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Basic principles of the GATT – theory and practice

History and legal nature of the GATT

The General Agreement on Tariffs and Trade (GATT) is the most important legal source of world trade law. It was negotiated during the United Nations Conference on Trade and Employment after efforts to create the International Trade Organization remained without success. The original GATT text from 1947, subject to modifications from 1994, is still in effect, even if it has become part of the World Trade Organization which has been in force since its establishment in 1995. Until today, 164 nations have entered the WTO and must therefore also comply with the provisions of the GATT. As for the Netherlands, it signed the GATT on January 1, 1948 and became part of the WTO with its establishment in 1995. Also the Czech Republic signed the GATT in 1993 and entered the WTO in 1995. Apart from the GATT, crucial legal bases on which the WTO is acting are the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). When negotiated, the GATT was a multilateral agreement regulating international trade. Simultaneously it is to be understood as a discussion forum for international trade problems as well as a body for multilateral trade negotiations.

Goals and how to accomplish them

After the horrors of the Second World War, the international community set itself the objective to reintegrate the global economy fundamentally. The goals pursued by the GATT are explicitly enumerated in the preamble, namely raising the standard of living, ensuring full employment, increasing the real incomes, the effective demand and the production. Globally, this also entails the full use of the world's resources and expanding the production and exchange of goods. Special emphasis is put on the support of developing countries, as they represent three quarters of the 130 signatory countries.
In order to realize these ambitious ideas, the signatory states declared to enter into "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce".

Basic principles

Although the WTO and the GATT are often described as enhancing "free trade", the system allows certain forms of protection. This is why, more accurately, one should speak of a system of rules dedicated to open, fair and undistorted competition. Three main principles are thereby binding for the member states when concluding above-mentioned international arrangements.

Non-discrimination

The central principle of non-discrimination shall prevent protectionist measures and guarantee the freedom of trade among all member states. It is designed to secure fair conditions of trade.

Most-favoured-nation principle (MFN-principle), Art. I.

According to this principle, a signatory state granting any trade or financial advantage to another one shall grant it to all the other signatory states as well. This happens unconditionally (i.e. without asking for reciprocity) and immediately. Pursuant to Art. 1, custom tariffs or other fees charged by one country for the import or export of like products have to be identical for all contracting parties. Equal competition conditions are thereby established for all member states.

However, relating to this principle there are emerging various exceptions and uncertainties. It is only applicable to "like products", while a definition of "likeness" is not provided. Dependent on the specific situation, the crucial question is whether the goods are in competition with each other due to their characteristics and quality, are meant for an identical consumer, or whether they are exchangeable. Problems can also emerge from the definition of a "foreign" or "local" product. Furthermore, numerous exceptions are provided by the GATT itself. Countries can raise barriers against products that are considered to be traded unfairly from specific countries or set up a free trade agreement that applies only to goods traded within the group, thus discriminating against goods from outside (see, for instance, the free trade areas NAFTA and EFTA or the EU's customs union). The most important exception refers to the treatment of developing countries. To such can be given special access to the developed countries' markets ("Generalized system of trade preferences").

In short terms: Grant someone a special favour and you have to do the same for all other signatory states.

Principle of National Treatment, Art. 3.

This principle is supporting non-discrimination between the member states and guarantees national compliance with the non-discrimination rule in foreign trade. Therefore it prohibits unequal treatment of foreign imported and locally-produced goods. The Agreement on Subsidies and Countervailing Measures (SCM) is concretizing this basic principle as it prohibits certain subsidies to companies contingent upon export performance and upon the use of domestic over imported goods. If domestic companies is given an advantage by the subsidies, the WTO members are authorized to take countermeasures.

Also in terms of this principle, "like goods" serve as the – undefined – reference point. Restrictions are imposed on this rule as well insofar as it only applies once the goods have entered the market. Charging unequal customs duty on an import is therefore not a violation of national treatment.

In short terms: Give others the same treatment as your own nationals.

Reciprocity

According to the preamble as well as various provisions of the GATT, negotiations are to be concluded "on a reciprocal and mutually advantageous basis". That is to say, that to a country which takes new steps towards liberalization granting trade advantages to another member state is to be granted in turn – "reciprocally - equivalent privileges by the favoured state. In declaring this, the member states aim at limiting the scope of free-riding that may arise because of the MFN rule and at obtaining better access to foreign markets. For the member states, the gain available from negotiating is greater than from unilateral liberalization.

Also in terms of reciprocity, an exception is made in favour of the developing countries. Under the *Enabling Clause* it is permitted to the members to accept less than full reciprocity from their developing trading partners. In doing so, the nations comply with the principle of solidarity.
The described principles affect one another, thus increasing their effectiveness as a whole. When, for instance, two countries conclude a bilateral agreement which advances liberalization, applying the Principle of Reciprocity in doing so, this progressive agreement automatically becomes effective on a multilateral basis under the Most-favoured-nation Principle. Consequently, global liberalization of trade is not be endangered by selective protectionist measures.

In short terms: Lower your import duties and other trade barriers in return for similar concessions from another country.

Liberalization through negotiation

Although one important target of the GATT is to reduce tariffs and trade barriers substantially, it is not prohibiting any kind of custom tariffs of individual countries. By way of multilateral negotiations between the member states (for instance the so-called "Uruguay Round", held in Uruguay from 1986 to 1994, from which emerged the WTO), custom tariffs shall be lowered and made transparent. The individual custom tariffs are listed and cannot be raised unilaterally afterwards. Connected to the process of liberalization, to the developing countries is once more given a privilege as they have more time to fulfil their obligations.

In short terms: Each signatory state lowers its own trade barriers through negotiation

Conclusion and outlook

However, as stated above, the theoretical main principles of the GATT as formulated on paper are not strictly adhered to in practical usage. Due to the numerous exceptions and restrictions as well as a wide-ranging scope of interpretation with regard to their implementation, it has become custom talking about the "grey area of the GATT". Focusing in particular on the MFN-principle, today, about 50% of the world trade is not obeying it anymore. This is not only a consequence of the exceptional areas mentioned explicitly in the GATT but also resulting from various nontariff barriers put into practice in- and outside its regulatory terms. Taking into account this recent development, the question needs to be asked

whether one can still speak of it as applied “unconditionally” or it is rather become a privilege granted only to certain countries under certain conditions, thus evading somehow the whole ambitious concept of global reintegration pursued by the international community. It remains to be seen to what extent the GATT will be undermined in future times.

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