

ELSA Moot Court Competition on WTO Law 2004/ 2005

CASE

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Paradise, a high-income developed country WTO Member renowned for its high environmental standards, has a programme whereby it grants tariff preferences to developing countries as a GSP scheme under the terms of the Enabling Clause. Paradise introduces an **additional** margin of preference beyond that generally available to developing countries under its programme for food imports that are "**pesticide-free**." The producer or importer must certify that no pesticides whatever have been used in the production of the imports in question. On the basis of such certification, the preferential rate of tariff drops to zero.

Where developing country food imports are **not** pesticide-free, they can still qualify for the general margin of preference afforded to all developing country imports under Paradise's GSP programme, **provided that** the imports are shown to have **less than half** the Maximum Residue acceptable for consumer health under the Codex Alimentarius of the Food and Agriculture Organization. Where food imports from developing countries are not shown to have less than half the Maximum Residue, duty is imposed as the full MFN-bound rate applicable to trade with developed WTO Members.

Arachnia is a small developing country WTO Member, situated in the tropics; Arachnia has failed to develop an economically viable "pesticide-free" niche in its agricultural industries. However, Arachnia has implemented the Codex Maximum Residue standards, although with some difficulty.

Arachnia files a dispute settlement complaint in the WTO against Paradise, claiming that the additional margin of preference granted to imports that are "pesticide-free" violates Article I:1 of the GATT, the MFN obligation, does not meet the conditions of the Enabling Clause, and cannot be justified under Article XX of the GATT. On the same grounds, Arachnia also challenges Paradise's denial of general GSP treatment to food imports from developing countries that are not shown to have less than half the Maximum Residue acceptable under the Codex.

Relevant legal materials are cited in the following page.

Relevant Legal Materials

Treaties:

General Agreement on Tariffs and Trade (1947, 1994), Articles I, XX

Enabling Clause

WTO Agreement

Food and Agriculture Organization, Codex Maximum Residue Limits for Pesticides,

http://faostat.fao.org/faostat/pestdes/pest_ref/pest-e.htm

Vienna Convention on the Law of Treaties

Case-law:

WT/DS26 & DS48/AB Reports - European Commission - Measures Concerning Meat and Meat Products (Hormones)

WT/DS54 & DS55 & DS59 & DS64/Report of the Panel - Indonesia - Certain Measures Affecting the Automobile Industry

WT/DS58/AB Reports - United States - Import Prohibition of Certain Shrimp and Shrimp Products

WT/DS135/AB Report - European Communities - Measures Affecting Asbestos and Asbestos-Containing Products

WT/DS139 & DS142/Report of the Panel - Canada Certain Measures Affecting the Automotive Industry

WT/DS161 & DS169/AB Report - Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef

WT/DS246/R Panel Report and AB Report - European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries