consensus to start the AB selection processes and to reappoint AB members – describe past practices how these processes were handled
* US concerns raised in the DSB and the Walker's process to address the US concerns.
* Alternative arrangements in case by 11 December 2019 there is no consensus to appoint 6 new AB members

Day two:

Morning: standards TBT/SPS

Session 3 (morning):

Technical regulations and standards:

* What is a technical regulation or a standard
* The old issue of PPMs resolved
* Addressing legitimate (non-trade) objectives under the TBT Agreement
* Non-discrimination in technical regulations – regulatory distinction based on legitimate objectives
* Trade-restrictiveness of technical regulations
* International standards

Case: US - Clove Cigarette, EC - Seal and US - Tuna

Sanitary and phytosanitary measures:

* The main features of the SPS Agreement
* relationship with GATT XX – a new conditional rights
* risk assessments
* international standards
* no more restrictive than necessary under 5.6
* no discrimination, difference with Chapeau of art XX GATT

CASE: EC - Hormones, US - Suspension, Australia – Apple, Japan – Agriculture products, Korea - Radionuclides

SeSSIOn 4 (Afternoon): Subsidies in WTO – SCM and AoA

Industrial subsidies under the SCM

* basic rules in SCM – definition of what is a subsidy
* types of subsidies; red and yellow
* prohibited subsidies, TRIMs, GATT III:4 and the role of art III:8
* yellow subsidies: Adverse effects
* no green subsides

CASE: Indonesia – National Car, BZ - Taxes

Agriculture Agreement – tariffs and subsidies

* Agricultural products: range of applicable agreements,
* Tarification exercise in UR
* expanded use of TRQs
* Scheduled commitments on domestic and export support,
* Green subsidies

CASE: EC – Sugar, US – Cotton, Indonesia – Animal products

**DAY THREE**

simulation: involving a sps import restriction and an import trq

Morning: preparation by team with the assistance of Bozena Mueller and Gabrielel Marceau

afternoon: presentations by each of the three teams

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**List of panel and AB reports discussed/relevant to this 3-day training**

Session 1 and general discussion

* *Belgian Family Allowances* case, GATT Report, 7 November 1952, G/32 – 1S/59
* *United States – Standards for Reformulated and Conventional Gasoline (DS2)*, Appellate Body Report, 29 April 1996, pp. 13-31
* *Japan – Taxes on Alcoholic Beverages (DS8, DS10, DS11)*, Appellate Body Report, 4 October 1996, pp. 17-37
* *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef (DS161, DS169)*, Appellate Body Report, 11 December 2000, par. 130-151
* *United States – Import Prohibition of Certain Shrimp and Shrimp Products (DS58)*, Appellate Body Report, 12 October 1998, par. 111-121, 129-133, 137, 141, 144, 150, 153-160, 163, 166, 172, 175, 177, 180
* *United States – Import Prohibition of Certain Shrimp and shrimp Products* (DS58), Recourse to Article 21.5 by Malaysia, Appellate Body Report, 22 October 2001, par. 115-150
* *European Communities – Measures Affecting Asbestos and Products Containing Asbestos (DS135)*, Appellate Body Report, 12 March 2001, par. 84-154
* *China – Measure Related to the Exportation of Various Raw Materials (DS394, DS395, DS398)*, Appellate Body Report, 22 February 2012, par. 319-346 and par. 356-36o
* *China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum (DS431, DS432, DS433)*, Appellate Body Report, 7 August 2014, par. 5.84-5.141
* *Turkey – Restrictions on Imports of Textile and Clothing Products (DS34)*, Appellate Body Report, 22 October 1999, par. 45-66
* *Peru – Additional Duty on Imports of Certain Agricultural Products (DS457)*, Appellate Body Report, 20 July 2015, par. 5.15-5.28, 5.81-5.119 (on Moodle)
* *Russia – Measures Concerning Traffic in Transit (DS512)*, Panel Report, 5 April 2019), par. 5.78-7.82, 7.100, 7.109- 7.126

Session 3 - TBT

* *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (DS381)*, Appellate Body Report, 16 May 2012, par. 185-199, 228-232, 284-298, 313, 351-372, 390, 398
* *United States – Measures Affecting the Production and Sale of Clove Cigarettes (DS406)*, Appellate Body Report, 24 April 2012, par. 166-182
* *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products (DS400, 401)*, Appellate Body Report, 22 May 2014, par. 5.169, 5.200-5.201, 5.214-5.215, 5.261, 5.276-5.280, 5.291-5.292, 5.296-5.306, 5.310-5.313, 5.317-5.339

Session 3 - SPS

* *European Communities — Measures Concerning Meat and Meat Products (Hormones) (DS26)*, Appellate Body Report, 16 January 1998, par. 157-177
* *United States – Continued Suspension of Obligations in the EC – Hormones Dispute (DS320)*, Appellate Body Report, 14 November 2008, par. 310-380
* *Australia – Measures Affecting the Importation of Apples from New Zealand (DS367), Appellate Body Report, 17 December 2010, paras 204-225, 236-242, 258*
* *Japan – Measures Affecting Agricultural Products (DS 76), Appellate Body Report, 19 March 1999, paras 72-94*
* *Korea – Import Bans, and Testing and Certification Requirements for Radionuclides* (DS495), A*ppellate Body Report, 26 April 2019, paras 5.29-5.39, 5.89-5.93*

*Session 4* – Industrial Subsidies and Agriculture related

* *Indonesia – Certain Measures Affecting the Automobile Industry (DS 54, 55, 59, 64),* *Panel Report, 23 July 1998, paras 14.26 – 14.131*
* *Brazil — Certain Measures Concerning Taxation and Charges (DS472, DS497)*, Appellate Body Report, 11 January 2019, par. 5.82- 5.138.
* *China – Domestic Support for Agricultural Producers (DS 511), Panel Report, 26 April 2019, paras 7.173-275, 7.135*
* *European Communities – Export Subsidies on Sugar (DS265, DS266, DS283)*, Appellate Body Report, 18 May 2005, par. 216, 220, 222 + Annex 4
* *European Communities – Export Subsidies on Sugar– Complaint by Australia (DS265)*, Panel Report, 18 May 2005, par. 8.1-8.8
* *United States – Subsidies on Upland Cotton (DS267)*, Appellate Body Report, 21 March 2005, 529-552, 580-584
* *Indonesia – Importation of Horticultural Products, Animals and Animal Products (DS477/478), Panel Report, 22 November 2017,* paras 5.7-5.25, 5.31-5.32, 5.551, 565-5.86