Reforming Farm Trade in the Next Round of WTO Multilateral Trade Negotiations

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Reforming Farm Trade in the Next Round of WTO Multilateral Trade Negotiations

Kevin C. Kennedy*

I. INTRODUCTION

Farmers plant their crops and harvest them according to a fixed cycle where the weather and markets can conspire against them. The image of the rugged farmer pitted against the vagaries of the weather and the capriciousness of the market is evocative. Add to this emotive mix the demands of food consumers for a steady supply of quality food at stable prices, and one begins to understand the political thicket that is agriculture.

Because the agricultural sector is so highly politicized for both farmers and consumers, few governments have summoned the political courage to resist becoming active players in the farm sector. For example, the total measure of government support to agriculture for all Organisation for Economic Co-operation and Development (OECD) countries—the producer support estimate or PSE—increased from US$ 247 billion during the period 1986–1988 to US$ 283 billion in 1999. Agricultural subsidies and import quotas cost European Union taxpayers and consumers close to US$ 100 billion during 1986–1988, a figure that increased to US$ 130 billion by 1998. For the United States, the increased costs climbed from US$ 42 billion during 1986–1988, to US$ 48 billion in 1998. The table illustrates that, with the single exception of Canada, the Quad Members of the World Trade Organization (Canada, the EU, Japan, and the United States) have made little headway in disciplining their use of farm subsidies:

<table>
<thead>
<tr>
<th></th>
<th>PSE 1986–1988 (Billions)</th>
<th>PSE 1999 (Billions)</th>
<th>As % of Total Farm Income 1986–1988</th>
<th>As % of Total Farm Income 1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>US$ 5.6</td>
<td>US$ 3.9</td>
<td>34</td>
<td>20</td>
</tr>
<tr>
<td>EU</td>
<td>US$ 95</td>
<td>US$ 114</td>
<td>44</td>
<td>49</td>
</tr>
<tr>
<td>Japan</td>
<td>US$ 53.6</td>
<td>US$ 58.9</td>
<td>67</td>
<td>65</td>
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<tr>
<td>United States</td>
<td>US$ 41.8</td>
<td>US$ 54</td>
<td>25</td>
<td>24</td>
</tr>
</tbody>
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1 The OECD defines “producer support estimate” as “the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers … arising from policy measures that support agriculture, regardless of their nature, objectives or impacts on farm production or income”. Agricultural Policies in OECD Countries: Monitoring and Evaluation 2000 (OECD, 2000), p. 21.

Sources for the statistics in this paragraph are from Agricultural Policies in OECD Countries: Monitoring and Evaluation 2000 (OECD, 2000), pp. 162-163; and WTO, Committee on Agriculture, Domestic Support, Background Paper by the Secretariat, G/AG/NG/S/1 (13 April 2000).
On the other hand Australia and New Zealand had phased out nearly all farm subsidies by 1992. Thus with sustained political will countries can achieve meaningful reform of their agricultural policies that adversely affect international trade.

A 1990 joint OECD/World Bank study estimates that if developed countries terminated domestic and export farm subsidies, food prices would rise resulting in a shift of food production to lower-wage developing countries. OECD countries would experience a net annual economic gain of approximately US$ 50 billion, and developing countries US$ 12 billion. By one estimate, OECD member countries paid over US$ 200 billion in 1990 in agricultural subsidies and artificially high consumer food prices. For 1999, the PSE for all OECD countries was estimated to be US$ 283 billion, or 40 percent of the total value of gross farm receipts. As a result of increases during 1998 and 1999, support to producers in 1999 returned to their 1986–1988 levels. Government regulation in Canada of food products such as chickens, eggs, and dairy products, can cost twice as much as for the same products in the United States. The United States for its part has hardly been a paragon of free trade virtue. In 1989, US$ 2.5 billion in commodity bonuses was paid under the Export Enhancement Programme (EEP), boosting the export sale of US$ 8.5 billion in agricultural products to 65 countries. The EEP has been defended as a challenge to the unfair trade practices of competitors that would pressure them to negotiate the reduction of trade barriers that injure American farmers.

Against this backdrop, agricultural trade was probably the most contentious issue of the entire Uruguay Round. As the Uruguay Round negotiations progressed, the issue of agricultural trade and government subsidies to the agricultural sector came dangerously close to wrecking the Round. Agricultural products had always been covered under GATT as a formal matter. As a practical matter, however, agricultural trade had departed so far from regular GATT disciplines that the effort to restore those disciplines to this sector, if only partially, proved nearly impossible for the negotiators. The story of how trade in agricultural products was permitted to deviate so substantially from regular GATT disciplines is by now a familiar one, but one worth briefly retelling.

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1 As note 1, above, p. 12.
4 See Agricultural Policies in OECD Countries, as note 1, above, pp. 24, 163.
5 See Agricultural Policies in OECD Countries, as note 1, above, p. 24.
7 See USDA, GAO Tell Senate Panel EEP Program Should Continue as Effective Trade Tool, 7 Int'l Trade Rep. (BNA) (1990), p. 291.
8 As note 8, above.
II. WHERE HAVE WE BEEN? FARM TRADE AND GATT 1947

In its early drafts, GATT 1947 made no formal distinction between trade in manufactured goods and trade in agricultural products. This fundamental design was turned on its head under the final version of GATT 1947 for reasons concerning US farm policy.10

The original GATT rules for agricultural trade were written to accommodate US domestic agricultural policy,11 resulting in the proliferation of a wide range of nontariff barriers to agricultural trade. These barriers and distortions resulted in a major departure from two core GATT disciplines, namely: (1) the general prohibition against quantitative restrictions on imports; and (2) the prohibition against export subsidies except under very narrowly circumscribed conditions. GATT disciplines were further weakened in 1955 when the GATT Contracting Parties granted the United States a waiver permitting it to impose quotas on agricultural imports in a manner inconsistent with Article XI:2(c).12 The barn door to GATT disciplines in the agricultural sector was now wide open. As observed by Professor Kenneth Dam:

"The breadth of this waiver, coupled with the fact that the waiver was granted to the contracting party that was at one and the same time the world's largest trading nation and the most vocal proponent of freer international trade, constituted a grave blow to GATT's prestige."

Compounding the problem of applying GATT disciplines to the agricultural sector is GATT 1947's schizophrenic treatment of subsidies on agricultural products. Under Article XVI, subsidies are divided into those bestowed on primary products (i.e., products of farm, forests, and fisheries) and non-primary products. Article XVI effectively exempts agricultural products from GATT disciplines with regard to export subsidies.14 Paragraph 2 of Article XVI provides in part that "[i]f the contracting parties recognize that the granting of a subsidy on the export of any product may have harmful effects for other contracting parties ... ." Paragraph 3 continues with the admonition to contracting parties not to grant export subsidies on primary products.15 It provides that "contracting parties should seek to avoid the use of subsidies on the export of primary products". In short, in the event a contracting party provides export subsidies for primary products, paragraph 3 urges restraint.

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13 Dam, as note 10, above, p. 260. See also Jackson, as note 10, above, pp. 733-737.
14 In the case of subsidized imports that cause injury to a domestic producer of the like product. Article VI permits the imposition of a countervailing duty to offset the government subsidy. GATT Article VI:3(a)
15 As note 14, above. GATT Article XVI:B(2) defines a "primary product" as "any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade".
III. THE TOKYO ROUND SUBSIDIES CODE

The flaccid GATT discipline on the use of export subsidies contained in Article XVI was hardened partially in 1979 under the Tokyo Round Subsidies Code.\(^\text{16}\) Article 9.1 of the Tokyo Round Subsidies Code obligated the signatories “not [to] grant export subsidies on products other than certain primary products”. Once again, little progress was made on ending the use of subsidies to promote exports of agricultural products. Article 9 narrowed the export subsidies exemption slightly by eliminating minerals from the definition of “primary products”.\(^\text{17}\)

Article 10 in turn reiterated the provisions of Article XVI:3 that circumscribed the use of export subsidies on agricultural products. It then defined three critical phrases in that original GATT Article: (1) “equitable share of world export trade”; (2) “more than an equitable share of world export trade”; and (3) “a previous representative period”.\(^\text{18}\)

Thus, while significant progress was made in disciplining the use of export subsidies on non-primary products, as of 1986, when the Uruguay Round was launched, neither GATT 1947 nor the Subsidies Code had returned GATT disciplines to the grant of export subsidies on primary products. If agricultural trade was to be liberalized, GATT 1947 had to be reformed.

IV. REFORMING FARM TRADE: THE URUGUAY ROUND AGENDA

A GATT preparatory committee was established in November 1989 to draw up an agenda for the Uruguay Round negotiations. The committee set a deadline of 31 July 1986, by which to reach agreement on an agenda.

As the deadline approached, developed and developing countries still remained divided, over whether six issues should be put on the agenda, including agriculture.

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\(^\text{16}\) Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade GATT Document MTN/NTM/W/236 Subsidies, BISD, 26th Supp. 56–83 (1980) (hereinafter Subsidies Code). During the 1965 Kennedy Round, the EC proposed capping subsidies on agricultural products using a calculation called the \textit{montant de soutien} (the “margin of support”), the precursor of the Aggregate Measurement of Support adopted in the Uruguay Round Agreement on Agriculture. The United States countered with the concept of “tarification”, that is, converting all non-tariff barriers to agricultural trade into tariffs and binding them in the contracting parties Schedules of Concessions. Unable to close the gap in their widely divergent positions, the parties failed to reach agreement. See Phillip Evans and James Walsh, \textit{The EIU Guide to the New GATT} (1994) p. 17.

\(^\text{17}\) As note 16, above, Article 9, n. 29.

\(^\text{18}\) As note 16, above, Article 10.2. Article 10.2 provides:

For purposes of Article XVI:3 of the General Agreement and paragraph 1 above:

(a) ‘more than an equitable share of world export trade’ shall include any case in which the effect of an export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind the developments on world markets;

(b) with regard to new markets traditional patterns of supply of the product concerned to the world market, region or country, in which the new market is situated shall be taken into account in determining ‘equitable share of world export trade’;

(c) ‘a previous representative period’ shall normally be the three most recent calendar years in which normal market conditions existed.”

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No claim asserted to original government works.
Even the developed countries could not agree on whether agricultural trade should be on the agenda.\textsuperscript{19} Although the United States and the 18-member Cairns Group\textsuperscript{20} were enthusiastic about including agricultural trade on the Uruguay Round agenda,\textsuperscript{21} the EU was reluctant to endorse GATT-sponsored negotiations that would require it to make politically difficult changes to the CAP. In the end, of course, agricultural trade was added to the Uruguay Round agenda.

The United States and the Cairns Group began the negotiations with a “zero-zero” position, i.e. all agricultural subsidies and quotas were to be eliminated over a ten-year period. Greeted with intransigence from the EU, the United States retreated to a position that called for the elimination of all export subsidies and a 90 percent reduction of all domestic farm subsidies over ten years, with “tariffication” of all other non–tariff trade barriers. Still confronting an unyielding EU, the United States back-pedalled again by proposing that domestic farm subsidies be lowered by 75 percent and export subsidies cut by 90 percent over ten years.

Against this backdrop, the prospects of successfully achieving any reform of agricultural trade rules appeared dim in the closing months of the Uruguay Round. It is no exaggeration that without a successful conclusion of an agricultural agreement, the Uruguay Round would have failed because reform of agricultural trade was the litmus test for Congress of whether the Uruguay Round negotiations were a success.

As deadline after deadline for concluding the Uruguay Round negotiations passed, in November 1992, the United States and the EU compromised on the major stumbling blocks to an agricultural agreement through the Blair House Accord, whose basic provisions are discussed below.

V. WHERE ARE WE? THE WTO AGREEMENT ON AGRICULTURE

A. THE THREE PILLARS OF THE WTO AGREEMENT ON AGRICULTURE: MARKET ACCESS, REDUCTION OF DOMESTIC SUPPORT, AND REDUCTION OF EXPORT SUBSIDIES

The Agreement on Agriculture represents a modest first step toward serious reform of international rules governing trade in agricultural products.\textsuperscript{22} The Agreement is built on three pillars:


\textsuperscript{20} The Cairns Group, named after a 1986 meeting held in Cairns, Australia, is a group of 18 agricultural exporting countries that supports liberalization of agricultural trade. Its members are Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Hungary, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand and Uruguay.

\textsuperscript{21} For a discussion of the parties’ positions at the start of the Uruguay Round, see CBO Study, as note 11, above, pp. 89–94.

\textsuperscript{22} For a background discussion of the Uruguay Round negotiations, see \textit{EIU Guide to GATT}, as note 16, above, pp. 17–19.
increased market access for agricultural products;
commitments to reduce domestic subsidies on agricultural production; and
commitments to reduce export subsidies on agricultural products.

The Agreement on Agriculture is just a beginning. As stated in the preamble to the Agreement, the long-term objective of the WTO Members is to establish a fair and market-oriented agricultural trading system that includes substantial reductions in agricultural support and protection.\(^2\) The Agreement on Agriculture initiates this reform process in the areas of market access, domestic subsidies and export subsidies.\(^2\)

B. MARKET ACCESS

Over the course of the GATT-WTO system's 50-year history, WTO Members had put in place innumerable non-tariff barriers to agriculture trade. These barriers came in various forms, including quotas, variable import levies, and voluntary import and export restraints. To remedy this situation, the market access commitments of the Agreement on Agriculture require: (1) a guaranteed minimum access level for all agricultural products; (2) the "tarification" of non-tariff barriers into tariff equivalents; and (3) the use of tariff-rate quotas to ensure that the market access commitments are honoured.\(^2\)

If there are no significant imports of specific agricultural products, WTO Members have agreed to minimum access opportunities for such products. Access is based on 3 percent of domestic consumption in 1995 and increasing to 5 percent by 2000. If import volume is greater than these thresholds, current market access levels are to be maintained.

The minimum access commitments are designed to allow a modest level of trade in agricultural products to occur where previously non-tariff barriers effectively blocked such trade, and/or where the new tariff equivalents are so high that they would continue to block all such access.\(^2\)

C. THE TARIFICATION PROCESS

The tarification process is an important first step towards greater liberalization of the agricultural sector in future WTO negotiations.
In acknowledgment of the corrosive effect that non-tariff barriers have had on agricultural trade, Article 4 of the Agreement prohibits members from maintaining, resorting to, or reverting to non-tariff measures, old or new. The process of tariffication requires Members to convert existing non-tariff measures into ordinary customs duties and to bind them.

In practice, tariffication means replacing non-tariff barriers with a tariff-rate quota. Thirty-seven WTO Members have tariff-rate quotas listed in their Schedules with a total of 1,371 individual tariff quota commitments shown. Of those, 560 are scheduled to increase over the implementation period (that is, the quota will increase allowing more imports to enter), 806 are scheduled to remain unchanged, and five are to decrease in quantity. The average quota fill rate for the period 1995–1999 has been approximately 63 percent, that is, about one-third of all quotas are not filled in any given year. In addition, a significant number of quotas are reserved for specific countries and a great deal of flexibility exists with respect to the administration of those quotas that are open to all exporters. The upshot has been that world exports of agricultural products are concentrated in a handful of WTO Members.

A WTO Member will assess duties on agricultural imports that are in excess of the minimum or current access level commitments for the imported product. The quantity of imports subject to minimum or current access level commitments will enter either duty free or be subject to an “in-quota” duty rate lower than the rate that results from tariffication.

27 The tariffication process is far from an exact science. It can result in a duty rate that is prohibitive, as illustrated by the phenomenon known as “dirty tariffication.” WTO Members have allegedly manipulated the tariffication methodology in many instances, resulting in declared tariffs higher than the estimated tariff equivalents. See Jeffrey J. Steinle, *The Problem Child of World Trade: Reform School for Agriculture*, 4 Minn. J. Global Trade 333 (1995), pp. 348–349. Guidelines for the calculation of tariff equivalents are contained in an annex to Annex 5 of the Agreement. The tariff equivalent is generally the difference between the internal and external price for the product, expressed as an ad valorem or specific duty rate. The external price is the average f.o.b. unit value price set by major exporters of the product, adjusted by adding insurance and freight costs. See Annex 5:2. The internal price is the prevailing wholesale price in the domestic market. See Annex 5:4.

28 Non-tariff measures identified in the Agreement include minimum import prices, discretionary import licensing, non-tariff measures maintained through State-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties, regardless of whether those measures were grandfathered under GATT 1947, maintained under GATT 1947 waivers, or listed in a country’s protocol of accession to GATT 1947. See Agreement on Agriculture, Article 4.2, n.1.

29 Under a tariff-rate quota, one tariff rate (the “in-quota tariff rate”) applies to imported products up to a stated amount (the “in-quota quantity”). A higher tariff rate (the “over-quota tariff rate”) applies to imported products in excess of that amount (the “over-quota quantity”).

30 See WTO, Committee on Agriculture, Tariff and other Quotas, Background Paper by the Secretariat, G/AG/NG/S/7 (23 May 2000), p. 2.

31 As note 30, above, pp. 6–7.

32 See WTO, Committee on Agriculture, WTO Negotiations for Continuation of the Reform Process in the Agricultural Sector, Proposal by Poland, G/AG/NG/W/103 (19 January 2001), p. 3.

33 See Statement of Administrative Action, as note 26, above p. 711.

34 The following illustration of the tariffication process is provided in the Uruguay Round Statement of Administrative Action: “Assume that during 1986–1988 a WTO Member limited imports of butter to 10,000 tons (subject to a tariff of four percent ad valorem) with the result that the WTO member’s domestic market price for butter was 75 percent above the world market price. Under tariffication, that WTO Member might establish a tariff-rate quota for butter with an in-quota quantity of 10,000 tons and an in-quota tariff-rate of four percent ad valorem and apply an over-quota tariff-rate of 75 percent ad valorem.” See Statement of Administrative Action, as note 26, above, p. 711.
D. Tariff Reductions

Working hand-in-glove with the tarrification process are tariff reductions. Developed countries are required to reduce agricultural tariffs by an average of 36 percent on a simple average basis over a six-year period ending in 2000. In the case of developing countries, the average reduction is 24 percent over a ten-year period ending in 2004. The lower, in-quota duty rates generally will not be reduced. All customs duty rates are to be bound, with developing countries establishing ceiling bindings where no bindings existed before the Uruguay Round. Least developed countries commit to tariff bindings on agricultural products, but are not required to make any further commitments to reduce tariffs.

In addition to the average tariff reductions, a minimum 15 percent tariff reduction must be made for each tariff line (10 percent in the case of developing countries). In order to meet the overall 36 percent tariff reduction commitment, Members have reduced duties on import-sensitive agricultural products by the 15 percent minimum, and made greater reductions on products that are either less import-sensitive or in which there is little trade.

E. Commitments on Domestic Subsidies

As noted, the Tokyo Round Subsidies Code did little to regulate the use of subsidies on farm products. Article 7 of the Agriculture Agreement heralds agreement on rules that mitigate the trade distorting aspects of domestic subsidies in the agricultural sector.

WTO Members categorize domestic subsidies by placing them into three boxes: an exempt green box (permissible and non-countervailable); an excluded blue box (permissible, countervailable if they cause injury, but not subject to reduction commitments); or an amber box (permissible but countervailable if they cause injury, and subject to reduction commitments). There is no prohibited or red box category for domestic subsidies. Article 3.2 imposes a standstill on the use of domestic subsidies: “Subject to the provisions of Article 6, a Member shall not provide support in favour of domestic producers in excess of the commitment levels specified in Section I of Part IV of its Schedule.” Having frozen the use of domestic subsidies, Members agree in Article 6 to reduce their domestic subsidies in accordance with Part IV of the Member’s Schedule submitted at the conclusion of the Uruguay Round. For developed countries, that commitment is a reduction of the remaining non-exempt domestic subsidies by 20 percent from levels existing during the 1986–88 base period in six equal annual instalments. Developing countries are required to make reductions...
of 13.3 percent over ten years.\textsuperscript{37} Least developed countries are not obligated to make any reductions, but must bind their levels of support.\textsuperscript{38}

After all exempt domestic subsidies have been accounted for and excluded, WTO Members calculate their non-exempt domestic subsidies using a standard methodology called the Aggregate Measurement of Support or “AMS”. Exempt subsidies and the AMS calculation are discussed below. Once the reductions have been implemented, Members thereafter agree to bind their reductions in a Final Bound Commitment Level.

1. Exempt “Green Box” Subsidies

Although there is probably no such thing as a subsidy that does not distort trade, the negotiators concluded that certain subsidies distort trade in agricultural products only minimally. Consequently, such minimally trade distorting or “green box” subsidies are exempted from GATT-WTO disciplines.\textsuperscript{39} Annex 2 of the Agreement provides generally that in order to qualify as an exempt or “green box” domestic subsidy, two threshold prerequisites must be met: (1) the subsidy in question must be provided through a publicly funded government programme that does not involve transfers from consumers; and (2) the subsidy must not have the effect of providing price support to producers.\textsuperscript{40}

Annex 2 lists 12 types of exempt subsidies, including the following:

- generalized government service programmes in the areas of research, pest and disease control, and training;
- domestic stockpiling for food security and domestic aid purposes;
- direct payments to producers in the form of decoupled income support (support that is not tied to production);
- government financial participation in income safety net and crop disaster insurance;
- structural adjustment assistance provided through producer retirement programmes;
- structural adjustment assistance provided through resource retirement programmes;
- structural adjustment assistance provided through investment aids; and
- payments under environmental and regional assistance programmes.\textsuperscript{41}

Although the decision to exempt any subsidy is subject to question, the transaction costs associated with litigating green box subsidy cases arguably outweigh any adverse trade effects.

\textsuperscript{37} Agreement on Agriculture, Article 15.2.
\textsuperscript{38} As note 37, above, Article 15.2.
\textsuperscript{39} As note 37, above, Article 6.1.
\textsuperscript{40} As note 37, above, Annex 2.1.
\textsuperscript{41} As note 37, above, Annex 2.2-2.13. Examples of US green box programs include agricultural extension services, agricultural research, marketing services, and crop disaster assistance programs.
2. Excluded “Blue Box” Subsidies

In addition to the green box subsidies exempted under Annex 2, Article 6 excludes from the AMS calculation three other categories of domestic subsidies that have been described as “blue box” subsidies: (1) certain developing-country subsidies designed to encourage agricultural production; (2) certain de minimis subsidies; and (3) certain direct payments aimed at limiting agricultural production.

First, with regard to the excluded developing-country subsidies, many developing countries were formerly net food exporters, but gradually became net food importers. In an attempt to encourage persons to return to farming Article 6.2 excludes three types of government assistance, whether direct or indirect, from the AMS calculation:
- investment subsidies which are generally available to agriculture;
- agricultural input subsidies that are generally available to low-income or resource-poor producers; and
- subsidies to agricultural producers to encourage diversification from growing illicit narcotic drugs.

Second, with regard to de minimis subsidies, Article 6.4 excludes from the AMS calculation: (1) product-specific domestic subsidies where the subsidy does not exceed 5 percent of that Member’s total value of production of a basic agricultural product during the relevant year; and (2) non-product-specific domestic subsidies where such subsidies do not exceed 5 percent of the value of that Member’s total agricultural production. The applicable percentage for developing countries is 10 percent.

The third type of blue box subsidy finds its genesis in the 1992 EU-US Blair House Accord. Direct payments made pursuant to production-limiting programmes are excluded provided: (1) they are based on fixed areas and yields; (2) they are made on 85 percent or less of the base level of production; or (3) they are livestock payments made on a fixed number of head. This clause covers EU set-aside schemes and was deemed politically essential in order to reconcile the Agreement with the CAP.

Even though a WTO Member may bestow both green box and blue box subsidies on its farmers, the important distinction between excluded subsidies and exempt green box subsidies is that blue box subsidies are actionable under an importing Member’s countervailing duty law, whereas green box subsidies are not.

3. The AMS Calculation

All non-exempt, non-excluded domestic subsidies are calculated and reduced to a single figure, the Aggregate Measurement of Support or AMS. It is defined in Article 1(a) as follows:

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42 See Brosch, as note 26, above, p. 873.
43 See EIU Guide to GATT, as note 16, above, p. 21.
“[T]he 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 from reduction under Annex 2 ...”\textsuperscript{44}

AMS subsidies include both budgetary outlays and revenue foregone by governments,\textsuperscript{45} whether at the national or sub-national level of government.\textsuperscript{46} Fees paid by producers are deducted from the AMS. A specific AMS expressed in monetary terms is established for each basic agricultural product. Once the AMS has been calculated, subsidy reductions of 20 percent for developed countries and 13.3 percent for developing countries were implemented.

F. COMMITMENTS ON EXPORT SUBSIDIES

Having agreed to discipline the use of domestic subsidies, WTO Members commit in Part V of the Agreement not to provide export subsidies otherwise than in conformity with the Agreement and their Schedules of Commitments.\textsuperscript{47} Article 3.3 provides that a Member:

“shall not provide export subsidies listed in paragraph 1 of Article 9 in respect of the agricultural products or groups specified in Section II of Part IV of its Schedule in excess of the budgetary outlay and quantity commitment levels specified therein and shall not provide such subsidies in respect of any agricultural product not specified in that Section of its Schedule.”

The Agreement on Agriculture thus prohibits export subsidies in only two instances: (1) products that never received export subsidies in the 1986–90 base period may not receive them in the future; and (2) export subsidies not listed in Article 9.1 are not permitted.\textsuperscript{48}

Developed countries commit to budgetary outlay reductions of export subsidies on agricultural products of 36 percent from 1986–90 base levels over a six-year period that ended in 2000.\textsuperscript{49} They also agreed to reduce the volume of exports receiving export subsidies by 21 percent.\textsuperscript{50} The parallel commitments by developing countries are 24 percent by value and 14 percent by volume over a ten-year period ending in 2004.\textsuperscript{51} Least developed countries made no reduction commitments, but did agree to a standstill by binding their export subsidies.\textsuperscript{52}

\textsuperscript{44} An alternative methodology to the AMS is the Equivalent Measurement of Support or EMS. The EMS is used where market price support for a particular product exists but for which an AMS calculation is not practicable. Id. Article 1(d); Annex 4. The EMS is a close approximation of the AMS.

\textsuperscript{45} “Budgetary outlay” is defined to include revenue foregone. Agreement on Agriculture, Article 1(c).

\textsuperscript{46} Agreement on Agriculture, Annex 3.3.

\textsuperscript{47} Agreement on Agriculture, Article 8. If a Member does not submit a Schedule, it is prohibited from granting any export subsidy of any kind in the future.

\textsuperscript{48} Although the Agreement does not prohibit export subsidies, it has “stopped the ship and begun to turn it around”, Brosch, as note 26, above, p. 867.

\textsuperscript{49} Agreement on Agriculture, Article 9.2(b)(iv).

\textsuperscript{50} As note 49, above.

\textsuperscript{51} Agreement on Agriculture, Articles 8, 15.2.

\textsuperscript{52} Agreement on Agriculture, Article 15.2.
1. **Export Subsidy Reductions**

Under Article 9.1, 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 producers of an agricultural product ... 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 agricultural products that are financed by virtue of government action ... ;
(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 ... the costs of international transport and freight;\(^5\)
(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."

By the end of the implementation period a Member must be in full compliance with its budgetary and quantity reduction commitments.

2. **Circumvention Commitments**

Article 10 prevents circumvention of the export subsidy reduction commitments in four ways. Two of the most important from the perspective of both least developed countries and developed countries are (1) Members agree not to circumvent the export subsidy reduction commitments through food aid except in conformity with Article 10.4; and (2) Members agree to work toward the development of internationally agreed disciplines on export credits, export credit guarantees, and export insurance programmes.\(^5\)\(^4\) This second commitment is of special interest to the EU, which wants to discuss it under WTO auspices but which the United States prefers to negotiate under the auspices of the OECD, not the WTO.

G. **The “due restraint” clause**

Deterring WTO complaints over agricultural subsidies during the nine-year implementation period of the Agreement\(^5\)\(^5\) ending in 2004 is the purpose of Article 13,

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\(^5\)\(^3\) Developing countries are exempted from undertaking reduction commitments under subparagraphs (d) and (e), provided that such subsidies are not applied in a manner that would circumvent reduction commitments. Agreement on Agriculture, Article 9.3.

\(^5\)\(^4\) Agreement on Agriculture, Article 10.2. The other two anti-circumvention commitments are: (1) Members are prohibited from using export subsidies, other than those listed in Article 9.1, and from entering into non-commercial transactions, in a manner that results in, or threatens to lead to, circumvention of export subsidy commitments; and (2) Members may not apply export subsidies on products that formerly did not receive them.

\(^5\)\(^5\) As used in the Agreement, the term "implementation period" is defined generally as the six-year period commencing in 1995, with the exception of the Article 13 "due restraint" provision where it means the nine-year period commencing in 1995. Agreement on Agriculture, Article 1(f).
REFORMING FARM TRADE

the “due restraint” or “peace” clause. Legal action against domestic and export subsidies under: (1) a Member’s countervailing duty law; (2) the Agreement on Subsidies and Countervailing Measures; or (3) Article XXIII of GATT 1994 on the basis of “adverse effects”, “serious prejudice”, or “non-violation” nullification and impairment, may be brought only under the following circumstances.

First, of course, all green box domestic subsidies are exempt under all three types of legal action. Second, all non-exempt domestic subsidies that do not grant support to a specific product in excess of the amount received during the 1992 marketing year are exempt from actions under (2) and (3). They are not exempt under (1) if they cause injury to a domestic industry producing a like product, in which case they may be the subject of an importing Member’s countervailing duty law. However, under the terms of Article 13, “due restraint shall be shown in initiating any countervailing duty investigations”. Third, all non-exempt domestic subsidies exceeding reduction commitments are subject to actions under (1), (2) and (3). Fourth, export subsidies that conform to the Agreement’s reduction commitments are exempt from actions under (2) and from “adverse effect” and “serious prejudice” actions under (3), but are subject to a GATT “non-violation” nullification and impairment action. If they cause injury to a domestic industry producing a like product, they also are subject to an importing Member’s countervailing duty law, but “due restraint shall be shown in initiating any countervailing duty investigations”. Fifth, all export subsidies exceeding reduction commitments are subject to action under all three types of legal action.

VI. RATING THE URUGUAY ROUND RESULTS

In rating the extent to which the Agreement on Agriculture produced liberalization in agricultural trade, the Agreement must receive low marks. While the Agreement mandated some reforms, they did little to liberalize agricultural trade. On a more positive note, it can be said in defence of the Agreement that it sets the stage for future reforms and liberalization efforts by calling for follow-on negotiations in 1999 and by requiring that all agricultural tariff lines be bound.

In short, the Uruguay Round was a missed opportunity for meaningful agricultural reform.

VII. WHERE ARE WE HEADED? CONTINUATION OF THE REFORM PROCESS

The Agreement on Agriculture is merely the first step in an ongoing process of fundamental agricultural reform. As the preamble to the Agreement on Agriculture recognizes, the WTO Members’ long-term objective is a substantial reduction in government support and protection of the agricultural sector. Accordingly, WTO Members agreed in Article 20 to continue the reform process by reinitiating negotiations in 1999 (actual negotiations were not initiated until early 2000). Article 20
obligates the WTO Members to consider the following issues in the course of their follow-on negotiations:

"(a) the experience ... from implementing the reduction commitments;
(b) the effects of the reduction commitments on world trade in agriculture;
(c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, ... ; and
(d) what further commitments are necessary to achieve the above mentioned long-term objectives."

What are the prospects for a successful conclusion of the latest WTO negotiations on agricultural trade? The positions of the WTO Members reveal a sharp divide over many key issues.

A. THE EUROPEAN UNION

The EU strongly supports continuation of blue box subsidies as a useful tool to limit production and thus reform domestic agricultural policies within the EU under the CAP. The EU is primarily focused on limiting export credits for sales of agricultural products, i.e. government guarantees of short and medium-term loans to foreign purchasers of agricultural products, but wants to maintain blue box subsidies. It also wants to include the issue of animal welfare—in particular highly intensive production methods for poultry and pigs—as part of the ongoing agricultural negotiations.

B. THE UNITED STATES

The United States wants to review blue box subsidies to ensure that they are not trade distorting. It would eliminate the blue box subsidy category of excluded subsidies and instead create two categories of domestic support: exempt and non-exempt. It proposes that new rules should be adopted to substantially reduce trade-distorting support, but at the same time exempt support programmes that promote sustainable agriculture in a way that minimizes trade distortions. Under the US proposal, non-exempt support would be reduced in equal annual instalments based upon a fixed percentage of the total value of a member's agricultural production. This formula would ensure that all members provide equivalent levels of support relative to
the size of their agricultural sector. It also avoids penalizing countries based on the size of their population or land endowments.

The United States proposes:
- to reduce substantially tariff levels among countries and ultimately to eliminate or substantially reduce all tariffs;
- to eliminate the special safeguard provision of the Agreement;
- to end the exclusive import and export rights of State-trading enterprises;
- to reduce to zero all export subsidies;
- to put all domestic support into two categories (exempt and non-exempt);
- to give special and differential treatment to developing countries in the areas of preferential market access, special exemptions for domestic support measures, and technical assistance. It wants to conclude negotiations by the end of 2002.61

C. CANADA

Canada has urged major cuts in farm subsidies and an end to blue box subsidies.62 It has also called for an end to the due restraint clause with regard to blue box measures. Canada wants all green box subsidies reviewed in order to ensure that they are not in fact trade distorting. Tariff quota administration also needs review, in Canada’s opinion, to guarantee that quotas are filled.63 Practices such as limitations on the size of licence allocations, time limitations on import licences, and allocations to specific supplying countries must be examined to ensure that market access opportunities are realized.

D. JAPAN

Japan’s major focus is the role that agriculture plays in food security.64 Japan strongly supports the EU’s position on maintaining blue box subsidies, as well as the green and amber box subsidy categories. Japan also supports increased disciplines on State trading, both on the import and export side of agricultural trade, but especially export State-trading enterprises, given that Japan is the world’s largest food importer, importing 10 percent of total world exports of agricultural products.

61 See WTO, Committee on Agriculture, Proposal for Comprehensive Long-Term Agricultural Trade Reform, Submission from the United States, G/AG/NG/W/15 (23 June 2000).
62 See WTO, Committee on Agriculture, WTO Negotiations on Agriculture—Domestic Support, Proposal by Canada, G/AG/NG/W/92 (21 December 2000); WTO, Committee on Agriculture, Third Special Session of the Committee on Agriculture 28–29 September 2000, Statement by Canada, G/AG/NG/W/42 (5 October 2000).
63 See WTO, Committee on Agriculture, WTO Negotiations on Agriculture: Market Access, A Negotiating Proposal by Canada, G/AG/NG/W/12 (19 June 2000).
64 See WTO, Committee on Agriculture, Negotiating Proposal by Japan on WTO Agricultural Negotiations, G/AG/NG/W/91 (21 December 2000); Ravi Kanth, Japanese Farm Trade Proposal at WTO Echoes EU Call to Protect Multifunctionality, 18 Int'l Trade Rep. (BNA) (18 January 2001), p. 104.
E. THE CAIRNS GROUP

As WTO Members made preparations for the 1999 follow-on negotiations on trade in agriculture, friction was building in 1998 over the increased use of export subsidies for agricultural products, with the United States and the EU being pitted against the 18-member Cairns Group of agricultural exporting nations. The Cairns Group remains committed to the abolition of all export subsidies, green box subsidies, and blue box subsidies. In a statement issued in April 1998 at its 18th Ministerial Meeting, the Group announced that “[t]here is no justification for maintaining export subsidies”.

As the Group’s leading spokesperson, Australia lashed out at the EU at a September 1998 meeting of the WTO Committee on Agriculture for its substantial increases in export subsidies for wheat, flour, and barley exports. Somewhat defensively, the United States, in response to criticisms from New Zealand over dairy subsidies, noted that 80 percent of all export subsidies provided by WTO Members came from the EU in 1995–96, whereas the United States was responsible for only 2 percent of the total.

The Cairns Group has called for major cuts in farm subsidies and an end to blue box subsidies. It also has called for an end to the due restraint clause with regard to blue box measures. The Group wants subsidy reductions for all agricultural products without exception. It has also questioned the EU’s call for animal welfare issues to be part of the agriculture negotiations.

F. ECONOMIES IN TRANSITION

Bulgaria, Estonia, Latvia, the Slovak Republic, Slovenia and Hungary have responded negatively to the Cairns Group proposal to review and remove certain “green box” measures that are currently exempt under the Agriculture Agreement. They view such measures as important to continuing the smooth transition from a control to market economy. Hungary has also urged the introduction of disciplines on State-trading enterprises because they have the greatest potential for trade distortion through special privileges. Poland has proposed that export subsidies be further reduced by 36 percent in terms of budgetary outlays and by 21 percent in terms of quantities of agricultural products exported. Thereafter, all forms of export subsidies

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65 See WTO, Committee on Agriculture, Cairns Group Negotiating Proposal on Market Access, G/AG/NG/W/54 (10 November 2000); WTO, Committee on Agriculture, Cairns Group Negotiating Proposal on Domestic Support, G/AG/NG/W/35 (22 September 2000); WTO, Committee on Agriculture, Cairns Group Negotiating Proposal on Export Competition, G/AG/NG/W/11 (16 June 2000).
67 See WTO, Committee on Agriculture, WTO Negotiations on Agriculture: Domestic Support—Additional Flexibility for Transition Economies, G/AG/NG/W/56 (14 November 2000).
should be further reduced. At the same time, however, Poland has proposed that Members be allowed to introduce and maintain blue box subsidies.

**G. LATIN AMERICAN COUNTRIES**

Argentina, Costa Rica, Brazil, Chile and Bolivia have condemned the use of export subsidies because they undermine the goal of achieving food security in developing countries, they depress the price of agricultural products on world markets and they reinforce developing countries’ dependency on developed countries’ agricultural economic policies. A renewed adherence to the Decision on Measures concerning possible negative Effects of the Agricultural Reform on LDCs and Net Food-Importing Countries would resolve some food security issues.

**H. OTHER DEVELOPING COUNTRIES**

Improved market access through substantial tariff cuts on products of export interest to developing countries is a major concern for developing countries. Developing countries have also criticized the green box category of exempt subsidies. Although developed countries committed to reducing domestic support by 24 percent, the overall levels of support have on the whole increased. Green box subsidies for the EU, for example, increased from roughly US$ 10 billion in 1986-88 to US$ 25 billion in 1996. For the United States green box subsidies have doubled over the same period, from US$ 24 billion to US$ 51 billion. Within the OECD member countries, the total level of support (i.e., green box, blue box, AMS, and de minimis support) has increased from US$ 247 billion to US$ 274 billion. Because green box subsidies provide opportunities for abuse and because they are non-transparent due to the lack of a rigorous definition of green box subsidies, many developing countries would like to see them eliminated. The present structure of the three subsidy boxes creates loopholes. Therefore, they propose, all domestic support subsidies should be collapsed into one category with a common level of support allowed for all countries, e.g., 10 percent of production.

Developing countries also want the due restraint clause to continue in force for them in order to provide a predictable legal environment when they export agricultural products. Developing countries want to exclude certain sensitive products from the domestic support commitments. They would also like to see the current de minimis levels of support that are legally permissible raised, as well as disciplines imposed on the use of export credits.

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72 As note 71, above, p. 3.


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Finally, India has expressed concerns over non-trade issues connected to the reform of agricultural trade. These non-trade concerns fall under the rubric of “multifunctionality”, a shorthand expression for agriculture’s role in environmental protection, land use, food security, food safety and quality, rural development, and animal welfare. India wants negotiators to address issues of food security and the role that agriculture plays in rural development and employment.74

I. LEAST DEVELOPED COUNTRIES

At a meeting of their trade ministers held in Zanzibar, Tanzania in July, 2001, the least developed countries (LDCs) issued a declaration in which they outlined their demands on WTO agricultural trade negotiations.75 First, Article 15.2 of the Agreement on Agriculture should be maintained, so that LDCs are not required to undertake reduction commitments on domestic support, export competition policies, and market access throughout the agricultural reform process. Second, other WTO Members should take steps towards immediate abolition of export subsidies for agricultural products that are of particular export interest to LDCs. Third, developed countries should immediately implement bound duty-free and quota-free market access for exports of LDCs, which will cover all agricultural products in their primary, semi-processed and processed forms. Such market access opportunities to LDCs should be accompanied with elimination of non-tariff barriers against LDC exports in order to ensure genuine trade growth. Finally, the WTO should introduce a fast-track dispute settlement mechanism for cases involving LDCs, and, where appropriate, enable quick compensation for trade losses incurred by an LDC as a result of trade measures found to be inconsistent with the SPS and the TBT Agreements.

VIII. CONCLUSION

With such compelling evidence to support the view that tremendous savings could be realized by liberalizing agricultural trade, the resistance to proposals for reform, especially from the EU and Japan, is puzzling. Why is the EU so intransigent on the issue of reforming its extremely expensive Common Agricultural Policy? Why does Japan so closely guard its rice market from imports?

Considering that agricultural trade represents approximately 10 percent of total world trade—a significant but not overwhelming percentage—the intransigence of the EU and Japan on this issue might seem reckless and wrongheaded. A key to Japan’s and the EU’s intransigence is food security, a prickly issue in every country. It is particularly so in Japan, a small island nation with little arable land, and in the EU,


75 Zanzibar Declaration, Meeting of the Ministers Responsible for Trade of the Least Developed Countries, Zanzibar, Tanzania, 22–24 July 2001 Annex I, at 9, WT/L/409 (6 August, 2001)
where widespread famine is within the living memory of Europeans who survived World War II.\(^{76}\) According to a 1986 World Bank study, the number of persons suffering from chronic malnutrition is estimated between 340 million and 730 million, excluding China,\(^{77}\) even though overall food production has grown faster than the population in developing countries. Counterbalancing these concerns is the high price tag on food self-sufficiency. It often entails huge budgetary outlays by governments and causes serious environmental degradation through the farming of marginally productive land.

In conclusion, the road to successfully concluding a new agreement on agricultural trade will be long and bumpy. The differences dividing the EU, Japan and the United States over farm trade reform are not trivial. Add to this sticky mix the concerns of developing countries for whom farming represents a significant sector of employment, and one begins to understand the quagmire that is international trade in agriculture.

On the one hand, the single undertaking, “package deal” approach that characterized the Uruguay Round agreements, i.e., no country could opt out of any of the Uruguay Round agreements if it wanted to become a WTO Member, makes the WTO a less than promising forum for successfully negotiating a farm trade agreement whose terms would be acceptable to all WTO Members. On the other hand, the WTO is a natural forum for negotiating additional agricultural trade reforms because of the opportunities for using bargaining chips and making trade-offs among and between trade sectors. The structure of the next WTO round of multilateral trade negotiations becomes of paramount importance. If the structure of negotiations is one that includes many agenda items, the opportunity then has been created for compensating a WTO Member with a concession in the services sector, for example, in exchange for a concession it makes in farm trade negotiations. In short, the chances for a successful negotiation of new liberalization measures in the agricultural sector will be improved if a new round of comprehensive and wide-ranging trade negotiations is launched that gives the negotiators bargaining chips with which to leverage concessions in the agricultural sector.

With the joint, and often conflicting, demands of producers and consumers on governments, the challenge of reforming agricultural trade has proven formidable. Farm lobbies, behind the banner of food security, wield tremendous power in the EU, Japan and the United States. But the gains to be achieved by shifting to a market-driven model of farming are no less impressive. If the law of comparative advantage is allowed to operate, farming will occur where production costs are lowest. Consumers, taxpayers and the environment would be the immediate beneficiaries.

