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Recent Developments in the Multilateral Trade System in the Agricultural Sector

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Module 1 : Multilateral Disciplines on Agricultural Policies and Trade - The Uruguay Round Agreement on Agriculture

Background Paper

Agriculture in the GATT

The treatment of agriculture in the General Agreement on Tariffs and Trade (GATT) differed significantly from that accorded to the manufactured sector. The GATT, as it emerged in 1947, applied to agricultural trade but also included two articles that specifically modified the impact of the general provisions relating to trade in goods. Article XI, which established the principle that non-tariff trade barriers could be only be used under specific circumstances, made room for some types of agricultural programs. The article recognized the case where an agricultural product is subject to quantitative restrictions on domestic production (Article XI:2 (c)): under such circumstances quantitative import restrictions were allowed (Josling, Tangermann and Warley, 1996).¹ Many countries relied on this clause to restrict imports by quantitative trade barriers when domestic markets were being managed. The other agricultural “exception” was to specify different rules for export subsidies of manufactures and primary products. Though the original GATT subjected both primary and manufactured product export subsidies to the same notification and consultation procedures, in 1955 it was agreed to add an explicit prohibition on export subsidies on manufactured goods (Article XVI). Agricultural export subsidies were constrained only by the obligation not to use such subsidies to capture “more

¹ Even this provision did not constrain the use of quotas to defend farm policy in developed countries. A prominent example of this was the imposition of quotas by the US under Section 22 of the Agricultural Adjustment Act (as amended) that mandated quantitative restrictions on imports of a number of goods whenever domestic programs were “materially interfered with” by imports. This required a waiver of the US obligations under Article XI, a waiver that was renewed annually until made irrelevant by the Uruguay Round outcome (see below). The EU also avoided restraints on its Common Agricultural Policy (CAP), which used “variable levies” to stabilize the duty-paid price of imports. Such an instrument was not easily classified as either a customs duty or a quantitative restriction. The Uruguay Round Agreement on Agriculture specifically bans such variable levies.

than an equitable share” of world markets. Successive GATT panels failed to come up with a satisfactory definition of this concept, and agricultural export subsidies in effect escaped any disciplines (Josling and Tangermann, 2003).

The Kennedy Round had tried but failed to introduce rules for agricultural trade that would constrain the domestic subsidies of the EU and the US. Instead, the discussion on agriculture focused on the setting up of commodity agreements that would coordinate the reaction of governments to high and low prices. The EU wished at one stage to go further, projecting its new market management regime onto the international stage, a convenient mixture of pragmatism and ideology. One such commodity agreement, for grains, did emerge from the Kennedy Round, but it failed to stop the slide in the international prices of agricultural commodities caused in large part by the generous domestic price support policies of the US and the EU.

The Tokyo Round, initiated in 1974 and concluded in 1979, did not do much better in the search for rules for agricultural trade. Coming at a time when world prices were high the emphasis was on coordinating stockpiles of basic foodstuffs rather than in reducing support levels and trade barriers.² A further international commodity agreement on wheat was negotiated, but barely survived the end of the Round. A plurilateral subsidies code (applicable only to the signatories) was agreed, as was one on standards, both aimed in part at constraining agricultural protection. A dairy agreement and a bovine meat accord attempted to address some of the problems in these sectors but had little impact on the behavior of the developed country governments and the direction of their domestic policies. So the first thirty years of the GATT had produced almost nothing that constrained developed country farm policies.

The fundamental weakness in the treatment of agriculture in trade rules was recognized and discussed in two Committees at the beginning of the 1980s: the Trade and Agriculture Committee of the GATT (1982) and the combined Agricultural and Trade Committees of the OECD (1984), acting under a mandate from the ministers. The GATT Committee discussed ways in which the agricultural rules could be brought more into line with those for trade in manufactured goods. This included the notion that non-tariff barriers be converted into tariffs. Though no agreement was reached at that time, many of the ideas of the Committee found their way into the Uruguay Round discussions. The OECD Committee took a different approach, requesting from the Secretariat credible information on the extent to which domestic policies gave incentives to production (and reduced consumption) and hence had an effect on trade. The Secretariat calculated an indicator, the Producer Subsidy Equivalent (PSE), which provided the basis for a more intensive and focused debate in the Uruguay Round on the disciplines that could be applied to domestic support.

² An exception to this was the successful removal of many of Japan’s quantitative restrictions on imports.

Agriculture in the WTO

The Uruguay Round of trade negotiations under the General Agreement on Tariffs and Trade marked a transition of the multilateral trade system from a limited intergovernmental agreement on rules of conduct for trade in goods to a more comprehensive treaty covering trade in services and trade-related aspects of intellectual property protection as well as goods trade. In addition to the broadening of the multilateral trade rules, further deepening also took place. Two issues were addressed: the consolidation of the Tokyo Round Codes (that had been set up as plurilateral agreements that countries could sign if they chose) and the absorption of agricultural and textiles into the mainstream of the trade system. The issues of agriculture and textiles were considered to be an important part of the agenda for developing countries, balancing negotiations over services and intellectual property that favored developed countries.

The Uruguay Round Agreement on Agriculture (URAA) marked a turning point in the treatment of agricultural goods in the multilateral trade system. It devised agriculture-specific rules that obliged the conversion of non-tariff border measures to tariffs. The restrictions on border policies included restraints on export subsidies. In particular, it addressed the question of the impact of domestic farm policies on trade flows. The URAA imposed restraints on the level of support provided by domestic programs and introduced incentives to shift to less trade-distorting measures. Moreover, it introduced institutional monitoring of compliance with the rules and schedules, sheltered some types of agricultural subsidy from challenge under new subsidy agreement, and committed member governments to further talks on agricultural policy reform. It represented a move toward the more complete integration of agriculture in the trade system, though paradoxically it made agriculture more “different” in certain respects. As the Agreement is still in operation (unless or until it is modified by the outcome of the Doha Round) its provisions constitute the current multilateral framework for agricultural trade and domestic policies for all WTO members.

The URAA defines rules related to what have become known as the three “pillars” of market access, export competition and domestic support.³ But in addition, important parts of the agreement defined special treatment for developing countries, limitations on the possibility for challenge to subsidies, the establishment of a monitoring institution and the commitment to the continuation of reform.⁴

³ There are of course linkages between the pillars. For instance the subsidization of exports requires some restraints on imports. Domestic programs often work in conjunction with border measures to keep domestic prices high. Indeed, at the beginning of the Uruguay Round there was discussion of the notion of using an overall measure of support (including that from border measures) as the vehicle for liberalization. This was however rejected in favor of disciplines on the three pillars individually.

⁴ A Glossary is attached to assist the reader to follow the sometimes arcane vocabulary of the agricultural agreement.

Market Access

Restrictions on market access for agricultural goods ranged from high tariffs to quantitative import controls and variable levies. The Uruguay Round introduced significant changes to the conditions for market access for agricultural products. The most significant changes included the following:

- Non-tariff barriers had to be converted into tariffs (tariffication)
- Tariff-rate quotas (TRQs) were introduced for these “tariffied” products: current access and minimum access provisions ensured that markets would remain open even with high tariffs⁵
- A Special Safeguard (SSG) was allowed for tariffied products (if specified in country schedules): temporary additional duties could be assessed if prices fell or quantities of imports increased
- Tariffs were to be bound and reduced by 36 percent on average (15 percent minimum for each line item): lower reductions were required of developing countries and no cuts were required of Least Developed Countries⁶
- Schedules of tariffs offered, verified and agreed became part of treaty provisions
- Developing countries were allowed to bind tariff “ceilings” rather than calculate tariff equivalents⁷

Conversion of non-tariff barriers took place with very few problems. The delay agreed for rice was used by Japan and Korea, but Japan instituted a tariff for rice in 2000. Some tariffs were set at rather higher levels than price gap warranted (“dirty tariffication”) by the choice of an unrealistic world price. As a result of the conversion of non-tariff measures to tariffs, agriculture emerged with a higher proportion of bound tariffs than non-agricultural sectors. The SSG has been used by some importers (Japan and the EU particularly) to restrict imports without the need for evidence of domestic injury.

Though the new rules offered the possibility of more open markets, market access for agricultural products did not greatly improve as a result of the tariff reduction schedules. Many of the tariff cuts merely reduced the “water” in the tariff schedules (the superfluous protection given by a tariff that is higher than that which would close off any imports). Ceiling bindings were often set at high levels even though applied tariffs were much lower. The introduction of TRQs, though arguably an improvement on the quantitative restrictions that they replaced, still restricted

⁵ Tariff-rate quotas are more commonly called tariff quotas in other branches of commercial policy.

⁶ A bound tariff cannot be increased without consultation and negotiation with affected suppliers. See Glossary.

⁷ Many of these ceilings were set at high and arbitrary levels, such as 100 or 200 percent, and applied across a wide range of products.

trade in the more sensitive products. So the task of reducing tariffs to a level more in keeping with non-farm tariffs was left to subsequent rounds of negotiations.

Export Competition

The new provisions included in the URAA in the area of export competition included the following:

- No new export subsidies were allowed to be introduced
- Existing export subsidies were defined in country schedules and had to be reduced in expenditure (by 36 percent) and in quantity of product subsidized (by 20 percent)
- Disciplines on export credits were to be discussed elsewhere
- Food Aid was not to be used to avoid restrictions on export subsidies⁸
- Developing countries were allowed to keep transportation and marketing subsidies on exports (Article 9.4)

Restraints on export subsidies have generally been effective. No new export subsidies of an explicit kind have been introduced, though WTO panels have found that some less direct export subsidies were introduced or maintained in violation of the scheduled amounts (see below). Countries did not use all export subsidy “entitlements”, as prices initially were high in the 1996 and 1997 crop years. In fact, the majority of export subsidies have for the past few years been paid by the EU, particularly in dairy products. The export credit talks (in the OECD) were not successful in defining when such credits could be used.

Countries have continued to complain about use of food aid as an export subsidy and about implicit subsidies involved in state-trading exporters. In particular the EU, as it became the predominant user of export subsidies, expressed increasing concern that these other practices were going on unchecked.

Domestic Support

The rules on domestic support broke new ground by both classifying subsidies provided by measures inside the border and by defining the levels of such subsidies in country schedules. The following elements were particularly significant:

- Domestic support was classified by extent of trade-distortion: Amber Box policies were those tied to production or price; Blue Box policies those

⁸ Competing exporters have long considered that food aid programs cross the line between meeting the needs of countries that would not otherwise be able to purchase food on world markets and disposing of surpluses by selling food at low prices to developing countries on the pretext meeting these needs.

constrained by supply control; and Green Box those that were “decoupled” from price and production⁹

- Blue Box policies were capped (at 1992 levels) but not included in reduction commitments
- Green Box policies were unrestricted, thus encouraging countries to move to instruments of support compatible with the definition in Annex 2.
- *De Minimis* exclusions of 10 percent of the value of production – 5 percent product specific and 5 percent non-product specific – were allowed
- Total AMS, calculated as total domestic support less Green Box, Blue Box and *De Minimis* payments, was to be reduced (by 20 percent)
- Developing countries were allowed some additional scope for domestic policies related to development, as well larger *de minimis* allowances.

Many developed countries have reformed farm policies since the base period (1986-88) chosen for reduction commitments, and generally have not used all their domestic support “entitlements”.¹⁰ The general move to targeted and decoupled payments has been consistent with the constraints imposed by the URAA.

However, not all countries have been content with the operation of the rules on domestic support. Developing countries and competitive exporters have accused developed countries (US and EU, primarily) of “box-shifting” to avoid restraints. As this was indeed one of the objectives of the URAA (to shift policy instruments towards less trade-distorting alternatives) this may seem somewhat inconsistent. But the problem has emerged as to whether significant payments given directly to farmers really do reduce the incentive to produce. So the question for policy makers is whether to sub-divide the Green Box and hence impose some constraints on direct payments even if not tied to current output levels.

Other Aspects of the WTO

Though the URAA specifically relates to agricultural programs and trade policies, other aspects of the WTO are of actual or potential importance. One of the most significant is the Agreement on Subsidies and Countervailing Measures (SCM), which governs all subsidies. The clause in the URAA that sheltered agricultural subsidies from challenge under the SCM expired in 2003, and since that time the

⁹ The term “amber box” is not defined in the URAA, but has become used in place of the more formal Total Aggregate Measure of Support (AMS). For a more complete explanation of the terms used in describing domestic support see Orden, *et al.* (forthcoming), chapter 2.

¹⁰ A recent study has explored in more detail the link between domestic support notifications by the major developed countries and the policy changes that took place coincidentally (Orden, *et al.*, 2011). In some cases there is a clear causal link between the URAA and domestic reform, but the degree of flexibility given by the high base period support levels (world price levels were low in the late 1980s) and the modest reduction requirements (20 percent) has meant that the WTO constraints have not been the main cause of domestic policy reform.

provisions have applied to a range of agricultural programs.¹¹ Another is the Sanitary and Phytosanitary Agreement (SPS), which obliges WTO members to base health and safety standards on scientific risk assessment. For certain sectors of agriculture, particularly livestock and fruits and vegetables, rules that ensure sound science-based import regulations in other countries are of considerable importance (Josling, Roberts, and Orden 2004). As a part of the set of WTO Agreements, the URAA is subject to litigation under the Dispute Settlement Understanding that also emerged from the Uruguay Round.

So the outcome of the Uruguay Round has had a major impact on the conduct of trade policy, and domestic farm policy, in particular in developed countries. The URAA introduced effective disciplines on agricultural trade by establishing special rules.¹² A tariffs-only regime was instituted (and hence Article XI 2 (c) is no longer needed), though the SSG and the creation of TRQs make provision for those cases where tariffs replaced quantitative restrictions. The URAA banned new export subsidies and limited existing export subsidies but did not eliminate them. Thus special agricultural rules still apply in this area, though the number of countries that use such subsidies is small. The URAA disciplined domestic subsidies but classified them differently from the SCM and therefore set up an apparently parallel set of criteria for judging the trade impact of such measures. Institutional innovations, such as the establishment of the Agriculture Committee, have had some limited success in providing greater transparency.

Implementation of the URAA

The Uruguay Round Agreement on Agriculture (URAA) came into effect in 1995 as a part of the Marrakesh Agreement that established the World Trade Organization.¹³ An important part of the Agreement was the country schedules that were appended to the WTO treaty. For agricultural products these schedules contained maximum permitted levels for export subsidies and for certain types of domestic subsidies, as well as commitments for the reduction of bound tariffs. The notification requirements are designed to lend transparency to the operation of the URAA: the Committee on Agriculture offers a structure for monitoring compliance and removing

¹¹ Other aspects of the WTO, not discussed in this paper, include the Agreement on Trade-related Intellectual Property (TRIPS), which covers patents for agricultural biotech and geographical indications for foods and wines, and the Technical Barriers to Trade Agreement (TBT), which attempts to prevent the use of standards and labels from being used as a disguised trade barrier. In addition, the WTO Anti-dumping Agreement is sometimes invoked in agricultural disputes.

¹² This is in contrast to the treatment of trade in textiles and clothing, where a temporary regime, the Agreement on Textiles and Clothing, was set up. The Agreement on Textiles and Clothing expired in 2005 and no special rules now exist for this sector. Protection levels remain high, however, and constraints on trade negotiated as part of China's entry into the WTO are still in place (see WTO, 1995).

¹³ The scope of the URAA covers products in HS Chapters 1–24, excluding fish and fish products but including cotton, wool, hides, flax, hemp, and a few other products.

Notifications to Agriculture Committee

The whole edifice of constraints on domestic support is built upon the notion that countries have up-to-date and reliable information on how the policies of other countries measure up to rules agreed in the WTO. The Agreement on Agriculture set up a Committee on Agriculture with a mandate to monitor compliance. Experience with the notification and monitoring of domestic support has shown that the current system is not working as well as originally expected. An improvement in monitoring would be useful, both in terms of keeping countries up to date in supplying notifications and in providing a more critical review of the notification of support under various categories.

One difficulty arises when the political process of monitoring clashes with the legal process of determining conformity. This may rise on the agenda for future political discussions of domestic support if stricter limits under a DDA agreement begin to have a major impact on policy decisions. One can expect some improvement in monitoring as well as in more timely notifications as a result of the fact that the “slack” in the system would be removed. In addition, the confidence of the developing countries with the effectiveness of the constraints needs to be increased. At present there is considerable concern over box-shifting and a lack of appreciation of the difference between cosmetic and trade-friendly changes in notifications.

The question of timeliness in the notification of domestic support is largely a political matter. Countries may seek to avoid “leading the way” and becoming a target for challenges by other WTO members. Consequently, the implementation of more rigorous schedules for monitoring would be useful. But equally important is reaching an agreement on the way in which domestic policy instruments are to be notified. The IFPRI project on WTO notifications (Orden, Blandford and Josling 2011) has revealed wide variations in the methodology used in calculating market price support across countries. As noted above in the context of the calculation of product-specific AMS bindings, this appears to be an example of how an apparent lack of detailed scrutiny of domestic support notifications in the WTO has provided an opportunity for the creation of “policy space”. If that continues to apply, the credibility of the constraints will suffer. If a new agreement on agriculture is forged in the DDA these matters will become even more crucial. US and EU notifications on domestic support indicate the changing balance between the boxes. Figures 1 and 2 show the composition of support since 1995. The first year of the US notifications covered the last year of the 1990 Farm Act. The US still had deficiency payments with acreage idling provisions and this is reflected in the blue box component of the notification. Crop prices were relatively high and so the notified total AMS and *de minimis* were both small. With the passage of the 1996 Farm Act, direct income support payments were introduced to replace the deficiency payments; the direct payments were notified in the green box. AMS support remained low until crop prices started to deteriorate in 1998. From that time until the passage of the 2002 Act, production-linked “emergency” payments were authorized that increased AMS support and its share of total support. During the life of the 2002 Act AMS support

has generally remained high and variable. More recently, strengthening commodity prices have led to significant reductions in the total AMS.¹⁴

The first notification of domestic support by the EU, in 1995/96, encompasses the changes in the instrumentation of the CAP that were the central aspect of the MacSharry reforms.¹⁵ Direct payments (area payments on cereals and oilseeds, and headage payments on beef and sheep) were placed in the blue box, since they were associated with limits on production. As a result, the original notifications, from the 1995/96 marketing year included a large AMS component (48 billion euro), a smaller but sizable blue box element (21 billion euro) and a relatively modest amount of green box payments (19 billion euro).¹⁶ The nature of the CAP reforms since 1995 has been reflected subsequently by a major shift in the pattern of notifications for the categories of domestic support. Support prices have been reduced for most of the major products to narrow the gap between EU prices and those in world markets. Export subsidies have also been reduced, in part as a result of WTO constraints.

The “new” CAP, starting with the 1992 MacSharry reforms, places heavy reliance on direct payments to farmers based on past production patterns and these payments are broadly unrelated to current prices and output decisions. Thus the thirteen notifications from 1995/96 to 2007/08 show a marked reduction in price supports, compensated by an increase in direct payments. The current total AMS fell from around 50 billion euro in 1995/96 to 12.4 billion euro in 2007/08, a 75 percent decline. Blue box payments rose over the period from 21 billion in 1995/96 to 27.2 billion in 2004/05 but fell sharply in the latest notification to 5.2 billion. Green box payments rose from 18 billion in 1995/96 to over 62 billion euro in 2007/08.¹⁷

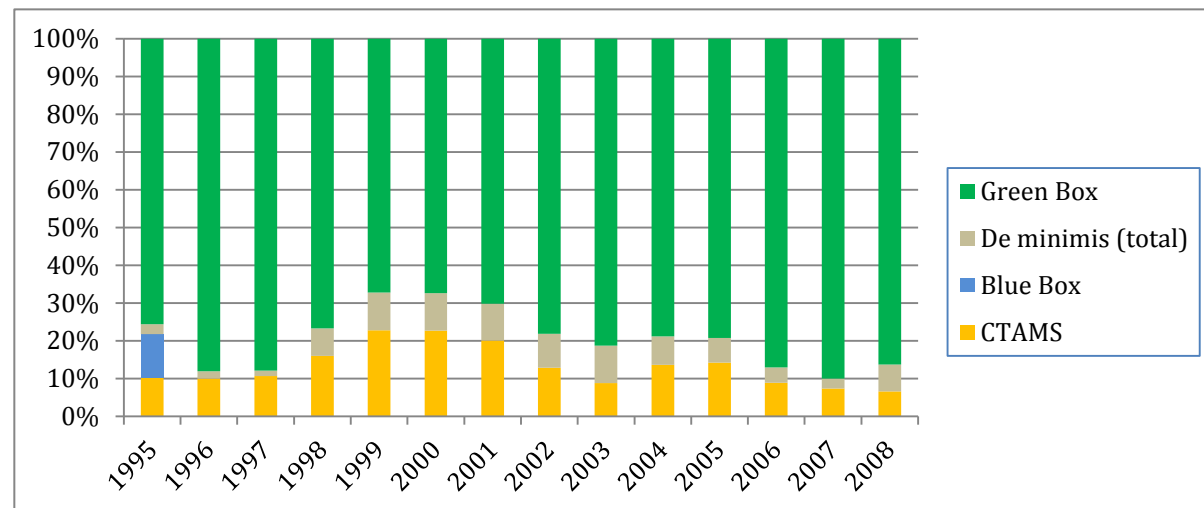
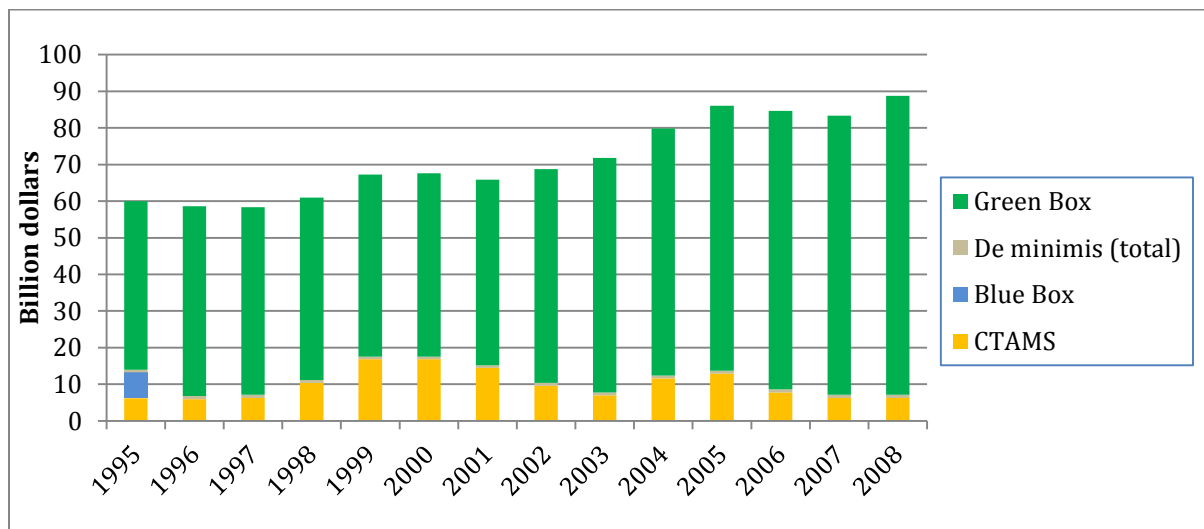
¹⁴ Note also the significant increase in green box support in the US, due primarily to a major expansion in expenditures on domestic food assistance programs.

¹⁵ Compensation payments were introduced progressively in the marketing years 1993/94 – 1995/96.

¹⁶ It is likely that, in the eight years between the 1986-88 base and the first year of the URAA, trade-distorting support (as measured by the AMS) fell from roughly 80 billion to 50 billion euro. This was due in large part to the introduction of the MacSharry reforms and the placing of these payments in the blue box. Green box eligible policies probably rose modestly over the same period.

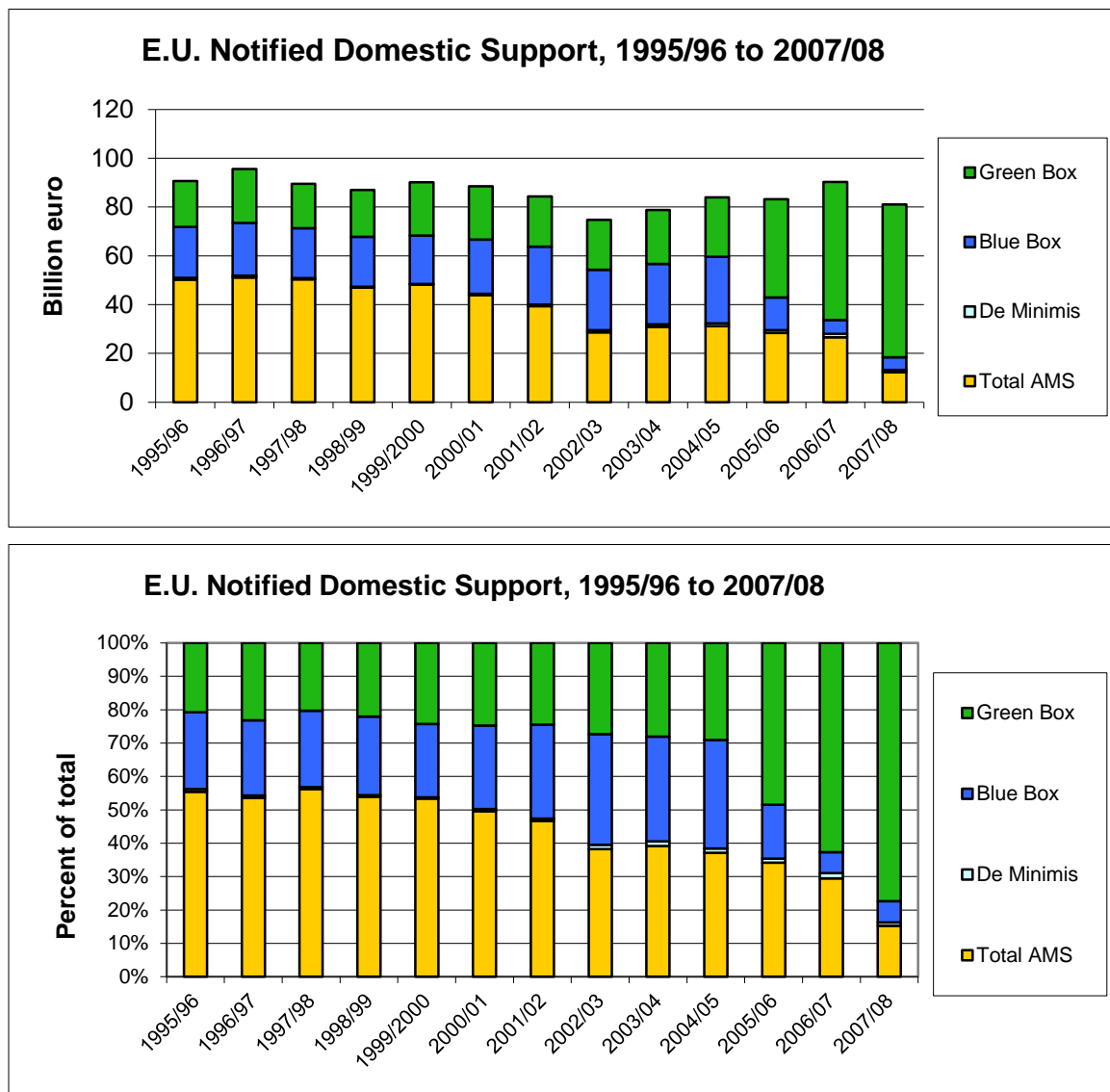
¹⁷ Though this might appear to suggest that about 38 billion euro in less trade-distorting support has replaced 38.5 billion euro of more trade-disruptive payments, it should be remembered that much of the AMS is a calculation based on the difference between an administered price and a fixed reference price. So a drop in calculated support may not be directly reflected in either actual government payments or farm income.

Figure 1: US Notifications of Domestic Support, 1995 to 2008



Source: WTO notifications and authors' calculations

Figure 2: EU Notifications of Domestic Support, 1995/96 to 2007/08



Source: WTO notifications and authors' calculations

The mix of policies in the EU changed relatively little from 1995 to 2000, as reforms in the cereal and oilseed sectors were being assimilated. But budgetary pressures and the prospect of ten new members from eastern and central Europe led the EU to consider further changes in policy. These were incorporated in the so-called Agenda 2000 reforms agreed in 1999. The policy changes had a noticeable impact on EU domestic support notifications, maintaining and strengthening the direction of the 1992 reforms. Intervention prices were reduced by 29 percent for cereals (including a more substantial cut for rice) and, from 2005, they were reduced by 15 percent for butter and for skimmed milk powder, reducing the gap between “administered”

prices and the fixed reference prices used in support calculations.¹⁸ The AMS fell from 48 billion euro in 1999/2000 to 28 billion euro in 2002/2003. Changes in the beef regime also affected the notifications somewhat; a slaughter premium and some supplementary payments were added to existing subsidies for suckler cows and the special beef premium. These new payments were notified as blue box as they were limited to base levels of livestock numbers. Blue box payments increased by 5 billion euros over the period.

Even more significant for the EU's domestic support notification are policy changes since 2002/2003, notably the 2003 Fischler Reforms, modifications to the regime for the Mediterranean crops in 2004, the change in sugar policy in 2005, and the reform of fresh and processed fruit and vegetable policies in 2007. The introduction of the Single Farm Payment, the key ingredient of the 2003 Reform further separates payments from current production. The 2004/05 notification of domestic support included some of these decoupled payments under the Fischler reforms, but the main impact shows up in the notification for 2007/08, and this will influence notifications at least through 2009/2010, by which time most of the policy changes already announced should be implemented.

The nature of EU direct payments has also undergone changes, with the relaxation of obligations to continue to produce specific products as a condition of eligibility. The Agenda 2000 reforms consolidated payments for cereals and oilseeds, and the Single Farm Payment system incorporates subsidies for most other producers in the same scheme. This will be reflected in the notifications as many blue box payments become eligible for the green box, since they are no longer linked to current production. The projected notifications in this chapter reflect this shift.

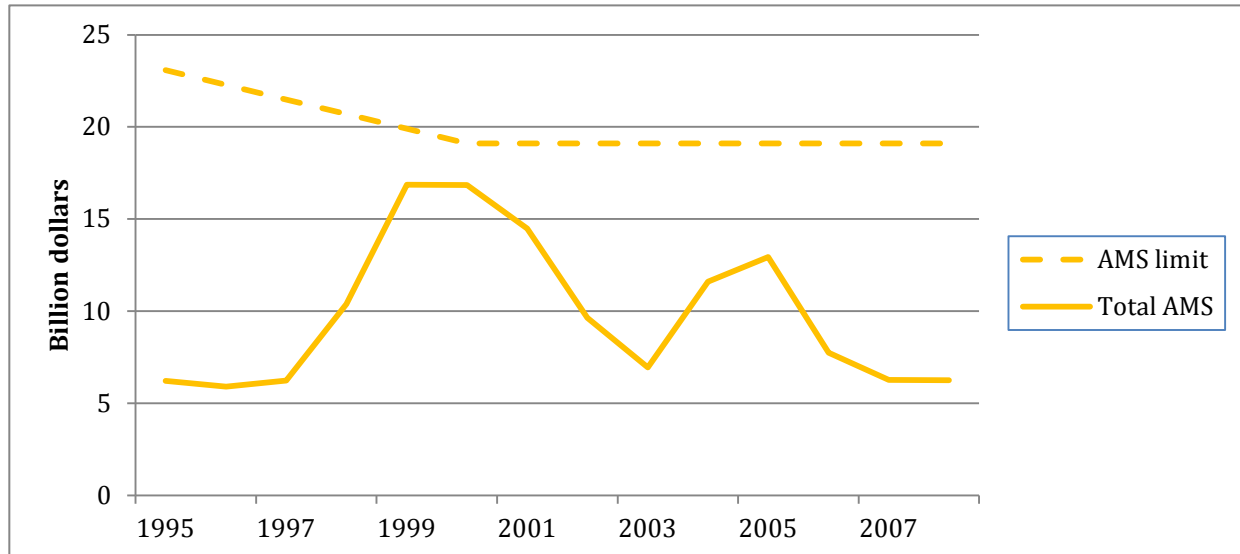
Figure 1 indicates that the total AMS for the US can be highly variable depending on market prices. As discussed below, this could pose some significant challenges in meeting future commitments under a DDA Agreement. Figure 2 indicates that the level and composition of AMS support in the EU has also varied over time, but much of the variation has been due to systemic changes in policy.

The Uruguay Round Agreement included bindings on the level of the most trade-distorting domestic support, as included in the total AMS. The current total AMS was not to exceed the final bound AMS after the transition period. Figures 3 and 4 show the current total AMS and the final bound AMS for both the US and the EU with projections to 2016 in the US and 2014/15 in the EU (see below for details on assumptions). Support has been comfortably within the bindings in both cases, although the pronounced variability of notified support by the United States is apparent. As discussed in Blandford and Orden (2008) support would probably have exceeded the binding if direct payments (notified as green box) and counter-cyclical payments (notified as non product-specific AMS) had been included in the

¹⁸ The Agenda 2000 package also agreed a new dairy premium from 2005, to compensate dairy farmers for scheduled reductions in butter and skim milk powder intervention prices. In WTO (1999) the EU indicated its intention to declare this as a blue box payment.

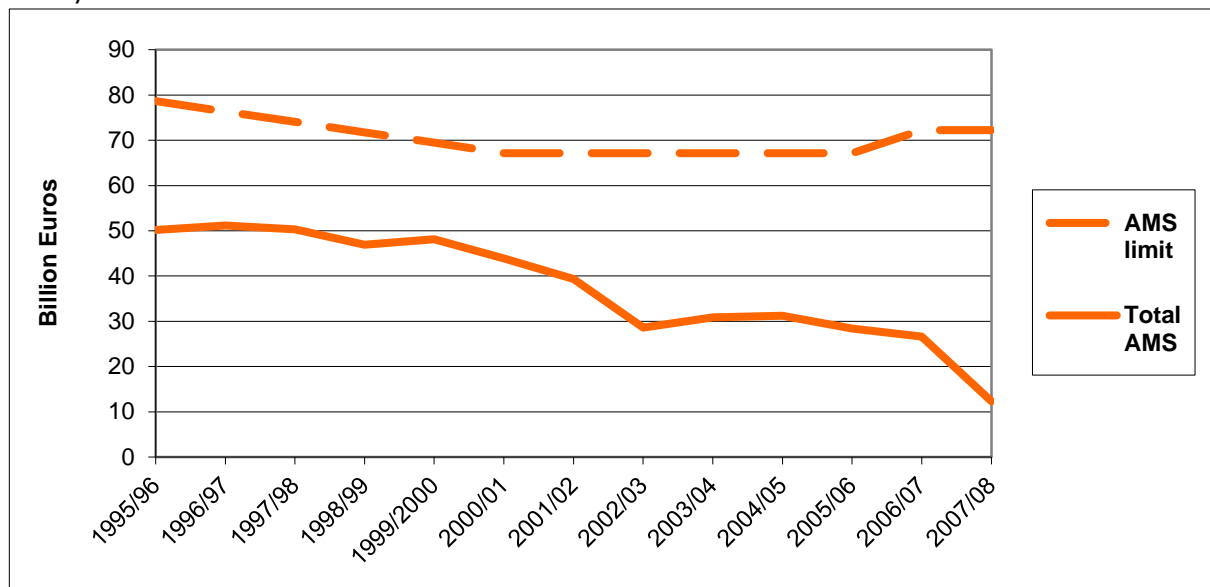
PS AMS. The possibility that this may required in the future is raised in an ongoing WTO dispute-settlement case brought by Brazil and Canada

Figure 3: Current Total AMS in US relative to WTO AMS Binding, 1995 to 2008



Source: Authors' calculations

Figure 4: Current Total AMS in EU relative to WTO AMS Binding, 1995/96 to 2007/08



Source: Authors' calculations

Agricultural trade disputes under the WTO

There have been about one-hundred disputes over agricultural trade notified to the DSB over the lifetime of the WTO.¹⁹ Figure 5 shows the distribution of these agricultural cases over time.²⁰ On average there have been about eight disputes every year that can be classified as agricultural.²¹ In the first couple of years of the WTO fifteen agricultural disputes were notified to the DSB. Four of these agricultural disputes focused on issues of implementation by the EC of the Uruguay Round commitments (DS 9, 13, 17 and 25, see Annex Table).²² Over this period, the US initiated three disputes with Korea about the treatment of imported agricultural products, reflecting a long-running concern by US exporters (DS 3, 5, and 41). And two of the most prominent of the agricultural disputes were litigated in 1996, both with their origin in the GATT and each involving the US and the EC (as was typical of many of the trade disputes at that time). These “legacy” disputes were over the EC’s (1992) import regime for bananas (DS 16, 27, and 105) and the (1988) EC regulations over the use of hormones in beef (DS 26, 48).²³ At least in the US, the justification for the strengthening of the GATT dispute settlement process through the DSU was in part based on the prospect of finally resolving these conflicts.

As these disputes were being adjudicated, a burst of new litigation occurred in 1997, with 13 disputes that year, perhaps reflecting the lag from commercial concern to formal request for consultations. Most of the 1997 cases were concerned with the operation of tariff rate quotas (TRQs) and other import regulations, representing the tensions that accompanied the process of “tariffication” and the removal of non-tariff import barriers. Typical of the disputes at this time were the challenges to the operation of TRQs by the EC by Brazil (DS 69) on poultry and by New Zealand (DS 72) on butter, and to the TRQs of the Philippines on pork and poultry by the US (DS 74 and 102). One exception was the challenge by the US and New Zealand to the Canadian dairy policy (DS 103 and 113).

¹⁹ The definition of an “agricultural” case is somewhat arbitrary. In this chapter I include all cases that deal largely with agricultural trade even if the dispute is over an aspect of the SPS Agreement. However, in these cases I do not dwell on the implications for the SPS Agreement itself but focus on the importance for agricultural trade and policy. I have excluded cases dealing with fish and fish products. Where the disputes have a broad scope (such as the challenges to India’s use of quantitative restrictions) I have chosen to exclude them, even though many agricultural products may have been affected.

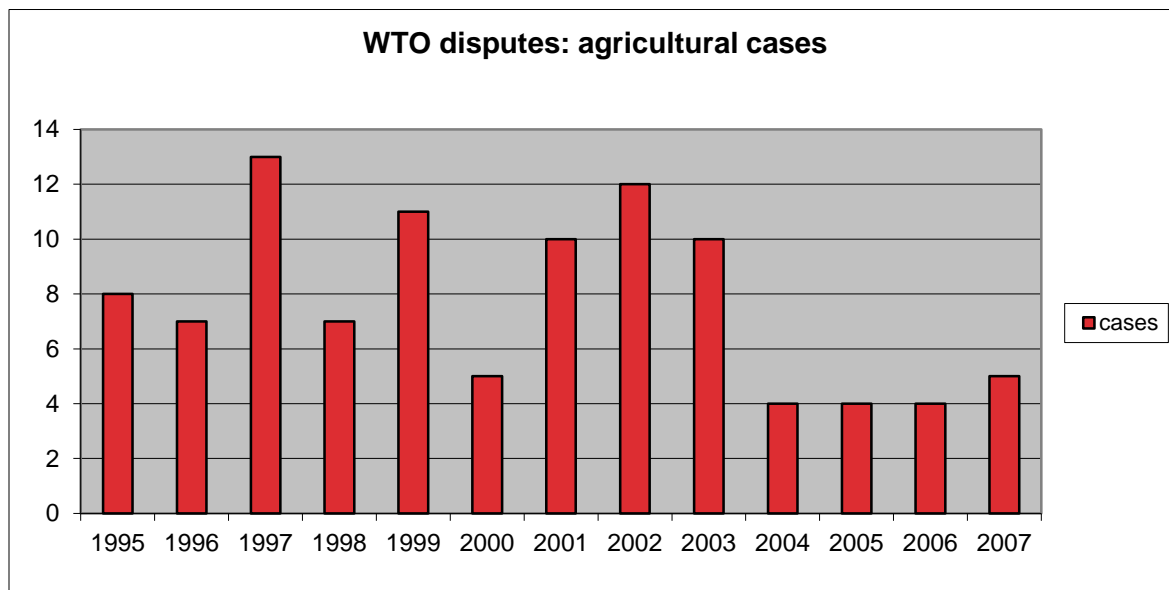
²⁰ For the purposes of this chapter a dispute is initiated by the request for consultations that is notified to the Dispute Settlement Board. It is then given a “DS” number. The WTO website keeps track of these individual disputes, and records any action taken.

²¹ The average number of requests for consultation notified to the DSB has been 28 per year since 1995.

²² The convention followed by the WTO of referring to the European Union as the EC (European Community) is adopted here. Though technically correct, this convention may seem a little anachronistic to the reader.

²³ Another dispute that had been prominent in the GATT era was over the EC subsidies to oilseeds. The final agreement that ended this dispute was negotiated at the same time that the modalities for agriculture in the Uruguay Round were agreed between the US and the EC, at Blair House in November 1992.

Figure 5: WTO Dispute Cases Involving Agricultural Products



Source: Annex Table

Disputes in 1998 also focused on market access issues, and the number of cases fell to more “normal” levels. Among these complaints was a challenge by Canada to transport restrictions on cattle, hogs and grain by the US (DS 144) that also reflected an attempt to settle an older dispute using the new-found legal structure of the WTO.²⁴ A renewed burst of activity in 1999 was followed by a less contentious year in 2000, with the focus again on import regulations in both years.²⁵ The year 2001 saw a number of safeguard complaints, in part due to the weakening of world prices at the turn of the century.

A significant shift in the type of agricultural disputes is noticeable in 2002, with the challenge by Australia, Brazil, and (later) Thailand to the EC sugar regime. The conflict was over the extent to which that regime in effect provided export subsidies about the scheduled limits. This was followed by a challenge from Brazil to the US policy towards upland cotton, on this occasion questioning the subsidies given to US producers. Thus the emphasis had shifted from disputes over import regulations and contingent protection to the farm policies that were becoming exposed to legal scrutiny. Litigation began to be discussed as a complement to the slow-moving Doha Round in the effort to curb subsidies notably in the US and EC. The cat was out of the bag.

The year 2003 saw another ten disputes on agricultural issues reported to the DSB. Two cases reflected the changed nature of food trade: the resurrection of an earlier challenge by the US to the EC’s system of protecting Geographical indications (GIs), and a challenge by three countries to the slow process of authorizing the release of

²⁴ For a more detailed history of US-Canadian agricultural trade disputes see Barichello, *et al*, 2006.

²⁵ An interesting issue was raised by Brazil (DS 154) on the preferential treatment for coffee imported by the EC from competitor countries under regional trade agreements.

biotech products on the EC market (DS 291, 292, and 293).²⁶ At the end of 2003 the Peace Clause expired, widening the net of subsidies that could be appealed under the SCM.²⁷ There was no immediate rush to litigation, though a number of countries actively explored the possibility for successful challenges. The panel report on the US-cotton dispute (DS 267) emerged in September 2004 and that on EC-sugar (DS 265, 266 and 283) was circulated in October 2004. The reports and their broad confirmation by the Appellate Body gave renewed hope to those who saw the DSU as an effective way of forcing policy change in the EC and the US. But in fact the number of new cases initiated since 2004 has been markedly less than before, perhaps reflecting the influence of continued negotiations in the Doha Round. Nevertheless the most significant cases in the past three years have been those that have challenged US domestic support notification (DS 357 and 365), again reflecting the emphasis since 2002 on using current agreements to rein in farm support policies.

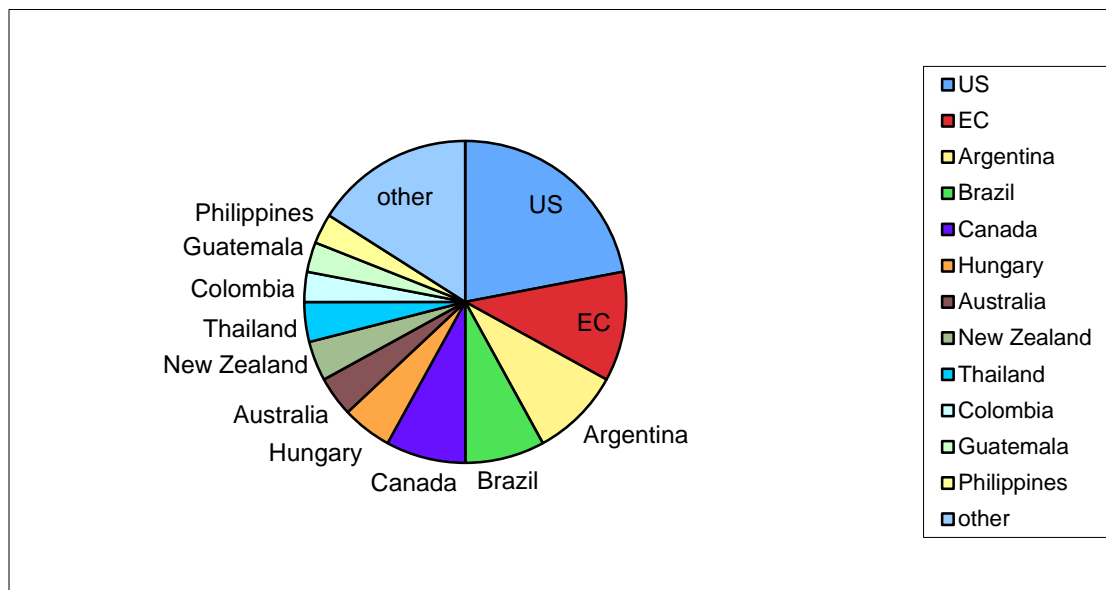
In contrast to the GATT dispute settlement process, which was used primarily by developed countries, the DSU mechanism has been used by a number of developing countries to resolve agricultural disputes.²⁸ The number (and percentage) of cases brought by individual WTO members is shown in Figure 6. About half of the complaints have been lodged by four countries, the US, the EC, Argentina and Brazil. It is of course normal for exporters to bring challenges to the policies of importing countries, and for the larger countries to be able to afford the expense of litigation. Small countries may hesitate to use the dispute settlement mechanism knowing that even if successful they have little chance of achieving the desired policy change. But the fact that twenty-three countries initiated requests for consultation (and many more joined disputes as third parties) shows that there appeared to be a need for such an outlet for commercial tensions in agricultural trade.

²⁶ The original US GI case (DS 174) had been held in abeyance, and was revived following a new policy initiative by the EC. Australia took out a case in 2003 (DS 290) that then was joined with the earlier case.

²⁷ For more detail on the effect of the Peace Clause on agricultural disputes see Steinberg and Josling, 2003.

²⁸ For a comprehensive treatment of the difficulties faced by developing countries in using the GATT dispute settlement process see Barton, *et al*, 2006.

Figure 6: Shares of Requests for Consultation on Agricultural Trade, by Complainant



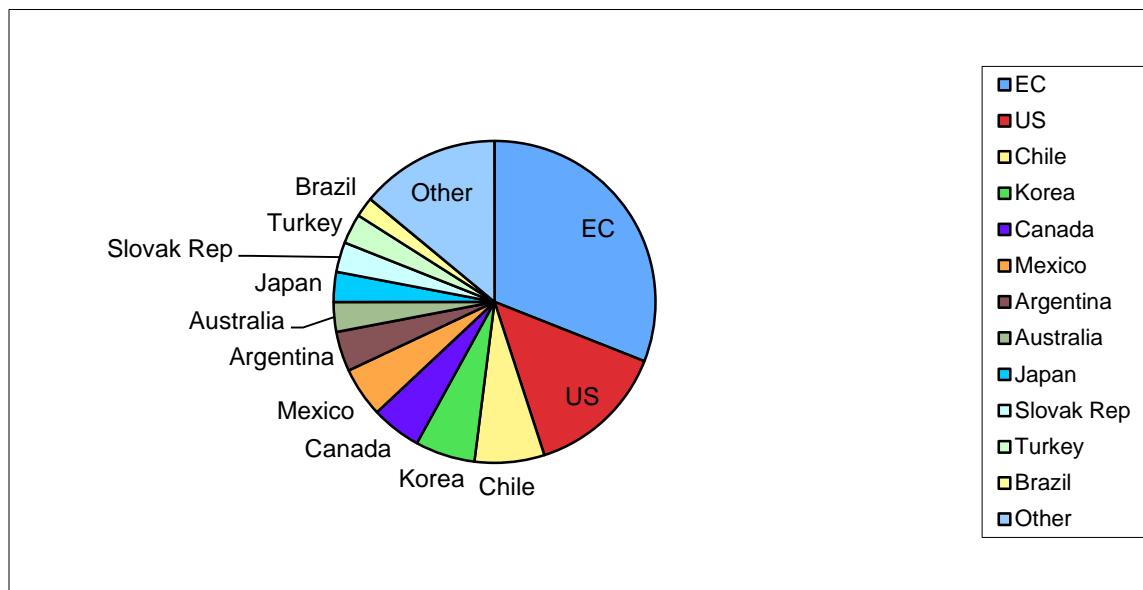
Source: Author's calculations based on WTO website

If agricultural cases are initiated by frustrated exporters it is natural that their complaints would be focused on the major (and most protected) import markets. Imports of agricultural products tend to be less concentrated than agricultural exports, reflecting the balance between population and land. But the same concentration of disputes among a few countries is evident from the list of respondents. Figure 7 shows the distribution of post-WTO agricultural disputes by respondent.

The distribution of respondents does not appear to reflect the trade pattern. Once again, twenty-three countries have been named as respondents in requests for consultations, and many of these are exporters. In fact, the EC, the US and Chile have had to respond to over one half of all complaints. And exporters such as Argentina, Australia, Brazil, Canada, Hungary and Mexico have all been the respondents in agricultural disputes. This emphasizes the often overlooked feature of agricultural trade policy that exporters are sometimes as protectionist as importers when it comes to parts of the agricultural sector that are less than competitive. So the disputes are often among exporters for whom domestic politics often complicates commercial diplomacy and leads to ambivalence in trade policy.²⁹

²⁹ One would expect these intra-exporter conflicts to be less when trade negotiations are in progress, as the tendency will be for exporters to focus on importing countries. But the Doha Round has progressed so haltingly that disputes among exporters have not been noticeably muted.

Figure 7: Shares of Requests for Consultation on Agricultural Trade, by Respondent



Source: Author's calculations based on WTO website

It was indicated above that many of the cases involving agricultural trade were focused on import regulations and other aspects of market access. This is confirmed in Table 1, where the 100 disputes are grouped on the basis of the grounds for challenge. Forty percent of the requests for consultations were on market access issues: if one includes challenges over health and safety standards imposed by importers and the contingent protection through anti-dumping duties, countervailing levels and safeguards, the share increases to 77 percent. By contrast, only ten percent of the disputes were over issues related to domestic support and export competition.³⁰

As with other disputes, agricultural challenges are often settled without the aid of a panel and formal litigation. Table 1 also shows the proportion of cases in each category that resulted in the establishment of a panel. The relationship between the grounds for complaint and the likelihood of a panel being established is significant. Forty-four percent of agricultural disputes reached the panel stage. But in the case of market access challenges, only one third of the cases resulted in a panel: only one quarter of the disputes over anti-dumping and countervailing duties reached that stage. So these cases are apparently easier to resolve, in part because the trade remedies and often the challenged import regulations are themselves temporary.³¹

³⁰ The Agreement on Agriculture distinguishes between market access, domestic support and export competition. This distinction is not always useful when considering disputes. Nor is the distinction between complaints under the URAA and other parts of the WTO (GATS, SCM, etc.). Complainants regularly include multiple grounds for challenge. The categories in the table are therefore based on a subjective view of the main issues involved and not a listing of the legal grounds for challenge.

³¹ Note, however, that the SPS cases more often resulted in the establishment of panels, as many of these trade barriers are less likely to be transitory (Josling, Roberts and Orden, 2004).

Disputes over export subsidies and domestic support tend to be more intractable, and involve potentially significant domestic policy changes.

Table 1: Classification of Agricultural Cases in the WTO, 1995-2007

	<i>no of cases</i>	<i>panels established</i>	
		<i>number</i>	<i>percent</i>
<i>Market access</i>	40	13	33%
Domestic support	3	3	100%
Export subsidies	7	5	71%
SPS	11	6	55%
A/D, CVD	15	4	27%
Safeguards	11	7	64%
UR Implementation	4	2	50%
Other	9	4	44%
Total	100	44	44%

Source: Author's calculations based on WTO website

The current (January 2008) status of the agricultural cases considered here is shown in Table 2. Of the forty-four panels established to consider agricultural cases, thirty-two have reported and a further eight have yet to report.³² In the other four cases the challenge was withdrawn, or the panel has been in abeyance for several years: a further case was replaced by another one covering the same complaint.³³ Twelve cases were notified to the DSB as having been resolved bilaterally, without the need for as panel, and a further 43 cases were presumably resolved, though the DSB was never notified of the outcome.³⁴

³² In two cases the DSB has agreed to establish a panel but the panelists have yet to be appointed.

³³ A challenge by Colombia against Chilean safeguards (DS 228) was replaced by a similar challenge with slightly revised complaints (DS 230).

³⁴ The reluctance of the parties to a dispute to report the successful resolution of that dispute to the DSB is understandable in strategic terms. However, one assumes that all interested parties are aware of the details of the solution, so it would make the assessment of the significance of the DSU simpler if notification were mandated.

Table 2: Current Status of Agricultural Disputes in the WTO

	<i>number of cases</i>
Adopted by DSB	32
Report awaited	8
No report issued	2
Withdrawn	2
Replaced	1
Resolved	12
Resolution not notified to DSB	43
	100

Source: Author's calculations based on WTO website

The number of disputes that are notified to the DSB overstates the number of policies or procedures that are actually in dispute. It has been common for two or more countries to complain about the same alleged violation of WTO rules. Correcting for this duplication, and for the fact that some countries revise or extend their complaints, the number of separate perceived violations falls to eighty-three. The number of these that actually went to panels also overstates the number of panel decisions. In a number of cases, similar complaints have been grouped and dealt with by the same panel. Indeed, many of the most contentious cases have been brought by countries acting in concert: the grouping of countries in the banana disputes, the EC- hormones case, the EC- GI case and the EC-biotech case are examples of coordination among complainants. The number of separate cases that went to panels is therefore thirty-five, generating thirty-one separate legal opinions.

The proliferation of agricultural cases in the WTO reflects both the ambivalent nature of the multilateral trade rules in the sector and the sensitive nature of the trade itself. In addition, the perceived vulnerability of the major farm programs of industrial countries to challenge under the URAA and the SCM has led to some recent high profile disputes. The nature of technological changes in food production, particularly the uneven adoption of biotech seeds, has led to other disputes. Countries are still grappling with the trade policy consequences of the search for attributes in production that are desirable to consumers. The dividing line between providing consumers with adequate decisions on which to base decisions and cooperating with domestic producers to restrict imports is often difficult to determine. More of these issues will be tested in the WTO in future years. Indeed it would be risky to predict any sharp decrease in the numbers of agricultural disputes brought before the DSB in the next decade.³⁵

³⁵ In some areas of trade, complaints can trigger retaliatory filings as an element of trade strategy. This does not seem to be a problem in agriculture at present but it may emerge as more sensitive cases are litigated.

Future of Litigation on URAA

The UR Agreement on Agriculture (URAA) constituted a negotiated solution to several market access issues in agriculture. The URAA mandated the removal of non-tariff border measures and the binding of most tariffs. It introduced the Special Safeguard for Agriculture (SSG) as new safeguard mechanism and Tariff-rate Quotas (TRQs) to maintain access in cases where non-tariff measures were converted to tariffs. In addition, the URAA helped to clarify the issue of subsidies that had proved to be so difficult to discipline under the GATT. The URAA circumscribed the use of export subsidies, obliging countries to notify all such aids and include schedules for their reduction. New export subsidies were banned. For domestic subsidies the URAA introduced a classification of domestic support instruments that attempted to limit the use of the more trade-distorting subsidies. The URAA also implemented notification procedures to track compliance with the provisions and the schedules of commitments.³⁶ But each of these issues left room for interpretation and were grist for the litigation mill.

Market access issues were the most important in the early days of the WTO, as countries explored through the DSB the practical implementation of the new rules and the agreed schedules. The process of tariffication was fairly smooth, and the introduction of the SSG also was without major problems. However, the establishment of TRQs did lead to several conflicts, as one might imagine in cases where government decisions had immediate commercial impact. The success in limiting trade-distorting subsidies has been somewhat more elusive. Export subsidies that were included in the schedules in general caused few disputes, in part because the limits were well above actual levels. But panels examining country policies unearthed several policies that acted as export aids within the terms of the WTO but had not been notified as such. Thus the major challenges to domestic farm programs in the EU and the US came from other exporters complaining that the export subsidy restrictions were being circumvented.

Cases brought against particular types of domestic support have been infrequent. With inconclusive debates in the Committee for Agriculture and without the guidance of panel reports, countries were able largely to decide for themselves whether particular policies were consistent with the definitions of the green and blue boxes, and hence not subject to reductions. So long as countries were way below their limits on domestic support it was not a priority to challenge the notifications themselves. But the jump in funding for the 2002 US Farm Bill caused a re-think of this situation, with the possibility that the limits may have been breached if notifications had been erroneous. The statement of the US-Cotton panel that some of the expenditures that the US had claimed as “green” may have been mis-labeled turned this possibility into a contestable proposition.

³⁶ Commitments on subsidy levels are treaty provisions, and the commitments in a Member’s Schedule are “an integral part” of the URAA and other WTO agreements (WT/DS265/R, paragraph 7.128). Conformity with scheduled commitments is a necessary but not a sufficient condition for escaping challenge. Panels have made clear that compliance with a Domestic Support commitment in a Member’s Schedule does not in itself preempt or exclude the operation of other WTO obligations (WT/DS267/R, paras. 7.1066-7.1067).

The current case brought by Canada and Brazil, challenging the level of US farm subsidies as notified under the categories used by the URAA, illustrates that ambiguity still exists.³⁷ On the one hand, it is a remarkable case, which if it ever went to a panel would clarify the somewhat fuzzy nature of the “boxes”. On the other hand, it refers to past notifications that were alleged to wrongly classify certain subsidies. So the remedy in the event of a successful challenge is presumably to oblige a re-notification by the US of its domestic support for several historical years. But the US could well argue that in the current period of high prices, support levels are already well below the limits set in the schedules even with re-notification. So it would not be clear what the US could do to make amends: changing current policies would not be an appropriate remedy, and compensation for past violations is not contemplated in the DSU.

This does not drain the interest away from the case. The reclassification of direct payments in the US away from the green box in a revised notification would indeed be a small prize for competing exporters. But add the possibility of a new set of limits in the Doha Round, and the case becomes critical. If the Doha Round succeeds in reducing allowable trade-distorting subsidies (as calculated by the Aggregate Measure of Support, or AMS), the allocation of subsidies to these boxes becomes sensitive. The prospect exists that the major driver of change in US farm policy could indeed be the WTO dispute settlement process, and the decisions on the classification of subsidies. That could also set up some controversy over the role of WTO rules when they clash with powerful political interests. Agricultural trade will continue to provide vexing issues for the multilateral trade system and its judicial process.

³⁷ The two cases brought by Canada and Brazil (DS 357, 365 respectively) have been merged. The complaint is that US exceeded its Total AMS limits in several recent years.

World Bank Institute

Recent Developments in the Multilateral Trade System in the Agricultural Sector

Workshop March 2012

Vienna

Module 2: Strengthening the Uruguay Round Agricultural Agreement; Status of the Doha Round; and implications for acceding countries

Background Paper

From the Uruguay Round to the Doha Round

A Doha Round Agricultural Agreement would build on and improve upon the URAA. The URAA brought agricultural trade under the umbrella of multilateral trade disciplines, a significant accomplishment in itself. But the Agreement was only a start and further progress has been needed to broaden and deepen that accomplishment. The Doha agricultural negotiations have provided an important opportunity to achieve significant reductions in tariffs, make sharp cuts in domestic programs that distort trade and finally eliminate export subsidies. A comparison between the cuts proposed in the Doha Round and those achieved in the Uruguay Round is illustrated in Figure 1. In each of the three pillars, the size of the cuts foreseen in the Doha Round exceeds considerably those agreed in the Uruguay Round (though from a somewhat lower base). We believe that a Doha Round Agreement outcome will lead to more open markets and to the locking in of policy reforms that have taken place in many countries in the past fifteen years. Decreasing, or in some cases eliminating trade distortions will provide greater incentives for investment in the agricultural sectors of developing countries. This will help lead to productivity increases that are badly needed in order to meet the rapidly growing demand for food as a result of anticipated growth in population and incomes.

The agreement to include agriculture as a key part of the Doha Development Agenda in 2001 has changed the nature of the relationship between domestic farm policy and trade rules. The US pushed for the elevation of agriculture from the “built in agenda” that was mandated by the Uruguay Round to a pivotal aspect of the Doha

Round. But the game has changed considerably since that decision was taken. The US is now under pressure in the Round to make “real” cuts in its farm programs.

The EU has been playing a more active role in setting the agenda for the agricultural component of the Doha Round than it did in the Uruguay Round and in earlier GATT rounds.³⁸ The Commission, negotiating on behalf of Member States, has tried to avoid the defensive position that gave it little room to suggest changes in the rules that it would favor. In particular it wanted to avoid being isolated as the main defender of protectionist agricultural programs, and risk being blamed for resisting further progress in bringing agricultural trade rules closer to those in the non-agricultural sector.

This new position has indeed had a major impact on the conduct of the negotiations. Although transatlantic tensions still exist, often over issues such as regulations regarding biotech food and the use of place names for trademarks, the past five years has seen a noticeable convergence of EU and US positions on agricultural trade rules. The conflicts that are prolonging the Doha Round agricultural talks are more often between the US and the EU on the one hand and developing countries on the other. Both the US and the EU have agreed that there will be significant cuts in tariffs, subject to partial exclusions for sensitive products, and major reductions in the allowable level of trade-distorting domestic support. The elimination of export subsidies is no longer a significant point of contention, although there are still differences in the area of food aid.

The main reason why the EU can be so much less defensive in its approach to trade talks is in the progress it has made with domestic reform of agricultural policy. The MacSharry reforms of 1992 allowed the EU to agree to disciplines on domestic and export subsidies in the Uruguay Round Agreement on Agriculture (URAA), as well as resolving the oilseed controversy. Cereal prices were cut to bring them closer to world prices and oilseed hectareage was restrained. Payments that were made in compensation for price cuts were placed in the Blue Box, and thus avoided mandated reductions. Support given through administered prices also declined, in part as a result of the use of the difference between these prices and fixed reference prices for the calculation of the subsidy element. So the partially-reformed CAP had no difficulty staying within the bounds of the EU’s schedule of subsidy reductions in the first few years.

Further reforms have had a similar impact, lowering the level of trade-distorting subsidies and making it easier for the EU to contemplate and accept further restrictions on agricultural policies in the WTO. In this connection, the changes in 1999 (the Agenda 2000 reforms) and the subsequent significant changes in 2003 and 2004 under the leadership of Commissioner Fischler have continued and developed the approach taken by MacSharry. Price support has been removed or weakened for many commodities, and payments are now made to farmers on the basis of historical production of a wide range of products with no obligation to

³⁸ We use the term EU for the collective position and interest of the European Union rather than the technically correct term EU, preferred in WTO documents.

produce any particular product to claim payment. This “Single Farm Payment” has made the CAP significantly more consistent with the “tariffs and decoupled payments” model that underlies the URAA.

The Doha Round Agricultural Agenda

The Doha Round agricultural negotiations are built on the structure laid out in the URAA, specifically the “three pillars” of market access, domestic support and export competition.

Market Access

Progress in expanding market access is the key to a successful round. The URAA made visible the high level of protection that was long hidden by non-tariff barriers. Quantitative restrictions, variable import levies and other similar measures were converted into tariffs, making market access conditions in agricultural trade significantly more transparent. The URAA bound all tariffs, making it impossible to raise tariffs without re-negotiation with one’s trading partners. The Agreement also mandated a 36 percent average cut in agricultural tariffs for developed and a 24 percent cut for developing countries over six and ten years respectively and with a minimum cut of 15 percent and 10 percent respectively.³⁹ But allowing countries to average their tariff reductions across all commodities meant that most politically sensitive tariffs in developed countries were often only cut by the required minimum, and substantial tariff peaks continued to exist for certain products.

For those products where non-tariff border measures were converted to tariffs, countries were obliged to allow particular quantities to be imported at low or zero tariffs (tariff rate quotas, or TRQs). These have led to some expansion of trade but have also perpetuated the problems associated with quota allocation. Countries could also designate those products whose border measures had been “tariffed” as being eligible for special safeguards to protect against import surges. Developing countries were allowed to set their tariffs at “ceiling” rates rather than calculate tariff equivalents, but as a result were not eligible for the special safeguards. This has led to widespread concerns among developing countries that they have inadequate recourse if imports threaten their own food system.

The agricultural market access chapter of the Doha Round seeks to remedy a number of these shortcomings. It calls for a tiered tariff cut, with products that have the highest tariffs required to take the greatest reduction. The cuts would range from 50 percent to 70 percent for developed countries and from 33 percent to 47 percent for developing countries. Agricultural tariffs would have a much different profile after such cuts, though average tariff levels would still be above those in most non-agricultural markets. However, the price paid for getting agreement on this tiered tariff cutting approach has been to allow countries to establish a certain number of tariff lines as sensitive (developed and developing countries) and special

³⁹ Least developed countries – LDCs – were not required to undertake commitments in the URAA and are also expected to be exempt from undertaking commitments in the DDA.

(developing countries only) for which lesser tariff reductions will be required. An overall average cut of at least 54 percent is to be required of developed countries and developing countries do not have to agree to cuts in excess of 36 percent on average. Moreover, for non-sensitive products, a ceiling of 100 percent for tariffs would cut off some egregious tariff peaks, and any remaining tariffs of that height should be compensated by substantial cuts in other tariffs.

The exporters have concerns that provisions on sensitive and special products lessen the impact of the tariff reductions, but emphasizes they do not negate the progress that such cuts would represent. Sensitive products would be limited to 4 percent of tariff lines (though particular developed countries may be allowed extra flexibility if they offer greater market access in other areas) and would be offset by expanded TRQs. Though it may be better to make the selection of the products based on a formula, the reality is that governments will require some flexibility if they are to reach agreement. The introduction of special products for developing countries is perhaps of more concern in the longer run. It is important that particular products are not taken “out of the marketplace” altogether by some developing countries from the point of view of trade. The impact would be felt by developing country exporters as well as by the consumers in those countries. The present proposal is for 12 percent of tariff lines to be self-designated as special, and the tariff cuts would be limited to 11 percent. However, the designation of “super” special products that would have no tariff cuts is a poor precedent. This may be one of those topics that have to be dealt with as a part of the final package rather than within the agricultural talks per se.

With respect to safeguards, the current draft contains a proposal to end the special safeguard (SSG) for developed countries that added uncertainty in several markets. The details of the new Special Safeguard Mechanism (SSM) for developing countries have yet to be finally agreed. The main point of contention at present is under what conditions can temporary tariffs imposed as safeguards exceed pre-Doha rates? It would indeed be retrogressive if the new SSM led to widespread increases in tariffs in developing countries, though such a situation is not very likely.

Several other areas of market access offer constructive advances in agricultural trade conditions, and should not be overlooked. The way in which the problem of TRQ underfill is addressed (Rev 4, Annex A) should improve the workings of this (imperfect) device for opening markets. Tariff simplification would also be taken an important step forward, with the conversion to ad valorem tariffs and subsequent binding occurring where the conversion does not lead to higher tariff levels. Tariffs on tropical products and diversification goods will be reduced, though some negotiations on details are still ongoing. Tariff escalation will also be less of a problem in the future as a result of the implementation of formulae that ensures that processed products are subject to tariff cuts at least as high as the raw materials that they contain.

Domestic Support

The URAA identified different types of domestic support and imposed reduction requirements on the type of support with the largest impact on production and trade. This support was calculated in an “aggregate measurement of support (AMS);” developed countries had to reduce their AMS by 20% and developing countries by 13%. Policy changes in developed countries, encouraged to varying degrees by the constraints of the URAA, have led to a substantial reduction of AMS, concomitant with a rise in non- or minimally-trade distorting “green box” support. As in the market access pillar of the URAA, however, a focus on average cuts meant that countries could continue to provide some commodities with a substantial amount of trade-distorting support. Moreover, the commitment to reduce trade distorting domestic support by only 20% from the (then) record high levels of the mid-1980's represented a generous cap for developed countries. Nevertheless, these commitments represented a breakthrough by forcing domestic policy makers to face up to the adverse trade consequences of certain forms of domestic farm policies.

Though no longer as significant for trade volumes given the trend of higher prices, restraints on domestic support are an important part of the trade disciplines. The IPC welcomes the opportunity offered by the reduction in AMS over the past decade for many countries to tighten the cap on such spending. The Doha Round negotiations have proposed reductions of from 50 to 85 per cent in the AMS of developed countries. There would also be caps for the first time on the AMS for particular products. The Blue Box support (currently tied to production controls) would be limited to 2.5 percent of the value of production, and individual product Blue Box payments would also be capped.⁴⁰

To avoid “box-shifting” among types of support the Doha Round agricultural modalities impose additional domestic support reductions not only on the AMS and the Blue Box but also on the Overall Trade Distorting Support (OTDS), which includes all such subsidies. Whether this additional constraint will prove to be necessary remains to be seen, but it plays an important role in giving members confidence in the ability of the WTO rules on domestic support to constrain developed country trade-distorting farm policy. And, though the negotiations have descended to parsing the provisions so as to address implicitly or explicitly the situation in particular members, the overall result of clamping down on high levels of domestic support is to be greatly welcomed.

Export Competition

The URAA also imposed disciplines on export subsidies, and required WTO members to both specify and cut their export subsidies. Developed countries were

⁴⁰ Some accommodation would be made for cases where the Blue Box product limits led to anomalies, and the definition of the Blue Box itself would be broadened to include historically fixed payments even when no production controls are in place. In addition, some minor changes in the definitions of subsidies eligible for the Green Box are included in the Draft Modalities.

required to cut the value of export subsidies by 36 percent. While this was an important commitment, countries continued to have access to this most trade distorting type of subsidy. Moreover, there were no new disciplines on food aid or export state trading enterprises and negotiations on export credits were transferred to the OECD (which ultimately failed).

An important milestone will have been reached in the Doha Round in the form of a commitment to eliminate export subsidies. WTO members are also close to an agreement on disciplines for export credits and food aid. The pillar of export competition is therefore generally in place, and the Doha Round will have fulfilled one of the tasks set in the Uruguay Round. Producers in exporting countries around the world should recognize this as a major achievement.

Other Issues

Though the three pillars of domestic support, market access and export competition make up the bulk of the issues under negotiation in the Round, there are some sensitive items that extend across all the pillars and others that lay outside them. Of the cross-pillar issues the most difficult is the special treatment of cotton, a commodity of intense interest to a group of African countries and one that is produced in the US with the aid of domestic support programs. The Chairman's report of April 21 notes the continued commitment of WTO members to find a solution that addresses the issue of cotton "ambitiously, expeditiously and specifically". The solution proposed by the Cotton 4 (Mali, Chad, Burkina Faso, and Benin) was incorporated in the December 2008 Draft Modalities but has not found favour with the US. Direct negotiations have been ongoing but no resolution has been found nor has any counter proposal from the US been published. The cotton question is likely to be among the last "balancing items" that will be decided at the final stage of the negotiations.

A similar fate awaits a topic pushed by the EU and Switzerland on the creation of an international register for geographical indications (GIs) for wines and spirits. Along with a companion proposal to extend some elements of GI protection now restricted to wines and spirits to other GI products, the multilateral register has polarized opinion among countries. Though the Chairman of the TRIPS negotiating committee has recently issued a draft text, the various positions are still far apart. The entrenched commercial interests on both sides make a compromise difficult. But some register of a limited nature would seem to be a reasonable outcome, with a commitment to review its working and improve it later if necessary.

An issue that has received less attention than it deserves is that of export taxes and restrictions. Countries continue to tax or restrict exports in times of high prices. This weakens the foundations of the trade system (as well as reducing the incentives of producers to meet market needs) and causes importers to be wary about relying on imports. It may be impracticable to introduce stronger rules on export restraints into the Doha agenda at this late stage, although an exemption for food aid purchases from such restrictions should usefully be negotiated at this stage.

Moreover, a willingness of exporters to negotiate or self-impose such restraints in future may be a valuable complement to the Doha Round.⁴¹

Another issue relating to export taxes revolves around the use of such taxes to restrict raw material exports with a view to keeping such prices down for domestic processors. The effect is similar to escalating tariffs on import items, which gives extra protection to processing sectors by lower tariffs on raw materials. The WTO needs to develop clearer rules on exporter behavior and the issue of differential export taxes is one aspect that could be tackled in the future.

Current Status of the Round

The Doha Development Round negotiations have entered their eleventh year. A stark assessment by the WTO Director General Pascal Lamy, issued on April 21, 2011 emphasizes the economic and systemic benefits of concluding the Round, but acknowledges the issues that “still divide negotiators and put the successful conclusion of the Round at serious risk.”⁴² The Agreement on Agriculture (URAA) was indeed a major step towards the reform of the trade system for agricultural products: for the first time agriculture was fully covered by multilateral trade rules. Yet, the agricultural sector remains relatively much more distorted than the industrial sector, and a great deal of further reform is required. While the stakes are high for the entire trade system, they are particularly high for agriculture since the Doha Round is only the second round to tackle agriculture –whereas it is the ninth round for industrial products. Given the sensitivities over agricultural liberalization, a multilateral approach – which offers countries trade-offs outside of agriculture – has always been considered crucial for further reforms in the international food and agricultural trade system. In his April 21 communication, Director General Lamy identifies the gap in the NAMA negotiations as a key obstacle to wrapping up the Doha Round, but it is understood that the stand-off over NAMA (as well as the less than satisfactory progress in the Services negotiations) also implicates the agricultural negotiations, since emerging economies are demanding greater concessions in agriculture from developed economies in exchange for agreeing to more liberalization in NAMA.

The agricultural negotiations have made considerable, if slow, progress since the establishment of an agreed framework for the talks in 2004 and the Chairman’s draft of December 2008 (known as Rev 4) comprises a sound basis for the next step in reforming the agricultural trade system.⁴³ Discussions subsequent to the date of that document have clarified many of the remaining points of contention, and the Chairman has recently summarized the current state of the debate.⁴⁴ There are clear

⁴¹ See Mitra S. and T. Josling. (2009), “Agricultural Export Restrictions: Welfare Implications and Trade Disciplines,” *IPC Position Paper* http://www.agritrade.org/documents/ExportRestrictions_final.pdf

⁴² 21 April 2011, TNC Cover Note by the Chair TNC/C/13

⁴³ WTO 2008. Revised Draft Modalities for Agriculture. TN/AG/W/4/Rev. 4, December.

⁴⁴ WTO 2011. Negotiating Group on Agriculture: Report by the Chairman to the Trade Negotiations Committee. TN/AG/26 April 21.

“landing zones” for agreement on each of these outstanding issues in the Doha agricultural modalities. A satisfactory agreement on agricultural modalities is clearly within reach as part of a larger Doha deal. Concluding the Doha Round will have a stimulating impact on trade in agricultural and food products and contribute to food security. Equally important - it will also pave the way for addressing a newer generation of food and agricultural trade issues. The international community will be better equipped to tackle these pressing issues if it can successfully wrap up the current agricultural negotiations.

Of course it may be the case that the Doha Round is never completed, in which case the exiting arrangements (including the bindings of support and export subsidies) would continue to apply. But the tensions that are still present in agricultural markets could lead to new attempts to improve the operation of the URAA and members may be tempted to explore further the option of challenging current practices (such as the notification of subsidies as “green box” when some productive activity is still required). Such litigation may clarify the meaning of the URAA but at considerable political cost. This could itself drive members back to the bargaining table. Or countries may find that they can achieve their agricultural and food policy objectives through regional and bilateral trade agreements. The next few years will tell in which direction agricultural policy rules will go.

Impact of a Doha Agreement on Domestic Support in the US and the EU

To what extent would a successful conclusion of the Doha Development Agenda (DDA), along the lines of the modalities in the Revised Draft Modalities paper of December 6, 2008, require further changes in the Farm Bill and the Common Agricultural Policy? Will those changes be made easier by corresponding disciplines on the domestic programs of other countries? How much increased market access is likely to be generated as a result of cuts in tariffs that would be required of the EU and the US? Will the termination of the EU’s use of export subsidies to balance its internal market have any significant impact on price levels and on world market conditions? What other issues will the EU insist on as it moves towards a package that is acceptable to Member States?

A recent study (Blandford and Josling, 2011) made projections of the domestic support notifications that might be expected assuming that the modalities in the December 6, 2008 draft are accepted in full and implemented over the period 2011 to 2015 (in effect from the crop year 2011/12 to the crop year 2015/2016 for the major crop support programs, and the calendar years 2011 to 2015 for other subsidies). The assumption is made that there will be no significant domestic policy changes over this period other than those indicated above. Estimated notifications can then be compared to the constraints (both general and product-specific) that would be implied by the DDA. Any instances of conflict between the projected notifications and the constraints would presumably trigger either policy change or modifications in the notifications as allowed by the modalities. Figures 1 and 2 show

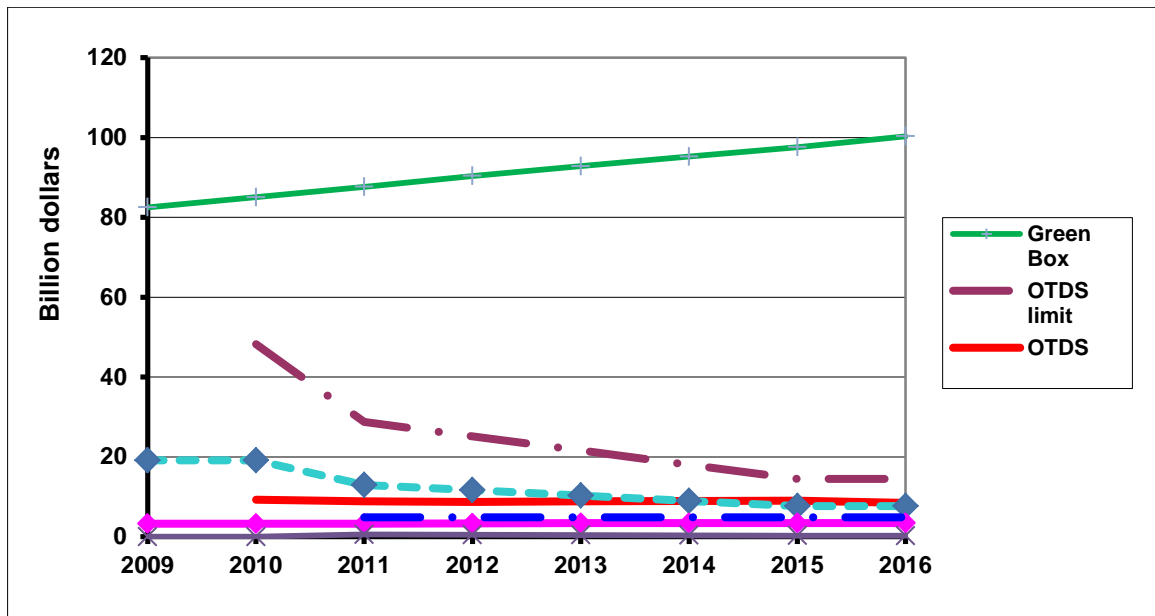
the proposed limits and projected values for the OTDS, the total AMS and the blue box for the US and EU, respectively.

The US is projected to stay comfortably within its total bindings for the duration of the projection period. In addition to the relatively high crop prices projected by USDA an important contributing factor to this result is a change in dairy policy included in the 2008 Farm Act. Prior to that legislation the U.S. dairy support program was defined with respect to a support price for milk. The structure was reflected in US notifications in that the per unit market price support calculation was applied to total milk production. The 2008 Act redefines the support program with respect to support for three dairy products – butter, cheddar cheese and non-fat dry milk.⁴⁵ Those support prices are defined to be consistent with the previous support price for milk (\$9.90 per hundredweight). The effect of this change is to allow the United States to notify market price support for dairy on the basis of the volume of the three dairy products concerned, rather than the total volume of milk production. This has already been reflected in the US notification for 2008. By applying the market price support calculation to the three dairy products, notified support fell to \$2.9 compared to \$5.1 billion in the previous year – a reduction of 41 percent. We build this change in the notification methodology for dairy into our projections. If this change had not been made it is possible that the US would come close to or even exceed its total AMS binding in 2016 rather than being comfortably below it.

The estimated current total AMS for the EU for the year 2015/16 is 18.9 billion euro. As Figure 2 shows, the reduced AMS binding would imply a significant restraint on EU policies in after final year of the transition period if these policies continue on their current course. Thus the new AMS limit (after the 70 percent reduction) would appear to limit further policy changes to those consistent with developments since 2003. The year 2013/14 is the start of a new budgetary cycle in the EU, at which time the funding for the CAP could well be trimmed for fiscal reasons.

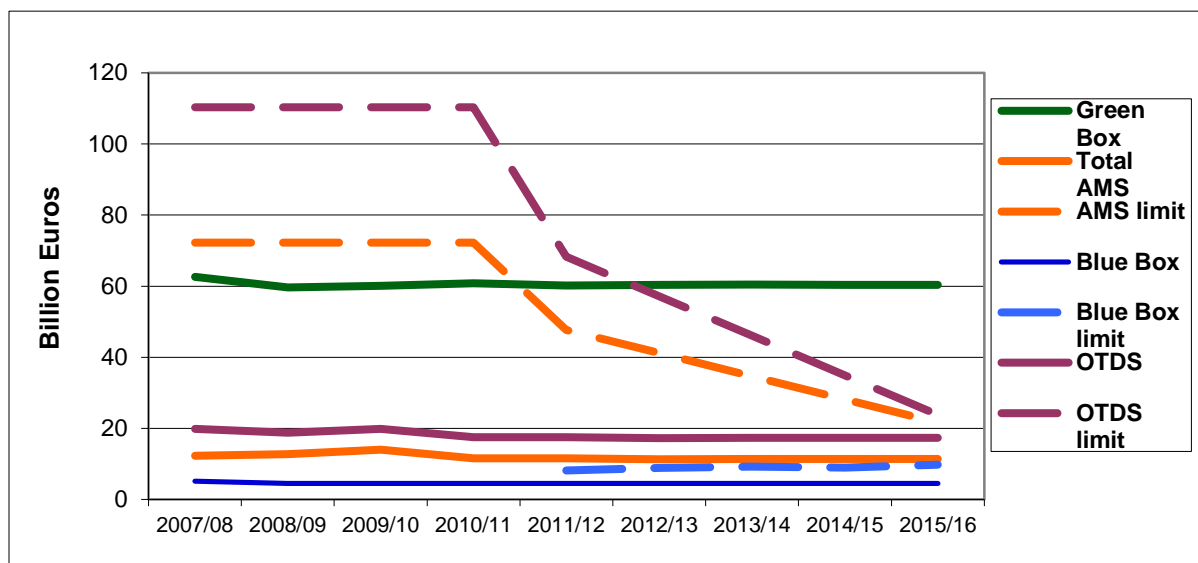
⁴⁵ Economists would argue that a price support program for a subset of dairy products is likely to affect the prices of all dairy products, i.e., that the originally formulation of the notifications is still appropriate in an economic, if not a legal sense.

Figure 1: Projected Notifications of Domestic Support, US, 2009 to 2016 and Proposed Limits to OTDS, AMS and Blue Box (Revised Draft Modalities)



Source: Authors' calculations

Figure 1: Projected Notifications of Domestic Support, EU, 2007/08 to 2015/16 and Proposed Limits to OTDS, AMS and Blue Box (Revised Draft Modalities)



Source: Authors' calculations

Although the overall bindings relative to aggregate support would seem to suggest few problems for the United States, there are issues with some commodities. The projections in Blandford and Josling (2011) suggest that the draft modalities would result in the blue box binding being exceeded for cotton during the early years of the

implementation period of an agreement, the AMS binding is exceeded for sugar throughout the period. As noted above the change in the dairy program is likely to remove a potential problem of exceeding the PS AMS binding for dairy. These results indicate that there are likely to be significant issues to be faced for a limited number of commodities, two of which (cotton and sugar) have proved to be highly politically sensitive in the United States.

The EU has less product-specific problems in meeting AMS and blue box constraints as a result of significant product-by-product reforms over the past fifteen years. Cotton and sugar policies have both been changed significantly in recent years, making the AMS constraint less intrusive. Products such as beef that are subject to cyclical market conditions could be affected by restraints that reduce the ability of the EU to respond to market collapse. So the future development of the CAP is likely to be influenced by the new constraints of the WTO agreement at least in the period after 2013.

Glossary of Terms

Aggregate Measure of Support (AMS).	The AMS aggregates all domestic support payments that are considered to distort trade. Current Total AMS is notified and compared with the allowable AMS (the Final Bound AMS) as in the schedule.
Domestic Support.	Assistance to farmers given by subsidies and support prices other than those administered at the border (tariffs, etc.).
Export Competition.	Conditions of export competition as distorted by export subsidies and other assistance to export sectors, including surplus disposal through food aid, subsidies to state trading enterprises and the granting of export credit at other than commercial rates.
Market Access.	The terms of entry into import markets, particularly tariffs, quotas, licenses, along with safeguard actions.
Amber Box	Elements of domestic support that are deemed trade-distorting and hence included in the Aggregate Measure of Support (AMS).
Blue Box	Elements of domestic support that are linked with supply controls (payments conditional on crop or livestock limitations, as defined in Article 6.5(a) of the Agreement on Agriculture). These payments are deemed to be less trade-distorting than Amber Box policies but more so than Green Box policies.
Green Box	Elements of domestic support that are considered non- or minimally-trade distorting, and satisfy the conditions in Annex 2 of the WTO Agreement on Agriculture. They should not be tied to current price and output levels.
Export Credits	Schemes that guarantee payments to exporters in the event of default by importing firms.
Special Products	Products that are of particular significance in developing countries as a result of being essential for food security and livelihood security.
Sensitive Products	Products that are deemed sensitive by importers and for which they can choose to use alternatives to tariff cuts (i.e. quota increases) to improve market access.
Tariff rate quota (TRQ)	A two-tier tariff whereby a low (or zero) tariff is charged on the first tranche of imports. (Also referred to as a tariff-quota).
Special Safeguards	The Special Safeguard for Agriculture (SSG) allows countries to impose import restrictions if import prices are lower than trigger prices or quantities surge by more than particular

	amounts. It is only available for products that have undergone “tariffication”.
MFN	Most-Favored-Nation principle, whereby each WTO member must grant to all as favorable access as it grants to the “most favored” nation. In other words discrimination among members is not allowed.
Preferences	The granting of access to particular trading partners. This inconsistency with MFN is allowed under certain conditions, such as Customs Unions and Free Trade Areas, and in favor of developing countries.
Geographical Indications	Terms relating to the geographical region or place where goods are produced that are protected by countries as the intellectual property of producers in that region.
State Trading Enterprises	Parastatal and state owned firms or agencies that import or export products, usually with exclusive responsibilities for such trade.
Multifunctionality	A term relating to the varied functions of agriculture including the stewardship of the countryside and the employment of rural people in addition to the production of farm goods.
Non-trade Concerns	Concerns that enter into the decision on trade liberalization not strictly related to commercial benefits
Tariff reduction formula	Methods of reducing tariffs in negotiations. Main types include “across-the-board” cuts of a particular percentage and “harmonizing” formulae that cut higher tariffs by a greater percentage. Tiered and banded approaches use different percentage cuts within defined bands.
Peace Clause	This refers to Article 13 of the Agreement on Agriculture that sheltered green box policies for a period of nine years from actionability under the Subsidies and Countervailing Measures Agreement (SCM) and amber and blue box policies from actionability if payments did not increase relative to the 1992 levels. Export subsidies were also non-actionable for the period of the Peace Clause.
Tariffication	The conversion of non-tariff import barriers into tariffs, using the tariff-equivalent (the tariff that would have the same impact on imports).
<i>Ad Valorem</i> Equivalents	The equivalent in percentage terms of a tariff expressed in “per ton” or other specific or conditional form.
<i>De Minimis</i> provisions	Nominal amounts of domestic support that are not included in the Current Total AMS when comparing with scheduled levels. Product-specific and non-product-specific <i>de minimis</i> levels

	were set at 5 percent for developed countries and 10 percent for developing countries.
Tariff Escalation	Tariffs that increase with the degree of processing. Lower-priced raw materials give additional protection to the processors and increase their “value added.”
Bound Tariffs	Tariffs that are bound cannot be increased without negotiations with principle suppliers usually leading to compensation through reductions in other tariffs.
Applied Tariffs	Tariffs actually applied can be well below the “bound” tariffs notified to the WTO.
Ceiling Bindings	Binding many tariffs at a nominal (usually high) level was allowed to developing countries as an alternative to line-by-line calculation of tariff equivalents (tariffication).

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