

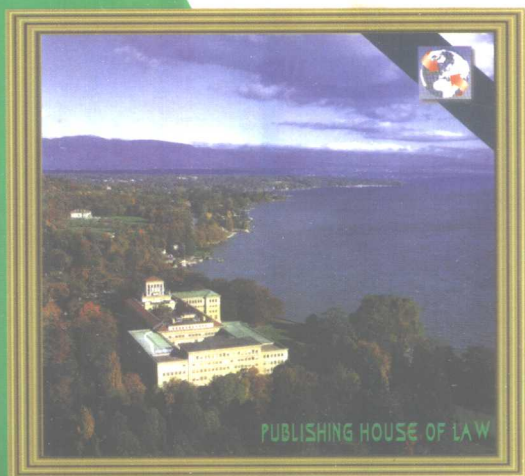
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English Readings in Legal Studies

关贸总协定
与
世界贸易组织

GATT & WTO — Law and Rules for World Trade

王 毅 / 编



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律出版社

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出版者的话

1755年,在英语——作为一种文字的发展史上,是具有里程碑意义的。这一年,英国的第一部《英语大辞典》问世。她的作者便是英国著名的作家和词典编纂学家撒缪尔·约翰逊(Samuel Johnson)。他在这部大辞典的序言里写下了这样一句话:The greatest of speech is frequency of translation. ... this is the most mischievous and comprehensive innovation (语言最大的祸害就是频繁的翻译,这是一种最有害且最综合意义上的“再炮制”。)

“炮制”常常会差强人意,甚至于以讹传讹,而法学译作更在一定意义上是件“不可为而为之”的作品。英美法的一些概念、术语实难在汉语中有完美的匹配。于是我们推崇读原文。

原文闪烁着作品本身质朴而灵动的光芒,而地道的语言传递着的是英语中“法言法语”独特的个性化色彩。

少有机会读到英美法学原篇的中国学子们,将会从这套丛书中看到真正的英文法学篇章是个什么样子。这里既有严谨、典型的英美法学学术篇章,也有法庭上唇枪舌剑的审判实录,更有闻名于世的英美法“案例学习”。

这套辑录自90年代以来的“原汁原味”的法学英语读物,我们相信她带给您的会是这样的阅读体验——语言一百分,思想不打折。

1997年12月

BA20310

导 言

关贸总协定(GATT)前总干事奥利维尔·朗格先生(Olivier LONG)曾于1986年说过,“关贸总协定是一个非常复杂的条约,要从法律角度进行探讨尤其困难。”同样,1995年生效的世界贸易组织(WTO)一揽子协议中包含了二十余项多边贸易协议,其内容复杂、浩繁、艰深,更超过了它的前身关贸总协定。

一位先哲说过,真理总是朴素的。能用简明朴实的语言把复杂的定理规则表达清楚,才是真正掌握这门科学的大师。这个册子中编注文章的共同特色就是采用简明易懂的语言(同时也是非常地道标准的英文)把十分复杂的 GATT/ WTO 论述得条缕清晰,层次分明。近年来,国内有关关贸总协定和世贸组织的文章和册子可谓多矣!但其中一些读来颇有吃别人嚼过的馒头的味道,往往是雾里看花,甚至于以讹传讹。要真正了解和掌握 GATT/ WTO 的法律规则,读者还是以直接接触第一手资料为宜。

笔者从事 GATT/ WTO 工作已有多多年,曾经亲身参与了中国“复关”谈判和加入世贸组织谈判,并参与了长达八年的乌拉圭回合多边贸易谈判中的服务贸易谈判。在1993年至1996年期间,笔者在中国常驻日内瓦代表团工作,作为中国代表团的成员出席了世贸组织成立前后的有关会议和谈判,其中包括争端解决机构的建立及其活动。本书文章中谈及的 GATT/ WTO 在八十年代以来的事件和活动许多是笔者亲身经历的,至今仍记忆犹新。现在能有机会与大家一起分享,更感到开卷有益,温故而知新。文中的注释和导读,均为笔者所加,供读者参考。这些注释难免有疏漏之处,恳请有识者不吝赐教、指正。

王 毅于北京

1997年10月

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1. GATT: What It Is, What It Does

这是由关贸总协定秘书处编写的一篇《关贸总协定简介》。

该文以流畅简洁的语言,深入浅出地介绍了关贸总协定 1947 年的初创历史。创始国原本打算建立的“国际贸易组织”(ITO)因个别大国国会未通过而流产,而作为权宜之计“临时适用”的关贸总协定却延续四十余年,发展得根深叶茂。可谓“有心栽花花不活,无心插柳柳成荫”。

读者可以从本文了解到:关贸总协定为国际贸易制订了系统的基本规则(如最惠国待遇、国民待遇、以关税作为保护手段、公平竞争等等);关贸总协定具有的三大职能,即制订多边国际贸易规则,组织多边贸易谈判和解决缔约方之间的国际贸易争端;关贸总协定的组织机构和运作情况。同时,本文还介绍了关贸总协定历史上多边贸易谈判各个“回合”的谈判成果,特别是第八轮多边贸易谈判——“乌拉圭回合”所面临的难题挑战与成功机遇。

本文不失为初学者了解关贸总协定 ABC 的一篇基本读物。

1. Introduction

The General Agreement on Tariffs and Trade — GATT — is a binding contract¹ between 105 governments which together account for around 90 per cent of world merchandise trade². The objective of the contract is to provide a secure and predictable international trading

environment for the business community³ and a continuing process of trade liberalization in which investment, job creation and trade can thrive. In this way, the multilateral trading system contributes to economic growth and development throughout the world.

So significant is the contractual nature of the GATT that its members are referred to as Contracting Parties.⁴ Their relationships with each other and the GATT as a whole represent a delicate balance between the rights and benefits of membership and the obligations that go with them.

The GATT operates in three ways:

- as a set of multilaterally-agreed rules governing the trade behaviour of governments providing, in essence, the “rules of the road” for trade⁵;

- as a forum for trade negotiations in which the trade environment is liberalized and made more predictable either through the opening of national markets or through the reinforcement and extension of the rules themselves;

- as an international “court” in which governments can resolve disputes with other GATT members.

Since 1986, the GATT has been conducting the biggest trade negotiation ever, the Uruguay Round.

(1) History

GATT was established on a provisional basis after the Second World War in the wake of other new multilateral institutions dedicated to international economic cooperation—notably the Bretton woods institutions⁶ now known as the World Bank and the International Monetary Fund.

The original 23 GATT countries had been among over 50 working on a draft Charter for an International Trade Organisation

(ITO)⁷ which would have been a specialized agency of the United Nations⁸. The Charter was intended to provide not only world trade disciplines but also rules relating to employment, commodity agreements⁹, restrictive business practices,¹⁰ international investment and services.

In an effort to give an early boost to trade liberalization after the Second World War—and to begin to correct the large overhang of protectionist measures which remained in place from the early 1930s — tariff negotiations were opened among the 23 founding “contracting parties” in 1946. This first round¹¹ of negotiations resulted in 45,000 tariff concessions¹² affecting \$ 10 billion — or about one-fifth — of world trade. The value of these concessions was protected by early acceptance of some of the trade rules in the draft ITO Charter.¹³ Together—tariff concessions and rules — they became known as the General Agreement on Tariffs and Trade and entered into force¹⁴ in January 1948.

Although the ITO Charter was finally agreed at a UN Conference on Trade and Employment¹⁵ in Havana in March 1948 ratification¹⁶ in national legislatures proved impossible in some cases. When the United States, government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO was effectively dead. Despite its provisional nature, the GATT has remained the only multilateral instrument¹⁷ governing international trade ever since. One of the final results of the Uruguay Round¹⁸ may be a decision to regularize the institutional arrangements of a world trade body.

(2) *Who's in the GATT?*

In October 1992 GATT had 105 contracting parties. Although developing countries have always had a significant presence accounting for 11 of the first 23 members—they now account for more than two-

thirds of the membership. All countries of the Organization for Economic Cooperation and Development (OECD)¹⁹ are contracting parties. So too are most of the Eastern and Central European countries which are currently in the process of moving from centrally planned to market-oriented economies²⁰—notably, Czechoslovakia, Poland, Romania and Hungary.

In addition, twenty-seven countries, while not contracting parties, apply the rules of GATT to their trade policies on a *de facto* basis.²¹ These and a number of other countries have observer status²² in some of the organs of GATT. In 1990 the Soviet Union became an observer as a means of preparing itself for a possible future application for accession and in order to familiarize itself with the operation of the multilateral system. Many inter-governmental organizations also have observer status in GATT.

At the time of writing, eleven countries were in the process of negotiating their accession and China was seeking to rejoin²³.

Why Open Trade Makes Sense

The principles of an open trading system based upon multilaterally agreed rules are simple enough and rest largely on commercial common sense²⁴.

"Comparative advantage"²⁵ means that countries prosper by concentrating on what they can produce best. This happens naturally for firms in the domestic market, but that is only half the story²⁶. The other half involves the world market. Most firms recognize that the bigger the market, the greater their potential — in terms of achieving efficient scales of operation²⁷ and having access to large numbers of customers. In other words, liberal trade policies which allow the unrestricted flow of goods, services and productive inputs multiply the rewards that come with producing the best products, with the best

design, at the best price.

But trading success is not a static thing. Competitiveness in particular products can move from country to country, just as it can move from company to company when the market changes or new technologies make cheaper and better products possible. This is, in general, a gradual process. As long as the trading system is allowed to operate without the constraints of protectionism, then firms can adapt in an orderly and relatively painless way to a focus on new products, finding either a new "niche" in their current area²⁸ or expanding into new product areas.

The alternative of import protection and perpetual government subsidies leads to bloated, inefficient companies supplying consumers with outdated, unattractive products. Ultimately, factories close and jobs are lost despite protection and subsidies. If other governments pursue such policies overseas markets contract and world economic activity is reduced.

2. Rules of the Road for Trade

The body of rules which together make up the multilateral trading system known as the GATT has three elements. First and foremost is the General Agreement itself and its 38 articles. Added at later stages, particularly at the end of the Tokyo Round, are associated agreements²⁹ covering anti-dumping and subsidy rules and other non-tariff or sectoral issues. Although membership of these agreements is much more limited than for the General Agreement—ranging from less than twenty to about forty—the members nevertheless account for the vast majority of world trade in the relevant areas. Finally, the GATT system is completed by the Multi-Fibre Arrangement which is a negotiated exception³⁰ to the normal disciplines of the General Agreement

affecting the textiles and clothing sector.

Underlying the often complex articles of the General Agreement is a number of simple principles.

(1) *Trade without Discrimination*

The first principle embodied in the famous "most-favoured-nation" clause³¹ is that trade must be conducted on the basis of non-discrimination. All contracting parties are bound to grant to each other treatment as favourable as they give to any country in the application and administration of import and export duties and charges. Thus no country is to give special trading advantages to another or to discriminate against it; all are on an equal basis and all share the benefits of any moves towards lower trade barriers. Most-favoured-nation treatment has been the vehicle which has ensured that developing countries and others with little economic leverage³² have been able to benefit freely and without question from the best trading condition negotiated by, and among, the strongest economic powers. Exceptions to this basic rule are allowed only in certain special circumstances. (See "Regional trading arrangements" and "Special conditions for developing countries,").

A further article relating to non-discrimination requires that once goods have entered a market, they be treated no less favourably than equivalent domestically-produced goods. This is referred to as "national treatment"³³.

(2) *Protection through Tariffs*³⁴

GATT does not prohibit protection for domestic industries. However, a second basic principle is that where such protection is given, it should be extended essentially through the customs tariff and

not through other commercial measures. Among other things, the aim of this rule is to make the extent of protection clear and to minimize the trade distortion caused.

(3) *A Stable Basis for Trade*

A stable and predictable basis for trade is provided partly by the "binding" of the tariff levels³⁵ negotiated among the contracting parties. These bound items³⁶ are listed, for each country, in tariff schedules³⁷ which form an integral part of the General Agreement. Although provision is made for the renegotiation of bound tariffs,³⁸ a return to higher tariffs is discouraged by the requirement that any increases be compensated for.

(4) *Promoting Fair Competition*

Since it permits tariffs and other protection, in certain circumstances, the GATT is clearly not the "free-trade organization" it is sometimes described as. It is more concerned with open, fair and undistorted competition³⁹. Much of the GATT's work focuses on subsidies and dumping⁴⁰, for instance. The rules under which governments may respond to dumping in their domestic market by overseas competitors are contained in the GATT "Anti-Dumping Code."⁴¹ Similarly, where export and domestic subsidies are alleged they can be challenged in the GATT. At the same time, GATT rules place disciplines on the use of "countervailing" duties⁴² which can be imposed to negate the effects of a subsidy. Other distortions of international competition are being considered in the Uruguay Round.

(5) *Quantitative Restrictions on Imports*

A general prohibition of quantitative restrictions⁴³ is a basic provision of GATT, which was established at a time when they were widespread and were perhaps the greatest single obstacle to international trade. Quantitative restrictions are now less widespread in developed countries; nevertheless they affect trade in agricultural goods, textiles, steel and certain other products, many of which are of export interest to developing countries.⁴⁴

The main exception to the general GATT rules against quantitative restrictions allows their use in balance-of-payments⁴⁵ difficulties (Article XII). Even then, restrictions must not be applied beyond the extent necessary to protect the balance-of-payments and must be progressively reduced and eliminated as soon as they are no longer required. This exception is broadened, for developing countries, by the recognition (Article XVIII) that they may impose quantitative restrictions to prevent an excessive drain⁴⁶ on their foreign exchange reserves caused by the demand for imports generated by development, or because they are establishing or extending domestic production. Regular consultations in GATT are held with countries that introduce, maintain or intensify import restrictions for balance-of-payments reasons.

Where quantitative restrictions are permitted, they should be applied without discrimination (Article XIII).

(6) *The "Waiver"⁴⁷ and Possible Emergency Action⁴⁸*

There are "waiver" procedures (Article XXV) whereby a country may, when its economic or trade circumstances so warrant, seek a derogation⁴⁹ from particular GATT obligations. Among others, the United States has a waiver relating to the implementation of certain agricultural policies which would otherwise be contrary to GATT.

It is also recognized that, on occasion, governments feel they

have no choice but to offer domestic industries temporary protection from imports. The "safeguards"⁵⁰ rule of GATT (Article XIX) permits such action in carefully defined circumstances. A contracting party may impose import restrictions or suspend tariff concessions on products which are being imported in increased quantities and which cause, or are likely to cause, serious injury to competing domestic producers.

In recent years, many GATT members have become concerned at the resort by some governments to discriminatory bilateral arrangements — often called "voluntary" export restraints⁵¹—which have avoided the disciplines of Article XIX. As a consequence, the question of safeguards forms an important negotiating issue in the Uruguay Round.

(7) *Regional Trading Arrangements*

Regional trading arrangements, in which a group of countries agree to abolish or reduce barriers against imports from one another, have been established in many parts of the world. The General Agreement recognizes, in Article XXIV, the value of closer integration of national economies through freer trade. It therefore permits such groupings, as an exception to the general rule of most-favoured-nation treatment, provided that certain strict criteria are met. The rules are intended to ensure that the arrangements facilitate trade among the countries concerned, without raising barriers to trade with the outside world. In this way, regional integration should complement the multilateral trading system and not threaten it.

Regional trade groupings under Article XXIV may take the form of a customs union or a free-trade area⁵². In both cases, duties and other barriers to substantially all trade between countries in the group are required to be removed. In a free-trade area, each member maintains its own external trade policy, including its tariff, towards non-

members. A customs union adopts a unified customs tariff towards non-members. In either case, duties or other regulations affecting trade of members of the group with non-members are required to be no more restrictive than those which were applied before the group was set up.

(8) *Special Conditions for Developing Countries*

About two-thirds of GATT's member countries are in the early stages of economic development and there is a constant stream of developing countries seeking accession. As a consequence, in 1965, a new chapter—Part IV—was added to the General Agreement. Three new articles encouraged industrial countries to assist developing nations "as a matter of conscious and purposeful effort". Part IV recognized the need of developing countries to enjoy more favourable conditions of access to world markets for their products and for developed countries to refrain from introducing new barriers to exports of primary and other exports of special interest to less-developed nations⁵³. Industrial countries also accepted that they would not expect reciprocity for commitments they made in negotiations to reduce or remove tariff and other barriers to the trade of developing countries .

At the end of the Tokyo Round in 1979 a decision was taken on differential and more favourable treatment⁵⁴, reciprocity and fuller participation of developing countries. The decision recognized developing countries as a permanent legal feature of the world trading system. This "enabling clause"⁵⁵ includes provision of a permanent legal basis for the extension of the generalized system of preferences (GSP)⁵⁶ by developed countries to developing countries. It also permits special trade treatment for the least-developed countries⁵⁷.

(9) *Making an Exception for Textiles and Clothing*

Since 1974, much of world trade in textiles and clothing has been regulated by the Multi-Fibre Arrangement (MFA)⁵⁸. Negotiated as an exception to normal GATT disciplines, the MFA has provided the basis on which industrial countries have established quotas⁵⁹ on imports of textiles and clothing from more competitive developing countries. The Arrangement has been extended four times, most recently, in July 1991, for a period of 17 months. Some 41 countries or territories participated in the MFA (counting the EC as a single participant) prior to this extension.

In principle, the Arrangement is intended to reconcile the interests of importing and exporting countries by permitting the expansion and liberalization of trade while avoiding disruption of markets⁶⁰. The safeguard provisions of the Arrangement⁶¹ may be invoked by participants if their domestic market is disrupted or threatened with disruption as a result of imports. Any restrictions introduced in this manner must permit exports from an affected supplying country to expand in an orderly and equitable manner. Most safeguard measures under the Arrangement have taken the form of bilateral agreements.

One major objective of the Uruguay Round is to secure the eventual integration of the textiles and clothing sector into the post-Uruguay Round GATT, thereby ending its status as an exceptional case.

3. How GATT Works

The work of GATT is undertaken by representatives of governments—the Contracting Parties—but its roots lie in the everyday activity of industry and commerce. Trade policies and negotiating positions are formulated in capitals,⁶² usually with a substantial advisory input from private firms, business organizations as well as consumer