The Problem Child of World Trade: Reform School for Agriculture

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Agricultural protectionism has played hooky from global trade reforms for decades.[1] A desire for economic security and independence prompts governments to subsidize their domestic agricultural sectors disproportionately compared to other industries.[2] Such protectionism impedes international trade and dramatically distorts trade in agriculture.[3] Although protectionism conflicts directly with the free trade purposes of the General Agreement on Tariffs and Trade (GATT),[4] exceptions have been consistently created for agricultural products from the inception

1. *See, e.g.*, Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT'L L.J. 123, 128 (1989). Filipek notes that the first recorded instance of state intervention in the interest of long-term food security is found in the Book of Genesis. *Id.* at 128 n.40. "There, Pharaoh, placing considerable confidence in Joseph's interpretation of his dream, built grainaries to store one-fifth of the harvest of Egypt during the seven fat years for use during the seven lean years." *Genesis* 41:33-37. Indeed, the New Deal farm policy was rooted in a modern application of Joseph's grain storage recommendation. *See* Henry A. Wallace, *Definition of the Ever Normal Granary*, AGRIC. SITUATION, Mar. 1937, at 9.

2. *See* HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 115-16 (6th ed. 1985). Numerous instances exemplify the basis for a nation's desire to avoid dependence on other nations for food. The blockade against Germany forced a quicker end to World War I, and significantly contributed to Nazi policies of starvation and outright killing to preserve the food supply in World War II. *Id.* at 115. Also during World War II, Great Britain's dependence on imports for 70% of its food required it to concentrate its wartime tactics on maneuvers that it could win quickly. *Id.*

3. *See generally* MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES (Andrew B. Stoeckel et al. eds., 1989) (analyzing country specific effects of agricultural subsidies); *see infra* notes 34-42 and accompanying text (identifying costs of farm subsidization).

4. General Agreement on Tariffs and Trade, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 21, GATT Sales No. 1994-4 (1994) [hereinafter GATT 1994]. The Final Act of the Uruguay Round and the Marrakesh Agreement Establishing the World Trade Organization (the WTO Agreement) were signed at the Marrakesh Ministerial Meeting in April 1994. The WTO Agreement includes the GATT 1994, which is based on the text of the original GATT 1947 as amended.

of the GATT until the most recent round of negotiations.[5] The Uruguay Round Agreement on Agriculture[6] (the "Agreement") reforms trade by eliminating many of these exceptions and by treating agricultural products more similarly to manufactured products.[7]

This Note examines the Uruguay Round Agreement on Agriculture and the effectiveness of its innovations. Trade liberalization of agriculture will have enormous benefits in cost savings and increased efficiency. The practical questions, however, are whether countries have the political fortitude to adhere to the Agreement and whether the World Trade Organization (WTO)[8] is equipped to enforce the requirements of the Agreement. Part I examines the historical rationales behind agricultural support policies. Part I further discusses the economic distortions produced by these policies, and conversely, the macroeconomic benefits that will result from trade liberalization. Part II surveys the role played by agriculture in previous GATT rounds. Part III details the central components of the Agreement, focusing on market access, export subsidies, and domestic support. Part IV examines specific obstacles to domestic support reductions including the multiple exceptions to, and implementation difficulties of, the Agreement. This Note concludes that the primary benefit of the Agreement lies not in its immediate impact on liberalizing trade of agricultural products, but rather in the framework it establishes for future trade liberalization.

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5. The first seven rounds of GATT negotiations largely ignored agriculture. Filipek, *supra* note 1, at 139; *see infra* part II.

6. Agreement on Agriculture, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 39, GATT Sales No. 1994-4 (1994) [hereinafter Agreement].

7. Stefan Tangermann, *An Assessment of the Agreement on Agriculture*, *in* ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE NEW WORLD TRADING SYSTEM: READINGS 143, 145 (Geoff Raby ed., 1994). Tangermann states that "[i]t is hard to overestimate the significance of the Uruguay Round for the agricultural sector. An important sector in world trade which had escaped most GATT disciplines since the inception of the General Agreement is now for the first time effectively brought fully into the GATT." *Id.* at 145.

8. Marrakesh Agreement Establishing the World Trade Organization, *opened for signature* Apr. 15, 1994, *in* GATT SECRETARIAT, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 6, GATT Sales No. 1994-4 (1994).

I. PROTECTIONIST POLICIES IN AGRICULTURE AND THEIR RELATED COSTS

A. FORCES UNDERLYING AGRICULTURAL SUPPORT

Many countries aim to achieve self-sufficiency in agricultural products.[9] Countries justify self-sufficiency with the proposition that dependence on other countries for food can lead to political subservience.[10] They argue that subsidies and other government support of agriculture are necessary because the ability to withhold food from a dependent country can create a significant political advantage.[11] A food embargo, for example, can detrimentally affect a country during war.[12] Even outside of war, economic sanctions, including those that restrict food supplies, have been used to address human rights abuses[13] and dis-

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9. *See, e.g.*, Al J. Daniel, *Agricultural Reform: The European Community, the Uruguay Round, and International Dispute Resolution*, 46 ARK. L. REV. 873, 876 (1994) (stating that self-sufficiency was the primary objective of the Common Agricultural Policy of the European Community).

10. MORGENTHAU, *supra* note 2, at 115. Morgenthau describes the difficulties facing nations with deficient agricultural resources. Wartime blockades on nations were instrumental in Allied victories in both World Wars. *Id.* Even today, with a worldwide surplus of food and excess capacity, many countries have inadequate food supplies. *See* William M. Miner & Dale E. Hathaway, *World Agriculture in Crisis: Reforming Government Policies*, *in* WORLD AGRICULTURAL TRADE: BUILDING A CONSENSUS 37, 44-45 (1988). A 1980 World Bank study estimated that up to 730 million people have insufficient food. *Id.* Thus, food embargoes against nations with inadequate food remain powerful political and economic tools.

11. For an in-depth analysis of the use of economic sanctions, including agricultural sanctions, see MICHAEL P. MALLOY, ECONOMIC SANCTIONS AND U.S. TRADE (1990). Malloy discusses in detail the use of economic sanctions by the United States against North Korea, China, Vietnam, Cambodia, Cuba, Egypt, Iran, Libya, Nicaragua, South Africa, Panama and Iraq. Malloy's analysis focuses on how economic sanctions can be used strategically both to manipulate long-term political relations and in response to specific acts. *See also* BARRY E. CARTER, INTERNATIONAL ECONOMIC SANCTIONS: IMPROVING THE HAPHAZARD U.S. LEGAL REGIME (1988).

12. MORGENTHAU, *supra* note 2, at 130. Food embargoes can sap the will of a civilian population whose capacity to support a patriotic effort is already stretched by the additional burdens of a wartime economy. Ultimately, the goal of a food embargo is to restrict provisions given to troops. While this is less of an issue in today's technologically modern wars, supply difficulties can still have a major impact, as demonstrated by the Persian Gulf conflict. Thousands of Iraqi military personnel surrendered during the Persian Gulf war. Many were described as "barefoot boys and malnourished older men." Guy Gugliotta & Steve Coll, *Bush Says Iraq has Agreed to Meet with Allies*, WASH. POST, Mar. 1, 1991, at A1.

13. *See, e.g.*, CARTER, *supra* note 11, at 12 (describing sanctions against South Africa in response to its apartheid policies).

suade countries from pursuing military goals.[14] Thus, to preserve national independence, governments subsidize agriculture beyond the level necessary to meet current food needs.[15] Subsidization encourages growth in the agricultural base and the resulting surpluses provide food security and independence.

To ensure that the agricultural base remains strong, governments must encourage commitment of both personnel and financial resources to agriculture. Farm support policies are necessary to maintain production due to the nature of farming.[16] Cyclical prices, variable production needs, and unpredictable weather all affect farming. Governments claim to mitigate these risks by making certain guarantees to agricultural producers. Such support increases the attractiveness of farming and thereby maintains high and consistent output.

Strong political support for farm programs is also a driving force behind protectionism. In the United States, for example, the support is due to several factors. First, farm groups and agricultural industries have a powerful lobby in Congress.[17] Second, farm states have a disproportionate voice in Congress. The

14. For example, the 1921 threat by the League of Nations to impose sanctions influenced Yugoslavia's decision to abandon attempts to seize territory from Albania. CARTER, *supra* note 11, at 9 n.8. The 1979 grain embargo against the Soviet Union following the invasion of Afghanistan is another example of a peaceable attempt to thwart war. MALLOY, *supra* note 11, at 213. The problem with such embargoes is the inability to measure precisely their consequences. *Id.* The grain embargo against the Soviets has been dismissed as having little effect on food supplies in the Soviet Union and rather dramatic effects on the economic health of American farmers. *Id.* While it is true that the Soviets were able to bypass the embargo through sources such as Argentina, it is unknown whether the embargo factored into the Soviet military decision. It is also difficult to analyze the embargo's effect on U.S. grain producers in isolation from other factors.

15. MORGENTHAU, *supra* note 2, at 131.

16. Miguel Montana-Mora, *International Law and International Relations Cheek to Cheek: An International Law/International Relations Perspective on the U.S./E.C. Agricultural Export Subsidies Dispute*, 19 N.C. J. INT'L L. & COMM. REG. 1, 12 n.48 (1993) (citing Eduardo Moyano Estrada, *Una Aproximación Sociopolitíca al Proteccionismo en la Agricultura*, 666 INFORMACION COMERCIAL ESPANOLA 163 (1989)). Other rationales for support include environmental concerns and the desire to maintain part of the population in rural areas. *Id.*

17. *See generally* WILLIAM P. BROWNE, PRIVATE INTERESTS, PUBLIC POLICY AND AMERICAN AGRICULTURE (1988) (examining agricultural farm lobbies in the United States). The tobacco lobby is consistently among the top contributors to both Democrats and Republicans. Roger D. Sharpe, *Increased Tax Could Reduce Fires: Phase Out the Growing*, N.Y. TIMES, Mar. 11, 1993, at A22. Political support of agricultural programs has great potential for future growth as industry groups such as large food producers join with the existing agricultural lobby to encourage governmental subsidies and inexpensive food supplies.

U.S. Senate is structured so that rural agricultural states such as North Dakota and Nebraska enjoy equal representation with New York or California.[18] Moreover, congressional friends of agricultural support policies include political heavyweights such as Senate majority leader Robert Dole and House Agriculture Committee chair Pat Roberts, both of wheat-producing Kansas, Jesse Helms of tobacco-producing North Carolina, and Patrick Leahy of Vermont, former chair of the Senate Agriculture Committee.[19] Finally, romantic concepts of idyllic fields and self-determinism pervade American visions of farm life and the political debate over farm programs.[20]

Agricultural liberalization is especially subject to legislative opposition in most countries due to a classic prisoners' dilemma.[21] The three major players in the Agreement, the United

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George Anthan, *Changing Scene of Ag Policy*, Gannet News Service, Feb. 27, 1994, *available in* LEXIS, News Library, GNS File.

18. *See* U.S. CONST. art. I, § 3, cl. 1. A bias for rural representation existed in the House of Representatives as well until a series of court decisions in the 1960s required states to draw legislative districts according to population rather than land mass. *See* Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809, 824 (1995) (citing Baker v. Carr, 369 U.S. 186 (1961); Wesberry v. Sanders, 376 U.S. 1 (1964); Reynolds v. Sims, 377 U.S. 533 (1964)).

19. In a letter to President Clinton dated April 20, 1994, 16 of the 17 members of the Senate Agriculture Committee warned the president that they would not vote for the Uruguay Round implementing bill if the Administration proposed reductions in agriculture-related spending to offset the lost revenues caused by the Agreement. *Farm State Senators Warn Clinton on Ag Program Cuts to Pay for GATT*, 11 Int'l Trade Rep. (BNA) No. 17, at 648 (Apr. 27, 1994). Yet the Agreement explicitly calls for reductions in export subsidies by 36% of budget. Agreement, supra note 6, art. 9:2. The letter indicates the stance typically taken by members of Congress from agriculture states, especially during an election year.

20. This agricultural idealism pervades popular culture as well as politics. Movies glorifying the sanctity of the family farm and benefits such as Farm Aid were steady fare during the 1980s. *See* Paul Antasio, *Movies 'The River'*, WASH. POST, Jan. 11, 1985, at B1; *Nelson Optimistic About Farm-Aid II*, L.A. TIMES, April 30, 1986, at 4. Such idealism about agriculture is not a strictly American phenomenon. An explicit objective of the Common Agriculture Policy of the European Community is to maintain a countryside dotted with family farms. THE DEVELOPMENT AND FUTURE OF THE COMMON AGRICULTURAL POLICY 12 (Bulletin of the European Communities Supplement 5/91) *cited in* Daniel, *supra* note 9, at 883. *See generally* Chen, *supra* note 18 (analyzing the entrenchment of popular support for farming).

21. *But see* Andrew B. Stoeckel et al., *Overview* to MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES 12 (Andrew B. Stoeckel et al. eds., 1989) (analyzing how even unilateral changes increase economic efficiency). The editors contend: "The corruption of the proposition that 'liberal (free) trade is the best policy for all countries' to the flawed proposition that 'liberal (free) trade is a good policy only if all countries practice it' is a victory for vested interests over informed public understanding of the gains from trade." *Id.* (quoting J. Tumlir,

States, the European Union (EU) and Japan, stand to benefit if the restrictions on agricultural trade are removed.[22] If any of these countries is able to maintain more of its protectionist policies than the others, however, producers in that country stand to gain dramatically through increased exports and higher domestic prices.[23] Thus, once other nations have agreed to reduce protectionism, special interests drive legislators to maintain protectionist agricultural policies. The potential for this outcome slows reform and minimizes the likelihood of trade liberalization.

B. EFFECTS OF AGRICULTURAL SUPPORT PROGRAMS

Developed countries use three primary policy instruments to support agriculture: internal price supports;[24] border restrictions such as tariffs, quotas, and restrictive licensing measures; and export subsidies.[25] Most countries also provide support for the agricultural sector through "soft" support policies such as agricultural extension programs, research, inspection, domestic food aid, and environmental programs.[26] The combination of soft programs with standard domestic support policies provides an incentive for farmers to increase production.

International Economic Order and the Decline of Multilateralism, presented at ACT Economics Society, Canberra (Mar. 23, 1983)).

22. Former U.S. Secretary of Agriculture, Clayton Yeutter, has stated: "We in the U.S. must spend enormous sums of money to counter, directly or indirectly, the farm policies of competitor nations. If we can convince those nations to change their policies over time, we can afford to change ours too." Address by Secretary of Agriculture Clayton Yeutter to the American Soybean Associations's Annual Expo, July 24, 1989 (Des Moines, Iowa), *quoted in* Alan Charles Raul & Kevin J. Brosch, *Global Trade in Agricultural Products, in* TRADE LAW AND POLICY INSTITUTE 1989, at 229, 232 n.3 (PLI Comm. Law & Practice Course Handbook Series No. 510, 1989).

23. *See, e.g., U.S. Should not Rush into GATT Agreement on Agriculture Trade, Key Senate Aide Says*, BNA Int'l Trade Daily, Apr. 9, 1991, *available in* LEXIS, BNA Library, BNAITD File. Charles Riemenschneider, staff director of the U.S. Senate Agriculture Committee, summed up the opposition to unilateral trade liberalization by stating that "Congress will want to see which way the EC is going" before agreeing to any significant changes in the Agreement on Agriculture. *Id.* Most other countries take a "wait and see" approach as well.

24. The most common price support in the United States is the deficiency payment which pays farmers the difference between a legislated target price and the market price. *See* Thomas L. Schoenbaum, *Agricultural Trade Wars: A Threat to the GATT and Global Free Trade,* 24 ST. MARY'S L.J. 1165, 1185 (1993). In 1991, deficiency payments accounted for $30 billion of the $52 billion appropriated by the U.S. government for agriculture. *Id.*

25. *See id.* at 1179.

26. *See* Agreement, *supra* note 6, Annex 5:2.

The United States currently has a comprehensive system of agricultural subsidies and programs to provide support for a variety of producers.[27] This system includes product-specific subsidies for wheat, feed grains, rice, dairy, tobacco, sugar, oilseeds, honey, wool, and peanuts.[28] Through a general category of "other non-basic agricultural commodities," the United States also has programs for many other agricultural products.[29]

The paradox of U.S. agricultural programs is that agricultural export gains have not kept pace with increases in productivity. U.S. agricultural production has more than doubled since 1948.[30] Even though the most significant gains occurred as a result of technological advances throughout the 1960s and 1970s, production continues to rise. Farm productivity rose twenty-five percent from 1982 to 1991.[31] Meanwhile, exports of farm products have remained relatively static since 1980.[32] The resulting surplus has not been met by increases in consumption

27. In the 1930s, as part of President Roosevelt's New Deal, the United States began its current national farm policy with a comprehensive system of protectionism including import quotas, production control programs, price supports, and export subsidies. Montana-Mora, *supra* note 16, at 11. Although U.S. farm policy has not changed significantly since the New Deal, every five years Congress must reauthorize the 1949 farm bill to set policy. Consequently, certain periods are associated with different realizations and reprioritizations of funds expended on agriculture. *See* Filipek, *supra* note 1, at 132. During the 1960s, for example, decisions regarding agricultural production were influenced by concerns about predictions of worldwide food scarcity. Raul & Brosch, *supra* note 22, at 253-54. As a result, U.S. farm policies were expanded both for humanitarian reasons and the commercial opportunities presented by increased worldwide demand. *Id.*

28. *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 314 (1993).

29. *See* Agricultural Act of 1949, § 301, 63 Stat. 1051 (codified as amended in scattered sections of 7 U.S.C.).

30. *See* ECONOMIC REPORT OF THE PRESIDENT 380 (1994). Using 1982 as the base year with a measurement value of 100, farm output in 1948 measured 48 while output in 1991 measured 110. *Id.* The percentage of Americans employed in agriculture has decreased from 6.7% in 1950 to 1.6% in 1993. U.S. CENSUS BUREAU, CENSUS BUREAU STATISTICAL ABSTRACT 395 (1994). Thus, farm output per unit of labor has increased by a factor of 6, from 19 in 1948 to 125 in 1991. ECONOMIC REPORT OF THE PRESIDENT, *supra*, at 380.

31. ECONOMIC REPORT OF THE PRESIDENT, *supra* note 30, at 380. While most industries may not consider a 25% increase over ten years unusual, it is noteworthy that this productivity increase occurred during the farm recession of the mid-1980s.

32. *See id.* at 383. While it is true that exports increased substantially throughout the 1970s, recent statistics show that they are leveling off. Total exports in 1980 were valued at $41.2 billion, while for the first 11 months of 1993 exports were valued at $38.5 billion. *Id.*

or decreases in imports.[33] Instead, the U.S. government has been forced to either purchase unconsumed products or pay for their storage.

The total cost of agricultural programs to developed countries is substantial. Worldwide agricultural subsidies total approximately $150 billion annually.[34] Although the yearly amount in the United States varies by several billion dollars,[35] over the past ten years the U.S. Department of Agriculture has spent an average of $20 billion per year on agricultural programs.[36] The cost of protectionism to U.S. taxpayers and consumers, including both direct governmental outlays and increased food prices, totaled $67 billion in 1989.[37] Agricultural programs in the EU and Japan subsidize farmers to an even greater extent than those in the United States.[38]

Moreover, these figures represent only the direct expenditures. Resultant inefficiencies and economic distortions further exacerbate the costs.[39] One study estimates that the U.S. gov-

33. *See* U.S. DEP'T OF AGRIC., AGRICULTURAL STATISTICS 453 (1993).

34. Statement of Clayton Yeutter, U.S. Secretary of Agriculture, Before the House Committee on Agriculture (July 19, 1989), *quoted in* Raul & Brosch, *supra* note 22, at 232 n.3.

35. Budget of the United States Government, *Historical Tables* 40-42 (1995).

36. *See id.*

37. Jimmye S. Hillman, *Agriculture in the Uruguay Round: A United States Perspective*, 28 TULSA L.J. 761, 764 (1993).

38. *See* Daniel, *supra* note 9, at 881. Two-thirds of the EU's budget is often required for agricultural market support. In 1992, over ECU 36 billion was expended on the Common Agricultural Policy, accounting for 58% of the total EU budget. *Id.* The total cost of EU protectionism, including both direct governmental outlays and increased food prices, totaled $97.5 billion in 1989. Hillman, *supra* note 37, at 790. In Japan, governmental expenditures and consumer transfers totaled $57.8 billion. *Id.*

39. Another fundamental detriment to world trade is increased trade tensions as countries attempt to dump increasingly devalued agricultural products on foreign markets. Stoeckel, *supra* note 21, at 1, 9-10. This conflict was illustrated dramatically in the disagreement between the United States and the European Community (EC) over agricultural quotas. *See* Hernicus A. Strating, *The GATT Agriculture Dispute: A European Perspective*, 18 N.C. J. INT'L L. & COM. REG. 305, 347 (1993). The oilseeds dispute began in 1962 when the United States secured a zero-duty-binding for exports of oilseeds to the EC. *Id.* After the binding was secured, the EC offered direct subsidies to European producers. *Id.* The United States complained and a GATT panel has twice found the EC to be in violation of the agreement. *Id.* The EC has largely ignored these findings and considerable tension between the two powers has resulted. *Id.* These trade tensions resulted in both subtle and overt retaliation in other markets. *See* Raul & Brosch, *supra* note 22, at 231.

ernment spends over $80,000 per year for each farm job saved.[40] Massive expenditures on agricultural support also shift resources from unsubsidized to subsidized goods and from other sectors of the economy, thereby affecting labor and land allocation. Price support and guaranteed income programs, for example, create incentives to use land for agriculture which may otherwise be put to other uses.[41] This negatively effects the economy and the environment.[42] Removing agricultural subsidies and other support programs worldwide would shift resources back to their optimal use and increase global social welfare.

The benefits of trade liberalization are startling. Despite the alarm of isolationists and mercantilists who argue that in trade there are winners and losers, studies demonstrate that the benefits of free trade accrue to all types of trading nations. Developing countries stand to gain $26 billion per year in real income through trade liberalization.[43] Germany could gain an additional 850,000 jobs.[44] The United States could reduce its trade deficit by $42 billion.[45] Furthermore, these studies isolate the effects of trade liberalization by individual countries.[46] The worldwide net benefits could be even greater if trade liberalization occurs concurrently.[47]

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40. Thomas W. Hertel et al., *Economywide Effects of Unilateral Trade and Policy Liberalization in U.S. Agriculture*, *in* MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES 260, 261 (Andrew B. Stoeckel et al. eds., 1989).

41. Absent agricultural support, marginal land will lie fallow if it is not economically profitable. During the 1970s, for instance, when agricultural support was expanding in the United States, more than 60 million acres of farmland were added to the U.S. production base. Raul & Brosch, *supra* note 22, at 255.

42. *See* Chen, *supra* note 18, at 872.

43. Thomas Loo & Edward Tower, *Agricultural Protectionism and the Less Developed Countries: The Relationship between Agricultural Prices, Debt Servicing Capacities, and the Need for Development Aid*, *in* MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES 64, 79-80 (Andrew B. Stoeckel et al. eds., 1989).

44. Hugo Dicke et al., *Effects of Agricultural Trade Liberalization on West Germany's Economy*, *in* MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES 125, 127 (Andrew B. Stoeckel et al. eds., 1989).

45. Andrew Feltenstein, *Agricultural Policies and the U.S. Federal Budget and U.S. Trade Deficit*, *in* MACROECONOMIC CONSEQUENCES OF FARM SUPPORT POLICIES 200, 201 (Andrew B. Stoeckel et al. eds., 1989).

46. Stoeckel, *supra* note 21, at 15-16.

47. *Id.* Multilateral trade liberalization creates worldwide welfare gains as consumers in protectionist countries gain access to cheaper goods and as producers in efficient countries gain access to new markets. *See id.*

Economic analysis of agricultural programs illustrates the inefficiencies created on a global scale. The trident of direct costs to taxpayers and consumers, increases in trade tensions, and inefficient resource allocation results in monumental costs. These factors, coupled with the budgetary concerns of the United States and the EU, drove reform of agricultural trade in the Uruguay Round.

II. HISTORY OF AGRICULTURE IN THE GATT

Despite the enormous trade distortions and costs of agricultural protectionism, the GATT has done little to reform trade in agriculture since its inception in 1947. Agriculture was largely ignored during the early rounds of the GATT.[48] Of the eight GATT rounds since World War II, seven focused on manufacturing.[49] Nevertheless, although the Uruguay Round was the first to focus primarily on agriculture,[50] important discussions occurred during the Dillon, Kennedy and Tokyo rounds which served as prologues for the changes instituted in the Uruguay Round.[51]

During the Dillon Round, the United States feared that the Common Agricultural Policy of the new European Community (EC) would result in higher duties than had previously existed under the policies of individual European countries.[52] As a result, negotiators discussed agriculture extensively. Although only a few items received reduced tariffs, those products (such as soybeans) quickly became some of the most traded items between the United States and the EC.[53]

The Kennedy Round discussions were also dominated by the dispute over market access between the United States and the EC.[54] There was some discussion of guaranteed access, but because of the low offer by the EC, the proposal was quickly aban-

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48. *See* Filipek, *supra* note 1, at 139.
49. *See* Hillman, *supra* note 37, at 763.
50. Filipek, *supra* note 1, at 139.
51. The Dillon Round was conducted from 1961 to 1962; the Kennedy Round from 1964 to 1967; the Tokyo Round from 1974 to 1979.
52. The United States requested guaranteed access to the EC market in exchange for releases from tariff bindings. Filipek, *supra* note 1, at 139. The EC denied the request and ultimately agreed to conduct future negotiations on tariffs of agricultural products. *Id.*
53. *See* Raul & Brosch, *supra* note 22, at 244.
54. Filipek, *supra* note 1, at 140-41. Historically, GATT allowed quantitative restrictions for agricultural products while prohibiting them for manufactured goods. Miner & Hathaway, *supra* note 10, at 58. Discussions about market access centered around eliminating most of these restrictions and low-

doned.[55] The EC introduced a new concept, margin of support, which ultimately played a key role in the Uruguay Round Agreement on Agriculture.[56] Margin of support centers on the recognition that support for agricultural products comes from a variety of sources.[57] While previous negotiations focused on import barriers,[58] margin of support accounts for other measures such as price supports and subsidies, as well as administrative support.[59] Essentially, margin of support includes any method that a government uses to provide higher incomes for producers than would be received under free-market conditions. Although this approach was abandoned when the United States discovered that the EC sought to use margin of support as a way to maintain their variable levy,[60] its introduction laid important groundwork for adoption of the concept during the Uruguay Round.

The Tokyo Round attained modest success in liberalizing agricultural trade, producing three general agreements.[61] The

ering tariffs so that the effects of the quantitative restrictions would not be duplicated.

55. The United States sought a 15% share of the EC grain market for imports and the Europeans offered only a 10% share. Filipek, *supra* note 1, at 141. The primary legacy of the Kennedy Round for agriculture was the failure of the International Grains Arrangement, an attempt to fix prices and market shares globally. JOHN W. EVANS, THE KENNEDY ROUND IN AMERICAN TRADE POLICY: THE TWILIGHT OF THE GATT? 289-91 (1971). This failure extinguished interest in commodity agreements which had been used previous to the Kennedy Round with modest success. *See id.*

56. Filipek, *supra* note 1, at 141-42.

57. *Id.*; *see infra* part III.C.

58. Previous negotiations primarily targeted tariffs and quantitative restrictions. Filipek, *supra* note 1, at 141-42.

59. *Id.* Margin of support is similar to a "producer subsidy equivalent" in that it equals the subsidy that would have to be given to agricultural producers to keep their incomes at the same level if all other farm programs were removed. Stefan Tangermann et al., *Multilateral Negotiations on Farm-Support Levels*, 10 WORLD ECON. 265, 266 (1987). "Producer subsidy equivalent" is the term used by the Organization for Economic Co-operation and Development (OECD). *Id.* at 265.

60. EVANS, supra note 55, at 211. The variable levy is a protection device whereby a minimum price to be received by domestic producers is set and products from other countries are not allowed to enter the market without paying an amount slightly more than the difference between the market price and the minimum price for domestic producers. *Id.* at 83. The variable levy was written into the EC's plan because the reference price was unique to each country and border protection could be increased if the offering price fell below the reference price. *Id.* at 210-11.

61. The changes wrought during the Tokyo Round are best understood in relation to the overall changes in agricultural trade which were occurring at the time. Trade in agricultural products was expanding at the fastest rate in his-

first agreement significantly reduced traditional tariffs on, and trade barriers to, agricultural products.[62] The second provided forums for resolving trade disputes over dairy products and beef.[63] The third agreement established a code of conduct which attempted to minimize non-tariff trade barriers that take the form of standards, product certification and testing requirements.[64] The Tokyo Round failed, however, to curb the EC's use of export subsidies.[65]

During earlier rounds of negotiation, significant agricultural trade reform was merely a GATT sideshow. While some trade liberalization occurred, its primary importance was in laying the groundwork for later negotiations. Negotiations in the Kennedy Round sought agreement on market access; the Tokyo Round sought to eliminate export subsidies. It was not until the Uruguay Round, however, that these ideas coalesced and agriculture took center stage.

III. THE URUGUAY ROUND AGREEMENT ON AGRICULTURE

The Uruguay Round Agreement on Agriculture modifies agricultural trade in three principal areas. First, the Agreement provides greater market access by bringing agricultural products within the confines of GATT limits on non-tariff barriers. Second, it bans all new export subsidies and establishes measures by which existing export subsidies are reduced. Third, the

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tory. Hillman, *supra* note 37, at 767. At the same time, however, agricultural trade relations between the EC and the United States were changing due to a substantial drop in European imports of agricultural products from 1973 to 1980. *See* Montana-Mora, *supra* note 16, at 20. Because the decline was due to extensive subsidies, the United States became increasingly concerned that its own agricultural market might be negatively affected. *See* John F. Hudson, *The European Community's Common Agricultural Policy*, *in* SENATE COMM. ON AGRICULTURE, NUTRITION AND FORESTRY, 98TH CONG., 2D SESS., TRADE POLICY PERSPECTIVES: SETTING THE STAGE FOR 1985 AGRICULTURAL LEGISLATION 323, 323-28 (Comm. Print 98-263, 1984). The Common Agricultural Policy has been described as the foremost example of a managed-market approach to farm support. *Id.* The EC relied almost exclusively on subsidies to guarantee income for farmers. *Id.* at 327. Although some programs existed to decrease production, they were negligible. *Id.* at 325-27.

62. Filipek, *supra* note 1, at 143. The United States, for example, received $3.8 billion in tariff and non-tariff barrier concessions. *Id.* at 143 n.162.

63. *See id.* at 143. Dispute resolution forums were created to resolve trade disputes over meat and dairy products and international councils were established for information exchange and consultations. *Id.* at 144.

64. *Id.* at 143-44.

65. *See* GILBERT R. WINHAM, INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION 119-20 (1986).

Agreement requires reductions in domestic support by establishing an Aggregate Measure of Support (AMS) for trade-distorting domestic policies and by providing timetables for specified cuts.

A. MARKET ACCESS

The market access provisions of the Agreement mandate tariffication[66] of all non-tariff border measures.[67] The market access provisions within the Agreement apply the principle of GATT Article XI to agricultural products by providing that members "shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties."[68] Tariffs are the preferred measure as they are more transparent and thus an easier basis for negotiation.[69] The measures to be converted include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, and voluntary export restraints.[70] The Agreement also includes a catchall provision covering "similar border measures other than customs duties."[71] The conversion of non-tariff border restrictions to tariffs signals that agricultural products are no longer afforded the myriad exceptions that are unavailable for manufactured goods.[72]

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66. Tariffication is the replacement of non-tariff barriers with tariffs that provide an equivalent level of protection. Tariff equivalents are equal to the difference between the world market price and the domestic price with non-tariff barriers in place. *See* THE INTERNATIONAL AGRICULTURAL TRADE RESEARCH CONSORTIUM, THE URUGUAY ROUND AGREEMENT ON AGRICULTURE: AN EVALUATION 29 (Commissioned Paper No. 9, 1994) [hereinafter IATRC EVALUATION]. The determination of these tariffs is controversial as it is easy to manipulate a tariff equivalent through the use of divergent internal and border price data. *Id.*

67. Agreement, *supra* note 6, art. 4:2. The Agreement exempts measures maintained under balance-of-payments provisions or under other general, non-agriculture provisions of the GATT. *Id.*

68. *Id.* GATT Article XI provides in relevant part:

> No prohibitions or restrictions *other than duties, taxes or other charges*, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

GATT 1994, *supra* note 4, art. XI:1 (emphasis added).

69. Frieder Roessler, *The Constitutional Function of the Multilateral Trade Order*, *in* NATIONAL CONSTITUTIONS AND INTERNATIONAL ECONOMIC LAW 53, 58-59 (Meinhard Hilf & Ernst-Ulrich Petersmann eds., 1993).

70. Agreement, *supra* note 6, art. 4:2 n.1.

71. *Id.*

72. IATRC EVALUATION, *surpa* note 66, at 6.

The Agreement also requires that the tariffs resulting after conversion of non-tariff barriers be reduced. Tariff reductions are based on each country's tariff schedule, averaging a total of 36% over six years for developed countries.[73] For individual tariffs, the minimum reduction is 15%,[74] limiting the extent to which a country may maintain protectionist border measures for some products by more drastically reducing tariffs on others.

Market access provisions require a minimum market share for imports and the maintenance of import quantities above 1986-88 levels. Market access provisions initially provide imports access to at least 3% of the domestic market, and to at least 5% by the end of the six-year implementation period.[75] Countries are to apply "low or minimal" duties to achieve the targeted market shares.[76] While imports already comprise 3% of many markets,[77] the market share guarantee creates a hedge against hidden protectionism. Furthermore, minimum access requirements, such as the 5% market share target, secure trade gains that should result naturally from tariff reductions.[78]

In addition to the market share targets, the *quantity* of imports must also be kept at a level no lower than the 1986-88 base period.[79] Current access opportunities specified in the schedules "shall be maintained and *increased* over the implementation period."[80] This requirement safeguards against trade decreases that could result if tariffication creates greater protection than the original non-tariff measures.[81] Moreover, the quantity requirement reinforces the minimum percentage requirement. If the consumed amount of a product increases, the

73. *Id.* at 8. Developing countries may reduce their tariffs at a lower rate than developed countries. Scheduled tariff reductions for developing countries average 24% over 10 years. *Id.*

74. Agreement, *supra* note 6, Annex 5:6. The minimum tariff reduction for developing countries is 5%. IATRC EVALUATION, *supra* note 66, at 8.

75. Agreement, *supra* note 6, Annex 5:6. The minimum access requirement for developing countries is 2% with increases leading to a level of 4% after 10 years. *Id.* Annex 5:7.

76. IATRC EVALUATION, *supra* note 66, at 9.

77. For example, even in the highly protectionist EU, its various preferential schemes and previous bilateral negotiations allow imports of more than 3% for most products. *Id.* at 49.

78. *See id.* at 9.

79. *Id.* at 8.

80. *Modalities for the Establishment of Specific Binding Commitments Under the Reform Programme* 2, GATT Doc. MTN.GNG/MA/W/24 (Dec. 23, 1993) (note by the Chairman of the Market Access Group) [hereinafter Chairman's Note].

81. See *infra* text accompanying notes 99-102 for a discussion of "dirty" tariffication.

minimum market share requirement dictates that the quantity of imports must increase as well. If the consumed amount decreases, the percentage of imports must increase to keep pace with the minimum quantity requirement.

The impact of the market access provisions is weakened by several exceptions. One exception is the Special Safeguards Provision "which can be invoked on those products subject to tariffication if imports rise too rapidly or import prices fall too low."[82] The volume safeguard is tied to "trigger levels" at which a country may increase tariffs to lessen the impact of tariffication.[83] Upon reaching the trigger level, tariffs on that product may be increased by one-third for the remainder of the year.[84] When market access opportunities are less than or equal to 10%, the additional tariff may be applied after the quantity of imports equals 125% of the preceding three-year average.[85] When market access opportunities are 10 to 30%, or greater than 30%, the trigger levels are 110% and 105%, respectively.[86] The price safeguard allows countries to impose increasingly higher tariffs as the difference between the import price and a reference price[87] increases.[88] Additional marginal tariffs of 30, 50, 70, and 90% may be applied as the gap widens.[89] In some respects, the Spe-

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82. Dale E. Hathaway & Merlinda D. Ingco, *Agricultural Liberalization and the Uruguay Round*, *presented at* THE URUGUAY ROUND AND THE DEVELOPING ECONOMIES: A WORLD BANK CONFERENCE 20 (Jan. 26-27, 1995). The products subject to the Special Safeguard Provisions are designated on the schedules with the symbol "SSG". Agreement, *supra* note 6, art. 5:1. The Special Safeguard Provisions may be invoked if:

> (a) the volume of imports of that product entering the customs territory of the Member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity . . . or, but not concurrently:
>
> (b) the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price for the product concerned.

Id. art. 5:1(a), (b) (footnote omitted).

83. Agreement, *supra* note 6, art. 5:4.

84. *Id.*

85. *Id.* art. 5:4(a).

86. *Id.* art. 5:4(b), (c).

87. "The reference price used to invoke the provisions . . . shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing." *Id.* art. 5:1(b) n.2.

88. *Id.* art. 5:5.

89. *Id.*

cial Safeguards Provision is similar to a variable levy and represents a serious deviation from liberalization.[90]

Another exception to the market access requirements is the Special Treatment clause.[91] Provisions within Annex 5 allow countries to avoid tariffication of "qualified" products under certain conditions. Products qualify if they meet five criteria: First, imports of a product must be less than 3% of domestic consumption during the base period.[92] Second, countries must not have subsidized exports of the product since the beginning of the base period.[93] Third, effective domestic measures to restrict production must be applied.[94] Fourth, the products must be designated as subject to special treatment for non-trade concerns such as food security or environmental protection.[95] Fifth, minimum access for these products must equal 4% for the first year of the implementation period and increase by 0.8% each year for the remainder of the period.[96] If imports of a product meeting these five criteria increase at a rate beyond a certain level, tariffication requirements do not apply.[97] Alternatively, if a qualified product is a traditional staple in the diet of a developing country, tariffication is not required; however, minimum access must initially be at least 1% of domestic consumption with equal incremental increases to 4% over ten years.[98]

The greatest impediment to the trade liberalization of the market access provisions is that countries overstated their tariffs.[99] The overstatement of tariffs has been labeled "dirty tariffication." One study found that the tariffication procedures used by a majority of countries resulted in significantly higher tariffs than the estimated equivalents for the 1986-88 base period.[100]

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90. Hathaway & Ingco, *supra* note 82, at 21.

91. *See* Agreement, *supra* note 6, Annex 5; IATRC EVALUATION, *supra* note 66, at 9. The Special Treatment clause was included to allow Japan and Korea to address political difficulties in opening up their rice markets. *Id.* Its provisions are designed specifically for the conditions faced by these two countries. *Id.* It applies, however, to all member nations. *See* Agreement, *supra* note 6, Annex 5.

92. Agreement, *supra* note 6, Annex 5:1(a).

93. *Id.* Annex 5:1(b).

94. *Id.* Annex 5:1(c).

95. *Id.* Annex 5:1(d).

96. *Id.* Annex 5:1(e).

97. *Id.* Annex 5:1.

98. *Id.* Annex 5:7.

99. Tangermann, *supra* note 7, at 145.

100. Hathaway & Ingco, *supra* note 82, at 18-19. For example, the EU's declared tariffs were higher than the estimated tariff equivalents for eight of nine major products; the United States used dirty tariffication for three prod-

"The resulting tariffs of sometimes several hundred per cent leave so little scope for the functioning of market forces, even after being reduced by (at least) 15 per cent, that it is difficult to argue that trade has been significantly liberalised."[101] Although dirty tariffication is less of an issue for original parties to the WTO, as the conversion of their tariffs has already been negotiated, it may prove to be an issue as new countries join the WTO.[102]

Dirty tariffication also increases the likelihood that countries will use the flexibility provided in reducing tariffs to minimize trade liberalization.[103] Because reductions are averaged across all products and are not trade-weighted, an incentive exists for countries to protect sensitive products through divergent tariff reductions.[104] This incentive is somewhat constrained by the requirement that all tariffs be reduced by at least 15%.[105] With dirty tariffication, however, a country may effectively avoid liberalizing trade on some products without violating the provision.[106] Such unbalanced levels of protection among products allowed by the Agreement may lead to even more distortion in trade flows.[107]

B. EXPORT COMPETITION

The Agreement imposes two major requirements on export subsidies.[108] Programs that constitute export subsidies include payments-in-kind, subsidized stock exports, producer-financed export subsidies, export marketing cost subsidies, export-spe-

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ucts. *Id.* at 18. Norway's tariff equivalent for beef for the 1986-88 period was 145%. *Id.* tbl. 2b. Norway's declared tariff is 405%. *Id.* Interestingly, some countries declared tariffs were lower than their estimated tariff equivalents. *Id.* Japan's tariff estimate for beef, for example, was 87% and their declared tariff is 38.5%. *Id.*

101. Tangermann, *supra* note 7, at 145.

102. *Id.* Dirty tariffication could be an especially important issue for large markets such as China and countries within the former Soviet Union.

103. *Id.* at 146.

104. *Id.*

105. Agreement, *supra* note 6, Annex 5:6.

106. This tariff reduction loophole exists because the 36% reduction is not a reduction of 36 tariff points, but rather a percentage of existing tariffs. Consider, for example, a country with four tariffed agricultural products. Three of the products have tariffs of 100% and one has a 4% tariff. The country must reduce individual tariffs by at least 15%, which it does for the three high-tariffed products. To meet the overall 36% reduction, it then reduces the tariff on the 4% product by 100%. It has thus met the requirement of a 36% reduction, but has only reduced tariffs on average by 12.25 points.

107. Tangermann, *supra* note 7, at 146.

108. Agreement, supra note 6, arts. 8, 9:1.

cific transportation subsidies, and subsidies on goods incorporated into exports.[109] First, nations are required to reduce their existing export subsidies.[110] Countries must reduce their budget expenditures[111] (or revenues foregone) on export subsidies by 36% over six years and the volume of subsidized exports by 21%.[112] Second, the Agreement prohibits nations from creating any new export subsidies on currently subsidized products.[113] In addition, new subsidies may not be implemented for agricultural products that were not subsidized in the base period.[114]

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109. *Id.* Under the Agreement, the following export subsidies are subject to reduction commitments:

> (a) the provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;
>
> (b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;
>
> (c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;
>
> (d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;
>
> (e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments;
>
> (f) subsidies on agricultural products contingent on their incorporation in exported products.

Id. art. 9:1.

110. *Id.*

111. For budgetary outlay reduction commitments, the budget reduced must be "the maximum level of expenditure for such subsidies that may be allocated or incurred in that year in respect of the agricultural product, or group of products, concerned." *Id.* art. 9:2(a)(i).

112. *Id.* art. 9:2(b)(iv). The quantity of agricultural exports to be reduced is "the maximum quantity of an agricultural product, or group of products, in respect of which such export subsidies may be granted in that year." *Id.* art. 9:2(a)(ii). Developing countries need only reduce these expenditures by 24% and 14%, respectively. *Id.* art. 9:2(b)(iv).

113. *Id.* art. 8.

114. *Id.* art. 3:3.

Export subsidy rules are important because they cap the future subsidies a country may provide for an exported product.[115] "[F]or the first time in the history of the GATT there can no longer be any doubts as to what (maximum) level of export subsidies a country can grant in agricultural trade."[116] To aid enforcement of these requirements, the exporting country has the burden of proving compliance with the reductions or prohibitions.[117] This burden of proof should also compel governments to implement detailed reporting procedures to establish that aid to producers is not tied to exports.

The dual requirement of reductions in budgetary outlays and export volumes is extremely important. If required reductions in export subsidies are measured only by budget percentages, then as trade increases, smaller subsidy expenditures can subsidize greater quantities of exports. Conversely, in a shrinking product market, if required reductions of subsidized exports are measured only by volume, then greater expenditures could be applied without decreasing the quantity of subsidized exports.

An important consequence that is not evident from the Agreement itself is the possibility that the export subsidy reductions create an incentive for some countries to eliminate their export subsidies more rapidly than required.[118] This consequence arises because the export subsidy reductions create two groups of agricultural products available for sale on the international market—subsidized exports and unsubsidized exports. The quantity of subsidized exports is capped and declining for all exporting countries. Since efficient producer countries will dominate the expanding unsubsidized product market, they have an incentive to eliminate export subsidies and concentrate sales in the unsubsidized product market.[119] The efficient pro-

115. IATRC EVALUATION. *supra* note 66, at 10.

116. *Id.*

117. Agreement, *supra* note 6, art. 10:3. "Any Member which claims that any quantity exported in excess of a reduction commitment level is not subsidized must establish that no export subsidy . . . has been granted in respect of the quantity of exports in question." *Id.*

118. The concepts within this paragraph are developed from a discussion with Robbin Johnson, Vice-President of Public Affairs, Cargill, Inc. (Feb. 8, 1995).

119. The critical assumption to this scenario is that profit margins are equal within the unsubsidized and subsidized markets. Under typical subsidization schemes which pay producers the difference between the market price and a legislated price, profit margins will remain the same as long as the unsubsidized market price rises to at least the legislated price. Under subsidy

ducer countries will absorb the newly unsubsidized market share of the less efficient producer countries. Furthermore, subsidy payments that adjust with market prices will automatically decline as market prices rise. Producers receiving such subsidies will be indifferent to their availability because their net return remains constant. Thus, trade liberalization may occur more rapidly than the export subsidy commitments require. Moreover, efficient producer countries also have an incentive to negotiate larger export subsidy cuts in subsequent negotiations since their export subsidies may have already decreased beyond the required level.

C. DOMESTIC SUPPORT

The Agreement requires reductions in overall domestic support based on an Aggregate Measure of Support (AMS).[120] The Agreement defines AMS as the annual level of support provided for agricultural producers of specific products as well as support for agricultural producers in general.[121] Essentially, AMS quantifies all forms of agricultural support and creates a composite figure used as the basis for cutbacks.[122] Prior to the signing of the Uruguay Round, each country calculated its AMS by identifying the various programs with which it supports agriculture.[123] The Agreement requires each country to reduce its AMS by a targeted 20% of budget over a six-year period.[124]

Both direct budgetary outlays and foregone revenues are included within the measure of AMS.[125] This prevents countries from shifting direct payments to tax cuts based on production. AMS includes support provided by the central government as

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schemes which give producers a fixed subsidy, however, producers will strive to remain in the subsidized market.

120. Agreement, *supra* note 6, art 6:1. The text of the AMS provision states: "The domestic support reduction commitments of each Member . . . shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in . . . this Agreement." *Id.*

121. *Id.* art. 1(a). AMS is defined specifically as "the annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product-specific support provided in favour of agricultural producers in general, other than support provided under programmes that qualify as exempt." *Id.*

122. Tim Dickson, *EC Heavyweights Clash Over Farm Reforms*, FIN. TIMES, Sept. 26, 1990, at 3.

123. *Id.*

124. IATRC EVALUATION, *supra* note 66, at 13. The exact support reduction depends on each country's schedule. *See* Agreement, supra note 6, art. 6:3.

125. Agreement, *supra* note 6, art. 1(c); *see also id.* Annex 3:2.

well as support provided by regional and local governments.[126] This forces countries to either effect the reduction of local governmental outlays to agriculture, or absorb the local outlays with greater cuts in the central government's programs.[127]

Countries must calculate AMS for each individual agricultural product.[128] AMS thus aggregates measures which create distortions in individual products rather than support given to an aggregation of products. The requirement that support programs be measured for each product embodies a more rigid approach to identifying subsidies.

There are several advantages to a measure which calculates all forms of support for agriculture and then requires across-the-board cuts. First, it prevents production and trade-distorting countries from eliminating trade barriers in one product area by imposing them in others. Second, it continues to provide political flexibility. AMS allows countries to maintain agricultural policies that are more appealing by making larger cuts in other less essential policies. The EU originally advocated AMS for this specific reason.[129] The United States opposed such a measure and instead wanted to concentrate on the elimination of export subsidies.[130] The AMS approach was ultimately adopted in the Uruguay Round and represents an important stride in breaking down global agricultural protectionism. The AMS approach recognizes that a variety of measures contribute to the overproduction of agricultural products worldwide and thus provides a broader, more accurate measure of the agricultural support that may result in trade distortion.[131]

There are several significant exceptions to AMS. The Agreement first exempts any agricultural support of a product

126. *Id.* Annex 3:3.

127. *See, e.g.*, Kenneth E. Cooper, Note, *To Compel or Encourage: Seeking Compliance with International Trade Agreements at the State Level*, 2 MINN. J. GLOBAL TRADE 143, 157 (1993).

128. Agreement, *supra* note 6, Annex 3:1.

129. Peter Torday, *GATT Talks Floundering in Final Phase; Peter Torday Reports on the Obstacles Blocking a Successful Uruguay Round Accord*, THE INDEPENDENT, Oct. 10, 1990, at 29.

130. David Brown, *Gummer Leads the Fight Against U.S. Farm Price Assault*, DAILY TELEGRAPH, July 25, 1990, *available in* LEXIS, News Library, TELEGR File. The U.S. proposal also attacked domestic subsidies, albeit in a slightly different way. The United States would have categorized domestic subsidies into those that were minimally trade distorting and those which were objectionable. The U.S. approach then called for cutting trade distortive methods while minimally trade distortive methods would be left untouched. Tangermann, *supra* note 7, at 144.

131. *See, e.g.*, Hathaway & Ingco, *supra* note 82, at 29.

where the amount of support constitutes less than 5% of the total annual value of production.[132] This allows countries to exclude products from inclusion in AMS where the support is considered *de minimis*.[133] A second exception to AMS requirements is the exclusion of both U.S. deficiency payments and EU compensation payments.[134] Deficiency and compensation payments provide price insurance by paying producers the difference between a legislated target price and the market price.[135]

The Agreement provides a third exception to AMS for "green box" programs.[136] To be exempted, green box programs must meet two criteria. First, support must be provided through a publicly-funded government program which does not involve transfers from consumers.[137] Second, the program must not provide price support to producers.[138] Green box programs are excluded because they are considered to be welfare enhancing and only minimally distortive.[139] They include programs such as research,[140] extension,[141] inspection,[142] marketing,[143] infrastructure,[144] food security,[145] food aid,[146] crop insurance

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132. Agreement, *supra* note 6, art. 6:4(a)(1). The percentage allowed for developing countries is 10%. *Id.* art. 6:4(b).

133. *Id.* art. 6:4.

134. IATRC EVALUATION, *supra* note 66, at 14.

135. *See, e.g.*, Bruce L. Gardner, *The United States*, *in* AGRICULTURAL PROTECTIONISM IN THE INDUSTRIALIZED WORLD 19, 35 (Fred H. Sanderson ed., 1990) (describing U.S. deficiency payments); Hathaway & Ingco, *supra* note 82, at 7 (describing EU compensation payments).

136. Agreement, *supra* note 6, Annex 2; *see* IATRC EVALUATION, *supra* note 66, at 12.

137. Agreement, *supra* note 6, Annex 2:1(a).

138. *Id.* Annex 2:1(b).

139. *Id.* Annex 2:1.

140. Chairman's Note, *supra* note 80, Annex 4:2.

141. Extension programs are essentially advisory services which facilitate the transfer of information and research findings to producers and consumers. *Id.*

142. Inspection services include general inspection services and inspection of particular products for health, safety, grading or standardization purposes. *Id.*

143. Marketing and promotion services include "market information, advice and promotion relating to particular products." *Id.* However, "expenditure[s] for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers" are excluded from the green box and are thereby included within AMS. *Id.*

144. Infrastructure services include "electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructure related to environmental programs." *Id.*

145. Food security includes: "Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral

and income safety-net schemes,[147] disaster payments,[148] retirement programs,[149] structural adjustment programs,[150] environmental programs,[151] and decoupled income support.[152] While the green box exemptions and many other exceptions are not an overt attempt to diminish the effectiveness of the Agreement, they undoubtedly hinder the Agreement's immediate effectiveness and necessitate future negotiation.

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part of a food security programme identified in national legislation." *Id.* Annex 4:3.

146. Food aid must be provided to a portion of the domestic population in need. In addition:

> Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

Id. Annex 4:4.

147. The amount of payments given as income insurance must relate solely to income rather than the type of product produced. *Id.* Annex 4:7. Producers' income must decrease by more than 30% in comparison to the previous three-year period before they are eligible for payments. *Id.* The amount of compensation also may not exceed 70% of the total loss. *Id.*

148. Eligibility for disaster payments must follow a formal governmental recognition of a disaster. *Id.* Annex 4:8. Losses must exceed 30% of the average production for the preceding three-year period. *Id.* A disaster payments program, like income safety schemes, must relate solely to income losses and may not be product specific. *Id.*

149. Payments from retirement programs must be made "to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities." *Id.* Annex 4:9. Payments must also be conditioned upon the permanent retirement of such persons. *Id.*

150. Structural assistance through investment aids "shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages." *Id.* Annex 4:11.

151. Payments under environmental programs "shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfillment of specific conditions under the government programme, including conditions related to production methods or inputs." *Id.* Annex 4:12.

152. Decoupled income support payments, by definition, must be unrelated to the type or volume of production of a particular producer. *Id.* Annex 4:6. "Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period." *Id.*

IV. SUBSTANTIVE WEAKNESSES AND ENFORCEMENT DIFFICULTIES

The market access and export subsidies provisions of the Agreement will have a substantial immediate impact on free trade in agricultural products. As a quantification of domestic subsidies, AMS represents an innovative mechanism to address trade distortion. However, the degree of trade liberalization afforded by reductions in domestic support has been significantly weakened by difficulties in enforcing the reductions. The first primary difficulty with enforcing domestic support reductions is the effect of the numerous exceptions within the Agreement. The second is the complexity of implementing the provisions and the political incentive for continuing support. The third difficulty is the ability of the new WTO to enforce the provisions of the Agreement.

A. AMS EXCEPTIONS

The difficulty with the AMS exceptions is the severe limit they place on achieving meaningful reductions in domestic support. The most troublesome exception is that neither U.S. deficiency payments nor EU compensation payments under the reformed Common Agricultural Policy are included in AMS.[153] Deficiency payments in the United States and compensation payments in the EU represent the largest expenditures on agriculture in these two countries.[154] In the United States, for example, deficiency payments comprise over 70% of domestic agricultural subsidies.[155] The Dunkel Draft of the Agreement included both programs as trade distortive subsidies subject to reduction.[156] They were later exempted as concessions to the

153. Deficiency and compensation payments are similar in that they work to provide price insurance by paying producers the difference between a legislated target price and the market price. *See supra* note 135 and accompanying text. Deficiency and compensation payments were excepted by the Blair House Agreement. Hathaway & Ingco, *supra* note 82, at 12. The negotiations resulting in the Blair House Agreement dealt with problematic issues from the Dunkel Draft. *Id.* at 11.

154. The EU compensation payments are new under the Common Agricultural Policy. IATRC EVALUATION, *supra* note 66, at 43. Their exception from AMS reduction commitments means that AMS has no policy significance for the EU. *Id.* at 46.

155. In 1990, the United States spent over $9 billion in direct payments to farmers, of which $6.8 billion was for deficiency payments. U.S. GEN. ACCT. OFF., AGRICULTURE PAYMENTS: NUMBER OF INDIVIDUALS RECEIVING 1990 DEFICIENCY PAYMENTS AND THE AMOUNTS 8 (1992).

156. Hathaway & Ingco, *supra* note 82, at 9.

two key parties.[157] This exception serves as the death knell for the immediate effectiveness of domestic support reductions.

Green box exceptions also limit meaningful reduction of domestic support. Despite the Agreement's requirement that green box policies have "no, or at most minimal, trade-distorting effects,"[158] some specified programs clearly distort trade.[159] An income insurance program, for example, has appreciable effects on the agricultural sector. Such a program makes crop production more financially attractive by providing an income floor and reducing the risk of an inadequate income. As a result, market forces fail to drive inefficient production factors from the agricultural sector, and surpluses once again result. While the level of protection varies among green box exceptions, the Agreement lists numerous programs that presumably qualify and thereby undermines the fundamental requirement that programs have no or at most minimal trade distortive effects. Furthermore, a country which utilizes multiple green box programs could cumulatively cause excessive trade distortion.

AMS exceptions may ultimately provide governments with the ability to avoid reducing agricultural support. The exceptions thus thwart the immediate effectiveness of AMS reduction commitments. The importance of AMS, however, lies not in its immediate effect, but in the groundwork it lays. AMS commitments formally restrict countries' internal budgetary priorities and resultant policies related to agriculture. AMS provisions are also important because they establish ceilings beyond which countries may not subsidize. Despite numerous exceptions, the AMS approach creates predictability in the amount and type of trade distortive domestic policies countries can utilize. Most importantly, AMS provisions provide the basis for future negotiation of subsidies reduction and exception elimination.

B. Implementation Complications

Notwithstanding the weakening effect of the exceptions to AMS, additional complications arise from the use of a broad measure of support. Political inertia creates the incentive to preserve more trade distortive measures. Furthermore, a mea-

157. *Id.* at 12.

158. IATRC EVALUATION, *supra* note 66, at 12.

159. Admittedly, some green-box policies are not as trade distortive. Decoupled income support, for example, will not encourage production. It merely encourages persons to become part of the qualified group, in this case, farmers. The direct outlay of funds, such as welfare payments, are not trade distortive and not a historical concern of the GATT.

sure that broadly addresses domestic support requires more exacting enforcement mechanisms than those previously utilized under the GATT.

AMS is politically appealing because it creates the advantages of flexibility and choice. The corresponding danger, however, is that different domestic support policies vary in their degree of trade distortion.[160] An equivalent cut in funds expended on support policies will not necessarily result in equivalent reductions in trade distortion for each country.[161] Thus, reduction commitments based on AMS create an incentive to retain trade distortive programs.

The danger is exacerbated by the fact that the most politically appealing programs are typically the most protectionist.[162] Cutting subsidization of land substitutes, for instance, has the greatest effect on trade liberalization.[163] "The logic of this proposition rests on the assumption that agricultural land is the constraining factor on the long-run output of the farm sector."[164] Because farmers' wealth is concentrated primarily in land, however, politicians are loathe to detract from that wealth and upset the powerful farm lobbies. Legislatures are also concerned about the effects of disrupting employment in the agricultural sector by cutting certain subsidies.[165] Although removing support from input factors has the greatest impact on trade liberalization,[166] it also significantly decreases employment in the farm

160. Thomas W. Hertel, *PSEs and the Mix of Measures to Support Farm Incomes*, 12 WORLD ECON. 17, 22 (1989). A subsidy for an input that is a substitute for land will increase production at a greater rate than the same amount expended on an output subsidy. *Id.* at 20. As other factors of production are subsidized, production can increase with less capital investment in land. *Id.* at 23. This in turn raises the value of land and the net worth of the owners of land (usually farmers). *Id.*

161. A cut in grain subsidies, for example, will have less of an impact on production than an equivalent cut on expenditures subsidizing fertilizer. *Id.* at 20.

162. Politically popular protectionism is protectionism that works. For example, quotas on rice imports have been established in countries such as Japan, Korea, and the Philippines for generations. Since rice is the primary staple of diets in these three countries, quotas, the scourge of the GATT, have been used extensively to protect rice producers. These countries insisted that a special provision be inserted within the Agreement to allow these quotas to remain in place. IATRC EVALUATION, *supra* note 66, at 9; see *supra* notes 91-98 for a discussion of the Special Treatment clause.

163. *See supra* note 160 and accompanying text.

164. Hertel, *supra* note 160, at 20.

165. *See id.* at 21.

166. *Id.* Hertel summarizes the differences between input and output subsidies in the ways they affect factor prices facing individual farms:

sector.[167] Politicians instead seek to cut output subsidies which have less of an impact on employment in the agricultural sector.

Given the political inertia for protectionist policies, enforcing the Agreement could prove to be a daunting task. The question of enforcement raises several issues, each of which could prevent the Agreement from minimizing trade distortion. Countries may have inflated their AMS estimates prior to the Agreement to more easily achieve reduction requirements. Inflation of AMS figures clearly undermines the effectiveness of the Agreement. It delays the effect of the Agreement in eliminating trade distorting mechanisms by postponing true domestic support reductions. Also, countries may focus on "accounting" compliance rather than "real" compliance to the reduction commitments. Either possibility casts a dim future for the potential effectiveness of the Agreement.

A further issue concerns the lack of reporting and verification procedures. Currently, there are no procedures in place by which a team of experts can audit agricultural support programs of individual countries. Naturally, countries have an incentive to monitor each other. Competing countries will monitor reports issued by other countries and institute a GATT proceeding when they believe a country is not in compliance. Relying on self-policing, however, creates informational problems because domestic subsidies data is particularly difficult for an outside country to gather and verify. An independent team of analysts is needed to examine and verify individual budgets and expenditures to determine whether individual countries are in compliance. Frequent physical inspections are also necessary to ensure that expenditures are not being routed to other agricultural sectors or areas that have been determined to cause trade distortion.

CONCLUSION

The importance of the reforms instituted by the Uruguay Round Agreement on Agriculture cannot be understated. Agricultural protectionism increased from the early 1970s until the

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> Over time [the difference between input and output subsidies] tends to result in farm operators changing the mix of inputs which they choose to employ. For example, subsidized credits, such as those provided to Brazilian agriculture, tend to induce a more capital-intensive form of production than would otherwise prevail .... In general, input subsidies encourage additional production.

Id. Although this is also the case with an output subsidy, the output subsidy is less prone to alter the mix of inputs used in producing the commodity. *Id.*

167. *Id.*

Uruguay Round. The Uruguay Round slows the growth of agricultural protectionism and in some ways reverses it. The market access and export subsidy provisions in particular represent huge strides as they require that agricultural products be treated similarly to manufactured products. These two provisions will also have the greatest immediate impact on trade liberalization of agriculture. AMS represents a new approach within the GATT for addressing global trade distortion and its implications liberalize trade in agriculture to an even greater extent than manufacturing. Because of exceptions within AMS and the complications of enforcing compliance, however, AMS is unlikely to have an immediate impact.

The success of the Agreement may depend on the dispute resolving ability of the WTO. An early dispute will almost certainly involve either the EU or the United States. The WTO's fortitude against these trading giants will foreshadow the Agreement's immediate effectiveness. Detecting and addressing violations of the Agreement will be a complex endeavor. Given the incentive of countries to maintain agricultural protectionism, it is questionable whether the provisions will be enforced.

These obstacles make it unlikely that the AMS provisions of the Agreement will have an immediate effect on protectionist agriculture policies. The dialogue that occurred in the Uruguay Round does, however, represent a large step in comparison to the attention agriculture received in previous rounds. Thus, the significance of the Uruguay Round Agreement on Agriculture is that it stems protectionism and provides a basis for further negotiation.