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Taking International Marketing Decisions under WTO Rules

Jean-Emile Denis¹

¹ Professor of Marketing, HEC - University of Geneva, 4, Boulevard du Pont d'Arve, 1211 Geneva 4, Switzerland, tel. 00 41 22 705 8126, fax 00 41 22 705 8104, email denis@hec.unige.ch

Taking International Marketing Decisions under WTO Rules

Abstract

With the conclusion of the Uruguay Round and the establishment of the World trade Organisation (WTO) in April 1994, a comprehensive set of rules emerged that affect in a pervasive manner the activities of firms on foreign markets. This body of rules is overwhelmingly presented in the literature from a trade policy or legal viewpoint. The result is that for many marketers WTO rules are somewhat confusing, and their impact on international business operation is difficult to assess. This paper is purely analytical and does not aim to provide any contribution to international marketing theory. Its purpose is to identify which rules, among the many the WTO system encompasses, are of direct concern to firms. It aims to expose in a straightforward manner how they may be coped with or taken advantage of by international marketers. It focuses on WTO measures, which deal with so-called international marketing mix decisions, namely decisions pertaining to 1) entry and international distribution 2) product and service 3) pricing and 4) international communication. Commitments made during the WTO Fourth Ministerial Conference in Doha (9 – 14 November 2001) that are relevant to issues raised in this paper are accounted for.

Key words: WTO, Doha Conference, entry modes, export pricing, exporting product and services, marketing communications, dumping, subsidies, rules of origin, trademarks, commercial presence, geographical denomination, export drawbacks, transfer pricing, foreign direct investment, licensing agreements, export licensing.

Taking International Marketing Decisions under WTO Rules²

Introduction

Firms are becoming increasingly aware of the impact the WTO system has on their activities in foreign markets. They certainly know that access to markets is dependent to a large degree on the trade liberalisation process that takes place at the WTO. They are, however, generally less knowledgeable about the WTO rules that affect their international marketing decisions such as the choice of an entry mode or the pricing of products. The purpose of this paper is to extract out of the 500 pages of printed text that represent the 30 legal documents that make up the WTO system (WTO 1994, WTO 1999) the rules that have a direct bearing on these decisions. In addition, due attention will be granted to the conclusions reached at the WTO Fourth Ministerial Conference in Doha that have a bearing on the WTO rules discussed in this paper (WTO 2001b, 2001c, 2001d).

The original GATT agreement did not have the reputation to be businesspeople friendly. Senator Millikin once quipped that "...anyone who reads GATT is likely to have his sanity impaired" (Jackson 1969, p. 8). The perception of the vast majority of international marketers is unlikely to have improved as over the years trade rules have gained both in coverage and in complexity. In spite of the commendable efforts by WTO, other international bodies such as UNCTAD and ITC, and various national or private entities to make the agreements that were put together under the WTO heading accessible to the general public, this large body of rules remains rather incomprehensible to most international marketers .

This text is not intended to provide a legal analysis of these rules but merely to expose from an international marketing viewpoint and in plain terms describe these rules, the relevant agreements to refer to if need be, and more importantly the process when one has to deal with them. These rules will be discussed in layman's terms, even at the risk of oversimplification. References will be provided so that it will be possible for the reader to identify the major exceptions, conditions, and waivers that are tied to virtually all WTO rules. Their contribution to the improvement of the international business operational environment will be discussed, and approaches that firms may consider when crafting international marketing strategies will be suggested.

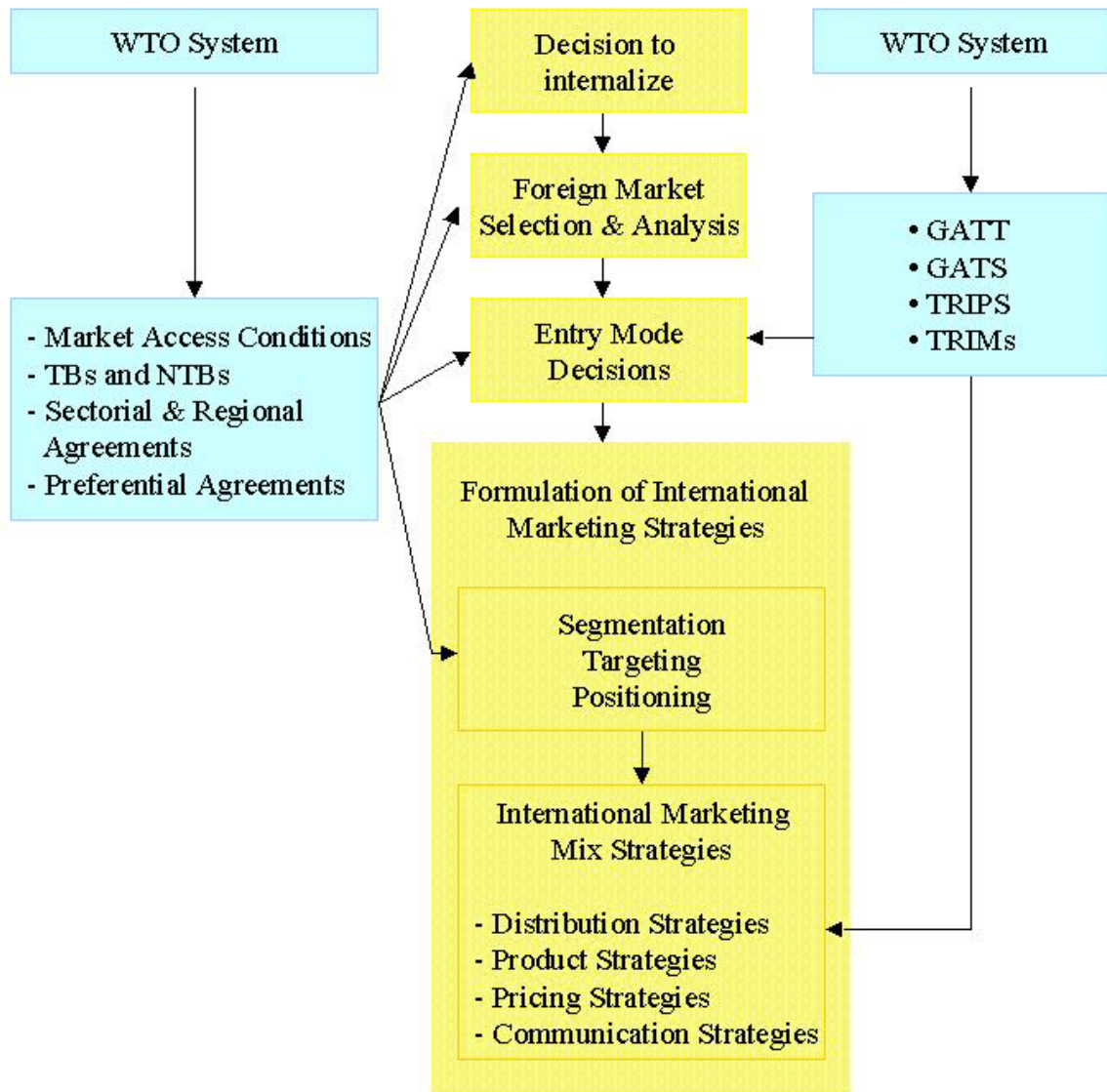
Although the importance of WTO rules and of GATT rules prior to 1995 is well acknowledged in the international marketing literature, it has not been the topic of much empirical research (Onkvisit and Shaw 1988). References to these rules are mostly found in international marketing textbooks. Yet, the treatment GATT/WTO rules is either ignored (Douglas and Craig 1995) or at best referred to rather briefly (Czinkota and Ronkainen 1996, Cateora and Ghauri 1999, Johansson 2000). In most textbooks, WTO is presented as an institution shaping the international business environment along other international trade, financial and economic bodies such as the IMF or the World Bank. Non-discrimination principles may be explained, and in some instances, WTO rules on dumping or subsidies may be alluded to (Johansson 2000, Czinkota and Ronkainen 1996, Terpstra and Sarathy 1997). International marketing textbooks do not criticise the WTO system, Usunier (2000) being an exception. Specialized articles focus on the impact of trade barriers (multilateral, bilateral or national) on the firm's attempts at coping with these obstacles and on their impact on performance (Rugman and Verbeke 1991, Kostecki 1991, Leonidou 1994). Some articles deal

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more specifically with the problems of small firms (Rabino 1980, Sharkey, Lim and Kim 1989).

Figure 1 illustrates the various decisions a firm has to take when marketing products or services on foreign markets. Main WTO rules affecting such decisions are regrouped under the “WTO System” heading. In this article, the WTO system refers to the complex and extensive body of agreements that constitute the rules, regulations and practices that member states adhere to in their international trade relations. Figure 1 shows that all steps in the internationalisation process of the firm are affected by the WTO system. The purpose of this paper is not to investigate all these interrelationships but only those dealing with the marketing mix, namely product, pricing, communication and distribution strategies. Since distribution and entry modes are closely interrelated in international marketing they will be discussed jointly. As in most international marketing textbooks, entry mode and distribution issues will be discussed first followed by product and pricing and finally by communication decisions. Relevant WTO rules will be identified under each of these headings and briefly explained, and their impact on decision-making will be assessed.

Figure 1: The internationalisation Process of the Firm
& the WTO System



- GATT : General Agreement on Tariffs and Trade
- GATS : General Agreement on Trade in Services
- TRIPS : Agreement on Trade-related aspects of Intellectual Property rights
- TRIMs: Agreement on Trade-related Investment Measures

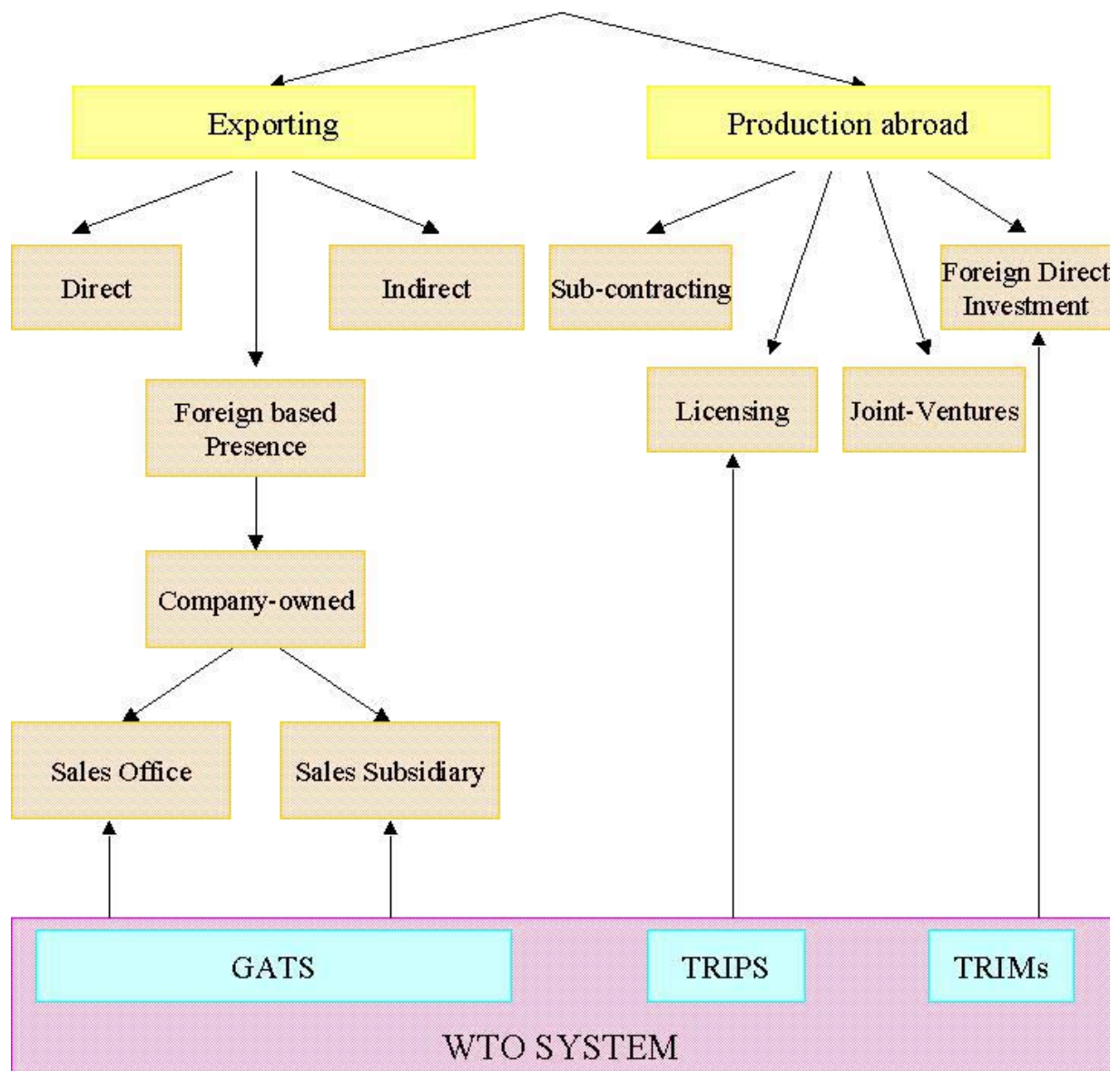
Entry Mode and Distribution Decisions

Figure 2 shows the various options a firm may consider when entering a foreign market. WTO rules deal directly only with the establishment of sales offices or subsidiaries, licensing and foreign direct investment, and indirectly with distribution in general (according to the national treatment principle).

Sales Office/Subsidiary

There is no specific WTO rule dealing with the setting up of a sales organisation in a foreign country for the marketing of either consumer or industrial products. There are, however, rules on the trading of services. These rules are contained in the General Agreement on Trade in Services (GATS). The terminology actually used in GATS is “commercial presence”, which means any type of business or professional establishment within the territory of another member for the purpose of supplying a service, and includes the creation or maintenance of a branch or representative office (GATS, art. XXXVIII). The basic rule is that such an establishment should be granted national treatment by members unless specified in their Schedule of Commitments (i.e. the listing of the concessions they granted to other members). National treatment refers to the principle that a foreign product or service should not be discriminated against in any way in favour of locally produced good or service (GATS, art. XVII).

Figure 2: Entry Mode / Distribution Decisions in International Marketing & WTO Rules



- GATS : General Agreement on Trade in Services
- TRIPS : Agreement on Trade-related Aspects of Intellectual Property Rights
- TRIMs: Agreement on Trade-related Investment Measures

This does not guarantee that an exporter of a service will be automatically granted the right to establish a commercial presence by another GATS signatory. The type of service involved may not be covered by the Agreement, and the Schedule of Commitment of the target country may include limitations to market access or to national treatment for any given service category. The exporter of a service must check if the service to be exported has been included in the Schedule of the target country, and what specific commitments that country has made. In principle, such inquiries should not prove too difficult to conduct since signatories are obliged to make their policies transparent by making relevant information on their import regime accessible to members. In addition, GATS signatories must have established a national enquiry point that service exporters may address for information on their policies on trade in services (GATS, art. III: 4).

Undoubtedly, some exporters may feel somewhat disappointed by GATS, which is riddled with exceptions and limitations. Yet, GATS should also be viewed as a major breakthrough. It brings trade in services in line with trade in goods, and provides a far more transparent environment for traders than the one prevailing prior to the Uruguay Round.

Licensing

Licensing is often chosen as a means of entry when firms cannot export or proceed through foreign direct investment either because of entry barriers or because the firm's resources are limited. Firms that consider entering a market through licensing are often afraid that they might not be able to protect their technological know-how from unfair practices in foreign markets. As a result, they may refrain from transferring licensing rights to foreign firms. They should, however, be aware that under the Agreement on Trade-related Aspects of Intellectual rights (TRIPS) they may well be obliged to transfer these rights to private local parties selected by the government of that country whether they like it or not.

The main objective of the TRIPS Agreement is first of all to protect the ownership rights of firms in accordance with previous international conventions (TRIPS, art. 2). The principle of national treatment is reaffirmed (TRIPS art. 3), and countries are required to extend Most-Favoured-Nation (MFN) treatment to foreign nationals (TRIPS art. 4), which requires that trade regulations should be applied to foreign goods or services without any discrimination against any exporting member countries. The TRIPS Agreement also lays down rules under which a country may be allowed to authorise a local firm to use a patent when its foreign owner demands unreasonable terms (TRIPS art. 31). In other words, a government is allowed under the TRIPS Agreement to proceed with compulsory licensing subject to several conditions. In particular, the compulsory license shall be used predominantly for the domestic market, and the patent owner shall be paid adequate compensation.

A firm that does not want to market the goods produced under a given patent either by exporting or through local direct investment should be aware that if it does not want to transfer know-how through a licensing agreement it might nevertheless be forced to do so. It may then be better to negotiate licensing conditions with a local firm rather than to be forced to accept compensation terms that may not be as advantageous even if they are adequate.

The Doha Ministerial Conference confirmed previous dispositions, and issued a statement concerning the TRIPS Agreement and its implication for public health management (WTO 2001c). It reaffirmed the right each member "...to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted" (WTO 2001c, paragraph 5b)

Direct Investment

Considerable liberalisation has taken place over the last decade regarding direct investment. Many constraints used to be imposed on foreign investors in contradiction to such GATT principles as national treatment and limits quantitative restrictions, the latter being prohibited unless very exacting conditions are met. The Uruguay Round Agreement on Trade-Related Investment Measures (TRIMs) identifies measures that are not acceptable, and reiterates that TRIMs that distort trade flows are not allowed.

Prohibited measures include trade-balancing import requirements, restricted access to foreign exchange and domestic sales requirements (TRIMs art. 2, Annex). The TRIMS Agreement is limited in scope, and a limited number of trade related investment requirements may still be imposed by members such as the proportion of equity to be held by local investors or demands for the transfer of up-to-date technology. Firms considering investment in a foreign market should, therefore, investigate what are the exact commitments, which have been made by these countries.

The Agreement has made investment abroad easier than in the past, and the power of host countries to subject foreign investors to demanding performance requirements has been greatly reduced.

At the Doha Ministerial Conference it was decided that further work would be accomplished before the Fifth Session and that "... Any framework should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest. The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances." (WTO 2001b, paragraph 22).

Distribution

There is no specific WTO rule dealing with distribution. However, the national treatment principle nevertheless applies to distribution arrangements. Member countries may not discriminate against foreign products or services in any way including distribution (see WTO 2001, Japan - Measures Affecting Consumer Photographic Film and Paper, complaint by the United States WT/DS44).

Product and Service Decisions

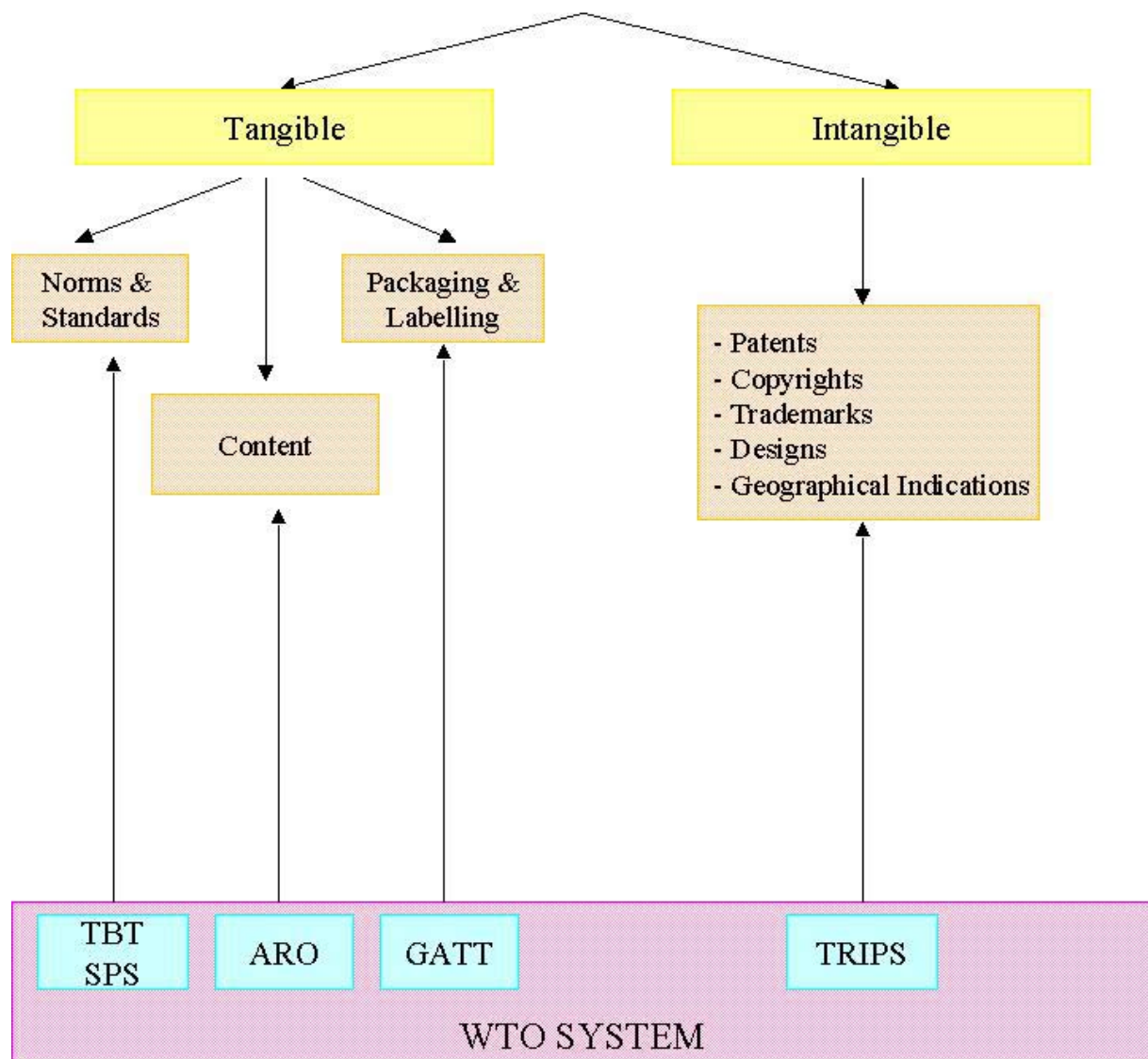
WTO rules have a bearing on both tangible and intangible products attributes (see Figure 3). Regarding tangible attributes, WTO rules deal with product specifications (norms and standards), labeling, products content (foreign content and rules of origin). Decisions about intangible attributes may also be affected by WTO rules on patents, copyrights, trademarks, designs and geographical indications.

Tangible attributes decisions for industrial products are affected by rules spelled out in the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Rules of Origin (ARO). Agricultural products are dealt within the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). Rules relating to labeling are to be found in the General Agreement on Tariffs and Trade, GATT 1994 (see WTO 1994).

Product Specifications

It is often required that imported products meet certain norms in order to protect the health and safety of the population and the protection of the environment. The TBT Agreement states that these compulsory norms must not be applied in a way that results in unnecessary obstacles to trade, and must be based on scientific evidence. Norms are acceptable obstacles to trade only if they are based on norms accepted internationally (TBT Agreement, Art. 2:5 and 2:6. See WTO 2001, Japan - Measures Affecting Agricultural Products, complaint by the United States T/DS76/1 and European Communities - Measures Affecting Meat and Meat Products (Hormones), complaint by the United States WT/DS26).

Figure 3: Product Decisions in International Marketing
& WTO Rules



- TBT : Technical Barriers to Trade
- SPS : Sanitary & Phytosanitary Measures
- ARO : Agreement on Rules of Origin
- TRIPS : Agreement on Trade-related Aspects of Intellectual Property Rights

Diversions from guidelines established by international standardisation organisations may be acceptable for climatic or geographical reasons. However, they must be publicised, and governments must take into account observations addressed by other countries. Attention should be given to the fact that the rules are not the same for industrial and for agricultural products. Whereas norms on industrial goods must be applied on a non-discriminatory basis (MFN and national treatment), SPS "...may be more or less demanding..." (ITC, 1999, p. 93 and Agreement on SPS, Art. 2:3). In addition, provisional measures may be applied to agricultural products in case of serious and imminent health hazard.

It should be pointed out that the TBT Agreement introduces dispositions that were not included in the previous GATT code. Whereas GATT covered only standards and norms affecting only the product itself, the TBT Agreement covers process and production methods that have an impact on product characteristics as well (Agreement on TBT, Annex 1).

Governments must take appropriate action to guarantee full transparency with regard to products requirements and testing procedures. A national inquiry point must be established, and changes in procedures must be notified to WTO members.

Product specifications have traditionally been a major headache for traders, and have often been used by governments as a powerful deterrent to import competition. The new WTO rules bring considerable clarity in this area. They will facilitate trade, and as a result promote international competition. Because of its reliance on internationally accepted standards, it may lead to increased product standardisation in product design and production processes. These rules are also an invitation to firms to participate actively in standard-setting organisations so that international standards that are to be adopted are not detrimental to their interests.

Packaging and Labeling

There is no specific rule dealing with packaging or labeling although the Agreement on TBT makes it clear that packaging, marking and labeling requirements should not constitute unnecessary barriers to trade (Agreement on TBT Annex 1, art. 1 and 2). Yet, exporters are often requested to adjust to local practices. As a result, they may incur additional costs that may deter them from exporting. Such practices are acceptable providing that they are not applied in a discriminatory manner. In particular, they must conform to the national treatment clause contained in Article III of the GATT Agreement, 1994. They must comply with adaptation requirements in packaging and labeling so long as they also apply to local firms. Therefore, governments may not impose packaging or labeling requirements that would, in effect, act as import barriers.

Product Content

Exported products are often made of ingredients or parts originating from two or more countries. It may be a difficult task in such a case to determine their origin. This may have considerable bearing whenever duties must be applied either at full or preferential rates depending on the country of origin of these goods. Rules of origin may actually shut out a product from a target market, and cause trade distortion effects if not carefully monitored.

The Agreement on Rules of Origin (ARO) clarifies how to proceed in an area, which is of considerable importance to exporters and importers alike. It provides greater clarification on rules to be followed when harmonizing national practices will be addressed in the future.

Work on rules of origin was supposed to be over in July 1998. It is still in progress (WTO, Rules of Origin in the WTO, May 1, 2001), and a fully harmonized system still has to be adopted in the future. If this ever happens, only exceptions for preferential agreements will be accepted (Agreement on Rules of Origin, Art. 1:1). In the meantime, rules of origin are to be clearly defined and published. They should not be used as trade policy instruments, nor result in any trade distortion; they should be based on positive rather than negative standards. The country of origin is defined as either the country where the good was wholly produced or where the last substantial transformation took place.

Apart from the advantages alluded to above, these new rules may have significant marketing impact regarding possible country-of-origin effects. They will provide a competitive advantage to products identified as originating from countries with a well-established and positive national image. This may be a valuable asset to exporters not only of branded consumer goods but also of nationally reputable manufactured goods.

Intangible Product Attributes: Trademarks and Geographical Indications

The value of a product does not depend exclusively on its performance or physical characteristics. Much of its value to the consumer or user resides in his or her perception of such cues as price, brand name and denomination of geographical origin. This has been well demonstrated empirically in a large number of countries, particularly with regard to the impact of branding on product value and to the effect of the country of origin has on consumer preferences (see for instance Tse and Gorn 1993). Marketers are well aware of these advantages, and try to build up the value of their products through carefully crafted branding strategies involving costly communication campaigns which capitalize whenever possible on strong and favorable national personality traits. Opportunistic competitors may be tempted to appropriate or plagiarize well-established brand names or unduly claim geographical origins that do not belong to their products, thereby granting themselves illegitimate marketing advantages. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides traders with some degree of protection in these respects.

The Agreement requires WTO members to grant each other both national and MFN treatment in intellectual property protection for trademarks as well as for “geographical indications” (Agreement on TRIPS art. 3 and 4). It does not replace but rather complements the rules laid down in the previous Paris, Berne and Rome Conventions as well as other basic agreements on intellectual property rights (TRIPS, art 2. See also WTO 2001, Canada – Patent Protection Term, complaint by the United States WT/DS170/1).

The Agreement confirms the exclusive rights of registered trademarks (TRIPS, Art. 16). Unlike patent holders, trademarks owners cannot be forced to transfer trademark ownership to other parties. Non-used trademarks may not be cancelled before three years have elapsed (TRIPS art. 19). Finally, it must be stressed that brand names may benefit from the TRIPS Agreement only if they have been properly registered.

Geographical indications (Agreement on TRIPS art. 22 to 24) identify a good as originating from a territory, a region or a locality that gives this product a value which to a large extent is to be attributed to that geographical origin. WTO members must make sure that the public is not misled about the geographical origin of a product. The Agreement provides that members may adopt legal means to prevent the inappropriate use of geographical denominations (Art. 23).

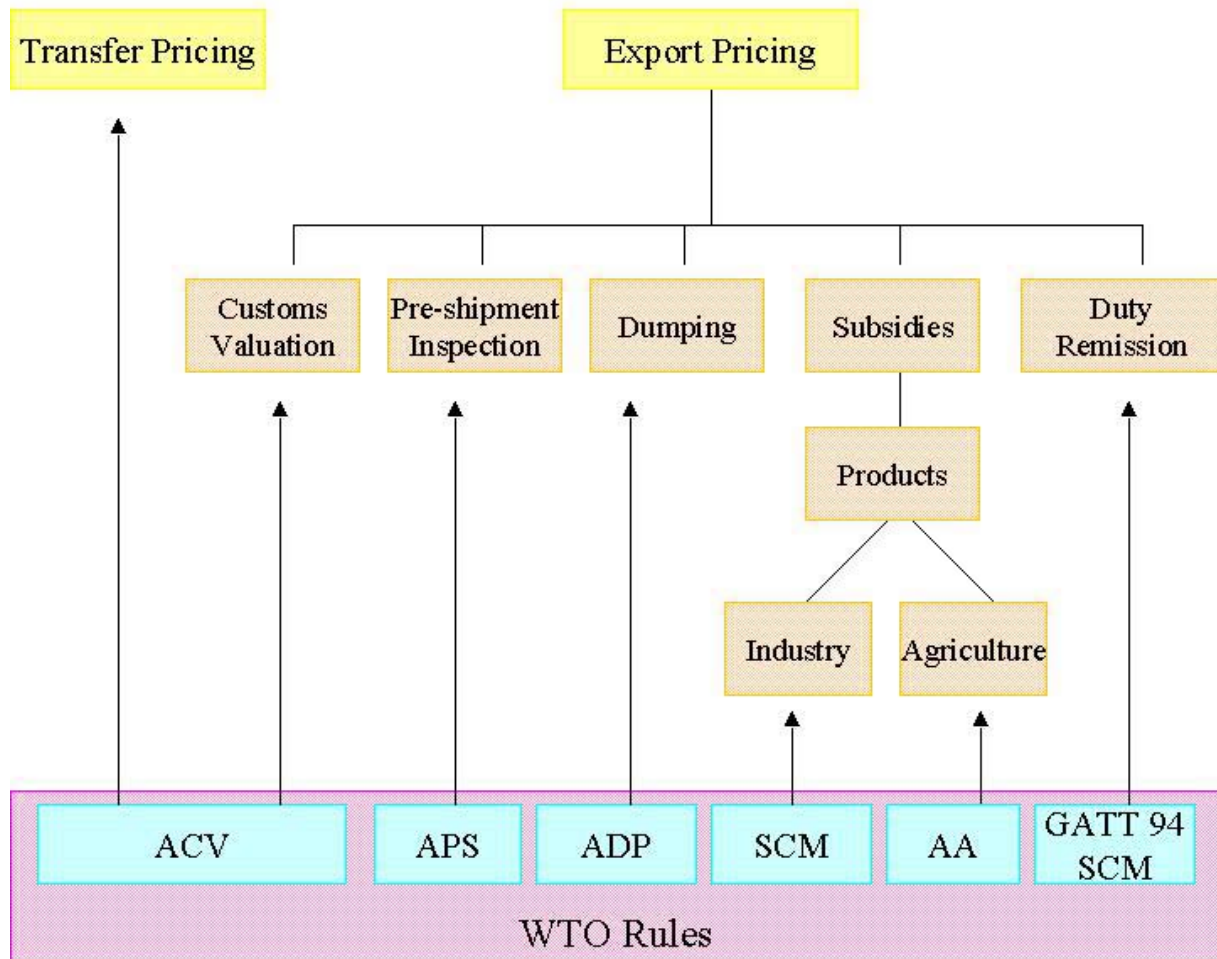
These rules provide increased protection against abuses of valuable intellectual property rights. Exporters will be less likely exposed to fraudulent international counterfeiting and piracy. They provide brand owners with an opportunity to promote their differentiation potential, and to capitalize on such intangible assets.

At the Doha Ministerial Conference, the members agreed to negotiate a multilateral system of notification and registration of geographical indications for wines and spirits before the Fifth Session of the Ministerial Conference (WTO 2001b, 2001c).

Pricing Decisions and WTO Rules

Export or transfer pricing depends on numerous factors, which fall into four categories: costs, demand, competition and regulations, including WTO rules. WTO rules are targeted at practices that restrict pricing decisions in the conduct of international transactions. Compared to other international marketing decision areas, there are a rather large number of WTO rules that impinge upon pricing. They include the determination of the price of a good when it is assessed by customs authorities, the determination of price in relation to dumping and subsidies, and transfer pricing in multinational firms (Figure 4).

Figure 4: Pricing Decisions in International Marketing
& WTO Rules



- ACV : Agreement on Customs Valuation
- APS : Agreement on Pre-shipment Inspection
- ADP : Agreement on Anti-Dumping Practices
- SCM : Agreement on Subsidies and Countervailing Measures
- AA : Agreement on Agriculture
- GATT : General Agreement on Tariffs and Trade

Customs Valuation

The value of goods traded that is taken into account by customs authorities is of major importance to exporters and importers. If the value is more than what it should be, it will result in higher duties at the importer's expenses, consequently making the product less competitive. In the past, GATT registered numerous complaints to the effect that customs applied arbitrarily and unduly high customs values. Traders also complained that they could not estimate in advance the duty that would be applied to products. The Agreement on Customs Valuation (ACV), which was adopted during the Uruguay Round, intends to address these problems, and indicates how goods are to be valued by customs authorities. The revised GATT article VII on "Valuation for Customs Purposes" reduces the possibility of arbitrary valuation and binds all WTO member countries (WTO 1999, p. 110).

The Agreement lists various alternative methods of valuing goods. The first method – the priority method – bases the customs value on the transaction value of the goods when they are exported under normal conditions. When such a method may not be used, five other methods are suggested. Broadly speaking, these methods are based on the price of similar products, in reference to other sales prices or to production costs or on the basis of a combination of both prices and production costs. In most instances, the customs value should be the invoice value plus various items when applicable such as royalties, licensing fees and export packing. Perhaps as importantly, the Agreement spells out which valuation practices are unacceptable. These include valuations based on comparisons with prices of competing products, export market prices, or choice of the higher price when two methods are used. Customs authorities always retain the right to question the documents that are presented to them as evidence of the transaction prices that are claimed by traders. They may reject prices but they must give an opportunity to importers to justify their claims.

These measures are likely to discourage invoicing firms from lowering prices with a view of saving on customs duties, in agreement with the importing party. They will also provide much greater clarity and predictability than under the old GATT regime as the rules followed by customs authorities should be more transparent than in the past. They also recognize that prices paid by an importer may as some of his or her suppliers may be more price-competitive than others.

Pre-Shipment Inspection

Many governments, in particular developing countries, request that goods be inspected before shipment. Independent firms provide inspection services, and certify the quality and quantity of products exported. One of the objectives of governments that request such a service is to make sure that the price billed to importers represents the true value of the goods. It therefore reduces the risk of under- or over-invoicing.

There is, however, a risk that exporters may be exposed to unfair practices by the inspection companies acting on behalf of governments. The Agreement on Pre-shipment Inspection (PSI) provides guidelines designed to cope with such dysfunctionalities. According to PSI, physical inspection should be carried out in the exporting country, and when it is not possible in the country of manufacture. Quality and quantity inspections should be conducted according to terms agreed between buyers and sellers. In order to determine whether the export price reflects the correct value of the goods, inspection companies should compare the price with prices of identical goods offered for export from the same country (PSI art. 2).

Inspections should be carried out in a non-discriminatory manner. Both the MFN clause and national treatment principle should be respected (PSI art. 2:1 and 2:2).

Inspection companies facilitate exports by speeding-up the exporting process. They, therefore, offer a valuable service for the trading community. The PSI Agreement provides stricter discipline in their determination of the value of goods exported. It also provides a new institutional mechanism for handling complaints regarding alleged arbitrary decisions by inspection companies. It may also reduce the level of customs-related corruption (ITC/CS, 1999 p. 81).

Dumping and Antidumping Measures

Firms may want to set the export price at a lower level than the normal price with a view of gaining market share or access to a new market. It is a rather common practice in exporting (Cavusgil, 1988, Stöttinger 2001). WTO does not condemn dumping *per se*. Dumping is not allowed only if it causes or threatens to cause material injury to an industry or if it delays the establishment of a domestic industry in a member country. The Agreement on Anti-Dumping Practices (ADP) states that if dumping is demonstrated, and if it results in an injury or threat of injury (ADP Art. 3), the importing country may impose an anti-dumping duty (See for instance WTO 2001, Guatemala - Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico, complaint by Mexico, WT/DS156).

The anti-dumping duty is to be set at a level that offsets the margin of dumping. Anti-dumping duties shall not be applied when the margin of dumping is *de minimis* (less than 2% of the export price) or when the injury is negligible (ADP, Art. 5:8). Provisional measures may be applied if the preliminary investigation leads to the conclusion that an injury has indeed been caused by dumping. Exporters may avoid anti-dumping duties by undertaking to increase their export prices. Such so-called “price undertakings” are allowed only after the investigating authorities have issued a preliminary determination of injury as a result of dumping.

Anti-dumping duties may not be imposed for more than five years, and should be terminated earlier if they are no longer warranted. Complaints are to be handled by the Dispute Settlement Body (DSB) of WTO.

Anti-dumping has attracted considerable attention from lawyers, policy makers and academics. Strictly from a business viewpoint, one may argue that it may have attracted too much attention. One might feel that other issues perhaps more mundane such as TBTs might actually be more important to the trading community as a whole. Although disputes over dumping issues are frequent, and attract considerable political and media attention, cases are limited compared to the vast number of international transactions conducted worldwide (See WTO, 2001). Yet some fear that complaints of dumping may be on the increase as industries in developing countries that used to be heavily protected have difficulties to adjust to ever increasing trade liberalization (ITC/CS 1999, p. 154).

When addressing the antidumping issue, traders should keep in mind a few basic facts. First, an action may be taken against them only if it causes or threatens to cause an injury to an industry or to a large share of that industry. For instance, one of the criteria listed in the Agreement is that producers in the importing country supporting the action should account for at least 25 % of the industry’s total production. As a result, a small or middle-sized firm is

unlikely to be exposed to anti-dumping action unless it holds a major share of an export market. Secondly, anti-dumping action is more likely to take place in oligopolistic rather than in monopolistic industries (Sabry 2000). One reason is that an agreement within the industry regarding the legitimacy of an action may be easier to reach in a sector composed of a few firms rather than in an industry with many firms and diverging interests. It may be observed that most antidumping actions have taken place in the past in highly concentrated industries such as the cement or lumber industries. Thirdly, a firm charged with dumping may always stop the antidumping process by offering a voluntary price undertaking. Actually, many anti-dumping investigations do end up this way (see WT 2001).

A firm deciding to fight an anti-dumping action should be prepared to cope with the usual legal hazards: heavy legal fees, alien scrutiny over its accounting, pricing and managerial practices, considerable time and human resources devoted to the defense of the case, and the additional discomfort of losing the case. Exporters should be very cautious, and watch closely the situation in the importing countries. They should pay attention to how local competition is behaving not only in terms of pricing strategies but also with regard to their marketing performance and profitability. When domestic competitors face difficulties, the temptation to lodge antidumping actions increases. In these circumstances, exporters might judiciously consider increasing their prices before being investigated. Lastly, exporters should take seriously any request for information by the investigating authorities. Failure to do so is likely to have costly consequences.

On a more theoretical note, one should be aware that anti-dumping is a sore point in the WTO system. Although considerable efforts have been made during the Uruguay Round to improve its legitimacy and effectiveness, it is still perceived by some trade policy analysts as a device that may too often be used by members to limit the contestability of their markets rather than to protect the legitimate interests of exporting firms (Hoekman and Kostecki 1995).

Subsidies

Governments that do not subsidize one way or another some sector of their economy are very few indeed. Since subsidies may have serious trade distorting effects, GATT has attempted in the past and during the Uruguay Round to limit their use and ill effects. WTO treatment of subsidies depends on whether the goods exported are industrial or agricultural products.

Subsidies and Industrial Goods. The Agreement on Subsidies and Countervailing Measures (SMC) covers industrial goods, and basically pursues the same two objectives of the Anti-Dumping Agreement. It seeks to protect industries in importing countries from unfair practices by exporting countries (see WTO 2001, United States – Imposition of Countervailing Duties on Certain Hot-rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, complaint by the European Communities WT/DS138/1), and to limit the opportunity to turn countervailing measures into obstacles to fair trade.

Two types of subsidies are prohibited (so-called red subsidies): export subsidies that are contingent one way or another on export performance and import substitution subsidies that are contingent to the use of domestic products (Agreement on SCM art. 3). (See also WTO 2001 United States - Tax Treatment for "Foreign Sales Corporations" WT/DS108/1).

The Agreement covers also subsidies that are neither condemned nor exempt from challenge should they have adverse effects on other members' trade interests (so-called amber

subsidies). Under the new GATT regime, there will be a presumption of prejudice in a number of specific instances such as when a subsidy amounts to more than 5 % of the value of a product. The presumption shifts the burden of proof from the importer to the exporter (Agreement on SCM art. 2, 5).

Subsidies that are non-actionable (green subsidies) are non-specific subsidies that do not favor any firm over other firms. Basic assistance to research, regional assistance and assistance for the adaptation to new environmental regulations are examples of green subsidies. They are however subject to specific conditions (Agreement on SCM art. 2,8).

One may wonder why many countries still offer to firms export promotion services such as subsidized trade missions to foreign markets or subsidized marketing information services, and whether firms benefiting from these services may be exposed to countervailing actions. They might indeed be exposed to such actions. Government export promotion services should therefore be charged to firms at full market cost equivalent. A number of developed countries have indeed taken the habit of doing so. In case of successful export performance as a result of such support, some governments demand a repayment for the cost of the services that have been granted to firms prior to entering foreign markets or negotiating international contracts. They cannot be accused of providing subsidized support to exporting firms.

The use of export subsidies for industrial products is now forbidden to developed as well as to developing countries (except countries with per capita GNPs lower than US\$ 1,000). They have, however, a transitional period extending to 1 January 2003 (ITC/CS 1999, p. 133). The Agreement contributes to reduce considerably the trade-distorting effects of subsidies on manufactured products.

Subsidies and Agricultural Products. The Agreement on Agriculture negotiated in the Uruguay Round was perceived by many as a potential breakthrough in a sector that been traditionally branded as a protectionist stronghold. The Agreement aimed at developing a more equitable market-oriented agricultural sector. Members were required in particular to adopt new disciplines governing export and other types of government subsidies.

As to export subsidies, countries are required to make commitments to reduce their use. They may use certain export subsidies (e. g. subsidized international transport charges on export shipments) provided they agree to undertake commitments to reduce the amount of subsidies and the quantities of subsidized exports (Agreement on Agriculture, Art. 10). (See WTO 2001, Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products, WT/DS103/1). In addition, the Agreement requires countries to make commitments to reduce trade distorting domestic subsidies. Domestic subsidies are divided in three categories: green, blue and amber subsidies (Agreement on Agriculture, Art. 1 and 6). Subsidies that have no or minimal distorting effects on trade or production are green subsidies, and are not subject to reduction commitments. Direct payments under production limiting programs are blue subsidies and under certain conditions are also exempt of reduction commitments. Amber subsidies are domestic support subsidies that are trade distorting. The Agreement sets a ceiling on total support that may be provided to producers, and that must be progressively reduced by agreed percentages.

The Agreement should have profound consequences on trade in agricultural products providing countries respect their commitments. Further negotiations on agriculture were supposed to start in 1999. The first phase of these negotiations actually ended up in March

2001. A work program was agreed upon that would prolong the negotiations at least until 2002. Progress is likely to be slow and uneven, including on subsidies. Yet, from a business viewpoint, bringing some more discipline to trade and subsidies in agriculture during the Uruguay round has been a major achievement (ITC/CS, 1999 p. 179).

With regard to pricing, the reduction in the margin of subsidy in the export price of products originating from countries that support heavily the agricultural sector is likely to make many products uncompetitive on world market. It will increase the relevance of adding value to products in order to reduce the burden of a comparative disadvantage in the primary sector.

Commitment to further reduction of subsidies has been strongly reaffirmed in the Doha Ministerial Declaration : "... building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." (WTO 2001b, 2001d).

Duty Remission

Under GATT, members are allowed to return to exporters the duty that they paid on imported inputs that are being re-exported in exported products (GATT 1994 art. XVI). The same principle applies to indirect taxes charged to exported products (e.g. sales taxes, value-added tax, excise tax, Agreement on SMC, Annex I). Such remissions are not considered to be subsidies and exporters should take advantage of these measures with a view of lowering their export prices and of making their products more competitive. Duty drawbacks are made available to exporters in many countries (ITC/CS, 1999 p. 125). It appears, however, that only experienced exporters take advantage of these measures. One reason may be that separate records must be kept, and that the administrative burden it represents is often perceived as too heavy to make duty remission an attractive proposition to exporting firms.

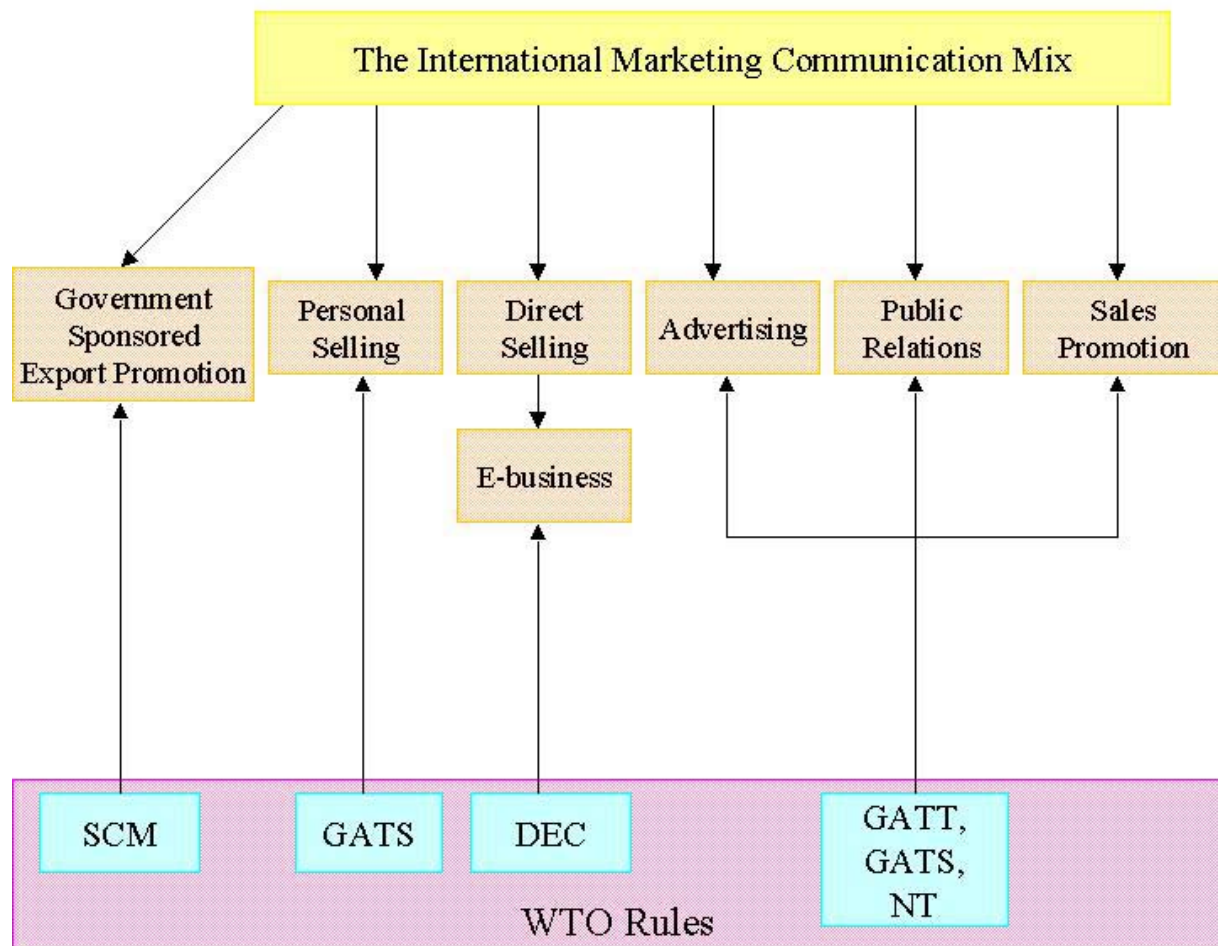
Transfer Pricing

As mentioned earlier, the rule is that in pricing the transaction value should be taken into account for customs valuation purpose (Agreement on Customs Valuation art. 8:1). This applies not only to arms-length transactions but also to transactions between entities within the same firm. Transfer pricing must therefore be based on the true value of the goods traded between international divisions. Firms should be attentive to this rule since governments usually monitor quite carefully the transfer pricing practices of multinational firms, and apply stiff sanctions when firms are caught not applying fair transfer prices (Al-Eryani, Alam and Akhter 1990).

Communication Decisions and WTO Rules

The communication mix of a firm includes advertising, personal selling, sales promotion, direct marketing as well as export promotion services provided to exporting firms by governments (see Figure 5). Two aspects of international marketing communication have already been addressed, namely personal selling through commercial presence abroad and government export promotion that were dealt with respectively under entry mode and pricing decisions.

Figure 5: Communication Decisions in International Marketing
& WTO Rules



- SCM : Agreement on Subsidies and Countervailing Measures
- GATS : General Agreement on Trade in Services
- DEC : Declaration on Electronic Commerce
- GATT : General Agreement on Tariffs and Trade
- NT : National Treatment Principle

Personal Selling

One issue related to commercial presence and pertinent to personal selling is the treatment under WTO of staff working abroad. This issue is dealt with in the General Agreement on Trade in Services (GATS) in relation to measures on the movement of so-called “natural persons”.

As mentioned earlier, the freedom to transfer staff abroad in the service industries remains quite limited because commitments made under GATS by members have been selective. Only a few countries have granted free access to foreign professionals without commercial presence, i.e. most European Union members and Canada (ITC/CS 1999, p. 202). Yet, GATS should be seen as a first step towards further liberalization in the transfer to foreign markets of staff in general and sales personnel in particular. There will be in the future a greater opportunity than in the past for firms to transfer and rotate sales personnel.

At the Doha Ministerial Conference it was agreed that further negotiations on the issue of commercial presence would be conducted before the Fifth Session according to the orientation previously adopted (WTO 2001b).

Direct Selling

Direct selling is selling to customers without using distribution intermediaries. It includes mail ordering and the sale of goods and services by electronic means (fax, telephone, internet). At the Geneva Ministerial Conference held in May 1998, a Declaration on Electronic Commerce (DEC) was adopted to examine all trade-related issues relating to electronic commerce. Members agreed to continue the current practice of not imposing customs duties on electronic transmissions. The Declaration is not yet binding, and therefore electronic commerce is not yet ruled by WTO (ITC/CS 1999, p. 317).

Advertising, Public Relations and Sales Promotion Activities

All these marketing communication tools are not specifically dealt with in any of the various WTO agreements, and one may wonder why. The reason is that WTO agreements address problems primarily related to trade barriers affecting exporting and importing operations. They do not predominantly concern activities that take place in the marketing of products or services such as advertising or public relations once products or services have passed borders. It should be noted however that goods and services that have entered other member markets are not to receive a treatment that is less favorable than the treatment granted to like domestic products or services as per the national treatment (NT) clause. As a result, any marketing communication activity undertaken by an exporting firm in members countries, such as advertising, public relations or sales promotion for the marketing of imported goods or services, should not be constrained any more than the communication activities of like domestic products or services.

Conclusion

This review of WTO rules and regulations from the firm rather than from a trade policy standpoint shows that only a limited number of rules affect the marketing mix decisions taken by firms when doing international business. Product and pricing are the decision areas most affected by WTO followed by entry modes/distribution and marketing communication. Yet,

firms (even large ones) are usually unaware of the opportunities or threats they face as a result of the implementation of WTO rules. This is even more so in developing countries where admission to the GATT/WTO has been more recent, and where firms have not been traditionally active in international business. Firms should be more attentive to WTO developments. They should be more involved as advisers in the design of national trade policies, and as lobbyists when their governments are negotiating agreements in Geneva.

It has been noted in many occasions in this article that WTO rules make the international business environment more transparent and predictable than it was in the past. WTO and its predecessor GATT are certainly a major factor in the expansion of world trade since the end of the Second World War. Over the years, the coverage of the system has expanded, rules have been clarified, and protectionism has been checked not as much as some may hope or too much as some other complain. The result is nevertheless an international marketing environment that is more open and competitive than ever before.

The main objective of this was to provide an overview of those WTO rules that have a direct impact on international marketing strategies without dwelling on technicalities. For this reason, a number of issues have been left aside which are nevertheless of concern to international marketers. In particular, two types of considerations have not been discussed: the preferential treatment granted to developing and to least-developed countries and the work-in-progress on many issues such as rules of origin or trade in agriculture. International marketers should keep informed on these developments as they may have significant impact on their performance on foreign markets. Fortunately, the Fourth Ministerial Conference in Doha has clearly charted the course of upcoming negotiations until the next Session of the Ministerial Conference (WTO 2001b).

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