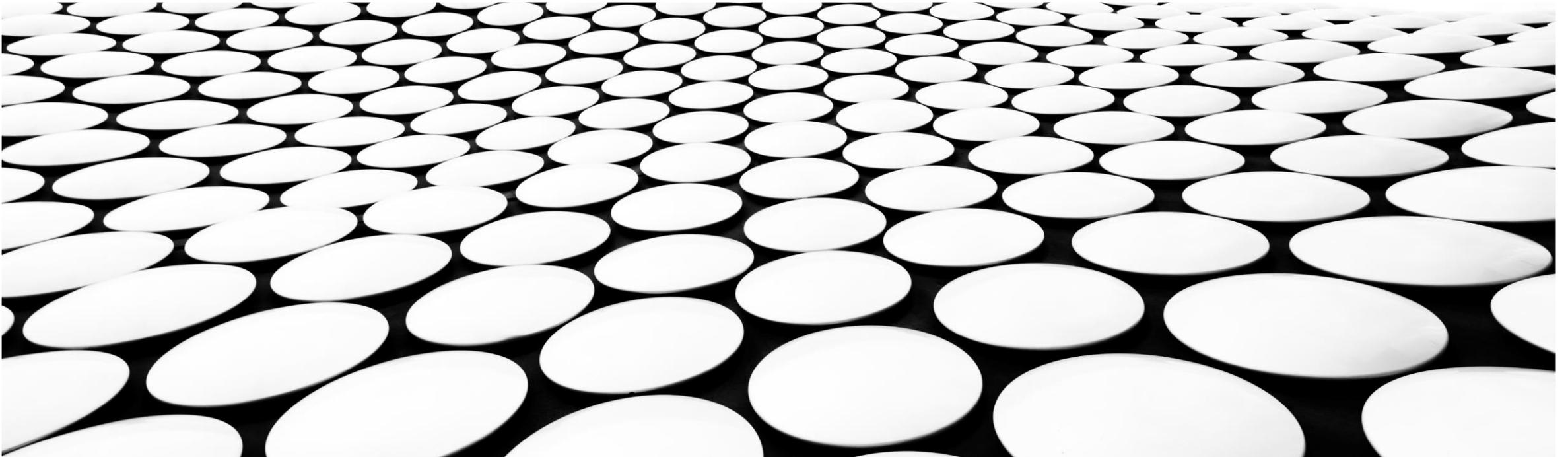

NEGOTIATIONS AND INTERNATIONAL ORGANIZATIONS

SETTING THE STAGE III: NEGOTIATING ABOUT AND IN INTERNATIONAL ORGANIZATIONS

Panagiotis Konstantinou, AUEB



TODAY'S LECTURE

- Negotiating a WTO
- Negotiating in the WTO
 - The Dispute Settlement Mechanism
 - Technical Barriers to Trade

READING

- Daugbjerg, C, and Kay, A. (2013). A trade balance: litigation and negotiation in the World Trade Organization's dispute settlement system. *Australian Journal of International Affairs*, 105-120 .
- Schott, J. J. and Jung, E. (2019). *The WTO's Existential Crisis: How to Salvage Its Ability to Settle Trade Disputes*. Washington: Peterson Institute for International Economics.
- Moon, D. (2006) Equality and Inequality in the WTO Dispute Settlement (DS) System: Analysis of the GATT/WTO Dispute Data, *International Relations* 32(3): 201-228

NEGOTIATING THE WTO: THE ISSUES

- **Systemic Issues:** some grey-area measures (voluntary export restraints agreements) and the rise of new protectionism (reliance on a broad range of non tariff measures to control the flow of imports)
- **Trade in Goods:** the extent to which trade in agriculture and in textile products was not covered by the same rules as those of other goods. Other prominent problems involved subsidies, antidumping and countervailing duty proceedings remaining tariffs, customs procedures and other aspects of the existing framework of rules.
- **New Issues:** increases in the international exchange of services, the greater prominence of foreign direct investment flows, and the growing importance of knowledge-intensive activities pointed to the desirability an international code of conduct.
 - The new issues presented a different challenge. Negotiators would need to devise not only proposals about what negotiate but also think through how to negotiate.

NEGOTIATING THE WTO: OLD AND NEW STRATEGIES

- The traditional approach to the GATT negotiations involved two reinforcing bargaining strategies:
 1. A set of negative prescriptions: exchange of concessions
 2. Commitment to the MFN and the organization of negotiations around the principal-supplier rule.
- Bargaining about exchanges of concessions is based on market power: large economies exchange concessions from each other, which are then multilateralized for the benefit of all other participants
- Enter into positive obligations: not only refraining from interfering in the market but also to conform to international standards.
- Bargaining about norms and standards is also not as easily organized on the basis of market power.

NEGOTIATING THE WTO: PLAYERS AND THEIR OBJECTIVES

- **The US:** American politicians seemed to have difficulty coming to grips with the challenge to US economic leadership from Europe and Japan and with the profound changes that were taking place in the trade relations system. American officials repeatedly indicated that significant US contributions to early rounds should now be matched by others.
- **The EU:** Keep new GATT rules from impeding progress toward a more integrated and united Europe. Put in place rules and procedures that would constrain the US fondness for unilateralism.
- **Japan:** its principal objectives included the tightening discipline on antidumping actions, rules of origins, and TRIMs (Trade-Related Investment Measures) all favorite EU and US measures to harass Japanese competition. Defensively, Japan was anxious not to see much erosion in its agricultural protection.

NEGOTIATING THE WTO: PLAYERS AND THEIR OBJECTIVES (2)

■ Developing countries:

- The debt crisis of the 1980s and the role of the IMF in restructuring held many developing countries realize the extent to which the statist, inward-looking import-substitution strategies of the past had helped to keep them poor.
- In fact, the absence of strong traditions of democracy allowed some developing countries to practice this new orthodoxy more effectively than did many of the OECD countries.
- The East Asian (Korea, Taiwan, Hong Kong, Singapore) exemplified this new pragmatism.

NEGOTIATING THE WTO: “LOCAL” CONTRIBUTORS

- Government Officials
- Lawyers and Legal Scholars
- Academics and Think tanks
- Business and Lobby groups

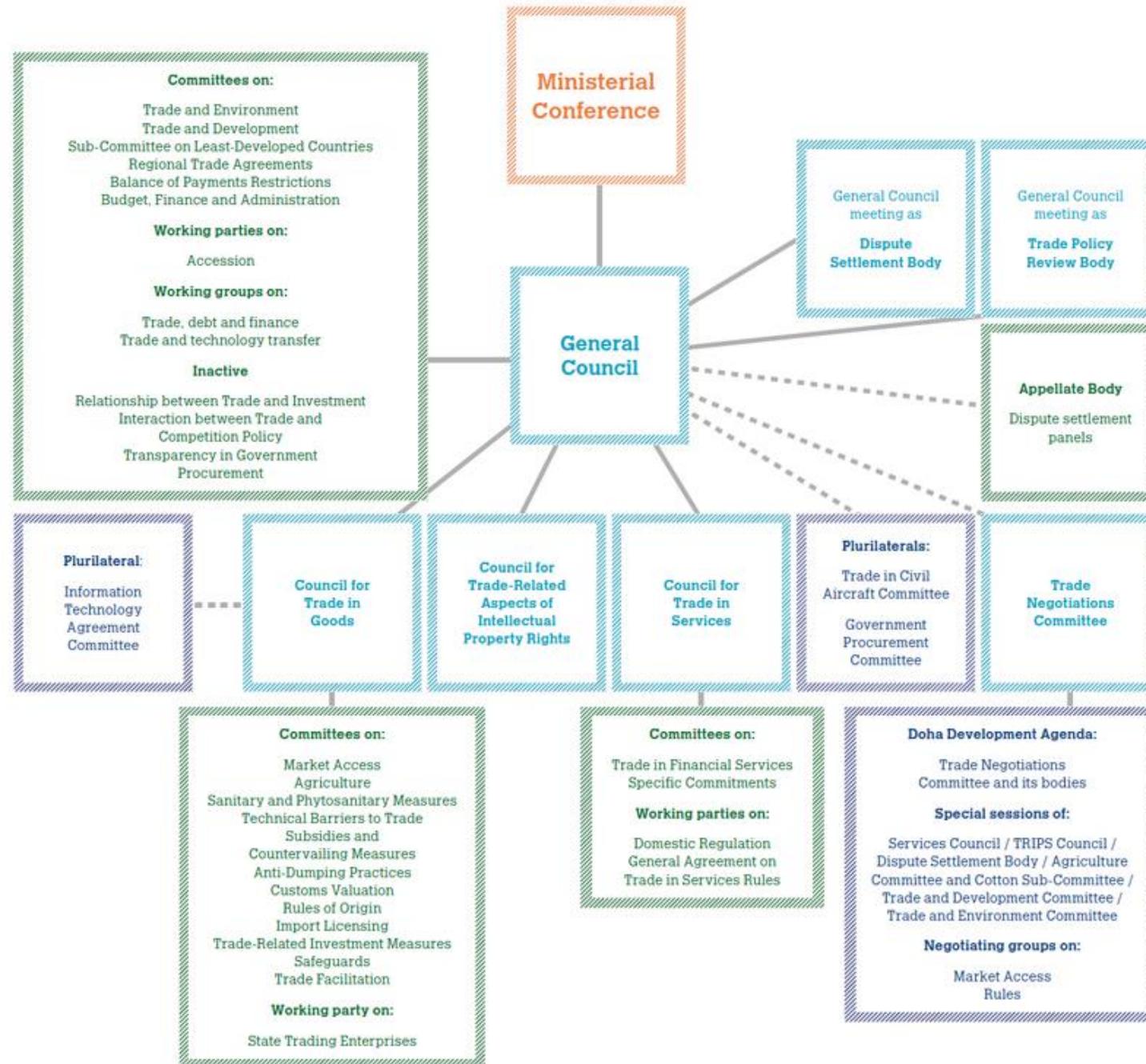
NEGOTIATING THE WTO: THE STEPS

- Prenegotiation
- Moving towards consensus
- Agreeing on the Scope and Agenda of the Negotiations
- Negotiations
 - Looking for an Early Harvest
 - Negotiations get Real
 - Looking for a Solution
 - New Blood...
 - Building Momentum

NEGOTIATING THE WTO: EXPLAINING THE OUTCOMES

- Public Diplomacy
- Coalitions (developing countries)
- Bridging and Bargaining
- Need for new negotiating techniques (no more tariff concessions)...
- The Problem of Politically Viable Alternatives
- Narrow the gap between Epistemic and Political Communities
- Ambiguity and Lowest-Common-Denominator Solutions

WTO: ORGANIZATION



NEGOTIATING IN THE WTO: THE DISPUTE SETTLEMENT BODY (DSB)

- The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes between WTO members.
 1. **Stage 1:** «Principle of prior consultation»
 - The complaining State expresses its objections to the violator and informs the WTO bodies
 2. **Stage 2:** Referral of the dispute to the Dispute Settlement Body
 3. **Stage 3:** Mediation with the help of a person of common consent
 - Alternatively, at this stage the parties can choose either negotiation or arbitration

NEGOTIATING IN THE WTO: THE DISPUTE SETTLEMENT BODY (DSB)

4. **Stage 4:** Recourse to the Dispute Settlement Body and establishment of the Group of Experts (Panels)
 - Preparation of interim reports and forwarding them to the parties for comments; forwarding the final report for adoption by the Dispute Settlement Body.
5. **Stage 5:** Referral of the case to the Appellate Body
 - The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a panel, and Appellate Body Reports are adopted by the Dispute Settlement Body (DSB) unless all members decide not to do so.
 - Currently, the Appellate Body is unable to review appeals given its ongoing vacancies. The term of the last sitting Appellate Body member expired on 30 November 2020.
 - Preparation of a report and subsequent referral for adoption by the Dispute Settlement Body. If the Report is appealed, the deadline is within 9 months. Otherwise, the time limit shall be within 12 months.

NEGOTIATING IN THE WTO: THE DISPUTE SETTLEMENT BODY (DSB)

6. Stage 6: Means of implementing the recommendations

1. **Compliance:** compliance by the losing state with the agreement and withdrawal of the illegal measure.
2. **Provision of compensation:** the affected party may request compensatory measures. Otherwise, the losing State may voluntarily provide compensatory measures.
3. **Adoption of retaliation:** adoption of retaliation by the body either through suspension of tariff concessions or suspension of other obligations.

NEGOTIATING IN THE WTO: THE DISPUTE SETTLEMENT BODY (DSB)

- **Arguments for its effectiveness/usefulness**
 - Development and creation of a multi-layered and structured dispute resolution system.
 - Production of extensive case law and contribution to the development of global commercial law.
 - It was seen as a "victory of law over might" (Kenneth W. Abbott, 1998), through providing protection to developing states from the unilateral exercise of power by developed states.

NEGOTIATING IN THE WTO: THE DISPUTE SETTLEMENT BODY (DSB)

- **Arguments against its usefulness**
 - Despite equality in the application of rules, inequality in the content of the rules due to unequal bargaining power.
 - The advantages of a potential retaliation are eliminated or limited in cases where the dispute involves states of similar or equal economic power. A simple example is the 2005 case of Brazil vs. United States.
 - **DS267: United States — Subsidies on Upland Cotton**
 - Negotiating bilaterally is a safer option for states, as it allows them to retain full control over their trade policy.

NEGOTIATING IN THE WTO: DS267 (1)

- Brazil initiated the dispute by requesting consultations in September 2002 and, after two years of consultations, filings and panel meetings with the parties, the decision of the WTO panel was released in September 2004.
- The ruling upheld Brazil's complaint and that US policy for upland cotton violated its WTO obligations.
- The panel recommended that the USA change its policies in order to bring them into conformity with WTO rules
- The USA appealed against almost all aspects of the decision, and the appeal was heard by the AB in December 2004. However, the results of the appeal were released on March 3, 2005, with the USA losing on all of the issues it had raised

NEGOTIATING IN THE WTO: **DS267** (2)

- The panel had recommended that (1) all prohibited US export subsidies should be withdrawn by July 1, 2005 and (2) the USA was under an obligation to reform its farm policy in order to remove the adverse effects caused by ‘price contingent’ subsidies (marketing loss assistance, countercyclical payments), even if this meant withdrawing them entirely.
- However, by August 2009, the cotton dispute was still unresolved, and the WTO authorized Brazil to impose sanctions against the USA for its continued subsidization of cotton producers in violation of the WTO panel ruling.
- Despite the authorization to retaliate, so far Brazil has preferred a negotiated resolution to the conflict.

NEGOTIATING IN THE WTO: TBTS

- **Technical Barriers to Trade (TBTs):** measures and laws a country puts in place for the protection of its environment, national security to consumer information, for the safety and health of its citizens from harm that could be caused by imported goods.
- Technical regulations and standards are important and they vary from country to country.

NEGOTIATING IN THE WTO: TBTS

- **Technical Barriers to Trade (TBTs):** They are characterized by form and nature and fall in three distinctions these include:
 - ***Technical Regulations (TR):*** which are country sets and demands mandatory compliance by law.
 - ***Standards:*** which a country sets and demands mandatory compliance by law.
 - ***Conformity Assessment Procedures (CAP)*** whereby a country demands a products to be tested for compliance with the standards and technical requirements as demanded by law before a product is allowed on the domestic market

NEGOTIATING IN THE WTO THE TBTS: WHERE?

- The [TBT Committee](#) is the body responsible for the implementation of the TBT agreement.
- ***The Regular Meetings:*** Review of Specific Measures and strengthening the implementation of the TBT Agreement through WTO members use the TBT Committee to address their Specific Trade Concerns (STCs).
 - These may include: domestic national laws, regulations or procedures that affect their trade through a complaints and address operation mechanism generally known as “notifications”
- ***The Thematic Sessions:*** Members take part in these sessions with the view to share experiences in their endeavor to implement the TBT agreement to achieve more efficient and effective TBT Agreement implementation to address issues such as:
 - transparency, standards, conformity assessment and Good Regulatory Practices (GRPs).

NEGOTIATING IN THE WTO THE TBTS: WHERE?

- ***TBT Information System*** (TBT IMS): The TBT Information System (TBT IMS) can be accessed by all members. It is an enquiry point where members can search for information with regards to the implementation of the agreement. Or to refer to when addressing their particular STCS.
- ***Members Transparency Toolkit***: Transparency is a cornerstone of the TBT Agreement and consists of three core elements: notifications, establishment of enquiry points, publication of requirements. The toolkit hubs information on the transparency obligations and procedures, it also contains Committee related work and other resources.

NEGOTIATING IN THE WTO THE TBTS: WHY?

- As of 2016 the TBT Committee has discussed 500 STCs. This achievement was commended by the DG, and encouraged members to endeavor to solve issues and concerns within the committee rather than in the Dispute Settlement Body (DSB).
- As of 2016 it was noted that only 2% of STCs discussed in the TBT Committee have become trade disputes since 1995. Therefore members should aspire to resolve their TBT issues through discussion and implementation reviews of each other.

NEGOTIATING IN THE WTO THE TBTS

- In the **thematic sessions** members continue to share experiences and address new avenues to solve some of the TBT challenges that persist.
- Members continue to discuss the establishment of a voluntary mechanism of compliance and related principles of good regulatory TBT practice.
- Members discuss the impact of regulation on trade and how the WTO can endeavor to tackle technical assistance for developing countries more efficiently.
- With the **thematic sessions**, members continue to discuss the development of an alert system for TBT notifications with the view that other international organizations and observers in the committee could contribute to the operation of this system.

READING

- Anne O. Krueger (1999) Are Preferential Trading Arrangements Trade-Liberalizing or Protectionist?, *Journal of Economic Perspectives* 13: 105-124
- Rocha, N. and The, R. (2011) Preferential trade agreements and the WTO, <https://voxeu.org/article/preferential-trade-agreements-and-wto>
- World Trade Organization (2011) [World Trade Report 2011: From Co-existence to Coherence](#) (Geneva: WTO).
- Krugman, Obstfeld and Melitz (2012) *International Economics: Theory and Policy*, ch. 10

NEGOTIATING TRADE: PREFERENTIAL TRADING AGREEMENTS (1)

- **Preferential trading agreements (PTAs)** are trade agreements between countries in which they lower tariffs for each other but not for the rest of the world.
- Under the WTO, such discriminatory trade policies are generally not allowed:
 - Each country in the WTO promises that all countries will pay tariffs no higher than the nation that pays the lowest: called the “most favored nation” (MFN) principle.
 - An exception is allowed only if the lowest tariff rate is set at zero.

NEGOTIATING TRADE: PREFERENTIAL TRADING AGREEMENTS (2)

- There are two types of preferential trading agreements in which tariff rates are set *at* or *near* zero:
 1. A free trade area: an agreement that allows free trade among members, but each member can have its own trade policy towards non-member countries.
 - An example is the North America Free Trade Agreement (NAFTA).
 2. A customs union: an agreement that allows free trade among members and requires a common external trade policy towards non-member countries.
 - An example is the European Union.

NEGOTIATING TRADE: PREFERENTIAL TRADING AGREEMENTS (3)

- Are preferential trading agreements necessarily good for national welfare?
- No, it is possible that national welfare decreases under a preferential trading agreement.
- How? Rather than gaining tariff revenue from inexpensive imports from world markets, a country may import expensive products from member countries but not gain any tariff revenue.

NEGOTIATING TRADE: PREFERENTIAL TRADING AGREEMENTS (4)

- Preferential trading agreements increase national welfare when new trade is created, but not when existing trade from the outside world is diverted to trade with member countries.
- Trade creation
 - occurs when high-cost domestic production is replaced by low-cost imports from other members.
- Trade diversion
 - occurs when low-cost imports from nonmembers are diverted to high-cost imports from member nations.

NEGOTIATING TRADE: PREFERENTIAL TRADING AGREEMENTS (5)

- **World Trade Report 2011:**
- PTAs tend to exempt high MFN-tariff items from preferential treatment. In a recent study involving four major trading countries and their partners, Damuri (2009) shows that about 7% of tariff lines, mainly agricultural or food items and labour-intensive manufactured products, are excluded.
- Preferential margins are small: only 2% of global imports are eligible for preferential tariffs where the preference margins are above 10%. For most large exporters, preferential tariffs matter little for the bulk of their exports.
 - This is not always true for individual sectors, especially in certain smaller economies exporting a narrow set of commodities (mainly sugar, rice, bananas, fish and garments) where preference margins may be more substantial

NEGOTIATING TRADE: PREFERENTIAL TRADING AGREEMENTS (6)

- The coverage of policy areas in PTAs, particularly those of a regulatory nature, has been widening and deepening over time
- WTO+ areas: policies covered by the WTO, and WTO-X: policy areas not covered in WTO agreements.
- Distinguish: whether these measures were legally enforceable or not under the dispute-settlement mechanism of the **PTA**.
 - WTO+ provisions universally include industrial and agricultural tariffs.
 - An increasingly large number of PTAs now also include provisions on technical barriers to trade, services, intellectual property, and trade-related investment measures.
 - WTO-X provisions commonly include competition policy, investment, and the movement of capital. About one third of the PTAs in the sample also include environmental laws, labor-market regulations, and measures on visa and asylum.