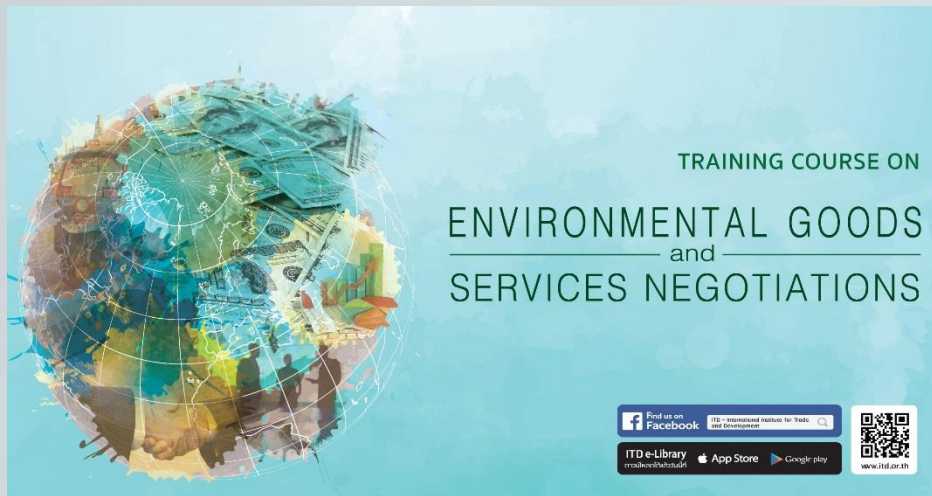


Session 6: GATT/WTO Dispute settlement cases involving environmental goods and services



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Session 6:

GATT/WTO Dispute settlement cases involving environmental goods and services

- I. Dispute Settlement: Why/Who/How/When
- II. WTO Principles
- III. Dispute Settlement Cases
 - a) Shrimps vs. turtle
 - b) Asbestos
 - c) Retreated tires and mosquitos
 - d) Seal products
- IV. Conclusions



I. Dispute Settlement in the WTO

Why

A central element in providing security and predictability to the multilateral trading system

Dispute resolution is mandatory and binding on all Members.



I. Dispute Settlement in the WTO

Who?

- Dispute Settlement Body (DSB)
- Panel and Appellate Body (AB)
- Parties: WTO Members
- WTO Secretariat



I. Dispute Settlement in the WTO

How?

Consultations



Notification of the request to the DSB

Talk between parties to see whether they can settle their differences.



I. Dispute Settlement in the WTO

How?

Panel



- Three well-qualified individuals selected from a roster of experts
- Secretariat proposals
- Agreement by concerned countries or nomination by DG



I. Dispute Settlement in the WTO

How?

Panel procedure



- Written submissions
- Oral hearings
- First draft submitted to parties
- Interim report
- Final report to parties
- Final report to all Members



I. Dispute Settlement in the WTO

How?

Appeal



- Cannot reexamine existing evidence.
- Three members selected from the permanent seven member Appellate Body (AB).
- Report of the AB may uphold, modify or reverse legal findings and conclusions of the panel



I. Dispute Settlement in the WTO

How?

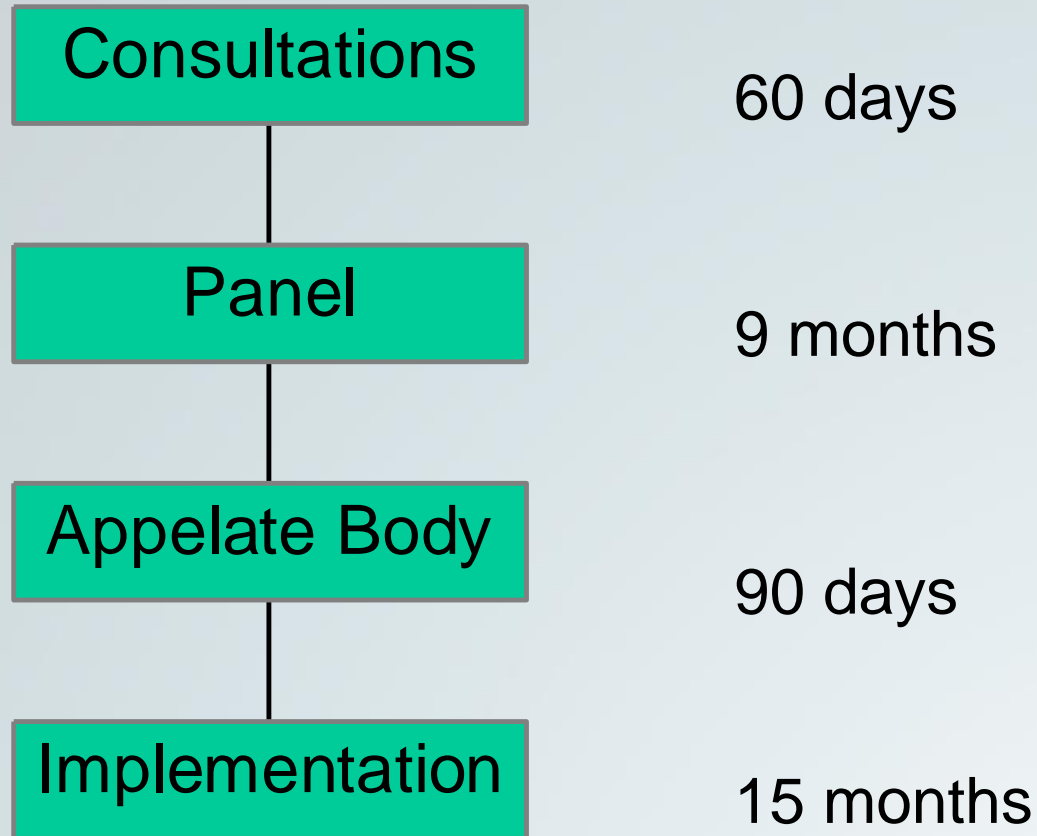
Implementation



- Member must bring the measures in conformity.
- Member must inform DSB of its intentions for implementation of the recommendations.
- If no implementation within a reasonable period:
- Compensation or retaliation



I. Dispute Settlement in the WTO When?



II. Principles of the WTO

- **Principle of national treatment:** goods and services of other WTO Members given no worse treatment than **like** goods and services of a member's own country
- **The MFN principle:** any advantage given to the goods and services of one country must be extended to any **like** goods and services from all WTO Members



II. Principles of the WTO

“like goods and services”

goods and services of a similar quality that perform
similar functions in a similar way



II. Principles of the WTO

Likeness test based on:

- Physical properties, nature and quality
- End uses
- Consumer taste and habits
- Tariff classification



II. Principles of the WTO

Preamble of the Marrakesh Agreement:

“allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment”



II. Principles of the WTO

GATT Article XX lays out exceptions to general rules with two directly related to environment:

- (b) measures necessary to protect human, animal or plant life or health
- (g) measures relating to the conservation of exhaustible natural resources



II. Principles of the WTO



GATT Article XX “Chapeau” for all exceptions including (b) and (g):

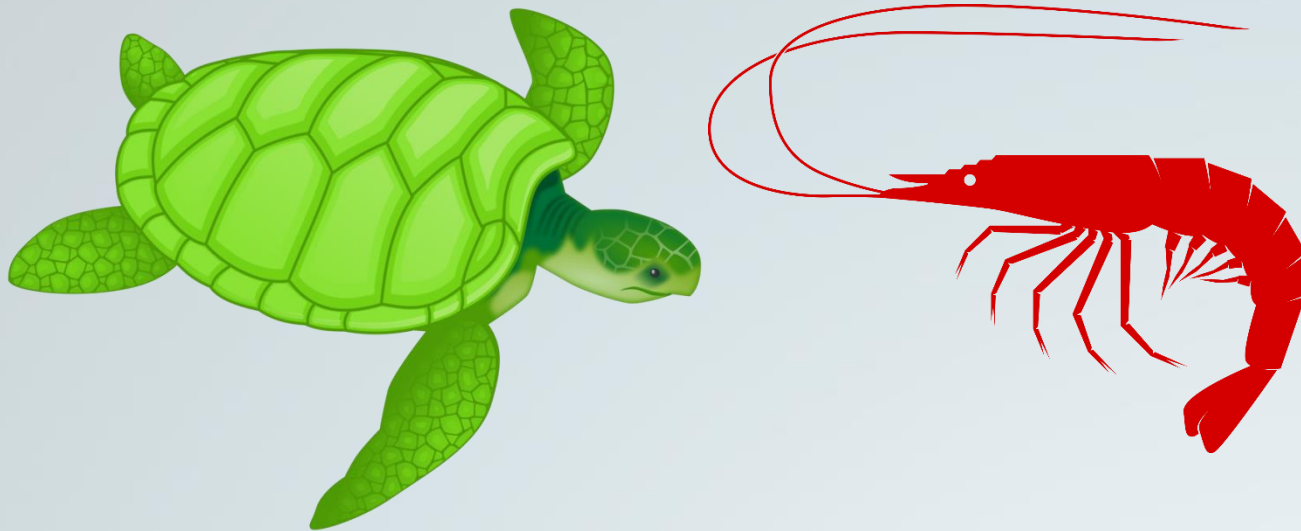
No discrimination between countries where same conditions prevail

Not a disguised restriction on international trade



III. Dispute Settlement Cases

a) Shrimp vs. Turtle



Brought by India, Malaysia, Pakistan, Thailand
Against the US



III. Dispute Settlement Cases

a) Shrimp vs. Turtle

Ban on the import of non turtle friendly shrimps



Complaint



Dispute panel rules against the US



AB rules against the US but stated that the measure could be allowed under GATT's Article XX(g) exception



III. Dispute Settlement Cases

a) Shrimp vs. Turtle

The AB faulted the US on process rather than on the measure itself:

- Specifying specific technology rather than specific environmental objective.
- Rejecting shrimp only based on prevailing policy in the exporting country.
- Insufficient lead time given to complainants compared to other WTO Members.
- Failing to take into account relative cost of turtle excluder devices in developing countries.
- Failing to explore multilateral alternative



III. Dispute Settlement Cases

a) Shrimp vs. Turtle

Implementation: *serious good faith efforts* by the US
to reach an agreement



Malaysia challenges implementation by the US



Implementation panel rules in favor of the US



AB rules in favor of the US



III. Dispute Settlement Cases

a) Shrimp vs. Turtle



Outcome:

- Rough principle guides to what make a measure acceptable despite discrimination between like products because of their different environmental impacts.
- A Member should notably seek international cooperation before resorting to unilateral trade measures.
- Article XX(g) also includes living resources.



III. Dispute Settlement Cases

b) Asbestos



Brought by Canada
Against France



III. Dispute Settlement Cases

b) Asbestos



Ban imposed by France on the importation of asbestos and certain products containing asbestos



Complaint by Canada



Dispute panel rules in favor of France under Art. XX(b)



AB also rules for France but reversing panel finding on “likeness”



III. Dispute Settlement Cases

b) Asbestos



Outcome:

The AB stated that the four criteria used in the likeness test are not sufficient and an overall assessment is required including the risk a product poses to human health or the environment.



III. Dispute Settlement Cases

c) Retreated Tires



Brought by EU
Against Brazil



III. Dispute Settlement Cases

c) Retreated Tires



EU requests consultation with Brazil on a set of measures on used and retreated tires



Panel and AB agree on the fact that measures are acceptable under Article XX (b)



But measures violate Article's XX chapeau



III. Dispute Settlement Cases

c) Retreated Tires



Outcome:

- Quantitative vs. qualitative assessment in an Article XX(b) perspective.
- Shows deference for environmental policy making.



III. Dispute Settlement Cases

d) Seal Products



Brought by Canada
Against EU



III. Dispute Settlement Cases

c) Seal Products



EU measures on seal products



Canada requests consultation



Panel and AB opens door for Article XX(a) or “*public morals exception*”

But rules against EU because of the “Chapeau”



III. Dispute Settlement Cases

c) Seal Products



Outcome:

- Can the public morals exception be used to justify discriminatory environmental measures?
- Concerns that a broad public morals doctrine would provide a cloak for protectionism.



IV. Conclusions

Dispute panels and AB confirmed time and again that WTO Members can adopt trade-related measures to protect environment and human health if they comply with GATT rules or fall under the exceptions to these rules



IV. Conclusions

Two major exceptions: Article XX (b) and (g)
...and a third one (a)



Do not forget the “Chapeau”



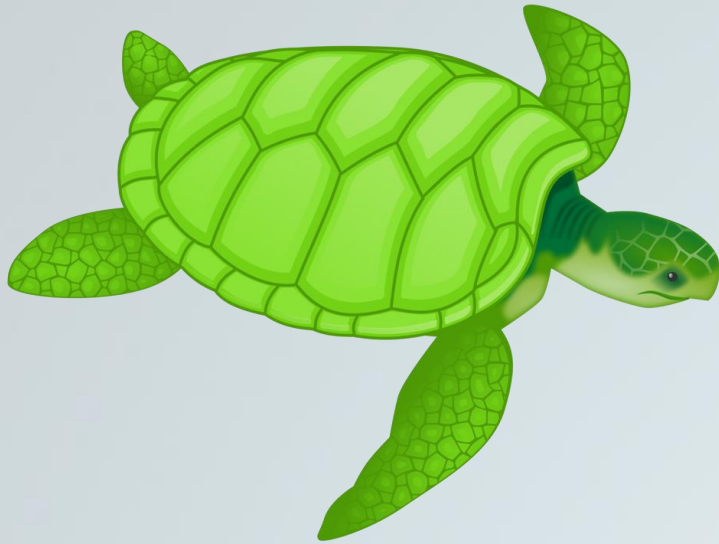
IV. Conclusions

How trade-related environmental measures are applied

- Connection between measures and the environmental objective
- Role of international coordination and cooperation
- Flexibility of the measure to take into account different situations
- Design of the measure



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THANK YOU

