Czech University of Life Sciences Prague

Faculty of Economics and Management

Department of Law

Bachelor Thesis

Problematics of protectionism and EU

Author: Tomáš Goldšmíd
Supervisor: JUDr. Ing. Bohumír Štědroň, LL.M. Ph.D

DECLARATION:

I declare that I have worked on my Bachelor thesis "Problematics of protectionism and EU" by myself. I have used the referenced literature at the end of the thesis and other sources.

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Problematika protekcionismu a EU

Problematics of protectionism and EU

Souhrn

Tato bakalářská práce nás provází problematikou protekcionismu, postojem EU a dopadem protekcionistických opatření na mezinárodní obchod, především se zemědělskými komoditami.

Práce v úvodu popisuje úlohu Světové Obchodní Organizace (WTO) v otázce mezinárodního obchodu se zaměřením na problematiku cel a necelních překážek. Je zde nastíněna jak pozice rozvojových zemí, tak ekonomicky vyspělých států v otázce protekcionismu a liberalizace světového obchodu. Dále je uveden současný stav jednání o odstranění protekcionistických překážek a očekávaný přínos pro EU.

Hlavní část práce se soustředí na dvě případové studie. První studie pojednává o netarifních bariérách mezinárodního agrárního obchodu a EU. Tato kapitola je částečně vztažena i na ČR jako takovou. Zde jsem popsal případy jednotlivých komodit, např. vývoz živých zvířat, export mléka atd. Druhá studie se zaměřila na konkrétní případ užití netarifních překážek v mezinárodním obchodě. Z důvodu názornosti jsem si vybral případ známý jako EC Biotech Case.

Cílem bylo ukázat, že WTO disponuje rozmanitými nástroji jak regulovat mezinárodní obchod a dohlížet na dodržování dohodnutých podmínek, které mají zaručit jeho otevřenost a rovnost. Zároveň je však vidět, že není v moci WTO odstranit všechny překážky volnému obchodu, a tudíž se WTO zaměřuje spíše na případy s rozsáhlejším dopadem na mezinárodní obchod.

Summary

This bachelor thesis introduces a reader into the affairs of protectionism, EU's standpoint and the impact of protectionist measures on international trade, especially when agricultural products are concerned.

In the introduction, the thesis describes the role of the World Trade Organization (WTO) in the matter of international trade with focus on tariffs and non-tariff barriers. Further depicted is the position of developing countries and their economically more advanced counterparts in the negotiations regarding protectionism and liberalization of the global trade. Also mentioned is the present state with regard to the elimination of protectionist barriers and potential benefit for the EU.

Main part of the thesis concerns two case studies. First study deals with non-tariff barriers in international agricultural trade with regard to the EU. This chapter also partially covers issues related to Czech Republic. Described are cases of particular commodities, for example livestock export, milk export etc. Second study takes on a specific case of application of non-tariff barriers on international trade. In order to provide sufficient depiction I chose a trade dispute known as EC Biotech Case.

The aim of the thesis is to show that WTO has various tools for international trade regulation at its disposal. These measures have been designed to enforce accepted rules and agreements among WTO members. Purpose of such measures is to make sure that international trade is indeed free and fair. However, as we will see, it is not in the WTO's power to remove each and every trade barrier there is because of its extensive numbers. Hence, the WTO chooses cases with large-scale impact on the international trade.

Klíčová slova: protekcionismus, WTO, GATT, EU, netarifní překážky, NTB, cla, GMO

Keywords: protectionism, WTO, GATT, EU, non-tariff barriers, NTB, tariffs, GMO

Table of Contents

Introduction

Protectionism may be part of the economic policy of any country that wants to protect and support its own industrial and agricultural production with a view to promoting the national economy. In particular, export and import policy is geared towards domestic production – in exports, exporters gain certain benefits from their state, while importers are required to overcome market entry barriers that reduce their competitiveness.

The free market rules out protectionist practices, at least in theory; in practice, of course, such practices can be of quite a common occurrence. One of the sectors where protectionism is used in many forms is agriculture and agricultural trade. As can be seen from the illustrative list of problems cited in complaints related to non-tariff obstacles to trade (EU Trade Barriers Regulation), the most commonly used ploys are import licenses, discriminatory taxation, penalties in the form of higher tariffs, phytosanitary, veterinary and hygienic limits, technical and other standards, and inadequate forms of protection for designations of origin or geographical indications.[1] This results in the favorable treatment of domestic producers, who may also be supported by subsidies.

On the global level the key role is played by the World Trade Organization (WTO), the only global international organization dealing with rules of trade between nations. Its heart comprises international agreements that have been negotiated, signed and ratified by a majority of the world's trading countries. The aim of the WTO is to help producers of goods and services and exporters and importers to carry on their business operations more effectively.

At the request of the G20, the WTO, in cooperation with the OECD and UNCTAD, prepares a regular report on trade and investment measures. Since 2009, the WTO Director has regularly reported to the Trade Policy Review Body (TPRB) on trends in international trade.

[1] European Commission: *Council Regulation (EC) No 356/95 of 22 December 1994*; p. 4. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1994R3286:20080305:EN:PDF

The emergence of the European Union was driven primarily by the common market, which was intended to be non-discriminatory with free competition. EU Member States – the initial fifteen and now the current twenty-seven – have renounced the right to pursue independent third-country trade policies, and instead promote their trade policy interests via the EU's common trade policy. EU legislation is consistent with this approach.

The common trade policy, within the exclusive competence of the Community, has uniform principles, such as the regulation of tariff rates, the conclusion of preferential trade agreements on trade in goods and services, the trade aspects of intellectual property, foreign direct investment, the harmonization of liberalization measures, export policy and trade protection measures (to counter dumping and illegal subsidies). The central body for the common trade policy is the EU Council, which is responsible for taking decisions on the proposals it receives from the European Commission. There are also other forums for the defense and promotion of Member States' national interests, such as the Trade Policy Committee and the Council's territorially or commodity-oriented working parties.

Objective of thesis

In my research, I focused on the differences encountered by exporters in agriculture trade within the EU and in third countries. I tested the hypothesis that, from the perspective of the impact of non-tariff trade barriers on agricultural exports, geographical orientation plays a more important role than the type of commodity. There are genuinely problem markets with traps that only large and experienced exporters with a base of expertise and capital can work around. These include transnational holdings dominating the beer and malt sectors, and, in particular, large multinational corporations specializing in the genetically modified organisms (GMO) market. The case study in the second part of this paper concentrates especially on GMOs.

The aim of this bachelor paper, then, is therefore to summarize the information available and formulate answers to the following questions:

- How is the international trade regulated and what are the tools used?
- How does WTO and EU cooperate?
- Is hidden protectionism an important factor affecting the agricultural sector?
- How are the disputes settled? Here I will show the process and some mechanisms on a case study (Case study 2)

Methodology

I have conducted a wide base of background research, structured in terms of information sources. In view of the objectives of this paper, I have focused primarily on European trade and its principles. In the main case study, I have concentrated on principles of the protection of free trade internationally, since the chosen case study deals with a major international dispute between the EU, of the first part, and the United States, Canada and Argentina, of the other part. For this reason, I directly address an issue active within the WTO.

In the first part, which describes non-tariff barriers, I have drawn on European legislation relating to agricultural trade and competition law, which applies universally. In particular, I have focused on case studies and mechanisms on how to prevent restrictions.[2]

I have compared selected obstacles to trade in the EU and third countries. Within the EU, only well-hidden obstacles can be used, the documenting of which generally comes up against the issue of legitimacy – after all, certain measures, such as those on live animals and genetically modified organisms, cannot be included among illegal trade barriers, yet in some cases there might be a hidden agenda. In contrast, in the case study dealing with restrictions on GMO imports into the EU, it is very easy to identify the specific barriers to free trade, which was the subject of international litigation.

The conclusion of the paper sums up these results. I am aware that the issue of protectionism and trade barriers as such is very broad, difficult to assess in many cases, and largely hidden. However, the scope and focus of this bachelor paper only permits a partial insight into the issue and the formulation of relevant conclusions.

Literature Overview

EU versus third countries

The European Commission (the "Commission") regularly assesses the situation regarding market access, including the existence of non-tariff obstacles to trade in third countries. These include Russia and the Asian post-Soviet republics, the countries of the former Yugoslavia, China, India, Korea, Lebanon, and even the USA and Canada.

[2] For more detailed reading see: European Commission: *The EU calls on trading partners to honour their commitment to remove protectionist trade barriers*; Brussels, 25 October 2010.

It publishes its findings in periodic monitoring reports. The Seventh Monitoring Report, published in October 2010, discusses potential restrictive measures implemented by third countries against the EU.

During the economic crisis over the past four years, global trade has been threatened by obstacles to trade more than in periods of prosperity. According to the Seventh Monitoring Report, although the number of obstacles to trade in the period from May to September 2010 did not fall, at least the growth was less marked. Nevertheless, the European Commission pointed out that, given the reluctance to reduce trade barriers, there was a risk that they would remain institutionalized even after the crisis had passed.[3]

According to the WTO's most recent estimates, although the restrictions in place affect no more than one per cent of world trade in goods (of which 0.7% relates to the exports of G20 countries – the twenty most economically advanced countries in the world), the impact of protectionist measures on exports from the European Union is higher (1.7%). The restrictions relate primarily to the automotive, textile and steel industries and also, to a large degree, the agro-food industry.

Despite the gradual economic upturn in the world economy, since October 2008, 332 measures have remained in force. Those sectors hit hardest are agriculture (54 restrictions), the automotive industry (42), services (35) and textiles (35).[4]

The report also analyzed the different forms of restrictions. Border barriers are the most common restrictions and are particularly favored by Russia and Argentina. Then there are measures behind countries' borders (in the case of public procurement and investment) – a prime example would be Indonesia, as well as export restrictions and other measures to assist a country's exporters and protect its own market against imports from the EU. The Report specifies the more than 30 countries applying restrictions during the reporting period.

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[3] European Commission: *The EU calls on trading partners to honor their commitment to remove protectionist trade barriers*; Brussels, 25 October 2010, http://trade.ec.europa.eu/doclib/press/index.cfm?id=632

[4] http://eur-lex.ec.europa.eu/doclib/docs/2010/october/tradic_146796.pdf

According to the findings of the report on protectionist measures in the period from May to September 2010, countries most active in the application of restrictive measures are Russia, Argentina and Indonesia. The European Commission has registered investment-related measures, usually combined with an increase in duties.

The Czech Republic's agricultural trade with most third countries, especially developing countries, is on a slow downward trajectory; over the same period, the share of agricultural exports in total declined by 5.8 percentage points, while agricultural imports were down by 13 percentage points.[5]

The World Trade Organization

The World Trade Organization came into existence in 1995. One of the youngest of the international organizations, the WTO is the successor to the General Agreement on Tariffs and Trade (GATT) established in the wake of the Second World War.

So while the WTO is still young, the multilateral trading system that was originally set up under GATT is well over 50 years old. The past 50 years have seen an exceptional growth in world trade. Merchandise exports grew on average by 6% annually. Total trade in 2000 was 22-times the level of 1950. GATT and WTO have helped to create a strong and prosperous trading system contributing to unprecedented growth. The system was developed through a series of trade negotiations, or rounds, held under GATT. The first rounds dealt mainly with tariff reductions but later negotiations included other areas such as anti-dumping and non-tariff measures. The last round – the 1986-94 Uruguay Round – led to the WTO's creation.

The negotiations did not end there. Some continued after the end of the Uruguay Round. In February 1997 an agreement was reached on telecommunications services, with 69 governments agreeing to wide-ranging liberalization measures that

[5] Šlaisová, Jiřina; Pohlová Karina: *Vliv globalizace a liberalizace trhů na české zemědělství*, ÚZEI, Praha, 2010, p. 24-25.

went beyond those agreed in the Uruguay Round. In the same year, 40 governments successfully concluded negotiations for tariff-free trade in information technology products, and 70 members concluded a financial services deal covering more than 95% of trade in banking, insurance, securities and financial information.

In 2000, new talks started on agriculture and services. These have now been incorporated into a broader work program, the Doha Development Agenda (DDA), launched at the fourth WTO Ministerial Conference in Doha, Qatar, in November 2001.

The agenda adds negotiations and other work on non-agricultural tariffs, trade and environment, WTO rules such as anti-dumping and subsidies, investment, competition policy, trade facilitation, transparency in government procurement, intellectual property, and a range of issues raised by developing countries as difficulties they face in implementing the present WTO agreements.

WTO Agreements

WTO ensures free and fair international trade by negotiating rules and enforcing them. The WTO's rules – the agreements – are the result of negotiations between the members. The current set were the outcome of the 1986-94 Uruguay Round negotiations which included a major revision of the original General Agreement on Tariffs and Trade (GATT). GATT is now the WTO's principal rule-book for trade in goods. The Uruguay Round also created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement, and trade policy reviews. The complete set runs to some 30,000 pages consisting of about 30 agreements and separate commitments (called schedules) made by individual members in specific areas such as lower customs duty rates and services market-opening.

Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each country receives guarantees that its exports will be treated fairly and consistently in other countries' markets. Each promises to do the same for imports into its own market. The system also gives developing countries some flexibility in implementing their commitments.

Goods

It all began with trade in goods. From 1947 to 1994, GATT was the forum for negotiating lower customs duty rates and other trade barriers; the text of the General Agreement spelled out important rules, particularly non-discrimination. Since 1995, the updated GATT has become the WTO's umbrella agreement for trade in goods. It has annexes dealing with specific sectors such as agriculture and textiles, and with specific issues such as state trading, product standards, subsidies and actions taken against dumping.

Services

Various kinds of services, whether financial, transportation or tourism-oriented now enjoy the same principles of freer and fairer trade that originally only applied to goods. These principles appear in the new General Agreement on Trade in Services (GATS). WTO members have also made individual commitments under GATS stating which of their services sectors they are willing to open to foreign competition, and how open those markets are.

Intellectual Property

The WTO's Intellectual Property Agreement amounts to rules for trade and investment in ideas and creativity. The rules state how copyrights, patents, trademarks, geographical names used to identify products, industrial designs, integrated circuit layout-designs and undisclosed information such as trade secrets should be protected when trade is involved.

Dispute Settlement

The WTO's procedure for resolving trade disputes under the Dispute Settlement Understanding is vital for enforcing anonymously accepted rules. Countries

bring disputes to the WTO if they think their rights under the agreements are being infringed. Judgments by specially-appointed independent experts are based on interpretations of the agreements and individual countries' commitments. The system encourages countries to settle their differences through consultation. Failing that, they can follow a carefully mapped out, stage-by-stage procedure that includes the possibility of a ruling by a panel of experts, and the chance to appeal the ruling on legal grounds. Confidence in the system is borne out by the number of cases brought to the WTO – more than 300 cases in ten years compared to the 300 disputes dealt with during the entire life of GATT (1947-94).

Developing Countries and Doha Round

Over three-quarters of WTO members are developing or least developed countries. All WTO agreements contain special provisions for them, including longer time periods to implement agreements and commitments, measures to increase their trading opportunities, provisions requiring all WTO members to safeguard their trade interests, and support to help them build the infrastructure for WTO work, handle disputes, and implement technical standards. In 2001 last WTO negotiation has begun in Doha, Quatar, thus it's called the Doha Round.

Its declared purpose was to help poor countries to integrate fully in the international trading system and to allow them access to the markets of developed countries. Doha round negotiations and the Uruguay round differs in that the developing countries have stronger bargaining position. Larger and relatively more advanced developing countries have banded together into the interest group of G-20 where they promote their own interests. On the other hand, developing countries agreed in particular on the need to eliminate export aid and open their markets to agricultural products.

Another significant step was that in 2001 China joined the WTO through which it strengthened the group of developing countries while also becoming a member of the G-20.

Consequence of this improved position of developing countries was that no agreement was reached. G-20 sent a clear message to the developed countries that it does not intend to continue to liberalize trade, until their earlier promises are fulfilled.

Earlier in 2001, WTO members agreed to eliminate agricultural subsidies and to open markets in developed countries with cheap imports from developing countries. So far this has not happened. Developing countries in turn refused to negotiate other chapters of liberalization of the international trade that are of interest mainly in developed countries. G20's argument was that developing countries had opened their markets to industrial goods from developed countries already in 1994 and they have accepted the Agreement on Trade-Related Aspects of Intellectual Property Rights, "TRIPS".

This agreement is a priority for developed countries and multinational corporations. These steps serve the interests of western investors and the developing world is waiting for adequate compensation in form of the abolition of protectionist measures in the agricultural sector, namely reducing agricultural subsidies and tariffs on imports. Developed countries, meanwhile, refused to accept this, unless developing countries wanted to negotiate their proposal called "Singapore points". Singapore points are related to the protection of foreign investment and transparency in public procurement. Application of Singapore points would be very difficult for developing countries, therefore the multinational companies would benefit the most, because they would be able to easily and safely invest in developing countries.

The head of the World Trade Organization (WTO) Pascal Lamy confirmed during his stay in Sydney that the interest in the successful completion of the Doha trade round is much more on the side of developing countries. They recognize that recovery of their economies hit by the global crisis depends mainly on exports. More willing to conclude the negotiations, Lamy notes, are the United States and China.[6]

[6] BusinessInfo.cz: *Šéf WTO věří v dokončení jednání z obchodního kola z Doha v roce 2011*, 20.1. 2011., http://www.businessinfo.cz/cz/clanek/australie/australie-wto-zakonceni-jednani-doha/1000413/59440/ (28.2. 2011).

Doha Development Agenda (DDA) has trailed for almost ten years. The interests of North and South, East and West are different. On a steep growth of bilateral negotiations on free trade, the change in EU trade policy can be documented. It seeks to level the trading field for European companies' access to foreign markets.

There is a number of studies that try to quantify the potential gains from a successful Doha round talks (DDA). What would Doha mean for EU? According to estimates cited in certain studies, the EU could expect export growth in both agriculture and trade in services. It would also benefit particularly from agreements on environmental goods and trade facilitation reforms. Overall, the combined benefits of the EU would amount approximately 62.7 billion USD in exports and 53,5 billion USD in imports. This would raise EU GDP by 45,6 billion USD.

It is therefore logical that in 2010 EU adopted a common strategy for trade policy. Related documents strongly emphasize early completion of the DDA as an important priority with great potential benefits for the whole EU. Besides the financial effect, Doha would contribute to the successful implementation of employment growth and ultimately provide consumers in the EU access to a wider choice of goods at more competitive prices.

For exporters it is significant that duties on most items in all 153 WTO member states would be reduced or possibly even completely eliminated. Realization of proposed tariff changes, according to the latest simulations, would reduce duties for at least a half of industrial products on the Chinese market. These products now include some of the most important items of EU exports (such as machinery, stamping tools, plastic casings, etc.).[7]

Regarding the trade facilitation, the DDA's purpose is to simplify procedures related to customs clearance, improvement of the transit conditions of all members and limitations of various fees and charges for promotional costs. This should minimize the bureaucratic hurdles and corruption related. Also of significantly increasing importance is the protection of intellectual property rights.

[7] Tlapa, Martin: "Co může přinést Rozvojový program z Dohá" in BusinessInfo.cz, 22.2. 2011, http://www.ceskyexport.cz/clanek/co-muze-prinest-rozvojovy-program-z-doha.aspx (28.2. 2011).

Case study 1 - Non-tariff barriers to agricultural trade

The role of non-tariff barriers is growing. Almost all countries believe it is important to protect some of their national industries and enhance their competitiveness. Unable to use tariffs and other regulatory mechanisms aimed at imports, they look for other opportunities. According to the OECD, non-tariff barriers to trade are any restrictions that adversely affect or distort international trade.[8] These are measures that discriminate imported goods because they are not simultaneously applied to domestic production, distribution and services.

According to BusinessInfo.cz, the official business and export portal, non-tariff barriers encompass anything that, beyond the scope of tariff barriers, make it more difficult and complicated for foreign commodities to enter a particular market compared to the same goods of domestic production in that market.[9]

According to the WTO definition, non-tariff barriers are all obstacles that limit or restrict the trade volume of exporters (importers) on the market of a given destination, with the exception of customs tariffs. These barriers result in higher costs for the exporter (importer) or unjustified delays in business transactions. Barriers of this kind also include veterinary, phytosanitary, health and hygiene, and unrealizable (inadequate) quality requirements, technical barriers, specific requirements for packaging, labelling and transportation, the lobbying of local trade associations, and competition leading to the deterioration of the image of a traded product. This group also encompasses policy decisions, corrupt practices, unreasonable administrative requirements, unjustified certification, obstacles linked to the origin of goods or intellectual property (trade-mark and patent conflicts), etc.[10]

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[8] OECD: The Impact of Regulations on Agro-food Trade, 2003, www.oecd.org

[9] BusinessInfo.cz: *Překážky pro vstup na zahraniční trh*, 4.1. 2006
http://www.businessinfo.cz/cz/clanek/manual-exportera/prekazky-pro-vstup-na-zahranicni-trh/1001370/38403/

10 WTO: *Standards and safety*;
http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm#TRS

All non-tariff barriers to trade between EU Member States are prohibited. Nevertheless, it should be noted that efforts to introduce these obstacles crop up within the EU anyway. They tend to take the subtlest possible form; alternatively, Member States try to pass them off as sanitary or phytosanitary requirements to ensure quality and maximum customer comfort. These hidden non-tariff barriers lead to increased operational and marketing costs for exporters, often combined with the rising costs to the customer.

It is not always easy to differentiate non-tariff barriers to trade from legitimate measures, such as consumer protection. Requirements placed on hygiene, the sales culture, etc., continue to rise, and need to be met by importers even if they do not exist in their own countries. A line may be drawn between legitimate and illegitimate approaches to importers by comparing whether a particular requirement is applied equally on domestic production and supply.

Within the European Union, Member States whose exporters are blocked from accessing a particular foreign market may refer the matter to the European Court of Justice. This court has already heard numerous cases concerning agricultural and food products. Here are some examples:

- The requirement to respect the *Reinheitsgebot* (Purity Law) when importing beer to Germany. German law strictly stipulated that beer must not be made from any raw materials other than barley malt, hops and water. Beer, however, can be produced from other raw materials. In this case, the ECJ ruled that the legislation of a Member State cannot preserve consumer habits and thus stabilize the benefits enjoyed by domestic producers.[11]
- Demands requiring special margarine shapes in Belgium were dismissed on the grounds that this entailed unjustified extra costs.

[11] Borak, Mark: *Beer in Bohemia and Bavaria: Brewing local identity in a global economy*; http://courses.cit.cornell.edu/his452/Alcohol/Beer%20Page/Beerpage1.html

- A ban on imports of pasteurized yoghurt in France on the grounds that it did not meet local technology standards.[12]
- Demands for the submission of various documents that are impossible to procure (under the pretext of security, quality improvement and consumer protection).
- "Buy local" promotional campaigns. The Court concluded that even if such events are organized by private operators, they adversely affect free trade and are incompatible with the EU Treaty.
- Unilateral implementation of veterinary and phytosanitary checks. The ECJ concluded that these checks make importing more difficult and more expensive.[13]

The Institute of Agricultural Economics and Information conducted a survey to determine whether Czech entities trading in agricultural products abroad had encountered non-tariff barriers to trade. A related question sought to discover exactly what these obstacles were and whether they were applies to rivals. Respondents also commented on whether they thought the barriers were appropriate, e.g. whether they were consistent with a current health situation or with hygiene and other phytosanitary requirements.

After analysing the questionnaires which were returned (completed by dozens of entities in the Czech Republic, including large, medium-sized and even small businesses), the authors of the study arrived at certain conclusions. One of the conclusions (albeit, understandably, just a qualified estimate) quantifies the implications of non-tariff barriers for trade in respect of Czech agricultural exports. The result was quite surprising: if these barriers did not exist, Czech agricultural exports could be 18% to 20% higher than at present. However, trade with EU countries would increase by no more than 2%.[14]

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[12] Geoffrey Garrett, R. Daniel Kelemen, Heiner Schulz: *The European Court of Justice, National Governments, and Legal Integration in the European Union*, p. 163, http://www.seep.ceu.hu/alpsa/articles/garrett.pdf

[13] European Commission: *EU sets out priorities to dismantle trade barriers*, March 10, 2011, http://trade.ec.europa.eu/doclib/press/index.cfm?id=684&serie=403&langId=en

[14] Šlaisová, Jiřina; Pohlová Karina: *Vliv globalizace a liberalizace trhů na české zemědělství*, ÚZEI, 2010, str. 6.

In recent years, European exporters have come across non-tariff barriers imposed on the following commodity groups in particular:

- Live animals, freshwater fish, meat and poultry, dairy products
- Cereals, pulses, oil seeds, malt and hops
- Beer, wine, spirits
- Ready-made food products, tinned vegetables

Particular Cases

Exports of live animals

Some states impose very strict requirements regarding the approval of animal breeds. One such state is Russia, which requires the thirty-day quarantine of animals and the presence of its veterinarians throughout the quarantine period, to be paid for by the supplier. Customs procedures are lengthy and lorries transporting animals often spend a long time stuck at the border. Transportation can be complicated by strict transit regulations, such as in Austria, which increases costs and encourages companies to use routes which are longer and avoid Austria completely. In some countries, firms are completely uninsurable (such as in Bosnia), forcing exporters to demand payment in advance.[15]

Exports of live animals sometimes come up against short-term bans on imports on health grounds (emergencies). There can also be problems obtaining export and import licences. Health regulations are strict and exporters believe they are often unjustified. Some countries will only allow imports of unvaccinated animals, which is contrary to internationally recognized veterinary recommendations.

[15] TheBeefSite.com: Russian Federation - Livestock and Products Annual Report, January 2010, http://www.thebeefsite.com/articles/2263/russian-federation-livestock-and-products-annual-report

Czech exporters of live fish have encountered problems including import surcharges levied on each kilogram of imported goods (Serbia) and inadequate veterinary conditions inconsistent with EU practices (in Hungary).

Exports of meat and poultry

In some markets, registration is required and registration numbers are allocated. Importers need to be certified as eligible to import poultry, or import companies need to "consent" to the importation of poultry meat. In Russia, trade often takes place via a predetermined (state or parastatal) company; there are also certain import bans and import quotas.[16] Particular problems singled out by exporters as common to numerous countries were the difficult and opaque approval procedures, signs of corruption, the requirement to match imports with "counter-exports", the very difficult access to insurance coverage for normal commercial risks, and a preference for domestic goods. Non-tariff barriers may also take the form of a special packaging requirement on environmental grounds, e.g. the requirement to minimize packaging (i.e. to package goods in "poly blocks" or "bare blocks"). Commercial risks are difficult to insure in Estonia, Bulgaria and Cyprus.[17]

Exports of dairy products

Export approval is often a very stringent procedure involving unjustified demands. Almost impossible health-related requirements may contravene common European practices. Permits are required for the importation of goods, the conditions of which cannot be found out with any accuracy in advance. Exporters are also confronted with the use of illegal or semi-legal commercial practices, such as the payment of duty prior to the release of goods, quotas, and payment authorization for

[16] Ibid.
[17] Kastrati, Pranvera: *NTBs, an impediment to trade in Western Balkan*; http://www.oecd.org/dataoecd/25/32/43892867.pdf

money transfers and the associated high fees. Lorries have to wait at the border for up to two days before the customs procedure is completed.[18]

One of the Czech exporters experienced a situation in Serbia where the Serbian Veterinary Administration charged EUR 32,000 for an analysis of a delivery of dairy products, even though the value of the whole shipment was EUR 34,000.

Exports of cereals, pulses and oil seeds

Within the EU, one of the technical barriers can be the requirement for ISO, GMP or HACCP certification, which places an excessive financial burden on smaller Czech exporters in particular. For example, the GMP (Good Manufacturing Practice) certificate is essential for exports of animal feed, but in Germany is also demanded from the carriers, which unnecessarily pushes up the price of transportation.

Often the barriers are just a formality. The obstacles are also usually quite bureaucratic. As lorries always need to be loaded quickly, complications may occur with the weight of the load. They cannot be rented out, transportation across non-member countries is not permitted, so they are forced to make empty crossings. In some third-country markets, exporters may need to have their documents super-legalized or make mandatory contributions to analyses, and there can be problems with the banks etc.[19]

An example of very specific non-tariff barriers applies to poppy seed. This commodity is subject to various quality standards, health regulations and, of course, many other measures associated with the production and distribution of narcotics. Exports to Russia are limited in numerous ways, particularly by the extreme requirement placed on cadmium levels which most growers simply can not meet. Restrictions also apply to the import permit procedure, the demands placed on accompanying documentation, which are easily the most complicated of any country,

[18] Beghin, John C.; Bureau Jean-Christophe: Bureau Jean-Christophe: Measurement of Sanitary, Phytosanitary and Technical Barriers to Trade, OECD, p. 11. http://www.oecd.org/dataoecd/1/36/1816774.pdf

[19] ITF: *Barriers to Foreign Trade in Ukraine*, http://inve-trade.eu/en/international-trade/article/information/9-trade/26-barriers-to-foreign-trade-in-ukraine.html?Itemid=2

and even quality requirements. Under Russian standards, poppy seed must be almost 100% pure, which is virtually impossible. Strict checks are conducted to detect any metals, aflatoxins are monitored, and stringent phytosanitary requirements (pest and weed control) are in place. When the time comes to clear goods for circulation, corruption plays a significant role because import regulations, although ostensibly stringent, can be rather ambiguous.

Exports of malt, hops and beer

The exporter registration system used by the US is a non-tariff barrier of sorts. There are also problems with the currency conversion system in Uzbekistan, where the customer pays in local currency, but the bank may take a year to clear the transaction. The situation is less complicated, though similar, in Belarus. Hop exporters identified inadequate phytosanitary regulations – mainly in Japan and the USA – as a barrier to exports.[20]

Non-tariff barriers identified by beer exporters are similar. Consular and customs formalities are accompanied by administrative delays. Unreasonable demands are imposed in relation to health and hygiene certificates, various import duties and import licences. Difficulties may be encountered regarding the issue of documents for imported and collected barrels.[21]

Exports of wine and spirits

Many non-tariff barriers are in place to hinder exports of spirits. These include import licences and the very complicated registration procedure, which encroaches on trade and industrial secrets (e.g. the granting of an important licence is contingent on disclosure of the product recipe). The unconventional customs procedures and various certification requirements also complicate matters. In some countries, there are

[20] CEPR: "Russia Faces Higher Non-Tariff Barriers on Exports to an Enlarged EU" in *CEPR Discussion Paper No. 3840*. http://www.cepr.org/press/DP3840.htm
[21] Emporiki Bank: *Market Access*. http://www.interexgreece.com/uk/countries-trading-profiles/russia/market-access

requirements to use non-standard packaging. Time-consuming, almost impossible analyses of fruit spirits are demanded, and imports must proceed via former state monopolies in the field of alcoholic beverages and spirits.[22]

For example wine exports to the Polish market are impeded by a non-tariff barrier. The wine here is subject to high excise taxes, but the main problem is compulsory stamping, which the law in other countries does not require. A special permit needs to be obtained to import wine.

Exports of mineral water

Quantitative restrictions on third markets are near-universal. Import licences are frequently required on those markets and, indeed, in some EU Member States, although for obvious reasons these measures are given a different name. The main challenge faced by exporters, however, is the labelling and classification of mineral water. Ukraine, for example, classifies mineral water as curative water, which is subject to very strict quality requirements. Korea regards all carbonated water as table water and rejects the description “mineral water”. EU states oppose the designation “flavoured mineral water” and in some countries insist on the classification “soft drink”. In practice, this means that the whole certification procedure has to be revisited over and over again. Russia does not accept the presence of metals at all, aflatoxins are monitored, and strict requirements on pest and weed control are imposed. When goods are being cleared for free circulation, corruption comes to the fore.[23]

Russia does not recognize the usual international standards in this area and exporters have no choice but to accept Russian legislation in its entirety. Germany has stern requirements for mineral water imports (in relation to waste disposal). Exporters are also confronted with indications of corruption and problems with customs clearance (shipments are delayed at borders for up to a week for minor errors in the

[22] The European Spirits Organisation: *The EU Spirits Industry's Trade Priorities for the 6th WTO Ministerial Conference in Hong Kong*, 2005, p. 6.
[23] OECD 2008: Identifying trade facilitating and trade limiting non - tariff measures, TAD/TC/CA/WP(2008)5

shipping documentation), and a number of Arabic-speaking countries require verification of commercial documentation by the consular department.

Exports of ready-made food products

Here, again, it is necessary to obtain an import license. Complications arise in the application of food retail chains' demands. Each supplier must pay high liability insurance. The ISO 9000 standard is no longer accepted as a sufficient guarantee of quality and safety; these days, the much more stringent IFS and BRC conditions are required.[24] It is very expensive to renew and with obligatory annual declaration of conformity. The market chains push for low prices, which should result in a reduction in the quality of supply – this is a problem not just for our exporters to foreign countries, but also for those importing food to the Czech Republic. These retail chains' requirements are not primarily motivated by the desire, for various reasons, to stem the flow of imports from other territories. They are pursuing a profit-driven business policy and their marketing activities in the given country reflect this.

The questionnaire among Czech agricultural exporters showed that, in the previous three years, half of the respondents had been forced by non-tariff trade barriers to restrict their export volumes, change their export range or completely change destination.[25] If these barriers did not exist, the geographical composition of most companies' export goods would change, leading to a significant rise in the volume of exports. The biggest changes would be witnessed in agricultural exports to Russia and China and certain commodities shipped to the countries of the former Yugoslavia.

[24] IFS and BRC are food safety systems in the food industry. They have similar requirements. The IFS (International Food Standard) is an international German-French standard, while the BRC (British Retail Consortium) was created in the UK.

[25] Šlaisová, Jiřina; Pohlová Karina: *Vliv globalizace a liberalizace trhů na české zemědělství*, ÚZEI, Praha, 2010, str. 24.

Case study 2 - EC Biotech Products Case

In early 2006 WTO issued a ruling in the case *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*. This case, also known as the *EC Biotech* case, represented a landmark ruling in the field of export of biotech products into EU. In *Legal Backgrounder*, an American magazine that is being published by the *Washington Legal Foundation*, international and business trade expert Lawrence Kogan argued that "a recent World Trade Organization (WTO) ruling represented a blow to the proponents of the *Precautionary Principle* in Europe and a victory for "best available science" in the regulatory process."[26] Most European counterparts, however, didn't share his enthusiasm since the topic of biotech products in general and genetically modified organisms (GMO) in particular is highly controversial in EU. Among other things, the case was used to analyze "whether WTO is an international organization sensitive to the larger concerns of human health and environmental protection or whether it is an obscure international trade tribunal with no environmental sensitivity or expertise."[27] Therefore, the result immediately caused quite an uproar and gained global attention not only from international trade and law experts and biotech scientists, but also from broad public.

For the purpose of this case study importance of the WTO ruling lies in two aspects. First, it showed that the *Precautionary Principle* "cannot be used, especially when scientific evidence is available on which to base a risk assessment."[28] And second, ruling refused to accept that the Precautionary Principle would be equal to the level of international law as the European Union tried to argue. In general, attempted restriction of biotech foods by the European community represented another major

[26] Institute for Trade, Standards and Sustainable Development: *WTO Ruling Disregards Precautionary Principle: Favors Science-Based Approach to EU Biotech Rules;* 2006, http://www.monsanto.co.uk/news/ukshowlib.phtml?uid=10972 (2.3. 2011).
[27] Negi, Archna: "World Trade Organization and the EC Biotech Case: Procedural and Substantive Issues" in International Studies, Vol 41., No. 1., 2007, p. 2.
[28] *WTO Ruling Disregards Precautionary Principle: Favors Science-Based Approach to EU Biotech Rules*, 2006.

failure to employ international trade protectionism on the basis of "scientific uncertainty."

EC Biotech case was opened by an established WTO Dispute Panel in August 29, 2003 in response to combined appeals of three plaintiffs - governments of the United States (DS 291/23), Canada (DS 291/17) and Argentina (DS 291/17).[29] These three countries charged the European Communities under four agreements - Agreement on Agriculture, the General Agreement on Trade and Tariffs 1994, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS measures) and the Agreement on Technical Barriers to Trade. The defending party was the European Commission representing the European Union.

Due to vast political and economic repercussions of the ruling for the participating countries and in order to counterbalance political pressures of a supranational organization the size of EU, the United States took the initiative for the complaining side. The U.S. claimed that

"Since October 1998, the European Communities (EC) has applied a moratorium on the approval of products of agricultural biotechnology (''biotech products''). Pursuant to the moratorium, the EC has suspended consideration of applications for, or granting of, approval of biotech products under the EC approval system. In particular, the EC has blocked in the approval process under EC legislation all applications for placing biotech products on the market, and has not considered any application for final approval. The approvals moratorium has restricted imports of agricultural and food products from the United States".[30]

It was widely assumed there were at least three possible consequences of a ruling that would be favorable to the plaintiffs. First, monetary compensations covering the financial losses suffered by the biotech products producers totaling at least the amount equal to the tariffs and regulations imposed. Already as of 2002, the

[29] Dispute Settlement Body: "US, Canada and Argentina request Panel to examine EU moratorium on biotech products" in *WTO News*, August 18, 2003, http://www.wto.org/english/news_e/news03_e/dsb_18aug03_e.htm (1.3. 2011).

[30] WTO: *European communities–measures affecting the approval and marketing of biotech products: Request for the establishment of a Panel by the United States*; WTO Dispute Resolution Panel, WT/DS291/23, 2003a.

U.S. State Department had claimed at least $300 million in lost sales of genetically modified corn and soy products. $56 million due to Portuguese regulations alone.[31]

Second, should the complaining parties succeed, they might have been be able to "seek changes to the EC regulatory regime that would presumably make that regime more like the U.S. regime, which the EC has characterized as “laissez-faire,” or a deregulatory regime."[32] This would inevitably cause further major complications as any changes within the EU would have to confront the complexity of its inner political system. Even further, sanctioning of the claim of the plaintiffs would most likely produce additional setback for the European Commission in relation to the biotech products. European Commission, the executive arm of the EU, has been attempting to overturn or ease up marketing and import rules or even bans on GMOs among the EU member states.

The fact that this line of reasoning was based wholly on realistic assumptions proved itself already before the WTO dispute Panel issued an interim ruling in March 2006, which was intended only for the participating parties prior to the publication. In July 2005, nine months before the interim ruling was announced, 22 of the 25 EU member states refused to lift bans on GMOs as was suggested in the European Commission proposals. "As a result," Sara Lewis noted, "the commission may introduce a totally new law to end the bans, rather than submit further proposals through the existing regulatory system."[33]

Third, the ruling of the dispute Panel would have also constitute a powerful legal ground for future cases of similar character because of the consequences of this case, regardless of the result. Since the WTO operates under customary international law, the ruling set up an important precedent (or rather upheld the rulings of two earlier similar cases). Nonetheless, the precedent will apply for many developing

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[31] Crop Choice: "Corn Growers say U.S. Isolating itself on GMO Issue: Japan, Europe Tighten Regulations on Unapproved Biotech Crops in Feed", October 16, 2002, http://www.cropchoice.com/leadstry1f1f.html?recid=1049 (2.3. 2011).

[32] Suppan, Steve: *U.S. vs. EC Biotech Products Case*; IATP, 2005, p. 1.

[33] Lewis, Sara: ”European Commission considers options after rebuff on biotech bans” in *Food Chemical News*, July 4, 2005, http://www.agra-net.com/portal2/fcn/home.jsp?template=pubarticle&artid=1172162971882&pubid=ag096 (3.3. 2011).

countries that haven't created any regulations with regard to the import of biotech foods so far.

Thus, even prior to the official publication of the ruling, the plaintiffs were very likely to try to persuade the Panel to increase the findings of violated agreements and articles. All parties were also almost certain to appeal the ruling to the WTO's appellate body.[34]

The WTO Dispute Panel focused on three different questions. First was what constituted an "undue delay" in relation to the approval of biotech products for commercial use. Second question concerned requirements for a scientifically based assessment as a ground for implementing the SPS Agreement. Third and final question of the dispute Panel concerned the application of SPS measures (Sanitary and phytosanitary measures) in case there is a lack of scientific information about a product - in other words the use of the *Precautionary Principle*.

The dispute Panel found three counts of violation against SPS measures. The two remaining issues (undue delay and scientific based risk assessment) were effectively dismissed when the dispute Panel stated there was no need to issue a ruling. Those three violations were 1) alleged general moratorium in the EU on approving biotech products that were about to enter the commercial market; 2) certain use of SPS measures and 3) illegal EU member state measures against bio-tech products that de facto created the moratorium on 24 out of 27 products. Between 1999 and 2003 European Commission's Scientific Committee had issued affirmative risk assessments of above mentioned products, but due to complex procedure of approving and numerous objections from member states, none was actually approved.[35]

Due to space constraints, this paper will not include specifics of legal procedures used during the hearing. Rather, it will focus on the outcome, which mostly favored the plaintiffs. As was stated, the EC violated the SPS agreement on the

[34] Negi, Archna: 2007, p. 3.
[35] Suppan, Steve: *The WTO's EC-Biotech Products ruling and the Cartagena Protocol*, IATP, http://www.iatp.org/iatp/factsheets.cfm?accountID=451&refID=78778 (2.3. 2011).

grounds of illegal application of SPS measures. The matter was that the EC and certain EU states had failed to undertake their own risk assessment. This was related to how the EU assessed health and environmental concerns. The EU didn't rely solely on an approach that is based on scientific research with strict criteria and defined methodology to find out whether or not a respective bio-engineered seed or a GMO constituted a clear threat. Good example of a study which prevented product from being marketed was covered by European press, for example *Le Monde*. It uncovered internal studies by Monsanto corporation that a variety of GM corn, Mon 863, under consideration to be commercialized in the EC, when fed to rats, caused changes in the blood composition and reduced kidney size.[36]

Instead, EU member states had on several occasions used public fears and unsubstantiated non-scientific arguments to approve restrictive legislation or to deny an approval of a preliminary affirmative risk assessment. "Legislators' concerns may even have a bearing on the question of which risks a Member decides to assess with a view to taking regulatory action, if necessary, on safety grounds," Kogan explains.[37] For that reason "measures aimed at mere consumer information were not covered by the SPS Agreement," states CIEL's analysis of the interim report.[38]

The dispute Panel claimed that objections of individual EU member states to the preliminary affirmative risk assessment conducted by the EU's Scientific Committee didn't exempt the EU from the SPS Agreement Article 5.1 requirement to justify an SPS measure limiting the approval or a marketing of a product. Put simply, it wasn't enough to merely state unsubstantiated objections against the EC Scientific Committee's approval. In order to cancel the findings of the risk assessment, member states would have to submit relevant scientific evidence.

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[36] Foucart, Stephane: "Monsanto's GM Corn MON863 Showed Kidney, Liver Toxicity in Animal Feeding Study" in *Le Monde*, March 14, 2007. http://www.organicconsumers.org/articles/article_4790.cfm (4.3. 2011).

[37] Kogan, Lawrence A.: "WTO Ruling on Biotech Foods Addresses "Precautionary Principle" in *Legal Backgrounder,* Vol. 21, No. 38, December 2006, p. 2.

[38] *Overview and Analysis of the Panel's Interim Report*, The Center for International Law, March 2006, p. 19.

Considerable part of the argumentation of the EC regarding the denial to import biotech food products rested on what the WTO Dispute Panel later identified as the so called Precautionary Principle, which is directly connected to the use and application of the SPS measures, more specifically to the SPS Article 5.7. EC Biotech case, was not the first landmark case related to the Article 5.7. Prior to EC Biotech, WTO ruled on *Japan – Measures Affecting Agricultural Products*, which was a crucial case that concerned the term "insufficient scientific evidence," also known as "scientific uncertainty." Second landmark decision was in the case *European Communities - Measures Concerning Meat and Products,* which focused solely on the Precautionary Principle. As we will see, both earlier cases echoed in the outcome of our case.

The Precautionary principle is a relatively new legal concept in the international law. It was first developed in Germany as a national law during 1970's and 1980's specifically as a response to ever growing complexity and sophistication of bio-engineering research. At that time usual scientific methods ceased to be able to provide unambiguous data that would rule out a possibility of significant or even irreversible damage to the environment due to use of new biotech or chemical products, because some negative effects were too difficult to estimate. For example infamous DDT pesticide required longer term cumulation in order to manifest its effects. But once critical accumulation was reached the damage was already done and could not be remedied. Hence, international instruments for the lawmakers were created to prevent environmental damage by taking a precautionary action to avoid the "paralysis of uncertainty." Put simply, precautionary principle represents "better safe than sorry" approach. At present, the principle has crystallized into a norm of customary international law (at least in the EU) through binding agreements, non-binding declarations and other instruments of global and local application.[39]

With regard to the international trade, WTO regulations allow countries that are concerned over the safety of biotech products to restrict imports of certain

[39] McIntyre, Owen; Mosedale, Thomas: "The Precautionary Principle as a Norm of Customary International Law" in *Journal of Environmental Law*, Vol. 9, No. 2, 1997, p. 221, 223.

products in order to protect the health of their citizens, animals and environment. However, in doing so, they must adhere to the specific terms of the *SPS Agreement.* Such regulations must be designed to prevent a genuine risk. Furthermore, "a concerned WTO member bears the burden of conducting an objective, empirically-based scientific risk assessment. And this must be done before a WTO member promulgates regulations that have the effect of denying or restricting market access to those products," Kogan adds.[40]

As was stated above, the EC based the defense of its regulatory regime on the recourse to the SPS Article 5.7. "The significance of Article 5.7 of the SPS Agreement," Niu Huei-Chih argues, "is that it authorizes Members of the WTO to adopt the necessary sanitary and phytosanitary measures to protect human health, animal and plant life in cases where relevant scientific evidence is insufficient."[41]

The EC argued, “in cases where relevant scientific information is insufficient to perform a risk assessment, the member should be able to apply a provisional measure until sufficient evidence is available to perform a “more objective risk assessment” to review the need for the provisional SPS measure."[42]

However, the Dispute Panel denied such an argument, therefore also the recourse to the Article 5.7. The Panel argued that the Precautionary Principle is a controversial measure that is not sufficiently anchored in the international law so as to serve as a basis for judicial rule. The Panel specifically stated that “even if a Member follows a precautionary approach, its SPS measures need to be based on a risk assessment.” Put simply, the Panel refused to accept the precautionary principle as a tool for risk management. The Panel decided so because the decision to impose a moratorium or a ban on a bio-tech product was not based on a scientific risk assessment as required by the SPS Agreement.

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[40] Kogan, Lawrence A.: 2006, p. 2.

[41] Huei-Chih, Niu: "Can Article 5.7 of the WTO SPS Agreement be a Model for the Precautionary Principle?" in *SCRIPTed - A Journal of Law, Technology & Society;*http://www.law.ed.ac.uk/ahrc/script-ed/vol4-4/huei-chih.asp (2.3. 2011).

[42] Suppan, Steve: *The WTO’s EC-Biotech Products ruling and the Cartagena Protocol*, IATP, http://www.iatp.org/iatp/factsheets.cfm?accountID=451&refID=78778 (2.3. 2011).

The outcome of the dispute is ambiguous at best. WTO decided in favor of the plaintiffs, because "the European Community (‘EC’) and several European Union member states had acted primarily out of political rather than scientific concerns to justify their trade-restrictive food safety measures, they clearly violated the tightly drafted provisions of the WTO Sanitary and Phytosanitary (‘SPS’) Agreement," Lawrence Kogan explains.[43] Therefore, the EC violated several WTO rules. First, it imposed de facto moratorium on bio-engineered products from the United States, Canada and Argentina. Second, the Panel also found that there was an undue delay in the approval procedure with regard to 24 biotech products, which was another violation of the SPS Agreement. Third, certain EU member states had imposed state-wide safety measures against respective biotech products even though the EU's Scientific Committee had issues an affirmative risk assessment. Those measures were found not to be valid due to insufficient scientific value.[44]

However, on September 29, 2006 final and publicly available decision of the Panel on EC Biotech case was released. It´s adjudications substantially differed from the interim report - a clear sign that the WTO Dispute Panel was under heavy political pressure. The petitioners' original victory seemed to have been reduced. What was of great importance is that the Panel rejected the idea brought by the complaining parties that the European Communities´ decision to apply a general moratorium on approvals was a decision to impose an effective marketing ban on all biotech products subject to approval, or that it established a new procedure, or amended the existing EC approval procedure. This was almost certainly a considerable factor in the fact that no dispute party decided to appeal, which was no small surprise. Overall, many scholars, trade, law and environmental activists note that the Panel omitted many important questions related to the case, mainly the relationship between natural and genetically modified organisms and their impact on the environment.

[43] Kogan, Lawrence A.: 2006, p. 1.
[44] *Overview and Analysis of the Panel's Interim Report*, The Center for International Law, March 2006, p. 51.

Conclusions

The issue of tariffs, trade barriers and protectionism as such is by no means something new. With the historical hindsight, all states and countries were trying to export as much goods and products as they could while trying to prevent the same from happening to them. 18th and 19th century have seen the rise and fall of mercantilism, which coupled with colonial economic system, represented an extreme use of protectionism. At present, the problematic of so called non-tariff barriers is of an increasing concern particularly to export oriented economies. The reason of technical obstructionism to the international trade is quite easy to figure out.

Never in the history of mankind have we seen so intense and massive global exchange of goods and other products. As the liberalization of markets proceeds, export subsidies are being prohibited and also other forms of state support are continuously being banned by the WTO, it is only logical that countries which wish to maintain positive trade balance sheet, seek other not so easy to remove ways of prevent import from outer economies.

First part of my thesis focused on rather descriptive analysis of non-traditional barriers (NTB) to trade. Since it is extremely difficult to quantify the exact data of how the NTBs affect the international trade, I tried to manifest some of the most common ways how to prevent or considerably reduce import of products based on technical requirements, which are designed to be nearly impossible to match. During my research I have found that only financially strong and well informed companies can afford to export their goods into counties like Russia, China or the USA.

To provide at least a partial picture of the extend of NTBs, relatively recent study of the Czech Institute for Agricultural Economy and Information (ÚZEI) discovered that at least 70% of Czech exporters have encountered NTBs of various kinds.[45] As a result, considerable portion of smaller export companies were forced by these circumstances to either limit their export, change their portfolio towards less

[45] Šlaisová, Jiřina; Pohlová Karina: *Vliv globalizace a liberalizace trhů na české zemědělství*, ÚZEI, Praha, 2010, str. 24.

financially attractive products or change the export destination. Thus, NTBs present considerable losses to our economy. However, there is a good reason to suspect that losses of other countries are similar.

Second major conclusion of the first part of the thesis dealing with NTBs is that introduction of NTBs doesn't necessarily have to be connected with the competition between two or more subjects as is usually the case of most NTBs there are. The cause of existence of NTBs in trade, particularly in the agrarian trade, can be of financially-political character. Motives behind such NTBs don't have to stem out of pursuit of success in over-competitive environment. They may have originated in the political circles that have to be receptive of the public opinion. For example as we have seen in the EC Biotech case, most of EU member states' restrictions against GMOs were based on country's reluctance to even admit biotech products into their markets. Their decisions to impose bans or strict criteria were based on health concerns of the public and distrust of environmental safety of biotech products.

This brings us to the second case study, which, in contrast to the first study, was much more specific. Aside from that, another major difference was the character of trade barriers discussed. The EC Biotech case was important for this thesis since it featured relatively straightforward dispute between several governments. It illustrates the problem of trade protectionism much better, because there are clear accusations and the dispute panel issued a relatively clear ruling. That is quite different from the other disputes where non-traditional barriers are concerned, since they are extremely difficult to prove. Hence, governments seldom want to appeal to WTO as there is relatively small chance for remedy.

But back to the EC Biotech case. WTO found that several measures taken by the EU member states were sometimes partially, sometimes in full, in conflict with WTO rules. The most important ruling the Dispute Settlement Panel issued was that the moratorium, which was imposed on 24 out of 27 biotech products, was a result of a failure to conduct approval procedures. This was interpreted as an "undue delay." However, it was important that this moratorium existed de facto and was not imposed by purpose.

Another major ruling focused on insufficient scientific evidence. The Panel concluded that several safeguard measures were accepted after the European Commission's Scientific Committee approved certain biotech products for marketing in the EU. Since EU member states refused to allow such products to be marketed despite the EC's Scientific Committee approval, but at the same time did not present sufficient scientific evidence which would rebut the original approval, such states violated the so called Sanitary and Phytosanitary Measures Agreement requirements. In plain words, the states had no right to deny marketing of GMOs since there was no substantial scientific reason against it.

In light of the distorted representations of the Panel's findings following the issuance of the Interim Report in early February 2006, it is important to point out that the Panel report is far from being the clear-cut victory for the complaining parties as was often reflected in the American press.[46] According to the Wall Street Journal, for instance, U.S. officials characterized the ruling as an important warning to other parts of the world against establishing prohibitions of GMOs. Although the full implications of the EC-Biotech case remain unclear, both for the EC and for other WTO members, the present overview and analysis of the Interim Report should serve to ease some of the concerns raised by such inaccurate statements.

Finally, the Panel did not avoid the often criticized practice of issuing two different versions of reports on rulings. Yet again interim report was made accessible only to disputing parties, which led to misinformation. Moreover, the Panel accepted, but refused to consider expert reports that explained the far reaching consequences of the Panel's decision. In this case such reports concerned mainly general anxiety if not hostility of European public towards GMOs, which are based on distrust and lack of sufficient information about long-term effects of use of GMOs. This effectively further removed WTO from being an organization that has in mind above all the public interest instead of pure legalism. The first-mentioned problem requires a change in

[46] *Overview and Analysis of the Panel's Interim Report*, The Center for International Law, March 2006, p. 52.

WTO procedures. The latter requires a broader understanding of the importance of public participation.

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