

# International Agricultural Trade

## *How Big is the Target on U.S. Agriculture?*

October 2018 - William Gillon, Moderator<sup>1</sup>

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### **The Legal Framework for U.S. Agricultural Trade**

#### ***Public vs. Private International Law***

The United Nations, Immigration, Citizenship, International Peace Treaties, the Louisiana Purchase, the Paris Peace Accords, the Nuremberg Trials, the International Court of Justice, the European Communities -- these laws, these subjects, these entities are all representative of Public International Law.

I took many international political courses in undergraduate, International Law under former Secretary of State Dean Rusk, United Nations Law, and several other courses going into my third year of law school.

That year, I happened to sign up for Mr. Hellerstein's one-quarter course on private international law. I also signed up for an international tax course, and my view of the world changed.

As important as war and peace are, and they are important, that one-quarter course taught me that the majority of international law was private. It was between private entities; it was for the purpose of conducting business. In order to grow and prosper, though, private international transactions also needed a framework of private international law, much like the public side.

#### ***The Legal Framework of International Trade and Its Impact on Agricultural Trade***

Today, we are going to focus on that framework. We are going to discuss the fundamental rules of that framework, and we are going to move from the law and show practical impacts. Trying to move through an overview of this area in a limited amount of time is impossible. I am afraid we will leave many more questions than we will answer.

We have panelists who will discuss the importance of trade to their agricultural sector.

We have lawyers who will discuss some of the ins and outs of international trade law.

What we hope to bring home at the end is --

- ◆ The US Agricultural Economy is tied strongly to international trade and a trade regime that has evolved over the past 70 years.
- ◆ That regime seems to have fostered amazing growth in the world economy. It is not without its faults. Two of its major challenges, namely, dealing with non-market economies and reducing economic disparity between the developed and developing world, continue to create disruptions in the world trading system.
- ◆ Some of the controversial aspects of the current Administration's trade policy are --
  - A willingness to employ tactics (unilateral tariff increases, for example) that have been opposed by the United States for over 40 years. Tactics that U.S. negotiators have consistently sought to restrict.

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<sup>1</sup> With assistance of John Gilliland.

- A change in approach at the WTO, including a refusal to accept the appointment of new members to the WTO's Appellate Body, a move which threatens to paralyze the institution's dispute settlement mechanism. The Administration also adopted a more truculent posture at last year's biennial Ministerial Conference, which ended without a consensus declaration, further raising doubts about the institution's future as a negotiating body and the U.S. commitment to lead it.
- A willingness to separate U.S. political aims from U.S. economic goals. In other words, the Administration is far less likely to grant any economic concession to its partners in exchange for political stability.

### ***A Road Map of International Trade Agreements***

The Post-War trading system was codified in the General Agreement on Tariffs and Trade (the GATT), signed in 1947, initially by 23 nations.

The Uruguay Round Trade negotiations, begun in the mid-1980s, culminated in the signing of agreements creating the World Trade Organization in 1994. The core legal text of the GATT remains in place in the WTO, but it is augmented, modified, and expanded by the Uruguay Round Agreement.

The original GATT covered trade in goods. It created the format for negotiations designed to lower tariffs and non-tariff trade barriers. It codified several critical components of the existing legal system --

1. **Most Favored Nation** -- the multilateral tariff negotiations are not between individual countries, rather, they are between all participating countries. Each country agrees in advance to give every other country the tariff rate they provide to their "most favored nation." For example, if the US agrees to a lower tariff on beef from Japan, it must provide that lower tariff rate to beef from every other country as well.
2. **National Treatment** -- Imported and domestic goods must be treated equally.
3. **Bound Rates of Duty** -- Each country binds itself to apply duty rates according to schedules enacted into their law and submitted to the WTO. Critical to this system is consistent definition of goods, codified by numbers in a Harmonized Tariff System.

The GATT also included rules designed to reign in unilateral actions by member countries against imports from other countries. Those rules authorized countries to protect their markets in certain specified circumstances, such as when imports were being subsidized (countervailing duties) or being sold into their market at below normal market value (antidumping duties).

In addition to creating an actual World Trade Organization, the Uruguay Round Agreements expanded coverage of the GATT system to Services, such as banks, insurance, telecommunications, transport companies, and others; Intellectual Property; and Dispute Settlement. Dispute Settlement was not a new component of the WTO, but the Uruguay Round Agreement dramatically strengthened the Dispute Settlement mechanism.

### ***There Can Be No Rules Without Exemptions - Regional Trade Agreements***

The basic framework of international trade rules has many exemptions and exceptions. Regional Trade Agreements, like the North American Free Trade Agreement, required an exemption from the WTO rules of non-discrimination or Most Favored Nation. Regional Trade Agreements, by their nature, are instances of a small number of countries agreeing to treat each other better than everybody else. The WTO does have exemptions for these agreements. The major requirement to

earn the exemption is that a Regional Trade Agreement must cover almost all areas of trade between the countries -- they cannot just negotiate a few tariff lines and call that a regional free trade area.

Developed and Developing Countries are treated differently, with Developing Countries and Least Developing Countries gaining trade concessions in many areas due to their economic and developmental needs.

### ***Predictability - the cornerstone for successful world trade, and successful international agricultural trade***

The WTO framework, and even the GATT framework before it, brought ever-increasing levels of predictability into international trade. Sellers and buyers faced a more predictable set of rules and events. If 20,000 tons of U.S. soybeans were sold to a buyer in Hong Kong, both buyer and seller know in advance the applicable trade barriers, the terms of transport and finance, and the duty rates that will be applied upon import. Predictability and control means businesses can factor in the cost of doing business internationally and structure their transactions accordingly.

That predictability has allowed international trade to flourish.

The outgrowth of the emphasis on predictability, is that WTO members cannot take unilateral action against trade from other countries, unless that action complies with WTO rules.

Until the current Administration, the US has been a forceful opponent of unilateral trade action. The U.S. is now singing from a different hymnal.

Every WTO member retains their sovereignty, their right and ability to take unilateral trade actions. Under the WTO system, however, unilateral action subjects countries to trade retaliation. That is the enforcement mechanism within the world trading system.

With every unilateral action, and every unilateral retaliation, the trade becomes less predictable. The chance of a load of grain sorghum being trapped on the ocean because import duties in China have suddenly increased by 120% escalates. Unpredictable losses will be the short-term result, at the least.

### ***Sources and Additional Reading***

The Legal Texts Making Up the World Trade Organization can be found online at WTO.org and the following specific link: [https://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/legal_e.htm)

The following link is to a pdf file of the agreements:

[https://docs.wto.org/gtd/WTOlegaltexts/Legal\\_texts\\_e.pdf](https://docs.wto.org/gtd/WTOlegaltexts/Legal_texts_e.pdf)

### ***Marrakesh Agreement Establishing the World Trade Organization***

*Article I - establishment of the Organization*

*Article II - Scope of the WTO*

*Article III - Functions of the WTO*

*Article IV - Structure of the WTO*

*Article V - Relations with Other Organizations*

*Article VI - The Secretariat*

*Article VII - Budget and Contributions*

*Article VIII - Status of the WTO*

*Article IX - Decision Making*

*Article X - Amendments*

*Article XI - Original Membership*

*Article XII - Accession*

*Article XIII - Non-Application of Multilateral Trade Agreements between Particular Members*

*Article XIV - Acceptance, Entry into Force and Deposit*

*Article XV - Withdrawal*

*Article XVI - Miscellaneous Provisions*

## **Annexes**

### ***Annex 1A: Multilateral Agreements on Trade in Goods***

- General Agreement on Tariffs and Trade 1994
- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
- Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards

### ***ANNEX 1B: General Agreement on Trade in Services and Annexes***

### ***ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights***

### ***ANNEX 2: Understanding on Rules and Procedures Governing the Settlement of Disputes***

### ***ANNEX 3: Trade Policy Review Mechanism***

### ***ANNEX 4: Plurilateral Trade Agreements***

- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- International Dairy Agreement
- International Bovine Meat Agreement

The Harmonized Tariff Schedule of the United States (HTSUS) is maintained by the U.S. International Trade Commission and can be found at its website at the following link:

<https://www.usitc.gov/tata/hts/index.htm>

See John Gilliland's Presentation Outline for citations to existing U.S. Trade Remedy legislation.