

METHYL BROMIDE CASE

International Trade Negotiations

INTRODUCTION

The purpose of this exercise is to simulate an international trade negotiation designed to reduce trade restrictions among three nations.

While the factual scenario is based upon real issues, this case is hypothetical in terms of the fictional countries identified and specific facts presented.

This case will include country teams, government teams, industry association teams, a non-governmental organization, and various forums including a WTO Dispute Resolution Panel.

The goals of this exercise include:

- 1) Development of research and investigation skills;
- 2) Development of analytical, planning, and negotiation strategy skills;
- 3) Development of negotiation, mediation, and conflict resolution skills;
- 4) Development of durable written agreements; and,
- 5) Development of planning and presentation skills to various official governmental and WTO panels and bodies.

It is important to carefully read the facts presented, the negotiation instructions to the parties, and resource materials as identified.

Methyl Bromide Case

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BACKGROUND, FACTS, AND ISSUES COMMON TO ALL PARTIES

Parties:

Country Representatives:

UNITED STATES
JAPAN
CHILE

Governmental Agencies:

U.S. Department of Agriculture (USDA)
U.S. Trade Representative (USTR)

Japan Ministry of Foreign Affairs (MOFA)
Japan Ministry of Agriculture, Forestry and Fisheries (MAFF)

Chilean Ministry of International Trade and Commerce (CMITC)
Chilean Ministry of Agriculture (CMA)

Industry Associations:

U.S. Grape Growers Association (USGGA)
U.S. Strawberry Growers Association (USSGA)
Japan Grape Growers Association (JGGA)
Japan Strawberry Growers Association (JSGA)
Chilean Grape Growers Association (CGGA)

Non-governmental Organizations: (NGO)

Greenpeace International

The problem:

The grape producers in the United States believe that Japan's imposition of certain sanitary and phytosanitary (SPS) standards which require the post harvest fumigation of U.S. grown grapes with methyl bromide (MB) constitutes an unjustified non-tariff, trade barrier. (The fumigation is required to eradicate pests that may be present in the grapes.)

Chile table grape growers consider US phytosanitary trade restrictions which require the fumigation of Chilean table grapes with methyl bromide to constitute a non-tariff trade barrier.

Not directly related to the trade issue is growing international concern regarding the environmental impact of continued methyl bromide use. International environmental organizations seek the immediate phase-out of all methyl bromide use. Organized labour groups have also documented adverse health impacts to field workers exposed to methyl bromide when used in the soil and crop cultivation process.

Historic Background:Trade and Tariffs

Trade is the act of the exchange of goods and services between two or more countries. As a general economic principle, countries should export those products which they can produce most inexpensively and efficiently based upon the availability of natural resources, production capabilities, and marketing efficiency. Conversely, countries import those products for which consumer, government, or industry demand surpass the internal production capacity or efficiency of the importing nation. Without an international trading system, countries would be required to produce all goods and services necessary to support societal needs and demands. Because of limitations of resources or productive capacity, however, countries would suffer in a non-trading economic system. In an open trading system, countries can concentrate on the production of goods and services based upon specialized resource or production capacities.

A free trading system would allow for the importation of products produced and marketed at the lowest price. Because of the concern that a totally free and open trading system might seriously jeopardize the survival of domestic producers, some countries have maintained high tariffs to protect domestic producers from foreign competition or to protect other identified national interests (domestic employment, key production sectors, national defense, etc.). In addition, many countries still rely on tariff for a significant percentage of government revenue.

The GATT and WTO system of rules and negotiating and dispute settlement procedures is designed to promote international commerce by gradually reducing or eliminating unnecessary barriers to international trade while at the same time respecting national sovereignty and legitimate governmental function.

Nontariff Barriers (NTBs) Measures other than tariffs that burden or restrict international trade. NTBs may be financial (e.g., internal taxes and customs fees) or nonfinancial (e.g., quantitative restrictions and excessive documentation requirements). Rules and regulations governing human health, the environment, and other recognized standards deemed essential for the protection of national, industrial, or other interests may be nontariff barriers.

Sanitary and phytosanitary regulations Health and safety standards affecting imports. ("Sanitary" regulations are those applying to human and animal products; "phytosanitary" regulations apply to plants and plant products.) Such standards are established to ensure that animals and plants and their products are safe for consumption and not damaging to the environment and have been developed to protect domestic or importing industries from recognized or identified contaminants, pests, or other agents that may be contained in a foreign import including produce, processed foods, timber, and other products. Sanitary and phytosanitary regulations are permitted by the WTO rules, but they must be applied only to the extent necessary, cannot arbitrarily discriminate and must be based on sound technical and scientific evidence. If such measures are imposed only to protect domestic markets from foreign competition, however, they may constitute illegal or unacceptable trade barriers under the GATT and WTO rules.

Agricultural Trade Under the GATT and WTO.

The World Trade Organization (WTO), established in 1994, incorporates and extends the body of agreements that constituted the former General Agreement on Tariffs and Trade (GATT).

The special treatment of agriculture in the GATT was largely, if not exclusively, a reflection of the power and influence of the United States at the end of the Second World War. The negotiators of the GATT, did not, generally speaking, see any need for a special regime for agricultural trade. Import quotas and export subsidies were, however, an integral feature of the American supply management system for agricultural products that existed at that time. (1) And, "no treaty that impinged upon the U.S. Farm program could receive constitutionally required senatorial approval".

The special treatment afforded to agriculture under the GATT led to a large number of disputes over the interpretation and application of the GATT to agriculture (3).

At the launch of the Uruguay Round of the multilateral trade negotiations and as early as 1982 at the OECD Ministerial Council, the parties adopted the position that "agricultural trade should be more fully integrated into and within the open and multilateral trading system".

A separate Agreement on Agriculture was finally achieved in 1993 and allowed for the conclusion of the Uruguay Round of GATT negotiations. Separate from the

Agreement on Agriculture discussed above, the Uruguay Round negotiators also approved an Agreement on the Application of Sanitary and Phytosanitary Measures (the “SPS Agreement”),

Below is a brief Summary of the SPS Agreement taken from the WTO website; for further details see the text of the agreement.

Agreement on Sanitary and Phytosanitary Measures

This agreement concerns the application of sanitary and phytosanitary measures - in other words food safety and animal and plant health regulations. The agreement recognizes that governments have the right to take sanitary and phytosanitary measures but that they should be applied only to the extent necessary to protect human, animal or plant life or health and should not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail.

In order to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members are encouraged to base their measures on international standards, guidelines and recommendations where they exist. However, Members may maintain or introduce measures which result in higher standards if there is scientific justification or as a consequence of consistent risk decisions based on an appropriate risk assessment. The Agreement spells out procedures and criteria for the assessment of risk and the determination of appropriate levels of sanitary or phytosanitary protection.

It is expected that Members would accept the sanitary and phytosanitary measures of others as equivalent if the exporting country demonstrates to the importing country that its measures achieve the importing country's appropriate level of health protection. The agreement includes provisions on control, inspection and approval procedures.

For purposes of this simulation, it shall be assumed that parties can resort to the procedures in WTO Dispute Settlement Understanding (DSU) when they believe that another government's measures are inconsistent with its obligations or impair benefits to which they are entitled. Relevant provisions of the DSU are attached at appendix B.

Factual Background

Methyl Bromide Use.

Agricultural producers and exporters in many nations have developed a critical reliance on the use of a pesticide (biocide) called Methyl-Bromide (MB).

MB is used in the production of many agricultural crops (tomatoes, grapes, strawberries, etc.) as a pre-plant soil fumigant. The biocide is injected as a liquid gas into

the soil before planting as a means of eradicating plant nematodes, weeds, and other organisms. After injection, the liquid gas converts to a gaseous compound that eventually vents into the earth's atmosphere where the bromine works as an efficient ozone depleter.

Because of its capacity to deplete the ozone layer, MB has been included under the Montreal Protocol on Substances that Deplete the Ozone Layer and is targeted for elimination according to a schedule set forth in the Protocol. The phase-out of most MB use will be achieved similar to the phased elimination of Chloro-Fluoro Carbons (CFCs).

Environmental organizations and labor organizations have advocated the immediate or more rapid phase-out and elimination of MB because of concern for the earth's ozone layer and the attendant risks to human health and safety posed by the chemical's continued use.

In addition to the use of MB in agricultural production, MB is also utilized as a **post-harvest fumigant** and is applied to crops after harvest to eradicate pests prior to shipment to market. Some countries (including the U.S. and Japan) require the application of MB as a post-harvest fumigant on certain produce and crops before they can be imported.

The application of MB after the harvest of tomatoes and grapes is considered to reduce the products shelf life by as much as 5 days to one week. In addition, the preparation of a crop for fumigation takes one day and the post-fumigation ventilation requires another full day. This shelf life reduction when added to the necessary transportation days to deliver products to foreign markets significantly reduces the marketability of the crops and results in substantial waste and a consequent diminished value of the product for export.

For purposes of this negotiation simulation, we will deal ONLY with the post-harvest fumigation of agricultural products including fumigations required as a condition of import by countries who are parties to these negotiations.

Assume the following facts:

1) Japan requires the post-harvest and/or pre-import MB fumigation of grapes and oranges which it imports from United States.

2) Japan also produces grapes requiring higher production costs related to a more labor intensive method of cultivation. Japan's export market for grapes is minimal and Japan exports no grapes to the United States or Chile.

3) US grape producers rely heavily on the Japanese market for the sale of their grapes and oranges, most of which are utilized in processed foods (jams, jellies, etc), but a significant percentage are sold as fresh fruit which directly compete with Japanese grapes and oranges. The Japanese market represents over 50% of the US grape export market.

4) Under existing sanitary and phytosanitary requirements, the Japanese government requires the post harvest MB fumigation of US-produced grapes and oranges to protect against aphids, nematodes, Mediterranean fruit flies, and other pests.

5) The United States government requires the post harvest MB fumigation of all imports of oranges (negligible) and table grapes (significant) from Chile to protect against aphids, nematodes, Mediterranean fruit flies, and other pests.

6) Assume that aphid damage is common in the production of US produced grapes, but is adequately controlled with the use of various organophosphate pesticides during production. Similar aphid species have been present in both Japan and Chile for years earning them the name of “cosmopolitan bugs.”

7) Fruit flies have not been discovered in United States grapes. Their presence has been limited to tree fruits only and eradication efforts in the United States have been deemed effective, but the threat is still considered serious and US agricultural authorities and industry leaders fear future infestations similar to those that caused the Med Fly eradication program in the United States in the late 1970s and early 1980s.

8) Anecdotal reports have suggested that the Mediterranean fruit fly has appeared in Chilean fruit trees. US growers in particular are worried about the importation of fruit flies on Chilean grapes and other regional products.

9) The post-harvest fumigation of crops accounts for approximately 7% of MB use in the United States; the majority of use is related to crop production, structural fumigation, or other uses.

10) Environmental organizations have targeted the agricultural industry in the United States, the United Nations, and all parties to the Montreal Protocols seeking an acceleration of the phase-out of MB. Many environmentalists are unfamiliar with the intricacies of agricultural production and the distinction between pre and post harvest uses of MB.

Negotiation Goals and Objectives

Each party is expected to identify its unique and shared interests vis-à-vis the other parties, and to work to achieve a negotiated resolution of the dispute. Because parties will receive separate, confidential instructions, it should not be assumed that all interests of all parties have been identified in detail in the outline of facts.

It is fair to assume that parties to trade negotiations generally seek to reduce trade barriers that restrict or limit their ability to export products to buyers in other countries and seek to impose and maintain barriers that will serve to protect domestic producers from foreign competition.

You may be the sole party representative or you may be part of a team representing one of the parties. If part of a team, it is important to work first to build a unified strategy among your team. You may want to divide subject areas for research, contacts with other parties, or trade-off roles as lead negotiator for the party.

As part of the process of negotiating and protecting your principal's interests, you must effectively identify the interests of the other parties including what other interest groups might be contacted, mobilized, or influenced to make a proposed compromise or settlement more acceptable to one or more parties.

In international negotiations, negotiators often participate with specific instructions from "home" and with varying degrees of authority or flexibility to bind their government or organization to extraordinarily wide-ranging or creative solutions. A process of communication with the home government, industry, or party officials is to be expected prior to entry into an enforceable commitment by negotiators.

The **goal of each party** should be to enhance and expand its interests (exports, sales, etc.) while minimizing costs, and protecting vital national, industry, and consumer interests.

Procedural Issues and Instructions

- 1) After party assignments are made, each party is to engage in further research and investigation of the issues presented to prepare for bilateral and multi-lateral negotiations, WTO Dispute Settlement consultations and panels, and press conferences.
- 2) Each party will receive separate CONFIDENTIAL briefing materials and instructions to guide you in the negotiations;
- 3) Parties will be paired for purpose of bilateral (informal) negotiations first. Then the exercise will expand to incorporate other parties;
- 4) Parties may invoke the procedures of the WTO Dispute Settlement Understanding through the consultation phase, because of lack of time a Panel may not be convened;
- 5) Expert testimony, scientific and technical data, and information pertinent to the negotiations and dispute settlement proceeding may be shared with the parties.
- 6) The official language of documents submitted to the WTO and all other bodies shall be English. The parties may structure various negotiations and hearings to incorporate interpreters to facilitate multilingual proceedings;
- 7) If not otherwise designated, the instructor will serve as home country government, industry CEO, or organizational leader for purposes of determining the parameters of

authority of the parties. Where possible, the parameters of authority will be outlined in the individual party instructions.

Partial List of Resource Materials:

- 1) Michael Johnson, The WTO Dispute Resolution System: How It Works, included in course syllabus;
- 2) The Montreal Protocol on Substances that Deplete the Ozone Layer
- 3) The WTO Agreement on the Application of Sanitary and Phytosanitary Measures
- 4) The General Agreement on Trade and Tariffs 1994(GATT)
- 5) EPA regulation and questionnaire on MB