world trade institute

TRƯỜNG ĐẠI HỌC NGOẠI THƯƠNG
FOREIGN TRADE UNIVERSITY

Master of International Trade Policy and Law (MITPL 4)

Agriculture, SPS and TBT

Presentations by Christian Häberli (PhD)
WTI Fellow

Thursday 16 February 2017

UNIVERSITÄT BERN

Menu for Today

6. **The Doha Round Negotiations for Agriculture**

Tea Break

7. **Vietnam: Agricultural Policies in the WTO and RTAs**

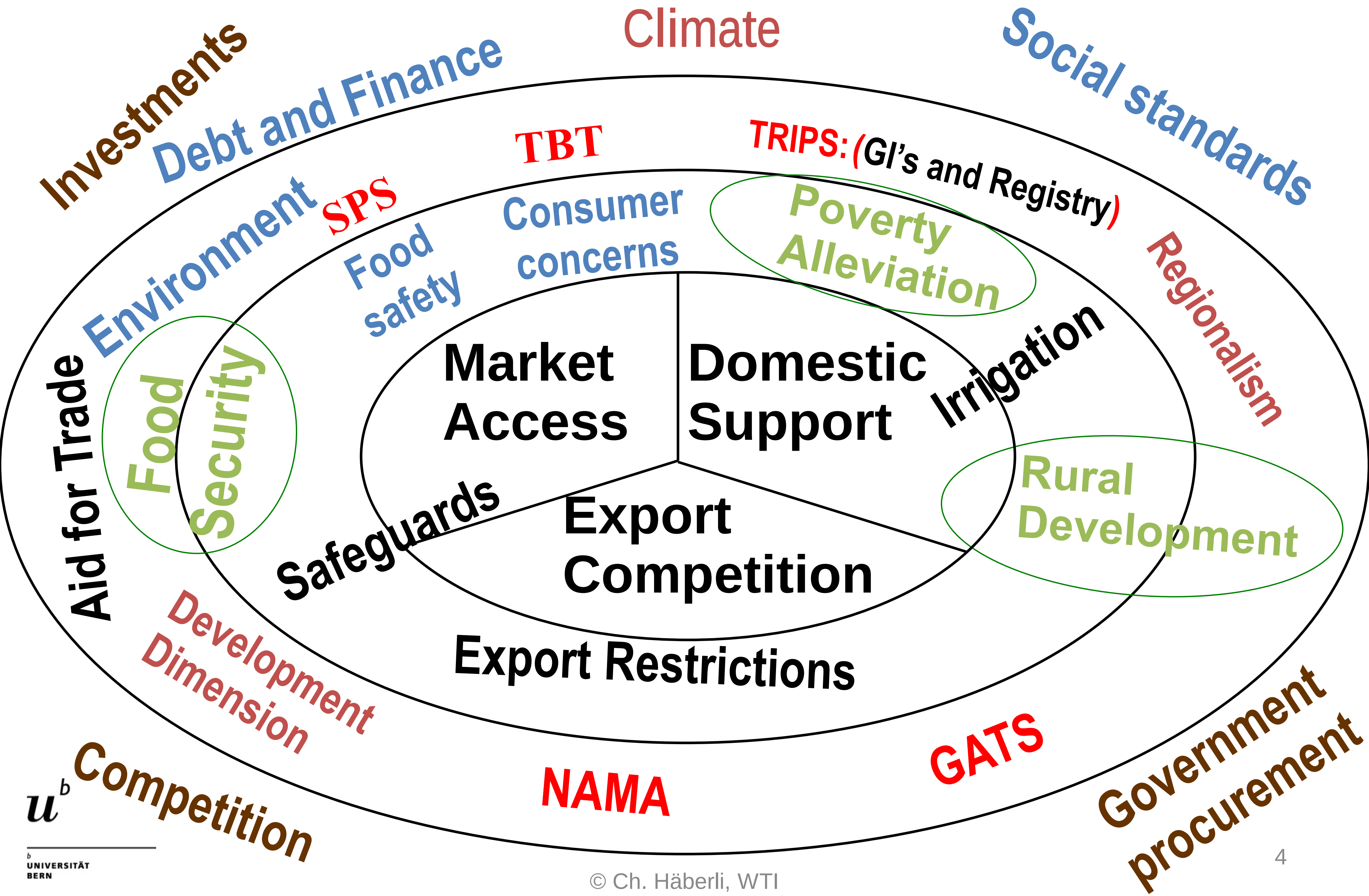
8. **Agricultural Dispute Settlement Cases**

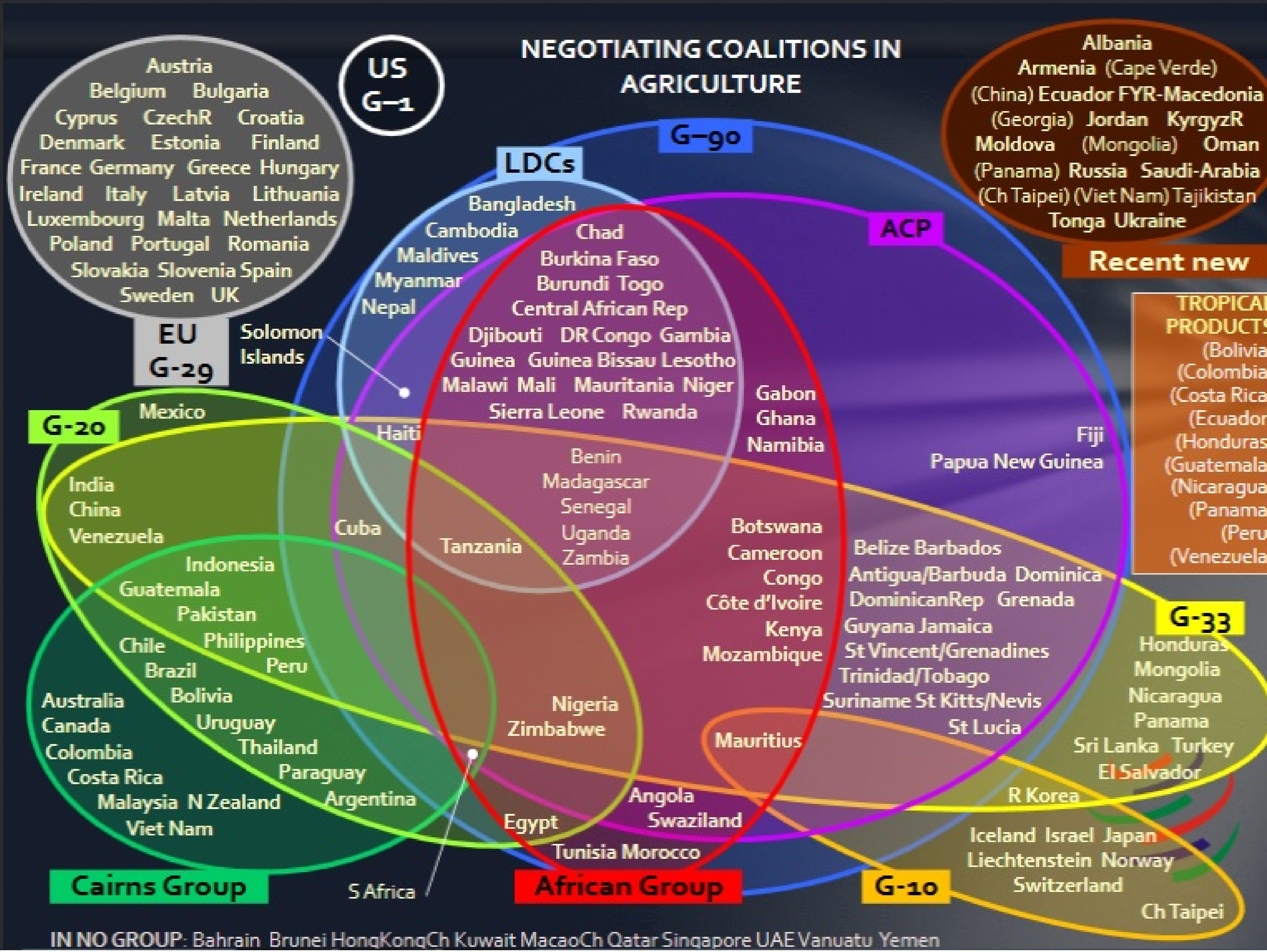
Questions and Final Exam Preparations

6. The Doha Round Negotiations for Agriculture

- Why does this matter?
- The complexity of Agriculture, SPS and TBT
- Consequences of the Doha Round Breakdown (not to mention the trio Trump, Xi and Putin, or the Spratley Islands)

Multilayered Agricultural Negotiation




NEGOTIATING COALITIONS IN AGRICULTURE
US
G-1
Austria Belgium Bulgaria Cyprus CzechR Croatia Denmark Estonia Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Malta Netherlands Poland Portugal Romania Slovakia Slovenia Spain Sweden UK
EU
G-29
Albania Armenia (Cape Verde) (China) Ecuador FYR-Macedonia (Georgia) Jordan KyrgyzR Moldova (Mongolia) Oman (Panama) Russia Saudi-Arabia (Ch Taipei) (Viet Nam) Tajikistan Tonga Ukraine
Recent new
TROPICAL PRODUCTS
(Bolivia) (Colombia) (Costa Rica) (Ecuador) (Honduras) (Guatemala) (Nicaragua) (Panama) (Peru) (Venezuela)
G-90
LDCs
ACP
Bangladesh
Cambodia
Maldives
Myanmar
Nepal
Solomon Islands
Chad
Burkina Faso
Burundi Togo
Central African Rep
Djibouti DR Congo Gambia
Guinea Guinea Bissau Lesotho
Malawi Mali Mauritania Niger
Sierra Leone Rwanda
Gabon
Ghana
Namibia
Haiti
Benin
Madagascar
Senegal
Uganda
Zambia
Tanzania
Cuba
Fiji
Papua New Guinea
Botswana
Cameroon
Congo
Côte d'Ivoire
Kenya
Mozambique
Belize Barbados
Antigua/Barbuda Dominica
DominicanRep Grenada
Guyana Jamaica
St Vincent/Grenadines
Trinidad/Tobago
Suriname St Kitts/Nevis
St Lucia
Mauritius
G-20
Mexico
India
China
Venezuela
Indonesia
Guatemala
Pakistan
Philippines
Chile
Peru
Brazil
Bolivia
Uruguay
Thailand
Paraguay
Argentina
Australia
Canada
Colombia
Costa Rica
Malaysia N Zealand
Viet Nam
Nigeria
Zimbabwe
Angola
Swaziland
Egypt
Tunisia Morocco
G-33
Honduras
Mongolia
Nicaragua
Panama
Sri Lanka Turkey
El Salvador
R Korea
Iceland Israel Japan
Liechtenstein Norway
Switzerland
Ch Taipei
Cairns Group
S Africa
African Group
G-10
IN NO GROUP: Bahrain Brunei HongKongCh Kuwait MacaoCh Qatar Singapore UAE Vanuatu Yemen

« Multifunctionality » - by what means?

Who can compete?

20 Years of Agriculture Negotiations

1995 Uruguay Round Agreements: Creation of WTO - **Agreement on Agriculture** established (Art.20!)

2000 Agriculture talks start – Built-in Agenda

2001 Doha Negotiations launched (DDA) + Accession China

March 2003 - Modalities deadline missed

2003 Cancún Ministerial – Reduced negotiating mandate

2004 "July Framework" – Big Step forward

2005 Hong Kong Ministerial – Export Subsidies + DFQF

July 2006 – Suspension of negotiations

Early 2007 – Resumption of negotiations

2008 – "**Last window of opportunity**" (Modalities in July and December)

MC7+8 (2009+11/Geneva) "DDA **impasse**"

MC9 (2013/Bali) – 5 Ag Decisions incl. stockpiles

MC10 (2015/Nairobi) – another small step

Summary of Market Access „Modalities“

- Tariffs mainly reduced according to a **formula**, with steeper cuts on higher tariffs. Ranges of cuts all in single numbers: (i) For *developed countries* the cuts would rise from 50% for tariffs below 20%, to 70% for tariffs above 75%, subject to a 54% *minimum* average, with penalties for (‘peak’) tariffs above 100% (‘capping’) (ii) For *developing countries* the cuts in each tier would be two thirds of the equivalent tier for developed countries, subject to a *maximum* average of 36%.
- Some products would have smaller cuts thanks to a number of **flexibilities** designed to take into account various concerns (i) **sensitive products** (available to all countries) with smaller cuts offset by tariff quotas allowing more access at lower tariffs (ii) **special products** (for developing countries only, for specific vulnerabilities).
- **Special Safeguards**: (i) Scrap existing “special safeguard” (SSG, for UR-tariffied products) (ii) More proposed details for the new hotly contested “special safeguard mechanism” (SSM, for developing countries only)

Summary of Domestic Support Reductions

- OTDS (≥ AMS)
- Tiered reduction formula – higher cuts for higher levels
  - Highest (EC: -80%)
  - Second highest (US: -70% and Japan: -75%)
  - All other developed: -55% (countries with high relative levels of OTDS to undertake additional effort)
- Implementation: 6 steps over 5 years
  - Developed countries in tiers 1 & 2 reduce base by 1/3rd on 1st day of implementation & then equal annual installments
  - Developing countries in tier 3 reduce base by 1/4th (25%) on 1st day of implementation & then equal annual installments
- **MINIMUM OVERALL COMMITMENT**

Summary: Export Competition

1. **Export subsidies**: elimination by 2013/16 (subject to DDA completion)
2. **Export credits, insurance and guarantees**: replace existing Article 10.2 of the AoA and add new rules and disciplines
3. **Food aid**: prevent *commercial displacement* (not food dumping at the expense of local farmers)
4. **Exporting State Trading Enterprises**: Slight revision of GATT Art.XVII rules for monopolies

► **Export restrictions**: an unresolved issue!

► Differential export taxes: development-sensitive

What happened since 2008?

- Trade since 1995 expanded, especially for ag exporting <u>developing</u> countries
- But the failure to improve rules and to reduce tariffs and subsidies has consequences:
  - Amber Box support (re-)increases everywhere.
  - Litigation often inconclusive, and expanding beyond tariff and subsidy disputes.
  - Negotiations go non-multilateral.
- Further trade liberalisation looks erratic, and dominated by big spenders' interests.

Consequences of the Doha Round Breakdown

- Prevent rules development except partial, incremental results (no “package”/single undertaking for a long time) – or plurilaterals (outside agriculture)
- Preventing substantial new negotiations e.g. multilateral disciplines for investment, competition etc.
- Promoting regionalism – but “WTO+” is rather difficult
- Agriculture:
  - “Tariff overhang” – while RTAs eliminate tariffs
  - “Subsidy overhang” – rollback of ag reforms (EU, US etc) with subsidy increases, and <u>no RTA progress</u>
  - Export competition with few constraints

Collateral Damage: WTO goes off-screen

- For MC10/Nairobi (December 2015) the WTO is desperately looking for a «Work Programme to complete the DDA» – with no real way around «Rev.4» for agriculture.
- Preventing substantial new negotiations e.g. for "Singapore subjects", "non-trade concerns" and climate action by way of trade and investment measures («green goods» not enough!)
- Promoting regionalism – spaghetti bowl – but "WTO+" is difficult, especially for non-tariff barriers (e.g. TTIP/hormones, TPP/cigarettes)
- Litigation continues in «splendid isolation» regardless of relative size of trade distortion

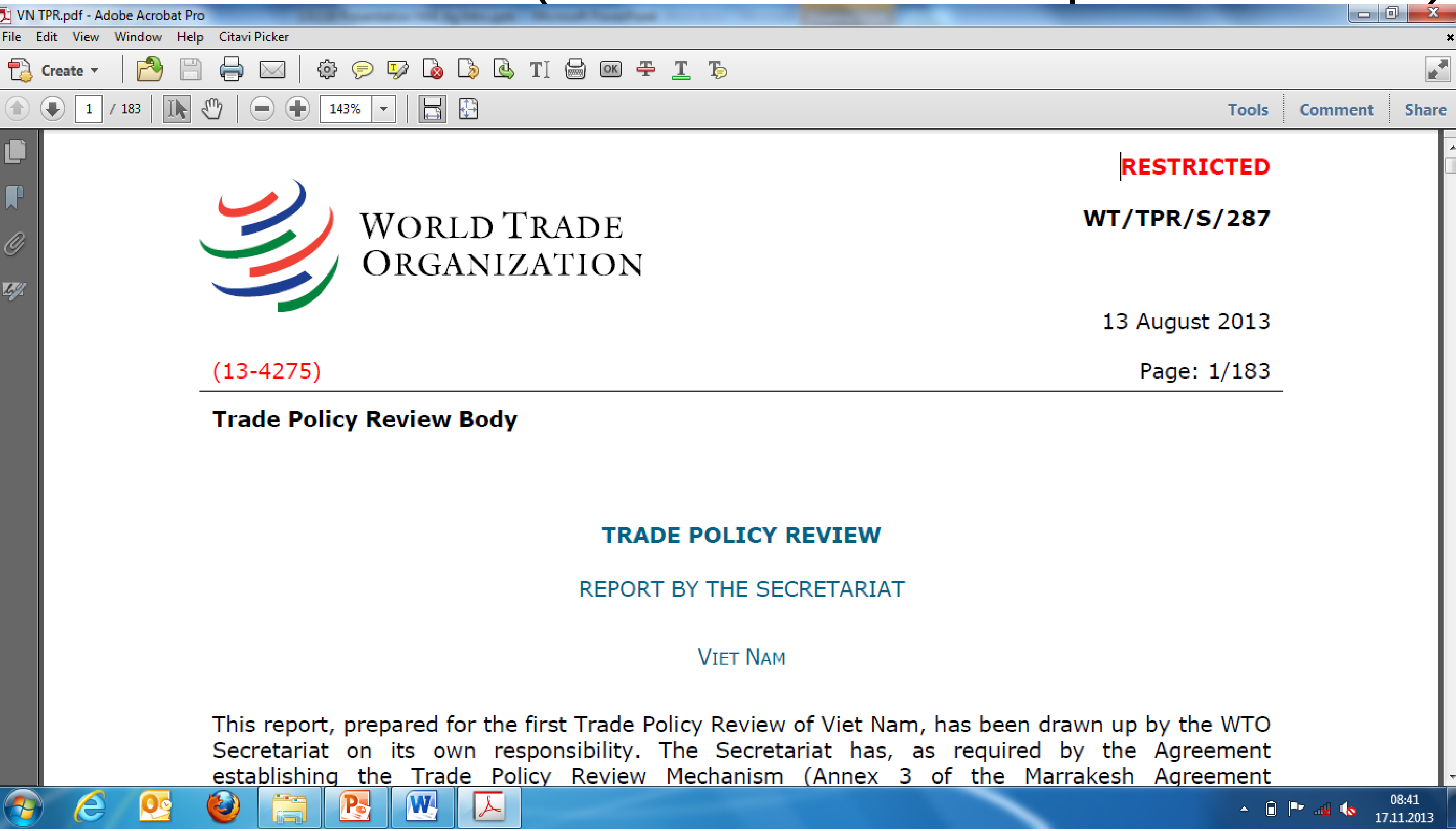
AoA as an unfinished (**food security**) job

- Market Access for cash crop exporters
  - MFN tariffs remain high for most sensitive products
- Domestic Support against poor farmers abroad
  - Price support ceilings allow for re-increase of trade distortions everywhere (“box painting” everywhere)
  - Agro-dumping remains legal – in violation of UN treaty commitments – without SSM for NFIDC
- Export subsidies
  - Allowed for some Members and some commodities
  - No new rules for export credits, export state trading and food aid abuse, no limits food export restrictions

7. Vietnam: Agricultural Policies in the WTO and RTAs

- Trade Policy Review (November 2013)
  http://www.wto.org/english/tratop_e/tpr_e/tp387_e.htm
- Participation in Regional Trade Agreements

First review of the trade policies and practices of Viet Nam (WTO, 17 and 19 September 2013)



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WT/TPR/S/287

WORLD TRADE ORGANIZATION

13 August 2013

(13-4275)

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Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

VIET NAM

This report, prepared for the first Trade Policy Review of Viet Nam, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement

Agriculture

- 4.8. Agriculture is an important part of the economy of Viet Nam where, in 2012, it represented about 17% of GDP and 47% of employment. Although the contribution of agriculture to GDP has declined from nearly 40% in the early 1990s, over the past few years it has increased, driven by relatively high prices and expanding production.
- Rice, the main crop, accounts for 36% of the total value of agricultural production, followed by coffee and rubber.

Production

- In 2011, Viet Nam was the world's biggest producer of cashew nuts and pepper, the second biggest producer of coffee, and one of the ten biggest producers of several other products including rubber, rice, tea, pig meat, and cassava.

Fisheries

- Although smaller than the agriculture sector, fisheries is also important to the economy and both the capture and aquaculture subsectors are expanding.
- Viet Nam has a large trade surplus in fishery products and most imports are for processing and re-export. The capture industry is based on large numbers of small vessels, which makes regulation and control difficult.

Aquaculture/1

- According to the FAO Global Aquaculture Production database, aquaculture production in Viet Nam was valued at US$5.7 million in 2011. Most production is of catfish and shrimps/prawns.
- The area devoted to aquaculture has increased considerably (although slower than production, as productivity has also increased): the 641,900 ha in aquaculture in 2000 had increased to 1,054,700 ha by 2011, while production increased from 590,000 tonnes to 2,930,000 tonnes.

Aquaculture/2

- Several factors are driving the rapid increase in aquaculture, but higher incomes are probably the principal driving force, as aquaculture offers higher income per hectare than traditional farming.

Source: GSO online information at: http://www.gso.gov.vn

Trade

- The main exports, rice and coffee, together make up over half of total exports of agricultural products (WTO definition), followed by pepper, starches, and manioc.
- The main imports tend to be feed and raw materials; oil cake and cotton were the top two imports in 2010.

State Trading

- About half of Viet Nam's rice exports are exported by Vietnam Northern Food Corporation (Vinafood1) and Vietnam Southern Food Corporation (Vinafood2).
- Until marketing year 2012/13, Vinafood2 had the exclusive right to sell to the Philippine market, and has retained exclusive supplier status for government-to-government contracts, which totalled about 200,000 tonnes for 2012/13.

World Market Prices for Rice

- Rice export prices fell in 2012 except for Thailand, where government purchases under the “pledging programme” supported prices. Due to this disconnect between the Thai and world prices, the benchmark price used for the projections was replaced by theViet Nam price (i.e. white 5% broken, f.o.b. Ho Chi Minh).

Source: OECD-FAO Agricultural Outlook 2013

Tariffs

- The simple average for tariffs on agricultural products (WTO definition) was 17% in 2013 which, although lower than in 2007, is higher than the overall average tariff of 10%.
- Among the agricultural product categories attracting the highest MFN rates of import duty are alcoholic beverages and tobacco, coffee and tea, fruit and nuts, and cereals and preparations (HS Chapter 24).

Safeguards

- On 26 December 2012, the VCA initiated a safeguard investigation on imports of certain vegetable oils.
- The decision to impose a provisional safeguard measure in the form of an additional import duty of 5% was announced in May 2013 and has been notified to the WTO.

Cf. WTO documents G/SG/N/6/VNM/2 and G/SG/N/7/VNM/1

8. Agricultural Dispute Settlement Cases

- Only shrimps, shrimps, and steel?
- Or do you prefer «The Life of a Panellist»?
- Or Obesity and Trade?

Find the info!

- The WTO Dispute Settlement Understanding is available at http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf
- The WTO Training Module is available at http://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/signin_e.htm
- One-page summaries of all WTO cases are available at http://www.wto.org/english/res_e/publications_e/dispu_settlement_e.htm
- WorldTradeLaw.net's Dispute Settlement Commentary (and much more) at http://www.worldtradelaw.net/

Viet Nam
World Trade Organization
Member
Non-member
Member concerned
As complainant
As respondent

Viet Nam and WTO Dispute Settlement/1

Viet Nam has been involved in three WTO cases, in all cases as a complainant.

1. In United States – Anti-dumping measures on certain shrimp from Viet Nam (DS404), the Panel found certain practices of the US Department of Commerce, particularly in relation to the use of zeroing in the calculation of dumping margins and the application of a "Viet Nam-wide entity" rate, to be inconsistent with several provisions of the Anti-Dumping Agreement of the WTO and Article VI:2 of the GATT 1994.

Viet Nam and WTO Dispute Settlement/2

2. The second complaint also concerns a number of US anti-dumping measures on certain frozen warmwater shrimp. The DSB established a panel (DS429) at its meeting on 27 February 2013.
3. On 1 June 2015, Vietnam requested consultations with Indonesia over a Safeguard measure on Certain Iron or Steel Products (DS496).

Viet Nam has reserved its rights as third a party in 16 disputes involving other WTO Members.

Viet Nam: Agricultural trade provisions, concessions, and enforceability

- ASEAN Free Trade Area and ASEAN Economic Commuity (http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=126)
- FTA+EIA Japan – Vietnam (2009) (http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=170&lang=1&redirect=1)
- FTA ASEAN – ANZ (http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=437&lang=1&redirect=1)
- FTA+EIA ASEAN – China (http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=42%20&lang=1&redirect=1)
- TPPA (26 January 2016 http://www.tpp.mfat.govt.nz/tpp-text.php)
- EVFTA (January 2016 http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437)

Menu for Tomorrow

- [11:30-13:30 FBBS «WTO Rules Can Prevent Climate Change Mitigation with Renewable Energies and for Agriculture»]
- 18:00 – 21:00 **FINAL EXAM – Oral Part**

Thank you for your attention!

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You can access my papers on SSRN at:
http://ssrn.com/author=1380616