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Bakalářská práce

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THE WORLD TRADE ORGANIZATION:

EVOLUTION, OVERVIEW OF THE LEGAL FRAMEWORK AND THE ANALYSIS OF SELECTED TOPICS

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Prohlášení

Prohlašuji, že jsem bakalářskou práci vypracoval samostatně a použil jsem jen uvedených pramenů a literatury.

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Poděkování

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ABSTRACT:

The aim of this thesis is to give a reader a comprehensive idea about the rules determining borders within which international trade takes place. It describes an evolution process of these rules via the history of the World Trade Organization and empirical data on the use of safeguards, countervailing duties, subsidies and anti-dumping measures. It sketches a picture of some current issues, both practical and theoretical and attempts to analyze selected ones (particularly the dispute settlement mechanism, the negotiating mechanism and the position of poor countries).

SVETOVÁ OBCHODNÁ ORGANIZÁCIA: VÝVOJ, ZHRNUTIE PRÁVNEHO SYTÉMU A ANALÝZA VYBRANÝCH TÉM

ABSTRAKT:

Cieľom tejto práce je poskytnúť čitateľovi komplexný nadhľad nad pravidlami určujúcimi hranice medzinárodného obchodu. Popisuje vývoj týchto pravidiel prostredníctvom dejín Svetovej Obchodnej Organizácie a empirické údaje o používaní ochranných opatrení, vyrovnávacích ciel, podpôr and antidumpingových opatrení. Načrtáva náhľad na súčasné problémy, praktické i teoretické a pokúša sa analyzovať tie vybrané (najmä mechanizmus riešenia konfliktov, mechanizmus vyjednávania a pozíciu chudobných krajín).

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Chapter 1: Introducing the WTO and the History of the GATT/WTO

1.1 Introduction to the WTO

The World Trade Organization, established in 1995, is apparently the most significant rule-making institution concerned with international trade. It embraces 97% share of world trade[1] and has 151 members (April 2008).[2] The WTO's predecessor GATT existed in 1947-1994. GATT/WTO is viewed as a medium for liberalizing trade, reducing trade protection at the borders from post-war's nearly 40% to below 5% in 1994. In 2002 the simple average was 4% for the US , EU and Japan and 9% for China. For textile and clothnig, the rates are roughly twice the average (especially for China it is 12%) and for agricultural goods twice for US, four times for EU and Canada and China and seven times for Japan. Some poor countries differ more from the average (African countries, Indonesia, etc) (Baldwin 2006). However, the average tariff is 5% computed from tariff rates of all members.

1.1.1 Structure of the WTO

The seat of the World Trade Organization is Geneva. It has 3 main bodies: General Council, Dispute Settlement Body and Trade Policy Review Body. In fact, the WTO physically comprises WTO delegates who meet regularly in Geneva (for the Czech

[1] taken from the WTO Publication Understanding WTO

[2] see a map (Figure 1) attached in Appendix; Ukraine is scheduled to join the WTO on 16 May 2008

Republic, it is the Ministry of Finance which appoints them) and ministers, who meet in various places all over the world at Ministerial Conferences (every two years). The WTO's official website refers to the Ministerial Conference as the topmost decision-making body. The WTO delegates meet once as General Council, the other time as Dispute Settlement Body or Trade Policy Review Body.

Each body has its own corresponding rules and its own chairperson. These chairpersons appoint the schedule of meeting, they have to agree upon which meeting (and when) is to be held in order to do a proper distribution of meetings. There are also departments of clerks, whose job is administration, or committees of experts (economists, lawyers, etc.), who assist in making documents, settling disputes, giving proposes, controlling countries' policies, etc.

The General Council is the WTO's highest-level decision-making body. It is the place where negotiations are held in order to make agreements on trade. The authors of these agreements are the member governments themselves.

The power is not delegated to a executive body (the board of directors, for example) as it is in the UN or the IMF. Decisions are made by a consensus of all members. It might be difficult to make a deal, where 151 members (April 2008) sit the hearing. There is a menace that too much inflexibility is brought to decision making. The negotiation mechanism is analyzed at the end of this thesis to gain insight into this complex issue.

2.1 History of the WTO's Predecessor – the General Agreement on Tariffs and Trade (GATT)

History of the GATT/WTO allows us to sketch an evolution process from a diplomat's agreement (GATT 1947) to a legal institution (WTO).

2.1.1 The Beginnings of GATT

After the Second World War, a new era of market globalization started and thus an agreement to reduce and bind customs tariffs was more and more demanded to settle a new period of development characterized by trade liberalization. The Bretton-Woods conference (1944) was devoted to monetary and banking issues, it established the International Monetary Fund and the World Bank. Problems with rules covering international trade were left aside. However, the initiative to deal with international trade came and the negotiations started between 15 countries, accounted for one fifth of overall world trade. When the deal, General Agreement on Tariffs and Trade, was signed (in October 1947), the number of negotiating members had already been extended to 23. Belgium, Netherlands, Luxemburg, France, UK, Canada, the USA were among the signatories[3]. Germany joined GATT in 1951, Japan in 1955.

The consequence of not incorporating international trade issues in the Bretton--Woods conference was the fact that GATT was perceived to be only a provisional agreement with no legal foundation for nearly 50 years.

[3] the Czechoslovak Republic was the signatory as well; the complete list of signatories can be found in www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

2.1.2 Any Alternatives to GATT?

The GATT concerned itself mainly with tariffs. Simultaneously with the beginnings of GATT, there was an effort to found ITO (International Trade Organization) in mid 40s. Its range was wider, more countries participated in negotiations and it covered more topics.

It should have been created at a UN Conference (1947) and existed alongside the International Monetary Fund and the World Bank. Countries involved in GATT were a part of the group which tried to establish the ITO. The ITO was not founded because ratification in some national legislatures failed. The GATT remained as the only agreement (although provisional) until the creation of the WTO as an institution in its right sense of a word.

2.1.3 GATT's Getting out of Date

At first, GATT showed to be successful in dealing with international trade. Its Articles reflected the experiences of the 1920s and 1930s and certainly were appropriate for many following years. Moreover, the relevance of GATT Articles was preserved by making amendments. The breakpoint, when GATT Contracting Parties were forced to make a considerably more effort to revise the system, came in the 1970s. It was the first attempt to reform GATT and took place in the Tokyo Round (1973-1979). It was the response to a radical change of the character of international trade, which occurred in progress of time, and caused loopholes to appear.

2.1.4 The First Major Reform Process: the Tokyo Round (1973-1979)

The reduction of trade barriers was maintained. However, GATT faced difficulties. Problems with safeguard measures were not resolved and some agreements were not signed by all members. Furthermore, while 1950s and 1960s were marked by an 8% annual average growth of world trade[4], in the 1970s and early 1980s economic recessions occurred and doubted GATT's credibility, as particular countries refused to obey (used subsidies, there was a loophole in agreements dealing with agriculture).

By 1985 there were 90 Contracting Parties. Hence, the membership was much more diverse in terms of agriculture, industry, politics, etc. than before. That was another incentive to try to adjust GATT at least once again to better reflect the reality. The Uruguay Round embodies the second attempt to reform the system.

2.1.5 The Second (and More Successful) Reform Process: the Uruguay Round (1986-1994)

It was the longest and the most complex round in the history of GATT. It took place in Geneva and lasted from 1986 till 1994. Beside this, preparations for this round took another 4 years. It incorporated the most members (123 at the end) and dealt with the widest variety of issues. The aim, to settle a new legal and up-to-date institution, was daring and necessary concurrently. Every GATT article was open to amendments. The talks about services and intellectual property rights were particularly intensive. The most uncertain were outlooks for questionable agriculture and textiles. There were many ups and downs: at the beginning, a system for monitoring members' trade policy was accredited, but when dealing with agriculture, there were moments which predicted an

[4] taken from the WTO Publication *Understanding WTO*

upcoming failure of talks. Moreover, additional problems with anti-dumping rules, market access and creating an institution arose.

In late 1992, an agreement was made between the USA and the EU on agriculture. Trading leaders (USA, EU, Canada and Japan) announced a near solution of market access issue which was a keystone of resolving this matter. At last, a final deal was ready to be signed. No other troubles, which could have hampered ratification, occurred and the World Trade Organization came into existence in 1995.

Chapter 2: The legal framework of the WTO #1

2.1 The Agreement Establishing the WTO

The WTO was established by the Agreement Establishing the World Trade Organization, which came into force on 1 January 1995. At this point, it is worth emphasizing that the WTO was given a *legal* existence.

The Agreement Establishing the World Trade Organization included Annexes 1, 2 and 3 as integral parts and thus binding on all Members. Annex 4 was also a part of this agreement but it was binding only on those members which accepted them. They are given in Figure 3 in Appendix.

The set of agreements showed in the Figure 3 is incomparably larger than the GATT; subjects covered by only a few pages were extended to individual agreements with detailed schedules, footnotes and annexes. Paragraphs became articles, terms became lists and definitions - much more precise characterizations of GATT disciplines are therefore provided.

2.1.1 Functions of the WTO

The Agreement Establishing the World Trade Organization, inter alia, defined the scope, functions of the WTO:

The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to GATT/WTO, shall facilitate the implementation, administration and operation of the Multilateral Trade Agreements and shall provide the forum for negotiations among its Members concerning their multilateral trade relations.

2.1.2 Constituting a Fundamental System of the WTO

The Agreement Establishing the World Trade Organization is an umbrella agreement and together with GATT, GATS and TRIPS it creates a fundamental system of the WTO. GATT (General Agreement on Tariffs and Trade) covers basic documents on goods, GATS (General Agreement on Trade in Services) deals with services, it is the first and only one set of rules on services it basically replicates the GATT principles, and TRIPS (Trade-Related Aspects of Intellectual Property Rights) gives trading conditions (protection, enforcement of IPRs, solving disputes) for IPRs. TRIPS specify minimum standards of protection for all Members of the WTO. The extra agreements bounded on GATT, GATS include special requirements on specific issues.

Besides the Agreements in Figure 4 (we will also later refer to them as rules, i.e. WTO legal texts), there are detailed commitments of every member, its tariffs, quotas, conditions of trading in services as well. They pose thousands of pages.

2.2 Basic Principles of the WTO

The rules, i.e. WTO legal texts, pose hundreds of pages. Eventually, they follow fundamental principles which are the core of the multilateral trading system. In general, one relatively short Article plus longer Annexes are devoted to each of those, which are explicitly formulated in the Agreements (General Most-Favoured-Nation Treatment and National Treatment). The other principles (encouraging trade, stability and predictability, transparency, supporting fair competition, cheering up development[5] only reflect the basic nature or the intention, which they were framed with.

2.2.1 Non-Discriminating Trade

2.2.1.1 General Most-Favoured-Nation Treatment

GATT 1947, Article I defines this rule as any advantage or privilege, with respect to customs duties or any charges connected with import/export, granted by any contracting party 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 contracting parties. In other words, it means treating all other members equally - if you grant a member (or a group of members) an advantage (for example, a lower trade barrier), you have to do the same for all other WTO members.

This rule is replicated in GATS (Article II) and TRIPS (Article IV) and is commonly called the MFN principle. This term "principle" is perhaps more concise - -MFN exemptions exist. In order to keep MFN principle effectively in operation,

[5] Principles freely taken from www.wto.org

particular WTO Agreements allow MFN exemptions only under strict rules. Additionally, MFN exceptions are granted only if they serve a good thing.

2.2.1.2 National Treatment

Imported products, services, items of intellectual property, etc. should be treated the same as domestic ones. This rule applies once such a product, service or item of intellectual property enters the market, that is, charging a customs duty cannot be considered as a violation of national treatment even if locally-produced products are not charged an equivalent tax. In GATT 1947, national treatment is defined in Article III - National Treatment on Internal Taxation and Regulation. In GATS, National treatment is the heading of Article XVII and TRIPS it is the heading of Article III.

2.2.2 Encouraging Trade

Lowering trade barriers (tariffs, quotas, red tapes, etc.) provided that it does not have considerable side effects (for instance, causing harm to a country because of insufficient competitiveness of domestic industry). Rules are set in a way to eliminate free riding and to raise the effectiveness- basically all countries are pressured to lower barriers if circumstances allow such action.

2.2.3 Stability and Predictability

Agreements are usually valid for sufficiently long period to ensure a stable and predictable environment. Binding tariffs or promising not to raise a trade barrier can

considerably encourage trade, investments. However, agreements can be prematurely renegotiated under certain conditions, but such case is rather exceptional than common. It raises flexibility to respond to uncommon circumstances.

2.2.4 Transparency, Supporting Fair Competition

If a member suspects another member of unfair practices, it can file a complaint at the WTO, the case will be investigated. Every member has a possibility to impose safeguard measures to protect its market (the most known safeguard measure is an anti-dumping measure), intellectual property rights (IPRs) are legally founded.

2.2.5 Embracing Development

Assuming Ricardo's economic theorem of a comparative advantage, trade liberalization and a consequent increase in trading has a positive effect on the welfare of countries. Specialization increases the effectiveness of production whereas trade provides allocation of products. The WTO, hopefully, liberalizes the international trade and therefore cheers up development.

Comparing GATT to GATS in terms of these basic trading principles, we arrive at a conclusion that national treatment is more frequently violated (Gallagher, 2005). One of the reasons may be that service sector is not completely mapped out by the WTO rules. There is still a lot of work to be done and services are being negotiated in the Doha Round (2007). Surely, improvements and liberalization is the objective. [6]

[6] insurance, banking, tourism, telecommunications and others belong to services

2.3 The GATT 1994 – Extension of the GATT 1947

The Agreement Establishing the World Trade Organization legally distinguished The General Agreement on Tariffs and Trade 1994 (GATT 1994) from the General Agreement on Tariffs and Trade, dated 30 October 1947 (GATT 1947). The GATT 1947 is viewed as a diplomat's agreement, its Articles are concise and have barely 80 pages, [7] which is not sufficient to precisely and elaborately cover all problems. It is rather a summary of principles.

During a half-century this original document was rectified, amended or modified, we then refer to updated the GATT 1947 (it includes any changes made to the GATT 1947 before the final version of the GATT 1994 came into effect). However, these changes were not extensive, at least compared with those ones made in the Uruguay Round (1986-1994), which led to the creation of the GATT 1994, the GATS (General Agreement on Trade in Services), the TRIPS (Trade-Related Aspects of Intellectual Property Rights)- the fundamental system of the WTO. The WTO is the successor of GATT (unlike GATT, which dealt only with goods, the WTO covered services and intellectual property rights as well). When reffering to GATT 1947, we are not necessarily speaking about history - this agreement is still in force and is a kernel of GATT 1994. Therefore GATT 1994 is an extension of GATT 1947, it must be actually read with GATT 1947.

[7] http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

Chapter 3: The legal framework of the WTO #2

3.1 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping)

3.1.1 Characterization of Anti-Dumping Measures

Article VI of the GATT 1994 deals with anti-dumping measures. Application of an anti-dumping measure is an exception from the MFN principle; it is aimed at a concrete dumping offender. Dumping is defined in Article 2 of Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 – a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price from one country to another is less than the comparable price for the like product destined for consumption in the exporting country.

When the price of like product cannot be used (in case of too low volume of sales of like product, for example) for a proper comparison, the comparison is made with the price of the product exported to an appropriate third country or with the price calculated from the cost of production of the product (plus transportation costs and other relevant factors on price).

Anti-dumping measure can be imposed only if it is proved that dumping is in place and simultaneously harm is caused to an industry, which is a target of dumping. In order to prove dumping and determine the degree and effect of dumping, an investigation shall be initiated. Conditions on initiating investigation are described in Article 5 while formal process of obtaining evidence is in Article 6. Obtaining evidence is a matter of the government of a country, which is a target of dumping, to gather the information showing dumping and its extent. The transparency is secured via giving enough space to all interested sides to present their evidence. An independent commission settles then the conflict.

Anti-dumping takes place in form of charging an extra import duty on particular products from the particular country which dumps these products to offset the harm caused by dumping (Article 9). The measure is cancelled no sooner than the harm is negligibly small.

3.1.2 Historical Background and Experience with Anti-Dumping Measures

Steele (1996) presents historical data which show that the major users of anti-dumping and countervailing duty action were Australia, the European Union, the USA and Canada. There are called "the Big Four''. Since the existence of Tokyo Round's Anti-dumping Code, the Big Four was responsible for bringing more than 90% of all such action by GATT Members. The usage of anti-dumping action corresponded with economic cycles. In the period of decline, when the material injury caused to domestic industry by imports was more likely, the usage grew rapidly (end of 70s and end of 80s). In the period of upturn, anti-dumping measures were less wide-spread.

The popularity of anti-dumping measures revealed several facts. Rules in the Code from the Tokyo Round were loosely defined. Their interpretation was divergent. Rules could be bent to the advantage of the users of anti-dumping measures and thus they were exploited. Such manipulations were a source of international tension. The countries, which economic success was based on low-cost exports, became traditional victims of anti-dumping. Asian countries serve as an example.

The new WTO's anti-dumping rules are more specific and detailed than its predecessor and intend to eliminate previous shortcomings.

3.2 Agreement on Subsidies and Countervailing Duties

3.2.1 Characterization of Subsidies

Subsidies are generally permitted but only on condition that they do not have negative effects on competition. The objective is the maintenance of a fair competition where no individual is favored. If the subsidy serves other purposes than the above mentioned matter, it is allowed. The most common prohibited subsidies are those, which favor domestic producers. They can be export subsidies, domestic supplier are donated when exporting to other countries. Let the domestic country be labeled as A. Country (countries) B would be a place, where competing exports come from. Country (countries) C is (are) the target of exports from A and B. As a consequence, exporters from country A are favored and therefore exporters from B and producers from C, which supply the C market, are discriminated. Another example is a subsidy donating domestic suppliers-domestic goods are in favor of imported goods.

If a member feels other member's subsidy is not in order, it can turn to the WTO's dispute settlement to examine the matter. Once confirmed by the WTO's dispute settlement, the subsidy has to be withdrawn immediately. If the wrongdoer does not do so, the discriminated member is permitted to use a countervailing duty to compensate for the distortion.

Article 1 of the SCM agreement defines subsidies which shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any other public body within the territory of a Member, i.e. where

(i) the direct transfer of funds through grants, loans, equity infusion, etc.,
(ii) foregone government revenue due to tax credits or other fiscal incentives,
(iii) the provision of goods and services other than general infrastructure, or purchases goods,
(iv) government payments to a funding mechanism that provides at least one function in (i) to (iii)

or

(a)(2) there is any form of income or price support

and

(b) a benefit is thereby conferred.

Furthermore, subsidies there are 2 types of classification of subsidies in the Agreement on Subsidies and Countervailing Duties. Firstly, subsidies targeted to limited or specific enterprises, industries or groups of enterprises, industries, or to enterprises in a certain geographic region are called "specific" subsidies. "Nonspecific" subsidies are not selective; they are generally available (Article 2).

Secondly (and the most importantly), subsidies are divided into 3 categories: prohibited, actionable and nonactionable (Articles 3-8). Unlike the nonactionable subsidies, prohibited and actionable subsidies can be countervailed under certain conditions.

3.2.1.1 Prohibited subsidies

Prohibited subsidies include nonprimary export subsidies and subsidies that can be roughly characterized as import substitution subsidies, regardless of whether they are specific or not. A Member should not grant or maintain these subsidies. If a Member feels confronted with such subsidy, it may search for remedy via consultations or making an official complaint, lodging it to the Dispute Settlement Body.

3.2.1.2 Actionable Subsidies

Actionable subsidies are specific subsidies with adverse effects to the interests of other Members, i.e. causing injury to the domestic industry or serious prejudice to the interests of another Member or nullification or impairment of benefits which the GATT offers to other members.

If a certain country finds out that a material injury has been caused to its industry by an actionable subsidy granted by other member, it needs to prove the existence of an actionable subsidy, injury to the domestic industry, and direct causality between the subsidy and the injury. In order to restrict the amount of injury cases, producers

accounting for less than 25 % of total production in an industry cannot initiate a countervailing duty investigation (Stehn (1996)).

3.2.1.3 Nonactionable Subsidies

All nonspecific subsidies, which cannot be classified as prohibited, are allowed. To continue, 3 kinds of specific subsidies are allowed as well: R&D subsidies, regional subsidies and environmental subsidies. To label a certain subsidy as R&D, regional or environmental subsidy, conditions stated in the SCM Agreement must be fulfilled.

3.2.2 Historical Background and Further Comments

Stehn (1996) points out that subsidies and countervailing duties were treated separately in different articles of GATT. With respect to GATT, rules on subsidies were in Article XVI whereas countervailing duties were in VI. It is worth emphasizing that the rules for granting the subsidies do not perfectly comply with and imposition of countervailing duties in the inverse meaning. In other words, they were not perfectly compatible. The practical implication of this fact was the situation, where the importing country was free to impose a countervailing duty even though the subsidy given by an exporting country did not violate Article XVI.

Article XVI distinguishes domestic from export subsidies and primary (agriculture) from non-primary subsidies. It prohibits subsidies reducing the price of non-primary exports, export subsidies on agricultural products are generally allowed, thus GATT rules on this kind of subsidies are considerably more benevolent chiefly because

of political reality (agriculture is a specific sector, subsidies had been common before making GATT rules). Domestic subsidies are allowed.

Fulfilling certain conditions, Article VI authorizes to countervail against subsidies. It broadly defines subsidies. Early GATT rules did not pay much attention to countervailing duties mainly because the demand for them was small. The situation gradually changed and in 1970s they were much more demanded. In Tokyo Round (1974-1979) Article XXIII was negotiated and posed a markedly elaborate document. Subsidies were concretely defined, the key approach was whether they cause material injury or adverse effects or not. The code introduced a dispute settlement mechanism as well.

The Uruguay Round brought another important milestone in regulating subsidies and countervailing duties. The official name of the document is the Agreement on Subsidies and Countervailing Duties, commonly marked as SCM Agreement. The last remarkable review of these rules so far was made at the Doha Ministerial Conference in 2001. It preserved the basic concepts, principles and effectiveness of GATT Article VI and the SCM Agreement and took into account the needs of developing countries. To be concrete, fisheries subsidies were in interest of developing countries.

Now, subsidies are viewed as one of the most important instruments for industrial policy purposes (particularly high-technology industries). International tension is often invoked by the promotion of industries that are regarded to be strategic from the point of view of a particular state- policy maker. The current discussion is focused on pros and cons of subsidies in high-technology industries, where, inter alia, R&D subsidies belong as well - private or state research and development funded by the state. Another influential subsidies promoting high-technology industries are investment and production subsidies.

The question whether and consequently how to regulate such subsidies is relevant. The current status is that there have been some major trade disputes and ineffective multilateral rules, which leave perhaps too broad space to national discretion, are to blame. National governments are still relatively free to use national economic policy instruments for the promotion of specific industries although such actions might have an indirect impact on international trade.

Subsidies are the most vital part of the economy of developing countries. The poorest ones are permitted to use subsidies. Other are requested to abolish unfair subsidies by the end of a certain date or WTO rules on subsidies are fully applied to them. The same holds for imposing a countervailing duty: developing countries are provided by preferential treatment.

3.3 Agreement on Safeguards

3.3.1 Characterization of Safeguards

A WTO Member may apply safeguard measures if its domestic industry is injured or threatened with a serious injury caused by a surge in imports- increase in quantities, absolute of relative to domestic production (Article 2) and the application follows an investigation by the particular competent authorities of the Member (Article 3). Article 4 defines a serious injury and a threat of serious injury (definitions were simplified):

a) “serious injury” shall be understood to mean an overall impairment in the position of a domestic industry,

b) “threat of serious injury” shall be understood to mean serious injury that is clearly imminent and the determination of the existence of a threat of serious injury should be based on facts and not merely on allegation, conjecture, etc.

These measures are imposed only to an extent necessary to prevent injury, if there is such a threat. Provided that the harm has been already suffered the safeguard measure serves to remedy the harm (Article 5). The duration of all safeguard actions is limited to usually 4 years and may be extended in special circumstances, but not more than 8 years (Article 7). When assessing the conflict, setting quotas, the import data from the last 3 years, from which statistics are available, are taken into account.

3.3.2 Difference between Safeguards and Anti-Dumping and Counter-vailing Duties

Safeguards differ from other widely-used import restrictions such as antidumping and countervailing duties in at least one respect: safeguard measures are applied to protect domestic industries and are not concerned with the fairness of exporters’ trade practices whereas antidumping or countervailing duties are to offset the advantages gained by the exporters’ unfair trade practices. A sudden surge in imports causing harm to a domestic industry is likely to cause acute social, economic problems and a political turbulence. Safeguard measure are targeted to prevent these problems. However, Ricardo’s classical theory of comparative advantage says that after all international trade improves the overall economic welfare of the importing country due to a better allocation of resources (Plummer et al., 2005).

3.3.3 Experience with Safeguards

Historical data point at low usage of safeguards. Before 1995, Article XIX of the GATT was the most important safeguard provision. Brown (2001) also adds that there were other 'safeguard' options such as Article XXVII for permanent protection, Article XII for balance payment problems, etc. The frequency of use was low compared to anti-dumping measures which were commonly substitutes for safeguards. Moreover, the usage of safeguards measures after introducing WTO's Agreement on Safeguards still keeps behind the proliferation of other GATT/WTO sanctioned instruments.

There are economic and political reasons which could explain the relative unpopularity of safeguard measures. The first one is that the adherence to MFN should be preserved - when a country, which applied for protection by a safeguard measure, restricts the jeopardous imports from one country, it has to do the same for all others which export the same, thus restricted, commodities. The common practice was to use "grey area" measures (measure negotiated outside the GATT). Countries usually made a grey area deal with the problematic member, who used voluntary export restraints to solve the dispute. Therefore safeguard measures were seldom taken.

The second reason is political. Considering anti-dumping measures, they can deflect the attention from the fact the competitiveness of a domestic industry is low and the exporters are accused of unfair practices. The impact of the accusation of unfair practices on the popularity of anti-dumping measures is not obvious and will not be examined here.

Furthermore, proving the fact that a certain exporter's practices are in compliance with the definition of dumping was not a such obstacle: " Foreign firms who charge not

only higher prices abroad than they do at home, but also higher prices than their domestic competitors, are still saddled with dumping margins of 50 percent and higher. AD no longer has anything to do with predatory pricing. Even more to the point, all but AD's staunchest supporters agree that AD has nothing to do with keeping trade "fair". AD has nothing to do with moral right or wrong, it is simply another tool to improve the competitive position of the complainant against other companies." [8]

The reforms made in the Uruguay Round were intended to make safeguard measures more usable. The Agreement on Safeguards in many cases does not require a country to compensate affected trading partners for the first three years that a safeguard is in place. With respect to Article 7, which says the period shall not exceed 4 years, [9] three years are to pose a substantially long period of the duration of safeguards. Under GATT's Article XIX trading partners affected by a country's increased protection were eligible for compensation (usually in a form of additional liberalization). Another point was that commonly exploited "grey area" measures were banned; the use of voluntary export restraints came to an end.

[8] Blonigen Bruce A., Prusa Thomas J.: *Antidumping*, NBER Working Paper No. 8398, July 2001, JEL No.F13, pp.2-3

[9] unless it is extended in special circumstances

Chapter 4: The legal framework of the WTO #3

4.1 Agreement on Agriculture

The Uruguay Round brought tariffication of agricultural goods. Before this process, import restrictions and quotas applied to more than 30% of traded agricultural products. Tariffs replaced all non-tariff restrictions and now all goods are bounded with tariffs. The aim of the WTO is a gradual elimination of tariffs as well as domestic support and export subsidies. This action presumes creating binding commitments on market access, domestic support and export subsidies. The WTO's vision is a market-oriented agricultural trading system as it is stated in the Agreement on Agriculture. The Article 20 of the Agreement on Agriculture binds all WTO Members to continue in the reform process. The schedule liberalization is given in Figure 4 in Appendix.

The Doha Ministerial Declaration form 2001 set more explicit objectives and deadlines. Due to the difficulty of negotiations on agriculture (because of wide range of Member's interests) delays arose. For example, a 31 March 2003 deadline for certain issues was missed. However, the Fifth Ministerial Conference in Cancún, Mexico, September 2003 was a success regarding agriculture negotiations. Proceeding to the Hong Kong Ministerial Conference, no formal commitment was made and delays were not eradicated. Moreover, the Doha Round negotiations were suspended in July 2006 due to deadlocks in negotiations (concerning various issues, not only agriculture). The Doha trade negotiations were resumed in February 2007. The Annual Report 2007 published by the WTO says there is a strong need to make a significant progress in agriculture subsidies and tariffs on agriculture as soon as possible.

4.2 Agreement on Textiles and Clothing (1995-2004)

This agreement set out provisions to be applied by members during a transition period for the integration of the textiles and clothing sector into GATT 1994. The Multifibre Arrangement had been the predecessor of this agreement and it provided a framework in years 1974-1994. It allowed quotas and import restrictions especially in case where domestic industries would have otherwise suffered a serious damage. The WTO's policy was to get rid of quotas by replacing them with tariffs. The Agreement on Textiles and Clothing set a schedule of a gradual integration of textile products into GATT 1994.

According to Whalley et al. (2006), one year on from January 2005 China's textile and clothing exports have increased, but only at a rate of 7% for clothing. Also imports of textiles and clothing by both the US and the EU increased at similar rates. What is more important, China's exports to the US and the EU increased rapidly. In US the increase was 56% and export prices for Chinese clothing sold in these markets fell sharply. The most dramatic increase in the volume of Chinese exports to the US and the EU occurred within few months immediately after the termination of the ATC. In the summer and fall of 2005 export restraints for Chinese clothing heading to the US and the EU were bilaterally negotiated. Data for the October 2005 showed that exports fell by 18% from month earlier figures. Exports from other Asian supplier (India, Pakistan, Bangladesh, Indonesia, Vietnam and Cambodia) also did well. However, the increase in volume of exports to the US and the EU was more modest compared to China.

The termination of the Agreement on Textiles and Clothing in January 2005 means that textiles and clothing products are now governed by the general rules (GATT 1994).

4.3 Agreement on the Application of Sanitary and Phyto-sanitary Measures

This document deals with food safety and animal and plant health regulations. It gives members right to take measures in order to protect human, animal or plant life and concurrently regulates their use. The measures should not be applied for the other purpose and should not unjustifiably discriminate between members. Previous experience shows that this environmental protection has been abused- it was actually a disguised protectionism.

4.4 Agreement on Import Licensing Procedures

The WTO members pledged in this agreement that administrative procedures used for granting import licenses by a corresponding administrative body of the importing member are in conformity with the relevant provisions of GATT 1994. In other words, there is an effort to prevent trade distortions which may arise from an inappropriate operation of granting import licenses. Problems of bureaucratic character should not hinder obtaining an import license. For example, it is explicitly stated in the agreement that licensed imports shall not be refused for minor variations inconsistent with normal commercial practice (such as minor variations in value, weight, quantity, etc.).

Import licensing is automatic, if a subject fulfils the legal requirements of the importing member, and complete applications for licenses are approved within a maximum of 10 working days. Non-automatic import licensing takes place if the condition for automatic import licensing is broken. The period for processing applications is extended to 30 days or 60 days according to which method for considering applications the importing member uses.

4.5 Agreement on Preshipment Inspection

Article I states that this agreement applies to all preshipment inspection activities carried out on the territory of members, whether such activities are contracted or mandated by the government or any government body of a member. Preshipment inspection activities are defined as all activities relating to the verification of the quality, quantity, price, including currency exchange rate and financial terms and/or the customs classification of goods to be exported to the territory of member. Preshipment inspection activities are then covered by WTO's law and help prevent from customs duty evasion, for instance.

4.6 Agreement on Trade Related Investment Measures (TRIMs)

Article 1 says that this agreement applies to investment measures related to trade in goods only. Its aim is to regulate the use of investment measures which could restrict or distort trade. Article 2 states no member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994 (National Treatment and prohibition of quantitative restrictions. Article 4 enables developing country members to

temporarily deviate from provisions of Article 2 and Annex gives an illustrative list of inconsistent investment measures. For example:

"1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production;

or

(b) that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports. "[10]

4.7 Agreement on Implementation of Article VII (Customs Valuation)

This document sets rules on the valuation of customs authorizes customs administration to request further information in case of doubts about the declared value of imported goods. Moreover, if the uncertainty about the correctness of declared value persists even after obtaining further information it may be decided that alternative form of valuation of customs will be used (in compliance with provisions of this agreement).

[10]Agreement on Trade-Related Investment Measures, Annex, Illustrative List

4.8 Agreement on Rules of Origin

Article I comprises the definition of rules of origin: laws, regulation and administrative determinations applied to identify the origin of goods. The determination of origin of goods is a prerequisite for the application of MFN treatment, anti-dumping and countervailing duties, safeguard measures, etc. The aim of this agreement is a harmonization of rules of origin and concurrently a minimization of obstacles to trade caused by rules of origin.

4.9 Agreement on Technical Barriers to trade

This document seeks to prevent unnecessary technical obstacles to trade from arising. It supports countries to use international standards and thus harmonization of technical standards throughout member countries. However, it does not require them to change their levels of protection resulting from standardization.

4.10 General Agreement on Trade in Services

4.10.1 Modes of Supply and the Scope of the GATTS

The term “services“ is not explicitly defined. There is a description of modes of supply instead:

(a) Cross Border Supply – the supply of a service "from the territory of one Member into the territory of any other Member".
(b) Consumption Abroad – the supply of a service "in the territory of one member to the service consumer of any other Member".
(c) Commercial Presence – the supply of a service "by a service supplier of one Member through commercial presence in the territory of any other Member".
(d) Presence of Natural Persons – the supply of a service "by a service supplier of one member through presence of natural persons of a Member in the territory of any other Member ".

The scope of GATS can be summed up from GATS Article I and Article XXVIII:

GATS applies to "the purchase, payment or use of a service, the access to and use of a service, in connection with supply, where such service is required by the member to be offered to the public generally or the presence, including commercial presence, of persons of one Member for the supply of a service in the territory of another Member". [11]

All these terms and definitions serve as a foundation for making commitments leading to liberalization of services and the application of Transparency, National Treatment and MFN principle. In GATS, the exemptions from MFN principle were used to a higher extent than in GATT. Again, the fact, that GATS became valid only in 1995, is considered to be to blame. The novelty and the uncertainty which accompanied GATS resulted in a fact, that each member was allowed to use, although only once, such measure. Generally, these concrete exemptions do not last more than 10 years.

[11] Plummer, Michael G.; Macrory, Patrick F. J.; Appleton, Arthur E.: *The World Trade Organization | Vol. 1*, Springer, New York, 2005, pp.822-823

4.10.2 Process of Liberalization of Services

Getting back to Plummer et al. (2005), the process of liberalization of services in GATS is different from the process of liberalization of goods in GATT. The mechanism of liberalization in GATT was at first convert non-tariff barriers to tariffs, then negotiations on binding tariffs to particular goods while the aim of negotiations was to reach low tariffs as far as possible. The nature of trade in services is unfortunately more complex. In GATS, it is reflected by requiring each Member to write down their Schedule- a hybrid of the 'positive list' and a 'negative list' approaches which then used during negotiations. Members may voluntarily define the service sectors in which they choose to permit market access. A Member is not obliged to make a commitment to liberalize any sector which is not listed in its Schedule (the positive list approach). Once the sector is specified in its Schedule, then a Member is compelled to liberalize the sector fully (all four modes of delivery) unless the Member has not specified limitations (written down on the negative list approach).

4.11 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

This Agreement states that current rules should not derogate from existing obligations and national treatment and MFN principle is applied here. Part II comprises Copyright and Related Rights, Trademarks, Geographical Indications, Industrial Designs, Patents, Layout- Designs, Protection of Undisclosed Information and Control of Anti-Competitive Practices in Contractual Licenses.

That means it covers in detail intellectual property rights which protect inventions, trademarks, copyrights, patents and others. The importance of the protection of IPRs is conclusive. IPRs encourage development. Compelling all trading members to put IPRs in practice has been another tough work. It cannot be said that the protection of

IPRs in each country is at the same level. Recently many members struggled with this issue, the worst situation is in developing countries. Although there are requirements which have to be fulfilled, not so much stress is laid on IPRs when accessing the WTO.

National treatment and MFN principle are applied here. Enforcement of IPRs seems to be the hardest part in securing sufficient protection. Therefore, transitional periods are more commonly set, during which countries with IPRs' protection troubles are committed to eliminate them.

Chapter 5: The legal framework of the WTO #4

5.1 Understanding on Rules and Procedures Governing the Settlement of Disputes

5.1.1 General specifications and schedule of Dispute Settlement

Solving conflicts between members, particularly due to breaking their commitments, is a matter of Dispute Settlement Body (DSB). Its competence is to assemble a team of independent and competent investigators.

Since international regimes themselves generally do not provide for hierarchical enforcement of the rules and principles which they embody, enforcement in the international system is decentralized to its constituent states.[12]

This statement includes GATT and WTO and reflects the mechanism of solving disputes in international trade generally. That means this mechanism is decentralized no matter conflicting countries are members of WTO or not. In both cases the conflicting countries usually deal with the dispute at a governmental level. Inside WTO, where there

[12] Sevilla, Christina R.: *A Political Economy Model of GATT/WTO Trade Complaints*, Department of Government, Harvard University, 1996, pp.4

is an additional legal framework (WTO laws), there is much more to stick to when dealing with the dispute. It is governments who enforce WTO law most commonly through complaints against other governments. WTO rules are enforceable only inside WTO, thus cannot be applied on non-members. Moreover, the formal trade-related complaint about a country's nonadherence to a certain agreement is only relevant if it is lodged by another contracting party to this agreement. The Dispute Settlement Body is eligible to create a team of independent experts to judge evidence provided by conflicting sides and makes a final report binding for both sides; it does not bring complaints on its own initiative. The dispute settlement mechanism is based on Articles XXII and XXIII of the General Agreement. The schedule of the dispute settlement is:[13]

1. Members in a conflict are given 60 days at most to discuss and solve the problem by themselves, they can ask for a mediator to assist (WTO director-general).

2. If the disputing countries do not find an consensus, a special committee is created in 45 days. It can be established sooner if the complaining country asks for.

   However, its creation can be blocked once by the reportedly guilty country.

3. Before the first hearing, each side presents the case in writing in its point of view.

4. Then the hearing takes place, it might be compared to a lawsuit, if scientific arguments are presented, experts are called to make an advisory report, evaluate its precision.

[13] taken from the WTO Publication Understanding WTO

5. The first draft of a report is presented, a time is left here for a review to make a final report (the final report must be created in 6 months since the establishment of the committee), which includes conclusions for the dispute where a concrete measure is proposed, the final report circulate to all WTO members to find out whether it does not break other WTO agreements.

6. 60 days are left for the quarreling sides to lodge an appeal (which is only an objection from the point of law interpretation, no new evidence cannot be added or the existing evidence to be reexamined).

7. If no appeal is lodged, the report becomes a ruling (it becomes a ruling anyway after resolving the appeal(s)); it takes about 1 year to settle the dispute without lodging an appeal before the final report comes into force. The appeals prolong the dispute settlement by 3 months (approximately).

If the complaining country loses, the other country (which was a target of a complaint) can preserve its previous policy. If the result is opposite and the complaining country wins, the guilty country has to make corrections to its trading policy according to conclusions of Dispute Settlement Body's final report. There is a time (one month) left for the guilty country to decide about its reply.

If it still refuses to follow the recommendations, the complaining country has a right to ask DSB to introduce sanctions (within one month) or make an agreement with the disobeying country about other compensation.

If the guilty country shows its willingness to fix the problem according to DSB's final report and fails to do so by the limit (20 days are set as a limit unless it is showed it is an inconvenient period- new reasonable period is set), the complaining country has a right to ask DSB to introduce sanctions (within one month) or make an agreement with the disobeying country on another compensation.

The last possibility is that the complaining country wins and the troublesome country fixes the problem according to DSB's final report. Then everything is in order. In the worst case it takes almost 3 months to retaliate against the unfair practices after a DSB's final report became a ruling. If possible (in terms of a practical and effective retaliation), the sanctions are imposed in the same sector as the dispute.

5.1.2 History of Dispute Settlements

Going back to the beginnings of GATT and taking a look at the panel procedure, it can be concluded that the system was quite informal. Contracted parties had their meetings and in case of dispute the problem was referred to the chairperson of the meetings, who issued a proper measure. Soon the chairperson’s competence was passed to the working party because of growing number of complaints. The working party comprised disputants and other interested parties. The informality lied in the fact that the representatives of involved member states judged the disputes. To bring formality to the whole process, the panel of independent experts was established in 1952. The evidence was provided by the disputants according to which experts issued policy recommendations or compensatory measures, all in compliance with GATT rules. It meant GATT rules were since that time legally interpreted.

However, the system contained a rule on veto which hampered its strictness. Any state, including the defendant, could use a veto against the decision to establish a panel to

hear a case as well as to adopt a panel report. Together with the formation of WTO, the Dispute Settlement Body as its part was established. All consultations for the purpose of resolving the dispute must be announced to the DSB and are exactly time-limited, which are new rules compared with GATT. The rule which gave the option of using veto was practically excluded - a complaining party has a right to the establishment of a panel to adjudicate its case, barring a consensus by the DSB not to establish it and in case of the adoption of a panel report, this process is virtually automatic, since a "reverse" consensus by the DSB to not adopt the report is required for rejection (see Sevilla 1997).

5.1.3 Government as a Filter of Demands for the WTO Complaints

GATT/WTO rules are only consequentially enforced as a result of formal complaints. Not anyone can make such formal complaint. It is only the governments of member states which are eligible for this, since only states have access to the multilateral forum and dispute settlement procedures. Bringing complaints to the WTO forum consists of many steps from consultations between quarreling state inside the WTO forum as well as inside. The more effort has to be made the higher the costs are. They include administrative expenses of the trade ministry, potential political costs, consequences plus opportunity costs of alternative solutions. Executives are also sensitive to diplomatic and strategic considerations, and therefore may refrain from bringing complaints when there are other important political considerations. To conclude, governments act as an important filter of demands for the WTO complaints. It is a decision making based on a supply-demand principle. It implies that international rules are ex post selectively enforced. It is important to stress that not all real violations are litigated and subjected to their correction.

5.1.4 Sources of Complaints

There are two sources of complaints: police patrols and fire alarm oversight (McCubbins, Schwartz (1984)) in the GATT/WTO. The police patrol surveillance has the form of regular reporting requirements from the WTO. These notifications are necessary to undertake collective surveillance; each Member is required to notify specific actions or changes in policies. Centralized source of information is then created and if there is any inconsistency it is discussed in the multilateral forum. However, this transparency comes at cost of a large inflow of information. It is rather costly and, as the requirements are scattered throughout the agreements, members may fail to fulfill them. Additionally, errors occur often. Developing countries faced the biggest problems, failing to notice on time or to notice at all and requests for a technical assistance were a common practice. The SCM Agreement and GATS are the area where notification failed the most (1995-2005). The results in other agreements were better, particularly mentioning the Agreement on Textiles and Clothing (this agreement was terminated on 1 January 2005) (Gallagher 2005).

Back to Sevilla's (1997) analysis, fire alarms, to be successful, require brisk communication between private producers and their governments in terms of bringing complaints via governments to the WTO. Here, private producers are those who detect violations of the WTO rules. At the multilateral level, other states may raise fire alarms by alerting a government with a shared interest to a third parties' possible breach of the agreement.

5.1.5 Evaluation of Fire Alarms and Police Patrols

The international political economy mentions 2 approaches to government policy making. The first one inclines to a high influence of interest groups - preferences of domestic lobbies are reflected in government policy to such degree when the state becomes largely a tool of private interest. Governments are responsive to the most sound and influential interest groups in order to gain or keep voters. The second approach states that policymakers are more independent of domestic pressure because such requirements must be reconsidered from more points of view than from the view of lobbies and international consequences must be taken into account as well. Both are backed by arguments.

On the demand side, only a part of the potential amount of WTO complaints is brought to the attention of governments. It is simply a cost-benefit calculation and consideration of possible alternatives. To outweigh the cost to the industry or group of firms of organizing, collecting intelligence and paying various fees, etc. the private complaints are there more likely to target areas with the greatest amount of trade in terms of total value. Therefore, on average, it implies that the largest countries seem to be an object of complaints. It is true that small countries may constitute a large proportion of trade but on average there are large countries which own higher shares of trade. That leaves a space for small and concurrently less developed countries, on average again, to be left unreported while violating the WTO rules because of less harm done to other members.

On the supply side, there is an argument for strengthening the statement that complaints are more likely to target large countries than small, on average. It is linked with theory when interest parties strongly influence the governments, thus complies with the requirements of the demand side.

One can argue that countries with the largest stake of trade are logically developed with an elaborate trade policy and are then closer to perfection, regarding to the compliance with the WTO rules, than less developed countries. Therefore the likelihood of the countries with the greatest amount of trade being scrutinized is diminished. That weakens the statement that large countries are on average more likely to be an object of complaints. It is true that developed countries has cleverly designed system which bend the rules without the breaking them. That might not be the source of complaints.

On the other hand, empirical experience shows that such objections are not strong enough to completely neutralize our statement. In other words, there is still a place for flaws in the systems of developed countries due to complexity comparable to law systems. It immediately implies that from the WTO's point of view less developed countries are violators of rules of more basic content rather than details. On the contrary, developed countries are the opposite case, but the consequences of breaking details of rules are far more serious in terms of economic harm. Furthermore, the demand really consists of prevailingly fire alarms described in the paragraph above, because the government finds fire alarms more beneficent compared with police patrols.

Firstly, police patrols are not that much perspective in terms of winning political capital. Fixing breaches of the WTO laws, which are detected by fire alarms, is actually remedying moans of possible voters. Problems detected by police patrols are commonly viewed as less urgent. On the other hand, there is an argument in favor of police patrols- a situation, when police patrols detect violations doing a serious harm to domestic industries without domestic producers' notice, may occur. Such situation would probably win a lot of voters. However, the efficiency of this centralized method of monitoring other members' policies is questionable, and mitigates the probability of the occurrence of such situation- which is the counterargument in favor of fire-alarms again.

Secondly, the cost of conducting police patrols lies on the shoulder of the state whereas in case of fire alarm oversight it is domestic firms, associations which are burdened with the expense of discovering complaints.

Finally, due to relatively high costs of police patrols and limited sources of bureaucratic and financial resources, the government should decide on the allocation of these resources. Therefore, surveillance targets the countries where the largest amount of trade is at stake – that is again the argument in favor of the statement that bigger countries are on average more likely to be targeted than smaller ones. Another sources of information on breaches of rules can be embassies which may become aware of such activities and then inform the home government. Media, print may also carry out this task.

5.1.6 Dispute Settlement System Biased Against Developing Countries?

Besson and Mehdi (2004) argue that the WTO dispute settlement procedure does not still completely eliminate power-based relationships between countries. The DSP is successfully projected in a way that the dispute outcome is not affected by the size of the countries, but there are biases left which can cause that developing countries are unlikely to win a dispute. Problems are seen in an asymmetric legal capacity, economic dependence via bilateral assistance and international factors.

Since the establishment of the WTO, the Dispute settlement Body has dealt with the increasing number of trade disputes. While there were only 300 cases under the GATT during 47 years, this quantity has been already reached under the WTO, which lasts for a much shorter period so far. The flourishing number is not only due to growing

membership of the GATT/WTO[14]. This fact is illustrated by the mean number cases per year per member which grew from 0.208 in period 1948-1959 to 0.307 in 1998 (Besson Mehdi (2004)). Empirical data shows that developing countries lag behind developed ones in initiating WTO disputes. Drawing information from a statistical documentation [15] of the WTO disputes in 1995-2001, one third of WTO disputes were conducted by developing countries as plaintiffs. Furthermore, most developing and almost all the least developed countries have not used the system. On the contrary, the most frequent complaints come from the EU, the US, Japan and Canada. Canada, the EC, Japan and the US account for over 60% of all complaints and three quarters have not used the system at all since its beginning).

5.2 Trade Policy Review Mechanism

Trade Policy Review Body is a council-level body which discusses the reports of each Member and of the Secretariat. "It reflects the greater consciousness of the connections between the agreements, national policies and the task of implementing the WTO obligations."[16] Continuing with Sam 1999, the purpose of the Body is to improve adherence by all Members to rules and commitments, which leads to the smoother functioning of the multilateral trading system.

The Body undertakes a collective examination of the trade policies and practices of all individual Members.

[14] as it is discussed in Brewer, T. and Young, S. (1999), "WTO Disputes and Developing Countries," *Journal of Wold Trade*, 33(5):169-182. Cited from Besson and Mehdi (2004)

[15] Park, Y.D. and Panizzon, M. (2002), "WTO dispute Settlement 1995-2001: A Statistical Analysis," *Journal of International Economic Law*, 221-244. cited from Besson and Mehdi (2004)

[16] Gallagher, Peter: *The first ten years of the WTO: 1995 – 2005*, Cambridge University Press, Cambridge, 2005, pp. 15

Canada, Japan, the EU and the US are reviewed every two years. The next 16 countries (countries are ranked with respect to the remainder of the membership every six years. The review is prepared by the Secretariat. It prepares a questionnaire for a country. The information is filled by people from ministries.

It seems there is a joint content with the operation of the TPRM. Criticism turns to the fact that the preparation for a review is highly demanding on Government authorities.

Chapter 6: Selected Topics with Respect to the WTO

6.1 Developing Countries

6.1.1 General attitude of the WTO to developing countries

The World Trade Organization claims it operates as a supporting organization of developing countries. One of reasons is that supporting countries of the third world is a support of a more globalised international trade; it is an opportunity for poor countries to develop faster. Indeed, it is mutually advantageous; it is a support of markets which, as soon as stability and a suitable trading environment are settled, companies from developed countries can expand to. It might be also considered as a form of solidarity. However, such generalization can get in a conflict with other points of view giving a deeper insight.

These countries are granted a preferential treatment in agreements, where a great amount of benevolence is expressed from the WTO, even special rights can be given to them. Transitory periods for implementing WTO rules are longer and more common. Greater market access creates better trading opportunities, while markets of developing countries are more protected. Much more attention is paid to securing the developing countries from being harmed. Expenses on offices in Geneva, the seat of the WTO, are subsidized by the Swiss government. Seminars for representatives are held throughout the world. WTO Secretariat gives legal assistance in disputes, etc.

However, Matoo and Subramanian (2004) argue that the system is not ideally set up. They state the current system relieves poor countries of obligations, including those that might be welfare-enhancing. They consider other way, to which the system should incline, to be more desirable-providing them financial assistance and nonpreferential market access.

There are 2 problems of small and poor countries. Firstly, poor countries have little to offer when dealing with market access, Secondly, while having preferential access to the markets of developed countries, further liberalization would be harmful.

6.1.2 Historical Development of the Position of Developing Countries

Until launching the Uruguay Round and the formation of WTO, developing countries had negligible vote on trade negotiations- almost purely a matter of developed countries. The issues, which the attention was paid to, covered liberalizing sectors such as agriculture and clothing. It was the area of developed countries' markets which was important; markets of developing countries in that period were not attractive enough. As globalization was becoming more and more intensive, the importance of the chance to export to markets of developing countries was growing.

It was the Uruguay Round, when a new equilibrium was reached- as a transitory measure, new accessing developing countries became treated preferentially. This compromise was a result of negotiations. It seemed as a good outcome, small and poor countries were given an opportunity to grow because of the openness of developed markets. Developed countries were not affected to a large extent. In fact, it was a mortgage granted to small and poor countries – growing on a basis of preferential

treatment means to gradually become ready for trade liberalization and that is the benefit for exporters from developed countries to expand and make profit.

Over time a new complication has arisen - the influence of small and poor countries has grown and it is visible especially when these countries act in a common interest. These countries raised objections to some practices in the Uruguay Round, the commitments, which were imposed on these developing countries, were viewed as unfair and too burdensome. These costly obligations related mainly to liberalization, institutional improvement, intellectual property rights protection. The Ministerial Conferences in Seattle (1999), Doha (2001), Cancun (2003), for example, therefore faced disagreements related to the above mentioned objections. The following round, the Doha Round, considered the objections from the small and poor countries, which were given extra preferential treatments.

One of such treatments was the initiative of the European Union - Everything But Arms (EBA). The aim of this measure was to support the least developed countries, all their exports (except for arms) to the EU became duty and quota free. It came to force on 5 March 2001. It contained transitional arrangements for the most common commodities (bananas, sugar, rice until January 2006, July 2009, September 2009, respectively). It is a part of the EU's programme the Generalized System of Preferences, the system of exemption from the MFN principle. The agenda of the EU comprised also the Cotonou Agreement (2002). Its aim was to contribute to the successful economic integration of concerned African, Caribbean and Pacific states, to reduce the poverty. These countries were given the freedom to decide about its future direction on condition to respect human rights, etc. However, this treaty indicated a suspension of a preferential treatment, provided that the signatory countries did not belong to the least developed countries, to which EBA was applied. This scheme should become operational in 2008 and means that trade agreements are reciprocal- if the EU granted a duty-free access to a market for these

countries, so have to these countries. To reduce poverty, the EU provided financial aid. Its allocation became more effective under Cotonou Agreement. It favoured well performing economic subjects, which were able to use sources more rationally.

6.1.3 The System of Taking Decisions and its Consequences for Developing Countries

Taking all decisions in the WTO has been based on a consensus principle since the very beginning of this organization, that is, since the establishment of the GATT. Generally, decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes, there are many cases, which require a two-thirds or three-fourths majority depending on the importance of the decision. Plurilateral agreements (agreements that apply only between a subset of the WTO membership) can be made only by consensus. Thus, small countries that now comprise more than 50 percent of the membership of the WTO, have de jure veto power (Matoo and Subramanian (2004)).

To more narrowly define the majority needed for taking decisions, admitting a new member to the WTO, amendments to the WTO, such as changes to the anti-dumping and subsidies agreements, changing the framework of WTO rules - is based on a two-thirds majority. The three-fourths majority is not so common, it is used under minutely specified conditions. For instance, the Ministerial Conference may, in exceptional circumstances, decide to waive an obligation imposed on a Member provided that any such decision shall be taken by three fourths. This right is then specified in further detail.

One area where the small countries may have less influence is a further access liberalization, because it can be undertaken by interested countries without basically

asking others for approval. Thus, tariff cuts, cuts of agricultural subsidies, the opening of markets can be agreed without countries being able to block them.

Small and poor countries are in a disadvantaged position. It is mainly because they are more vulnerable to WTO decisions. Let us consider the Uruguay Round. Dealing with TRIPs, larger developing countries has tools how to mitigate the TRIPs' worst impact (through the use of compulsory licensing). The small countries did not have this option. Implementing agreements like the Customs Valuation Agreement was also more bearable for richer developing countries as it was closer to their further development priorities. Another point is that The most heavily protected sectors in many developing countries tend to be sectors that employ a high proportion of unskilled workers earning low wages (Goldberg, Pavcnik (2004)).

Perhaps the most important problem is that larger developing countries are able to negotiate reciprocal concessions. Large market is in principle more attractive and thus secures more negotiating power for large developing countries. Particularly in the Uruguay Round, large developing countries were able to get market openings in clothing and agriculture. Moreover, the expiration of the MultiFibre Arrangement on 1 January 2005, which meant imposing quotas on the amount developing countries could export to developed countries, was another loss was small and poor countries. They just tented to be higher cost suppliers and the release of a competition from large and cheap developing countries posed additional threat. This situation was the reason for complaining that Uruguay Round was burdensome.

It is the interest of these discontented small and poor countries to influence the forming of rules in the WTO towards gasping the advantage of being a member of this organization. The problem is that their goals might be inconsistent with the goals of the WTO. Issues like the protection of property rights or other rules might suffer in a larger

scale than it is usual in the WTO. Their power particularly consists in being able to block deepening of rules or widening the scope of the WTO, while they have less influence to hinder the scope of WTO.

6.2 Negotiations

Negotiation is the medium of multilateral trading system. Rules, declarations, agreements, amendments, resolving of conflicts, decisions on accepting new members are (or might be) the outcome of negotiations. Negotiations in the WTO are both official and unofficial. Unofficial negotiations play a considerable part in the final result. There are few patterns recognized in the negotiating process. Coalition formation, bilateral and plurilateral interactions among members take part before multilaterizing the agreement through the MFN rule.

6.2.1 Negotiation as a Game Theory

The negotiating process can be described with a help of game theory, where actions by players are interdepent. Outcomes depend on how the interaction is structured, the information available to the players and on the way how players' expectations about other players' actions are formed. Basically, game theory distinguishes between cooperative and noncooperative type of game. Cooperative type assumes the outcome of game to be gains from trade maximizing and the only issue is the distribution of gains across players. It further assumes the existence of a binding enforcement mechanism and the visibility of players' turning away from a cooperative solution. It differs from a noncooperative type in the fact that there is no central enforcement mechanism and the

outcome is not expected to be Pareto- optimal. The multilateral trade liberalization under WTO auspices can be regarded to efforts to set the rules of the noncooperative international trade game. While multilateral trade liberalizations are attempts to coordinate, the outcome of negotiations will rarely be Pareto- optimal (Hoekman (2001)).

6.2.2. A barter-like Multilateral Trade Negotiation (MTN)

Multilateral approach to liberalization has many proponents. They believe „ reductions in all forms of import barriers and export subsidies on a nondiscriminatory basis across all commodities create all commodities will create the most favorable conditions for high, sustained rates of income and employment growth throughout the world economy and forharmonious political relations among nations."[17]

Hoekman (2001) further says, the MTN mainly comprises barter. There is no generally accepted medium of exchange such as money - countries pay with lower trade barriers, market access concessions, etc. To look at this issue from another point of view, lowering trade barriers or granting market access boost the trade volume of goods (services, etc.). That is, it is a trade with estimated amount of exported/imported goods for which a space was created by lowering trade barriers, etc. To evaluate, for instance, the value of lowering trade barriers, several methods have been practiced. One basic method (for tariffs), frequently called trade coverage is defined as the reduction in a tariff multiplied by the volume of imports of that product. For example, if imports of a product are US$20 million and the applicable tariff is reduced from 15% to 10%, the trade coverage is 0.05 x 20, or US$1 million.

Another basic method is the average cut. It uses weighted averages. If a country imports US$20 million worth of cotton shirts and US$30 million worth of cotton trousers

[17] Baldwin, Robert E.: *Alterantive Liberalization Strategies*, National Buerau of Economic Research, Cambridge, 1986, pp.10

and reduce tariff on cotton shirts by 5% and on cotton trousers by 10%, then weighted average cut in import tariffs for cotton imports is 8% (0.05 x 20/50 + 0.1 x 30/50). Of course, these estimates might be biased pretty well (in case of high prohibitive tariffs, for instance).

There is no doubt that barter is inefficient (which was the main reason to introduce money). There are several types of inefficiency which would not occur in case of money as a medium. Firstly, the market might not offer any goods a trading partner country is interested in. This is a point where negotiations stop (if they have already started) - trade will just not be possible. Secondly, a chain of transfers may be created as a consequence of reality that a trading country, which owns something the trading partner country is interested in, wants something which has only the third party, not the trading partner country. The trade in this case is practicable on condition that every country has something that another wants and it must be possible to equate trader's marginal valuations of goods. In other words, consider a simple 3-country model with 3 different goods. Country A produces goods *a*, country B goods *b* and country C goods *c*. Country A is interested in goods c, country B in *a* and country C in *b.* Country A wants goods from country C but does not have anything to offer which country C is interested in (country B has the goods the country C wants). We could continue further following the same logic to describe the situation for the remaining countries B and C. To solve it, country B would trade with country C - exchange *b* for *c* and consequently make a deal with country A- exchange c for a. This can occur only on condition that there is sufficient amount of goods *a, b* and *c* to equate trader's marginal valuations of goods. As goods are indivisible in barter, trade may not occur, and it may hold even for MTNs.

6.2.3 Starting to Negotiate

Because of these problems connected with MTNs, it is important to carefully plan the agenda, i.e. which topics will be a subject to multilateral trade liberalization. The agenda itself determines a set of possible policy packages that might become the solution to the negotiation. A package is a set of issues and the problem not only in what to link, but also when to link. The choice of issues depends on whether there are sufficient mutual gains to be achieved and whether these gains are distributed relatively symmetrically. To reach balance, often a great piece of creativity is needed. The agenda should include alternatives and be flexibly responsive to changing terms of negotiations. During the negotiation process, involved parties are likely to modify their perception of how realistic their demands are. It is quite risky to create a stiff agenda, a failure of agenda usually means a failure of the whole ministerial meeting.

Establishing an agenda is a negotiation itself and the preparations for agenda consist of examination of domestic needs and interests, national authorities and industries are engaged in a domestic negotiation. Industries take an active part in negotiation, it is common that large enterprises, industry associations or generally lobbying parties are very initiative in pushing through their interests. As firms they do not have direct access to the WTO for this purpose, only the governments can help them to bring their matters to the WTO.

Lobbies are useful in collecting intelligence on firms' needs and requirements which can become legislative initiatives vital for managing trade systems and keeping them up to date. Lobbies are considered to be influential the EU, USA or other OECD countries. '' There are hundreds of European and international federations, as well as hundreds of multinational firms with direct representation in Brussels (de Bony, 1994)'' Numerous management consulting and public relations firms maintain offices close to the

EU Commission and are actively involved in efforts to shape EU trade policy. As of 1998, there were 13,000 professional lobbyists in Brussels, almost one per Commission staff member (World Bank, 2000). ''[18]

6.2.4 Choosing allies and enemies

The choice of agenda is a pretty complex matter. There are a few more important factors which have say in making the set of feasible issue linkages. The first one is the number of participants. Generally, transaction costs go up together with the increasing number of participants. That means that not only the variety of nations, but also the number matters. Usually, the less troublesome situation is when there are few countries trying to do MTNs and the benefits for these toughly hard negotiating countries resulting from an agreement (which is about to be established) are so large that free riding by others is not such a big deal. There is a second factor which can make the situation easier in large part – the extent to which nonparticipants can be excluded from the benefits of an agreement.

A good example for this and of how a MFN requirement can be circumvented is from a 1904 trade agreement between Germany and Switzerland: ''Germany committed itself to reducing its tariffs on ' large dapple mountain cattle reared at a spot at least 300 meters above sea level and having at least one month grazing each year at a spot at least 800 meters above sea level' (Curzon, 1965: 60).''[19] If there are limited possibilities to

[18] Hoekman, Bernard M.; Kostecki Michel M: *The Political Economy of the World Trading System: The WTO and Beyond*, Oxford University Press, New York, 2001, pp.121

[19] Hoekman, Bernard M.; Kostecki Michel M: *The Political Economy of the World Trading System: The WTO and Beyond*, Oxford University Press, New York, 2001, pp. 128

prevent the parties, which are not in favor of an agreement, from free riding, then it they should be included in the negotiation process. However, the differences in opinions are then deep enough to block an agreement.

When negotiating, coalitions of like-minded countries on an issue form. It happens because of increasing negotiating power, partly sidestepping free-riding problems and reducing transaction costs: in order to grab the advantages from forming coalitions, it should be in interest preserve to as few coalitions as possible. Benefits of the WTO have the characteristics of public good, which is, adding new members to the coalition does not impair the benefits of any member of the coalition. Negotiations are multilevel. Just only deciding which coalition to join (of course, provided that there are not only opposite- minded coalitions) is a negotiation. As a result, even at this early stage compromises must be made. Then there is a negotiation inside a coalition to work out a joint attitude to finally bargain with other coalitions.

Hamilton and Whalley (1989)[20] sorted coalitions to a few categories: agenda moving, proposal making, blocking and negotiating coalitions. The first three are the most common. As there is no need to arrive at a common position, they do not require a lot of effort to coordinate and that contributes to the fact that they are wide spread. In the Uruguay Round major developing countries acted rather as an agenda moving in TRIPs and services. During Seattle ministerial meeting African countries were a blocking coalition because they were excluded from most green room negotiations.

[20] taken from Hoekman (2001)

6.2.5 Reciprocity in negotiations

As negotiation is a key the medium of multilateral trading system, the Articles of the WTO Agreements, dealing various issues, emphasize negotiations to be based on reciprocity and to be mutually advantageous. Reciprocity is viewed as a tool which helps prevent free riding by countries that continue to maintain high trade barriers. Reciprocity can be applied also in a broader sense, it can be intra-issue as well as inter-issue. Intra-issue reciprocity means that concessions of an identical nature are exchanged while inter-issue reciprocity stands for an exchange of concessions of dissimilar nature. Reciprocity may be product specific (item-by-item negotiation) or more general (across-the-board trade barrier reductions).

Reciprocity converts nation's exporters in tariff debates from watchers to active opponents of protection within their own nation . Lowering tariffs at home actually means gaining better access to foreign markets. That gives incentive to domestic lobbies to pressure domestic government. The additional element here to reach optimal tariff rate is the size of export and import competing sectors. If there are many active firms in the import competing sector the marginal benefit of a tariff rise is greater in the unilateral case and the size of the export sector's gain from a MFN tariff cut depends on size of the export sector (Baldwin 2006). One of the reasons why size of import and export competing sectors matter is that they are in different situations – a change in tariffs has different impact on import sector than on the export sector.

To better describe the character of WTO negotiations we mention that there is a lack of price mechanism which makes the negotiations different from simple bargaining in an Arabic shop. It makes the situation less clear which raises the opportunity to drain more by tactics but the ambiguity is another source of quarrels which can hamper reaching an agreement. Therefore negotiations often end in a dead end because no party is willing to make a compromise. It makes negotiations really dramatic with gridlocks and last minute deals. Another feature of WTO negotiations is that negotiators bargain

over a substantial period of time and they know the schedule- when the session is planned to end and that their meeting will be repeated. Another issue is that internal problems, namely inside governments, might become larger than problems to agree with trading partners.

6.2.6 Stages of Negotiations

The prenegotiations, which lead to establishing the agenda, are followed by the negotiation period. It is divided into stages. The first one is the learning period during which participants examine thoroughly the agenda and let others know about their preferences. It is a step towards forming coalitions. The learning period is succeeded by substantive negotiations where demands of all coalitions are met, rectified and a set of feasible solutions is created. It leaves a space for various tactics, aggressive or mild or nodding and it can be changed during time period.

In practice, reputation of negotiating teams is essential and it takes a lot of time to build it. For this purpose, responsibility, proficiency in learning period, not having unreasonable second thoughts about own demands is required and often the change of approach (tactics) works against the reputation. It is suitable to join the change of approach with the change of the whole negotiating team. When negotiations are done, postnegotiations then come. It is the implementation stage, agreements are incorporated into a country's law system. Enforcement of such agreements must be secured as well.

7. Conclusion

This thesis portrays the World Trade Organization chiefly as a legal framework determining rules on international trade. It shows how this framework has evolved from a diplomat's agreement throughout past 60 years. It has briefly covered the history of the WTO as well as practical experience with protective instruments such as anti-dumping, subsidies and countervailing duties and safeguards. It concludes to what extent anti-dumping measures were exploited, explains why safeguards became unpopular, points at the GATT's flaw related to subsidies and countervailing duties.

It provides definitions and basics from WTO's legal texts and their understandable interpretation and does not exclude less important agreements to better illustrate the scope of rules and more practical aspects of international trade. The thesis can serve as a comprehensive introductory paper to the WTO's understanding with advanced insight into Dispute Settlement mechanisms and key issues in negotiating.

The purpose of the schedule of Dispute Settlement is to help reader get a picture about flexibility and formal fairness of the system. The further examination revealed past and present imbalances in the system via evaluation of Dispute Settlement’s functioning supplemented by statistics of the system’s usage by developed and developing countries.

Further attention was paid to developing countries. This thesis covered the WTO’s treatment towards developing countries, assessment of their position by searching for reasons causing the disadvantages in this issue and development of character of this problem throughout time.

The end of the thesis is devoted to the core process of arriving at WTO's agreements. It includes coalition formation, game theory issues, how consensus is reached in multilateral trade negotiations. Particular stages of MTN are described as well.

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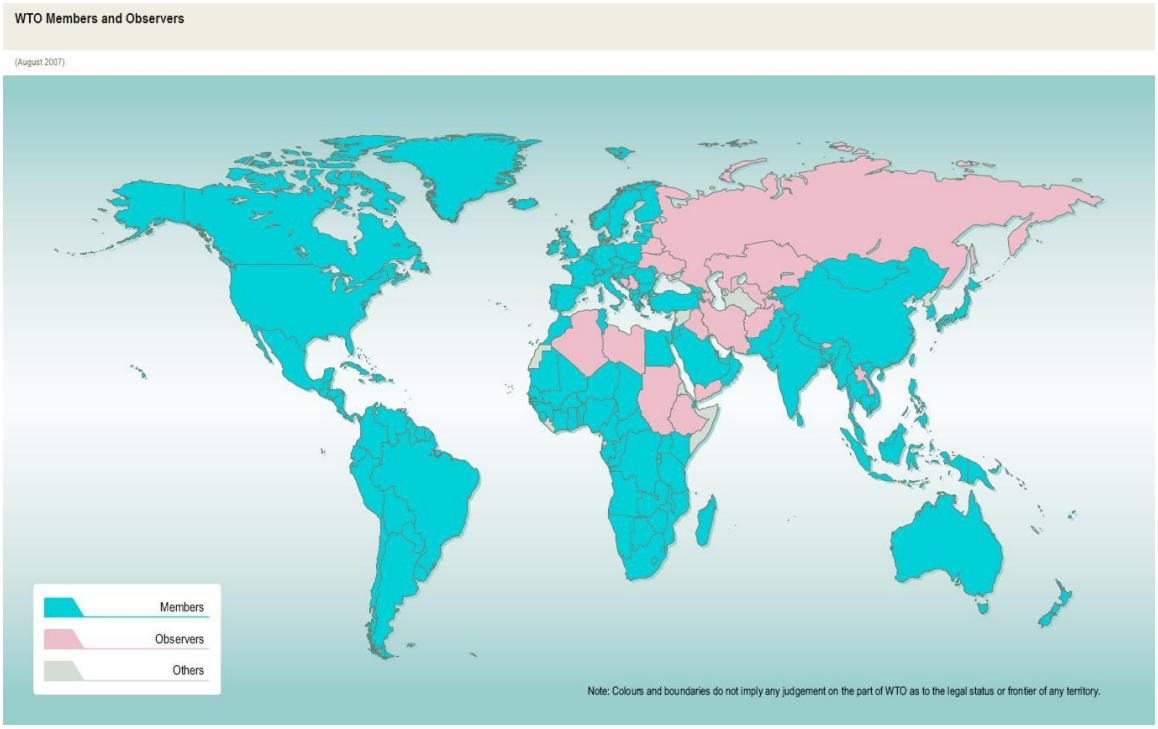
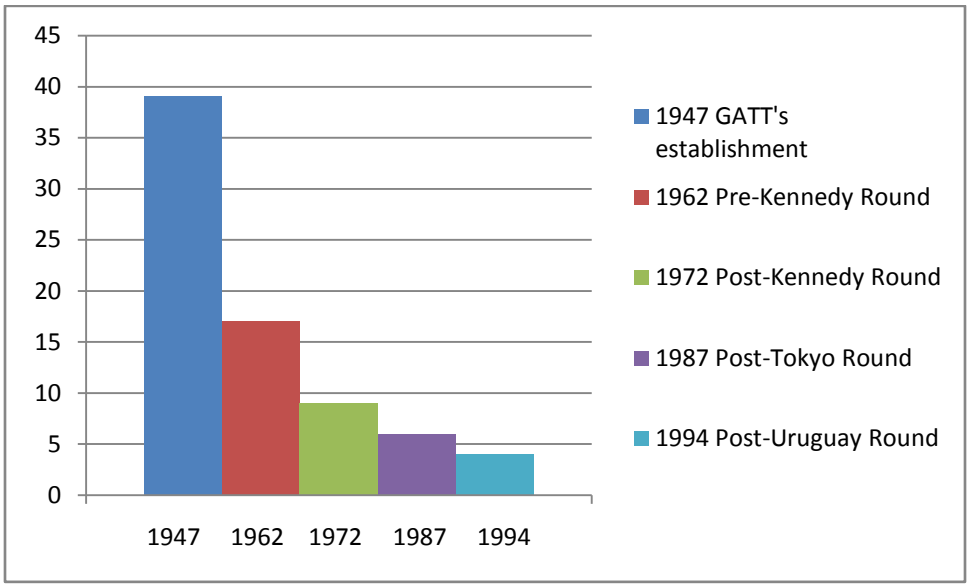
Appendix

Figure 1: Members of the WTO (August 2007)



Source: WTO

Figure 2: Average tariff reduction in 1947-1994



Source: Adamantopoulos: An Anatomy of the World Trade Organization, 1997

Figure 3: Annexes to the Agreement Establishing the World Trade Organization

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Annex 1A Multilateral Agreements on Trade in Goods

- GATT 1994 (must be read with GATT 1947)
  Other duties and charges (GATT Art.II:l(b)), Understanding
  State trading enterprises (GATT Art.XVII), Understanding
  Balance-of-payments, Understanding
  Regional trade agreements (GATT Art.XXIV)
  Waivers of Obligations, Understanding
  Concession withdrawal (GATT Art.XXVIII), Understanding
  Marrakesh Protocol to the GATT 1994
- Agriculture
- Sanitary and Phytosanitary Measures
- Textiles and Clothing
  Note: this Agreement was terminated on 1 January 2005
- Technical Barriers to Trade
- Trade-Related Investment Measures (TRIMs)
- Anti-dumping (Article VI of GATT 1994)
- Customs valuation (Article VII of GATT 1994)
- Preshipment Inspection
- Rules of Origin
- Import Licensing
- Subsidies and Countervailing Measures
- Safeguards

Annex 1B General Agreement on Trade in Services (GATS)

Annex 1C Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Annex 2 Dispute Settlement Understanding

Annex 3 Trade Policy Review Mechanism

Annex 4 Plurilateral Trade Agreements

- Annex 4(a) Agreement on Trade in Civil Aircraft
- Annex 4(b) Agreement on Government Procurement
- Annex 4(c) International Dairy Agreement
  Note: this Agreement was terminated end 1997
- Annex 4(d) International Bovine Meat Agreement
  Note: this Agreement was terminated end 1997

Source: WTO

Figure 4: Schedule of liberalization in agriculture

	Developed countries 6 years: 1995-2000	**Developing countries** 10 years: 1995-2004
Tariffs		
average cut for all agricultural products	**-36%**	**-24%**
minimum cut per product	**-15%**	**-10%**
Domestic support		
total AMS cuts for sector (base period: 1986-88)	**-20%**	**-13%**
Exports		
value of subsidies	**-36%**	**-24%**
subsidized quantities (base period: 1986-90)	**-21%**	**-14%**

Source: WTO

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Charakteristika tématu, současný stav poznání, případné zvláštní metody zpracování tématu:

WTO deals with issues of international trade, develops economic relations between states. Thus it deserves attention.

Struktura BP:

Introducing WTO Trade rounds Contribution to trade Current issues and disputes Conclusion

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