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Lecture: Specific Questions of International Trade Law
Graduate Law School at the Osaka City University, 8 – 10 January 2009

This lecture will emphasize – besides basics - specialist questions of international trade law (WTO law, as well as EC & US trade law), by discussing practical cases from current trade law practice. The first half will concentrate on WTO Law, and the second half on export law.

The plan is as follows:

1. **08 January 2009, 10.00 – 17.00**

- Main principles of WTO Law and of EC Law concerning International Trade (10.00 – 11.15)
- Continued, and free trade cases like: *Turkey Textiles* (DS 34) and *India – Quantitative Restrictions* (DS 90): customs union & balance of payment (11.30 – 12.45)
- Local content policy: Cases *India – Automotive Sector* (DS 146, 175) and *China – Imports of Automotive Parts* (DS 339 – 342, July 2008) compared (13.45 – 15.00)
- *China Automotive Parts Case* continued: Impact of Special & Differential Treatment (SDT)? (15.15 – 17.00)

2. **09 January 2009, 10.00 – 17.00**

- Case on increased Chinese taxes, and WTO Panel Procedure (and Proposals for Improvement of this Procedure) (10.00 – 11.15)
- Health cases: *EC Hormones* (DS 26, 48) and *Japan Apples* (DS 245) (11.30 – 12.45)
- The Dual-Use Regulation of the EC (EC Regulation 1334/2000): Decisive EC Export Provisions and Their Legal Basis in WTO Law (13.45 – 15.00)
- 2 Cases of EC Export Law: Practical issues of Export Risk Management (15.15 – 17.00)

3. **10 January 2009, 10.00 – 17.00**

- Short introduction US Export Law, Japanese companies and US Iran embargo (10.00 – 11.15)
- Trade Facilitation (vs. US security) and other Doha Demands/Achievements (11.30 – 13.00)
- AEO: Some Practical Questions on Its Implementation in the EC (13.45 – 15.00)
- Repetition and Conclusions (15.15 – 17.00)

(The program may be shortened/modified)

Literature:

Literatur: *Trebilcock/Howse*, The Regulation of International Trade, 2nd ed. London/New York 1999; *Hilf/Oeter*, WTO-Recht, Baden-Baden 2005; *M. Krajewski*, Wirtschaftsvölkerrecht, (cf müller-Start), Heidelberg 2006 (18 EUR); *Senti*, WTO-System und Funktionsweise der Welthandelsorganisation, Zürich 2000; *Stoll/Schorkopf*, WTO – Welthandelsordnung und Welthandelsrecht, Köln 2002; *Hohmann ed.,* Agreeing and Implementing the Doha Round, Cambridge 2008; *M. Moore ed.*, The Future of the Multilateral Trading System, Cambridge 2004; *Hohmann/John Hrsg.*, Kommentar zum Ausfuhrrecht, 2002; *Hohmann*, Angemessene Außenhandelsfreiheit im Vergleich (Jus Publicum 89), Tübingen 2002; *Hermann/Weiß/Öhler*, Welthandelsrecht, 2. Aufl. München 2007; *Prieß/Berrisch* Hrsg., WTO-Handbuch, München 2003; *Matsushita*, The World Trade Organization, Oxford 2004; *Ortino/Petersmann* ed., The WTO Dispute Settlement System 1995-2003, Den Haag 2004; *WTO Appellate Body* ed., WTO Appellate Body Repertory of Reports and Awards, 1995-2004, Cambridge 2005; *Hohmann u .a.*, Annual Reports on WTO Panel Decisions (in German), the last in: RIW 2005, 321 ff; *WTO* ed., WTO Dispute Settlement: One-Page Case Summaries (1995 – September 2006), Genf 2006; *Fair Trade Center* ed., Selected GATT/WTO Panel Reports. Summaries and Commentaries, Tokyo Vol.1 (1995) et seq., *Meng* u.a., Das Internationale Recht im Nord-Süd-Verhältnis, BDGV 41 (2005); *Weith/Wegner/Ehrlich*, Grundzüge der Exportkontrolle, Köln 2006, *BAFA* Hrsg., Praxis der Exportkontrolle, Köln 2006; *Puschke/Hohmann*, Basiswissen Sanktionslisten, Köln 2008, *Böer/Groba/Hohmann*, Praxis der US-Re-exportkontrolle, Köln 2008; *Witte* Hrsg., Praxishandbuch Export- und Zollmanagement, Köln 2007, *Julia M. Natzel*, Der Zugelassene Wirtschaftsbeteiligte – Entwicklung und Ergebnis des Rechtsetzungsprozesses, Witten 2007; *Möller/Schumann/Summersberger*, Der Zugelassene Wirtschaftsbeteiligte: Bewilligung, Status, Vorteile, Köln 2008; *Weerth*, Der neue Zollkodex, Köln 2008; *Hohmann*, Zur Vereinbarkeit von REACH mit WTO- und EG-Recht, Stoffrecht 2006, 67 ff, and in: in: *Boeki to Kanzai* 55 (2007) 1, S. 34 – 42 und 55 (2007) 2, Seite 49 - 52 (with a critical review by *Rosenbaum*, Stoffrecht 2006, S. 207 ff); *Streinz*, Europarecht, 8. Aufl. Heidelberg 2007; *Bieber/Epiney/Haag*, Die Europäische Union, 7. Aufl. Baden-Baden 2006; *Borchardt*, Die rechtlichen Grundlagen der EU, 3. Aufl. Heidelberg 2006.

Update of literature: *C. Murray*, Schmitthoff's Export Trade: The Law and Practice of International Trade, 11th Edition, London 2007; *A. Alavi*, Legalization of Development in the WTO: Between Law and Politics (Global Trade Law Series Band 17), London 2009; *Y. Aubin / A.Idiart*, Export Control Law and Regulations Handbook: A Practical Guide to Compliance (Global Trade Law Series Band 10), London 2007; *X. Wu*, Anti-Dumping Law and Practice in China (Global Trade Law Series Band 16), London 2009.

Texts of law: The following texts should be brought to the lecture: (1) WTO Law (Beck Text in dtv 5752), (2) EC-Treaty (Beck-Text in dtv 5014), (3) the text of the EC Dual Use Regulation; all of these texts are also available in: www.hohmann-partner.com under: Current Legal Documents (1) EC export law, (2) US Export law, (3) WTO Law

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Cases

Case 1:
Turkey had enacted quantitative import restrictions vis-à-vis India for several textiles. Turkey did justify this as follows, based on Art. XXIV GATT: These contingents (quotas) are required under the EC-Turkey customs union, because the Association Council had required that Turkey should follow same standards concerning textiles vis-à-vis third States as within the EC-Turkey customs union. (Cf. DS 34).

Case 2:
The US government claims that India's import restrictions (quotas) for several products are not justified under WTO Law. However India argues that these quotas are justified for reasons of balance of payments (BOP) and will be abolished within 7 years (cf. Art. XVIII B GATT). Are these quotas justified? (Cf. DS 90).

Case 3:
India had enacted a decree in December 1997, under which a license for the importation of cars or of automotive components will not be given if the exporter to India does not guarantee that (1) 50 – 70 % of the components of this car will origin from local content (i.e. will be from Indian origin) and (2) present a proof of trade balancing requirement (exports value = imports value) (cf. DS 175).

Case 4
For the protection of its domestic car industry, China has enacted 3 legal instruments in the year 2004 and 2005 (Policy Order 8, Decree 125 and Announcement 4). Under these legal instruments, a special tariff ("customs duty") is due on imported car parts, when in a car to be assembled in China the following conditions are fulfilled: (1) the two main components (the vehicle body and the engine/motor) are imported, or (2) one of these two main components and three or more other components are imported, or (3) five or more components – except the main components – are imported to assemble the vehicle (cf. art 57 of Policy Order 8, Art. 21 of Decree 125). (Originally, there was an additional alternative: if the imported components represent 60% or more of the car's value – this alternative was dropped later.) If one of these alternative conditions is met, there will be special tariff of 15% on all imported car components, so that the tariff altogether will be 25% - this is the same tariff as for importation of foreign cars to China. Any use of imported parts in vehicle manufacturing will subject the manufacturer to a burdensome administrative regime under the measures (self-evaluation report, filing documents with customs, applying for and undergoing verification by Customs of the self-evaluation etc.), while these administrative requirements do not apply to vehicle manufacturers that use only Chinese parts.
The EC, USA and Canada claimed that these Chinese measures would violate several provisions of the TRIMs, the GATT and of China's accession protocol to the WTO. China assumes that these national provisions are justified under Art. XX lit. d GATT (cf. quotation in no.3.11 and 7.614 of the Panel Report). How will a WTO Panel decide? (cf. DS 339, 340, 342 of 18 July 2008).

Additional question: Which of the "currently available 145 S&DT provisions in WTO Treaties" (*cf. Alavi, Legislation of Development, 2009, at p.84*) could have helped China to defend this case?

Case 5:
China is the largest producer of several raw materials, which are used for industrial motors and automotives, and is nearly dominating this market. For the year 2008, China has raised the export taxes (custom duties) remarkably, around 15 or 25%. Several European and Japanese manufacturers for industrial motors have to pay a large amount of additional export taxes, which must not be paid by their Chinese competitors, since these taxes are dependent on exporting. Against Japanese critics, China answered that the purpose of the trade restrictions is "the conservation of exhaustible natural resources". Other newspapers told that the real reason for this measure is favouring Chinese manufacturers. Under Art.16 Foreign Trade Law of China, China – under specific conditions - can restrict exports, enact quotas or raise export taxes. Was China allowed under WTO Law to raise the export taxes in 2008 remarkably vis-à-vis 2007?

Case 6:
The EC prohibited the placing on the market and the importation of meat and meat products treated with hormones for growth purposes, based on health concerns for humans and animals. The USA and

Canada claimed that this import prohibition is in violation of WTO Law. How will the WTO Panel decide? (Cf. DS 26, 48, cf. Hohmann, RIW 2000, 88 et seq.).

Case 7:
This case covers certain Japanese (quarantine) measures restricting imports of apples from the USA on the basis of concerns about the risk of transmission of the fire blight bacterium. These (quarantine) measures included: an import prohibition for apples from other US states than Oregon or Washington, an import prohibition for apples from cultivations in which or in the neighbourhood of 500 meters of which this bacterium was found (zero tolerance), separated stocks for apples going to Japan than going to other countries, certification of US inspectors that these apples are free from this bacterium and have been treated with Chlorine. These and other Japanese demands resulted in a 23 year long import prohibition of US apples in Japan. The US claimed that these Japanese measures would violate several WTO provisions. How will the Panel decide? (Cf. DS 245).

Case 8:
The Konnichiwa Germany GmbH, a German subsidiary of the Japanese Konnichiwa Corporation, and his Turkish sales agent are exporting non-listed aluminium tubes to China, which are used for bicycle frames, lifts etc. Suddenly the German export agency BAFA sends a letter saying that this export might be regarded as sensitive, since the tubes could possibly be used for a gas ultra centrifuge in North Korea. What should Konnichiwa Germany do? And what precautionary risk management is recommended?

Case 9:
The Kombanwa Germany GmbH, a German subsidiary of the Japanese Kombanwa Corporation, wants to export cameras to Iran. Let us assume the clients are the following Iranian companies: Kala Electric and Hara & Co. What measures of risk minimization should Kombanwa Germany take?

Case 10:
The Japanese exporting company Domo Corp. is a 100% subsidiary of the Domo International Ltd. in the UK, which is listed at the New York Stock Exchange. The daily business of the Domo International Ltd. is conducted by the US citizen Mr. America, being of the CEOs, but with the function of the managing director among the CEOs. Mr. America is at the same time also active for the Japanese companies: he can give instructions concerning export activities in the Domo Corp. The Domo Corp. wants to send several machines via China to Iran. Is the Domo Corp. prevented from this export to Iran under the US Iran embargo, or does this US embargo no matter for this case?

Case 11:
The Japanese multinational Nihon Corporation has 50 subsidiaries within the EC, namely 1-2 companies within each EC Member State. The function of these subsidiaries is to import the products from Nihon Europe Ltd., the EC headquarter in London, while the export activities are all done by the Nihon Corporation in Japan, which ships the goods to Nihon Europe Ltd. in London. In addition, the Nihon Europe Ltd. has five branches in the EC Member States.
Question 1: Nihon Europe Ltd. wants to arrange that all his subsidiaries and branches could be certified as AEO. Could Nihon Europe Ltd. submit the AEO application for all his subsidiaries and branches? And which EC Member State is competent for this?
Question 2: What are the conditions to be certified as AEO? And what must the company and their subsidiaries demonstrate: Which annexes to the self-questionnaire are necessary in Germany and in Austria?
Question 3: What are the advantages of becoming certified as AEO? If the talks between METI and the EC Commission on the mutual recognition will be successful: What advantages can be expected?