

Mr. Nguyen Anh Duong

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Viet Nam's WTO Accession and SCM

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Introduction

- Viet Nam has conducted remarkable trade reforms in early stages of renovation (late 1980s and early 1990s), but they slowed down during the 1997 – 1999 partly due to the Asian financial-monetary crisis.
- In late 1990s, Viet Nam adopted trade reforms in the way that it encouraged rapid export growth while protected domestic industries, though the level of protection has been reduced significantly.
 - *The emphasis on industrialization and modernization remained important.*

Introduction (2)

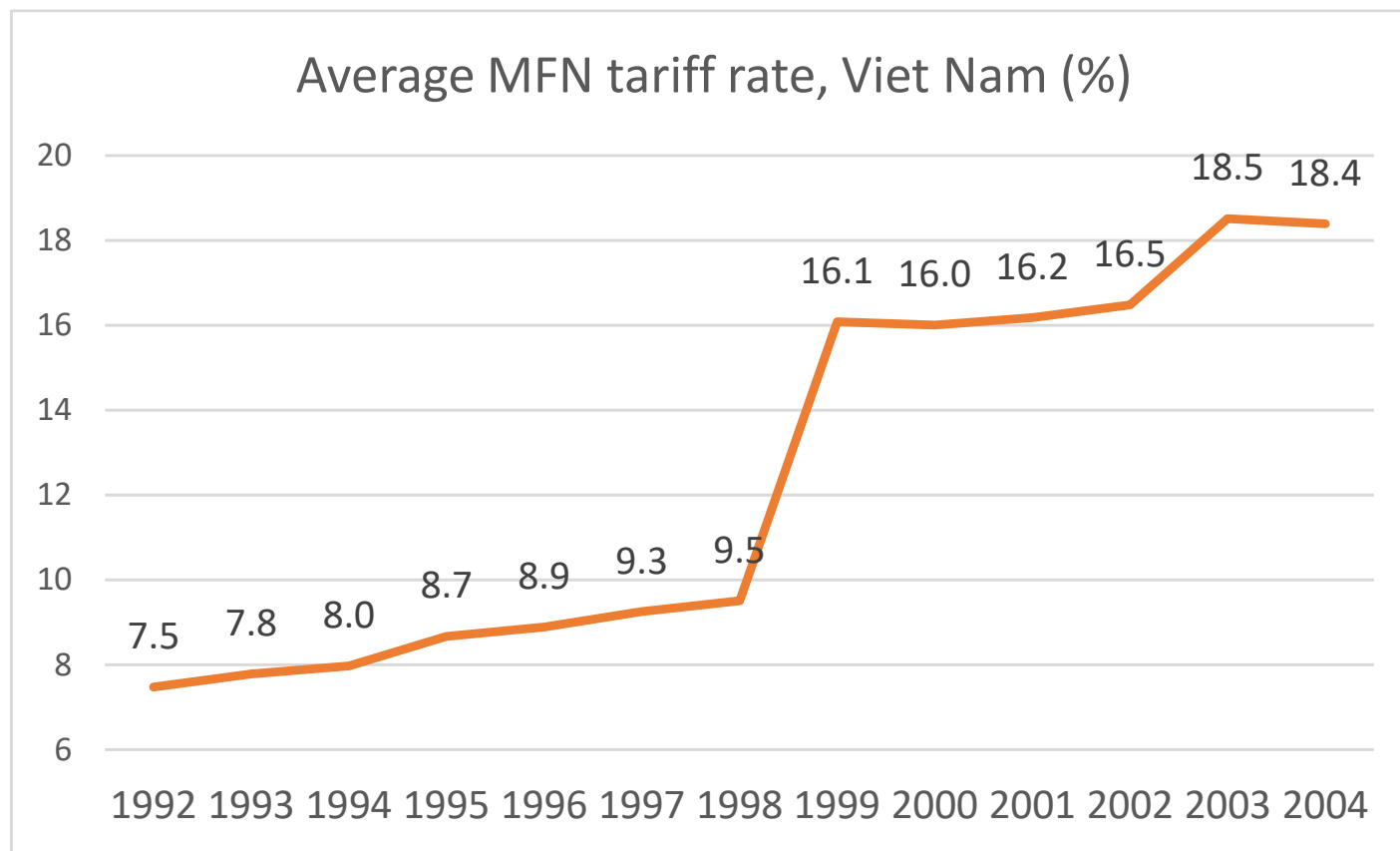
- Trading rights gradually introduced and expanded for all enterprises since 1998.
- Subsidies to SOEs were reduced as part of enforcing hard budget constraints on these enterprises and putting them on commercial footing.
 - *Since 2005, talks about subsidies focused more on agricultural sector.*
- Price liberalisation also reduced the implicit subsidy provided to manufacturing firms (e.g. liberalising electricity tariff may reduce incentive for electricity-intensive sectors such as steel).

Introduction (3)

- NTBs were introduced in Viet Nam when the country shifted from a centrally controlled economy toward market trade in the late 1980s to early 1990s and quickly became a key component of Viet Nam's trade policy.
- Since 1994, when industrialization program was launched, the quantitative controls on some 'key' imported goods have been introduced, with the main purpose to protect some industries developed under import substitution strategy.

Introduction (4)

- During 1999-2004, Viet Nam started to replace NTBs with tariff (so-called tariffication process).



Source: Dinh and Nguyen (2006)

Introduction (5)

- Before the WTO accession, in order to promote export, Viet Nam has implemented several measures such as zero export duty, duty drawback scheme, export–support credit and rewards.
 - *Export Promotion Fund was established to assist, encourage and promote exports.*
 - *Subsidies in the form of interest rate support and direct financial support to first-time exporters, for exports to new market, or for goods subject to major price volatility.*
 - *No anti-subsidy investigation case against Viet Nam before WTO accession.*
- Viet Nam recognized the possible subsidies by other countries upon exporting to Viet Nam, but did not take countervailing measures until after 2010.

Viet Nam's Negotiation for SCM under WTO Accession

- Notification on Subsidies for the period 2001-2002 (including criteria for granting subsidies) already submitted to the Working Party before 7th meeting.
- May 2003:
 - *General concern, or calls for more information, about subsidies, the broader economic regime, among others.*
- Additional questions and replies (November 2003)
 - *Question about export bonus in Viet Nam.*

Viet Nam's Negotiation for SCM under WTO Accession (2)

➤ December 2004:

- *One member mentioned Viet Nam's request to be granted a transition period in order to implement the Subsidies and Countervailing Measures Agreement. This member stated that Viet Nam would not automatically get a transition and encouraged Viet Nam to use subsidies not prohibited under the WTO agreements. Other members said that they also wanted Viet Nam to implement the Subsidies Agreement upon accession. One developing country member argued that Viet Nam should be entitled to special and differential treatment on subsidies.*

➤ September 2005:

- *Subsidies among the issues of concern.*

Viet Nam's Negotiation for SCM under WTO Accession (3)

➤ March 2006:

- *Viet Nam submitted the new and updated Notification on Industrial Subsidies covering the period of 2003-2004*
- *Members of Working Party still had question on impacts of draft laws awaiting approval on subsidies.*

Viet Nam's Negotiation for SCM under WTO Accession (4)

- A number of questions regarding export subsidies, and regulatory changes and potential compliance with WTO Agreement on SCM
 - *We acknowledge Viet Nam's response to question 78 of WT/ACC/VNM/23 concerning Viet Nam's access to flexibilities under Article 27 of the SCM agreement (Special and Differential Treatment). Viet Nam maintains in its responses to WT/ACC/VNM/23 ", questions 65, 66, 67, 68, 74, 75, 76, etc., that it is entitled to maintain export-contingent incentives. We wish to reiterate that Viet Nam is not one of the developing countries automatically covered by the flexibilities in Article 27. Any access to these flexibilities must be negotiated with members of the Working Party. We would have difficulty accepting subsidies that Viet Nam has already eliminated in practice, such as incentives for import- substitution projects.*
 - *Answer: Viet Nam takes note of the above comments. As export-contingent incentives are mainly aimed at encouraging investment and economic development, Viet Nam hopes that Members of the Working Party will show flexibility in considering this issue*
 - *Source: WTO (2003), Additional Questions & Replies.*

Viet Nam's Negotiation for SCM under WTO Accession (5)

- *Could Viet Nam clarify in the Draft Working Party Report text its proposals for the removal of discriminatory taxes on ... automobiles?*
- *This policy [excise tax deduction] aims to support the infant automobile manufacturing enterprises at the early developing stage in the form of specific subsidies. In fact, when issuing the investment licences, Viet Nam's government had committed with the automobile manufacturing enterprises on tax treatments, including excise tax. ... Viet Nam noticed that subsidies to the automobile industry through incentive of excise tax deduction would be subject to the Agreement on Subsidies and Countervailing Measures and would bring certain negative impact on trade and interests of some countries. Therefore, Viet Nam has provided the above-mentioned schedule with the view to gradually eliminating incentive of excise tax deduction as a compromise between the need of supporting enterprises and the accession to the WTO.*
- *Source: WTO (2004), Additional Questions & Replies.*

Viet Nam's Negotiation for SCM under WTO Accession (6)

- *As regards prohibited subsidies in general, we note that the 2005 Investment Law, Article 32, stipulates that investments in export processing zones shall be entitled to the incentives under the law. Because of this classification, all incentives listed under Section 2 "Investment Incentives" are also granted for export activities, and considered as prohibited export subsidies under Article 3 of the WTO Agreement of Subsidies and Countervailing Measures (subsidies contingent on export performance).*

Could Viet Nam explain its view on how Article 32 of the Investment Law can be considered compatible with the commitment to stop granting export subsidies?

- *Answer: Article 32 and 37 of the Law on Investment stipulate investment incentives for investments in export processing zones. However, in the implementing decrees of the law, these incentives shall conform to Viet Nam's commitments on subsidies (i.e. incentives will not be contingent upon export performance or local contents) . Specifically, enterprises in export processing zones are not required to export their products and are entitled to incentives in the forms, among others, of: facilitation of investment procedures, and rental of land and premises; support in the supply and training of labour, supply of water, power and other public utilities..*
- *Source: WTO (2006), Additional Questions & Replies.*

Ordinance on Anti-Subsidies of Products Exported to Viet Nam

- The Ordinance was issued on August 20, 2004, during Viet Nam's negotiation for WTO accession.
- The Ordinance entered into force on January 01, 2005, and was repealed at the end of 2018.
- This Ordinance prescribes anti-subsidy measures; procedures and contents of investigation for application and the application of such measures to the subsidized imports into Viet Nam.

Ordinance on Anti-Subsidies of Products Exported to Viet Nam (2)

➤ Article 3.- Forms of subsidy

- 1. The Government or Government agencies transfer capital to organizations and/or individuals in form of capital allocation, share transfer, soft loans or guarantee for loans at an interest rate lower than that applied to loans without guarantee.*
- 2. The Government or Government agencies leave out or don't collect revenues obligatorily payable by organizations and/or individuals.*
- 3. The Government or Government agencies supply goods and/or services other than the common infrastructure or purchase goods and/or services at high prices and resell them to organizations and/or individuals at prices lower than market prices.*
- 4. The Government or Government agencies contribute money to a financial assistance mechanism, and assign or order a private organization to apply one or many forms defined in Clauses 1, 2 and 3 of this Article.*
- 5. Other subsidies other than those defined in Clauses 1, 2, 3 and 4 of this Article, which are determined in an equitable and reasonable manner and not contrary to international practices.*

Ordinance on Anti-Subsidies of Products Exported to Viet Nam (3)

➤ Article 4.- Anti-subsidy measures

- 1. Imposition of anti-subsidy tax.*
- 2. Acceptance of commitments made by organizations, individuals or Governments of goods-producing/exporting countries or territories to Vietnam's competent State agencies regarding the voluntary termination of subsidy, reduction of subsidy levels, adjustment of export prices or application of other suitable measures.*

➤ Article 6.- Conditions for the application of anti-subsidy measures

Anti-subsidy measures shall apply to subsidized imports into Vietnam only when the following conditions are fully met:

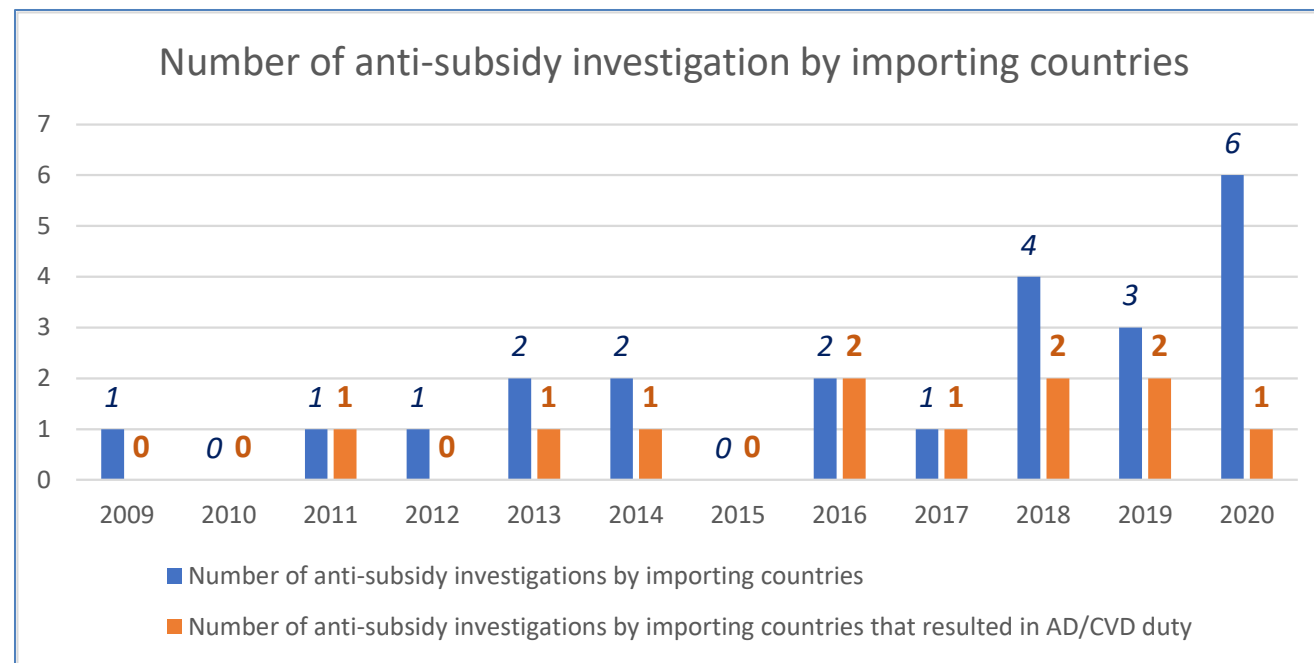
- 1. The imports are determined as having been subsidized according to the provisions of Article 3 of this Ordinance;*
- 2. The imports defined in Clause 1 of this Article cause or threaten to cause material injuries to domestic production branches.*

Ordinance on Anti-Subsidies of Products Exported to Viet Nam (4)

- Other details:
 - *Grounds of investigation;*
 - *Providing information and documents in the investigation process;*
 - *Determining subsidies, and material injuries and threat to cause material injuries to domestic production;*
 - *Imposition of provisional anti-subsidy tax, anti-subsidy tax, etc.*

Actual Implementation of Anti-Subsidy

- By June 2021, Viet Nam only launched one anti-subsidy investigation against sugar import from Thailand, with a final decision to impose an anti-subsidy tax of 4.65%.
- By June 2021, Viet Nam's export products had been subject to 23 anti-subsidy investigations.
 - *The first case only in 2009, but with no decision to impose anti-dumping or anti-subsidy/countervailing duty.*
 - *Debate: Chilling effect over actionable subsidies?*



Source: chongbanphagia.vn

WTO Trade Policy Review

➤ 1st TPR by the Secretariat (2013)

- *“In January 2009, the Government announced a $\text{đ}17$ trillion (US\$1 billion) stimulus, involving a 4% interest rate subsidy for businesses and individuals.”*
- *“Viet Nam did not provide subsidy notifications until March 2013, when it notified details of support programmes applied in 2005-07.70 Without a more recent update, the information contained in this section can only be considered indicative of the kind of support provided to specific industries or more generally available to encourage investments, regional development, research, etc. Moreover, the Secretariat has no reliable data on debt forgiveness to loss-making state-owned or private enterprises.”*

WTO Trade Policy Review (2)

➤ 2nd TPR by the Secretariat (2021)

- *“Viet Nam did not submit subsidy notifications to the WTO between September 2015 and February 2020, when it notified details of support programmes from 2012 until the present. The notification does not contain data on the programmes' subsidy per unit. The authorities state that, due to limited resources, they were not able to collect the data.”*

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Key lessons

- Envisage a sufficiently long-term plan/strategy for economic development and market-based institutions with minimal trade-distorting instruments (subsidy).
 - *Incremental steps and transparent information may be necessary.*
- Building consensus:
 - *What should be expected, trade-offs during negotiation;*
 - *Complementary reforms on industrial and fiscal policies;*
 - *Attitude to actionable subsidies;*
 - *Beneficiary of domestic subsidy vs. risk of retaliation by partner countries against other products.*

Key lessons (2)

- Intensive trainings for negotiators
 - *Negotiation skills;*
 - *Inter-agency coordination and cooperation in WTO negotiations and those in charge of/related to subsidy/anti-subsidy issues;*
 - *Build capacity for analysts.*
- Build capacity for lawmaking
 - *Legal experts;*
 - *Good regulatory practices (regulatory impact assessment, public consultation, international regulatory cooperation, etc.).*

Key lessons (3)

- Shared experiences from existing members (negotiation, promise to fulfill after accession, etc.).
- Non-market economy vs. market economy (lessons of China and Viet Nam).

Knowing which member is most demanding.

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International Economics
Strategic Analysis For Growth & Development

International Economics Consulting Ltd.

Grand Baie Business Park - Suites 207 and 208

Grand Baie – 30510

Mauritius

Tel. +230 263 33 24

info@tradeeconomics.com

Thank you!