

NOTES

A BARREN HARVEST FOR THE DEVELOPING WORLD? PRESIDENTIAL “TRADE PROMOTION AUTHORITY” AND THE UNFULFILLED PROMISE OF AGRICULTURE NEGOTIATIONS IN THE DOHA ROUND

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I. INTRODUCTION

The "Trade Promotion Authority" (TPA)¹ that Congress granted the president in the Trade Act of 2002² could allow him to leave a mark on international affairs that, in the long term, might rival the significance of the "war on terrorism."³ The successful conclusion of the Doha Round of comprehensive multilateral trade negotiations—began in November 2001 in Doha, Qatar with the primary goal of further integrating developing countries into the global economy⁴—would have far-reaching implications not only for developing countries, but also for how the people of those countries view the industrialized world in general, and the United States in particular. This Note will demonstrate that the success of the Doha Round will turn on the president's use of this TPA and on his success in following the export-oriented guidance given by Congress when it granted him this authority.

Further, this Note will argue that the language pertaining to agriculture in the Trade Act of 2002 is the fulcrum of the Doha Round. The success or failure of the Doha Round depends on the success or failure of the agriculture negotiations, which are "the centrepiece"⁵ of the Round. The agriculture negotiations themselves pit the United States against the European Union and Japan in a geopolitical struggle to gain the support of developing countries.⁶ Because its export-oriented agriculture interests coincide with those of developing countries, the United States has, or at least once had, the upper hand in this courtship ritual.

The U.S. advantage in this struggle is captured explicitly in the language of the Trade Act of 2002, by which Congress delegated to the president the

¹ Trade Promotion Authority is the new name the Bush Administration has given the constitutional device formerly known as "fast-track authority." TPA allows the president to complete international trade agreements and submit them to Congress for a yes-or-no vote without any amendments. See *infra* notes 8 and 52 and accompanying text.

² Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933.

³ See, e.g., Tom Friedman, *Connect the Dots*, N.Y. TIMES, Sept. 25, 2003, at A26 (calling the September 2003 collapse of the Doha Round negotiations in Cancun a "disaster" for U.S. global leadership, including U.S. efforts to combat terrorism).

⁴ Ministerial Declaration of the Doha WTO Ministerial 2001, adopted November 14, 2001, available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm [hereinafter Doha Declaration]. The Doha Round is the first attempt at comprehensive global international trade negotiations since the World Trade Organization (WTO) was established in 1994.

⁵ See *Europe's Meagre Harvest*, ECONOMIST, Jan. 25, 2003, at 70.

⁶ See *infra* Part V.

authority to negotiate trade agreements.⁷ Trade Promotion Authority is an innovative constitutional device that allows the president to present to Congress a completed trade agreement for a yes-or-no vote, without the possibility of amendment.⁸ TPA is indispensable for the completion of complex multilateral trade talks such as those in the Doha Round.⁹ Further, this partial delegation of Congress' power to "regulate Commerce with foreign nations"¹⁰ comes with direct and explicit instructions.

In the case of agriculture, these instructions are simple: Congress commands the president to seek export opportunities for U.S. farmers.¹¹ This Note will argue that this language is the key to the entire Doha Round; the success or failure of the Round will hinge on whether the United States and its trading partners in Europe, Japan, and the developing world can come to an agreement that accommodates this congressional demand for international agriculture markets favorable to U.S. exports.

Part II of this Note will provide a detailed contextual overview of the agricultural negotiations in the Doha Round, from the November 2001 launch in Doha through the September 2003 collapse in Cancun. The Note will then present the above argument in an analysis that will consist of three sections. Each section will analyze a different legal and political aspect of the agriculture negotiations of the Doha Round, from constitutional to domestic to international.

Part III will examine the history of presidential Trade Promotion Authority.¹² It will explore the conditions that led to its successive renewal through two decades and five presidential administrations. Then it will look at fast-track's most prominent hour during the approval of: (1) the Uruguay Round of global trade negotiations, which created the World Trade Organization (WTO),¹³ and (2) the North American Free Trade Agreement (NAFTA), which created a free trade area among the United States, Canada, and Mexico.¹⁴ Next, this section will review the 1994 expiration of TPA

⁷ Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, Division B (Bipartisan Trade Promotion Authority).

⁸ See generally Michael A. Carrier, *All Aboard the Congressional Fast-Track: From Free Trade to Beyond*, 29 GEO. WASH. J. INT'L L. & ECON. 687 (1996).

⁹ See *infra* Part III.

¹⁰ U.S. CONST. art. I, § 8.

¹¹ Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933.

¹² TPA was formerly known as "fast-track authority." See *supra* note 1.

¹³ See *World Trade Organization*, at <http://www.wto.org>.

¹⁴ See *The NAFTA Secretariat*, at <http://www.nafta-sec-alena.org>.

immediately following those landmark accords and the Clinton Administration's subsequent failure to renew the authority. Finally, it will examine the Bush Administration's eighteen-month fight for TPA and identify the key conditions and concessions it had to make to narrowly gain passage. Part III will conclude that had President Bush vetoed the vast subsidies of the Farm Security and Rural Investment Act of 2002 (the Farm Bill),¹⁵ Congress would not have granted him TPA.

Part IV will examine the United States' agriculture proposal through the lenses of the Farm Bill and the language of TPA. With the politics of the Farm Bill and the Trade Act of 2002 in mind, this section will evaluate the Farm Bill's compatibility with the U.S. agriculture proposal. In looking at the synergy between the Farm Bill, the TPA language, and the U.S. agriculture proposal, Part IV will conclude that the much-reviled Farm Bill can peacefully coexist with the highly-praised U.S. agriculture proposal.

Part V will take a holistic view of the U.S. position on agriculture in the Doha Round. First, it will demonstrate that of all the crucial issues of the Round, agriculture is the *sine qua non* of the Doha Development Agenda. Second, it will compare the initial U.S. agriculture proposal to those of Japan and the European Union (EU), and it will detail the agreement between the U.S. and the EU that led to the collapse of Doha Round negotiations at the September 2003 Cancun ministerial meeting. Third, it will conclude that this agreement failed to find sufficient consensus among other WTO members, particularly the developing countries, because it strayed too far from the export-oriented congressional guidance of the TPA legislation.

Finally, the Note's conclusion will synthesize the analysis into a simple thesis: The language in the Trade Act of 2002 regarding TPA guidance on agriculture negotiations is the key to the Doha Round, because its demand that the president open agricultural export opportunities is in line with the interests of a tremendous majority of WTO member countries. All of the issues discussed in the three sections of the legal analysis collapse into one: the importance of TPA language of the Trade Act of 2002. Therefore, if the major players can reach a consensus on agriculture trade that comports with that language, the Doha Round will be well on its way to success. If not, as now seems possible given the September 2003 collapse of negotiations in Cancun, the Round will fail.

¹⁵ Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, 116 Stat. 134 [hereinafter Farm Bill].

II. CONTEXT: PROMISE, CRITICISM, PRAISE, AND COLLAPSE

The members of the World Trade Organization (WTO) launched the Doha Round in November 2001 amidst grave global concern over the potentially devastating effects the September 11 (9/11) attacks would have on international trade and the world economy. Only two months after the attacks, the prospects for trade liberalization at Doha were "a lone bright spot in a dark world."¹⁶ This bright spot was a pleasant surprise. The previous biannual meeting of WTO trade ministers, at Seattle in 1999, had also held the promise of beginning a new round of multilateral negotiations, but it had deteriorated before it could even begin.¹⁷ The United States, the European Union, and the collective group of developing country members could not agree on an agenda for a new round, and this negotiating impasse quickly became an embarrassing debacle when the meeting was marred by violent protests from the anti-globalization community.¹⁸ The contrast with the failure in Seattle in 1999 accentuated the air of optimism coming out of Doha in 2001.

It also heightened the Bush Administration's sense of accomplishment: "Doha wouldn't have happened if it weren't for the United States," crowed U.S. Trade Representative Robert Zoellick.¹⁹ The United States played an important role in ensuring that the outlook of the Doha Round, captured in the Doha Declaration, was particularly ambitious on the issue of agriculture: "[W]e commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support."²⁰ Further, the interests of the developing countries were made a central part of the Declaration:

We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and

¹⁶ *Trade Disputes: Dangerous Activities*, *ECONOMIST*, May 9, 2002, at 63.

¹⁷ *See Clueless in Seattle*, *ECONOMIST*, Dec. 4, 1999, at 17.

¹⁸ *Id.*

¹⁹ Daniel Altman, *Global Trade Looking Glass: Can the U.S. Have it Both Ways*, *N.Y. TIMES*, Nov. 9, 2002, at C1. *THE ECONOMIST*, writing nearly a year later in its August 1, 2003 issue, still agrees that "the Doha Round will not succeed without American leadership."

²⁰ Doha Declaration, *supra* note 4, art. 13.

commitments . . . [so as to] enable developing countries to effectively take account of their development needs.²¹

Zoellick argued that the United States had reassumed the mantle of leadership in the international trade arena: "The debate is now over how (not whether) the United States is advancing free trade."²²

Agriculture is the central issue of the Doha Round,²³ and the Bush Administration initially felt it had the upper hand in the agriculture negotiations. However, since this initial promise in the wake of the launch of the Doha Round, the United States has had a hot-cold relationship with the developing world. First, in May 2002, Congress passed, and President Bush signed, the Farm Bill,²⁴ which sent shockwaves throughout the global agriculture community.²⁵ The legislation increased domestic subsidies for U.S. agriculture by an estimated eighty percent.²⁶ The Farm Bill dealt a devastating, if self-inflicted, blow to America's claim to being the champion of agricultural trade liberalization. "Seemingly overnight," wrote *The New York Times*, the Farm Bill transformed U.S. farmers "from benevolent producers of the world's greatest bounty to . . . greedy welfare kings undermining poor farmers in Africa, Latin America and Asia."²⁷

Developing countries saw these new subsidies as "a declaration of war" and as a betrayal of past promises from the United States to help developing countries make the transition from protected economies to free trade.²⁸ There were charges of hypocrisy; after pushing developing countries for years to seek the benefits of trade liberalization, the U.S. had undermined these poor countries' efforts by passing subsidies that would depress the commodity prices on which these countries rely to realize the gains of trade. "This is the way of rich countries," says Prakarn Virakul, the agricultural attaché of the

²¹ *Id.*

²² U.S. Trade Representative Robert Zoellick (by invitation), *Unleashing the Trade Winds*, *ECONOMIST*, Dec. 7, 2002, at 27.

²³ *Europe's Meagre Harvest*, *supra* note 5, at 70 (calling agriculture the "centrepiece" of the Doha Round).

²⁴ Farm Bill, *supra* note 15.

²⁵ Elizabeth Becker, *A New Villain in Free Trade: The Farmer on the Dole*, *N.Y. TIMES*, Aug. 25, 2002, at Section 4-10.

²⁶ See *US Farm Bill 2002: Its Implications for World Agricultural Markets*, *KISANWATCH*, at http://www.kisanwatch.org/eng/analysis/may2002/an_US_FARM_BILL_2002_1.htm (last visited Feb. 17, 2004).

²⁷ Becker, *supra* note 25.

²⁸ *Id.*

Thai Embassy in Washington, D.C. "They tell us to open our markets; we do, but they don't stop giving their farmers subsidies."²⁹

However, in July 2002, only two months after President Bush signed the Farm Bill, the United States put forward an ambitious WTO agriculture proposal that U.S. officials trumpeted as a brave first step toward meaningful liberalization of global trade in agricultural products.³⁰ This proposal received widespread praise from developing countries and countries that had been critical of the Farm Bill. "The Government of Sri Lanka welcomes the comprehensive U.S. proposal to reform global agriculture," Minister of Economic Reform Milinda Moragoda said, adding that "agriculture is critically important to the prosperity of developing countries and [to] the success of WTO negotiations on the Doha Development Agenda. [Therefore] our government looks forward to working with the United States in the WTO negotiations to achieve the declared objectives."³¹

Other agriculture-exporting countries such as New Zealand and Australia said the "bold [U.S. proposal is] to be applauded,"³² adding that it "clearly demonstrates [the United States'] commitment to engage seriously"³³ in Doha Round agriculture negotiations. The stance of these countries, which are members of the "Cairns Group" of agriculture-exporting nations,³⁴ is of great significance because their support for the U.S. proposal rounds out a tremendous coalition of WTO-member nations that (like the United States) wishes to use the Doha Round to effect substantial liberalization of global agriculture markets.³⁵

This initial U.S. proposal called for drastic reductions in agricultural tariffs worldwide, the wholesale elimination of export subsidies, and huge reductions

²⁹ *Id.*

³⁰ See *U.S. Proposal for Global Agricultural Trade Reform*, U.S. DEPARTMENT OF AGRICULTURE FOREIGN AGRICULTURAL SERVICE, at <http://www.fas.usda.gov/itp/wto/proposal.htm> (last visited Jan. 16, 2004) [hereinafter *U.S. Proposal*].

³¹ *What They're Saying about the U.S. Agriculture Proposal*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, at <http://www.ustr.gov/new/agr-sayings.html> (quoting Moragoda on July 25, 2002).

³² *Id.* (quoting New Zealand Minister of Agriculture Jim Sutton on July 26, 2002).

³³ *Id.* (quoting Australian Trade Minister Mark Vaile on July 26, 2002).

³⁴ The Cairns Group, founded in 1986, is a partnership of seventeen agricultural exporting countries. Its membership consists of wealthy countries such as Australia, New Zealand and Canada, as well as developing countries from Asia (e.g., Indonesia, Malaysia, the Philippines), South America (e.g., Brazil and Uruguay), Central America (e.g., Costa Rica and Guatemala) and Africa (e.g., South Africa). See *The Cairns Group* at <http://www.cairnsgroup.org>.

³⁵ See *infra* Part V.

in trade-distorting domestic subsidies to farmers.³⁶ If enacted as proposed, the provisions of the U.S. proposal would indeed have brought about significant liberalization of world agriculture markets. In particular, the proposals to eliminate export subsidies and to slash domestic support would address many of the complaints from the developing world about the heavy support wealthy countries lavish on their agriculture industries.³⁷

However, critics in the EU and Japan, which protect their farmers with high tariffs and heavy domestic and export subsidies, argue that because of the social importance of viable rural farming communities, and the land use and environmental issues that are inherent in farm policy, agriculture should be treated with caution in global trade negotiations.³⁸ Accordingly, they complained that the U.S. proposal focused too much on cutting tariffs and subsidies and not enough on preserving the environment and traditional rural farming lifestyles.³⁹ Moreover, they noted pointedly that the U.S. proposal put most of the pain of agricultural liberalization on its trading partners (read: the EU and Japan).⁴⁰ Because of this perceived imbalance, says EU Farm Commissioner Franz Fischler, the U.S. proposal was "not a very good basis to find a compromise in the negotiations."⁴¹ The proposal was unrealistic, the argument goes, because it demanded so much of some countries and so little of the United States.

After a year of international political posturing that followed the initial U.S. agriculture proposal in July 2002, the United States and the EU finally found common ground in a joint agriculture proposal in August 2003 that the two trade powers hoped would pave the way for a successful conclusion of the Doha Round.⁴² To the contrary, though, because the agreement scaled back the

³⁶ *U.S. Proposal*, *supra* note 30. See also *infra* Part IV.

³⁷ Generally speaking, developing countries are not fiscally capable of supporting their agricultural sectors with either export subsidies or domestic subsidies. See generally Peter Lichtenbaum, "Special Treatment" vs. "Equal Participation": Striking a Balance in the Doha Negotiations, 17 AM. U. INT'L L. REV. 1003 (2002).

³⁸ *WTO Chair Cites Good Progress in Farm Trade Talks*, BUREAU NAT'L AFF. TRADE DAILY, Nov. 12, 2002.

³⁹ *Id.*

⁴⁰ *Id.* See also *infra* Part V.

⁴¹ *U.S. Agriculture Proposal Receives Mixed Reviews*, BRIDGES WKLY. TRADE NEWS DIG., Aug. 6, 2002, at <http://www.ictsd.org/weekly/02-08-06/story5.htm>.

⁴² Paul Meller, *Deal Reached on Subsidies for Farmers*, N.Y. TIMES, Aug. 14, 2003, at A1 (quoting trade lawyer Richard Weiner as saying, "Developing countries may criticize it, but the two sides have now created the conditions needed for success in Cancun").

ambition of the initial U.S. proposal significantly,⁴³ it lost the support of the developing world. The result of this agreement between the U.S. and the EU was the collapse of the Doha Round negotiations at the September 2003 Ministerial Meeting in Cancun.⁴⁴ A coalition of over twenty developing countries walked out of the talks, largely in protest of the perceived stubbornness of the U.S. and the EU with regard to agriculture.⁴⁵

This Note argues that this collapse at Cancun was caused by the failure of the United States to find an agreement that accommodates the TPA language of the Trade Act of 2002. The following sections will demonstrate that for the Bush Administration, the aim of both the Farm Bill and the initial agriculture proposal was to toe the political line of the powerful domestic agriculture interests. This political requirement is enshrined legally in the congressional TPA guidance. The initial proposal aimed to secure for U.S. farmers gains in export markets that would offset any losses they might suffer from potential cuts in subsidies that could come during Doha Round negotiations. In the words of one industry source, "They're going to have to convince [us] that [we're] going to get a better return from the market than from the government."⁴⁶

Further, the initial proposal would have allowed farmers to reap a substantial harvest from the government as well as from the market, because it would have left most of the subsidy programs of the Farm Bill in place. Still, it was possible that this glaring duplicity would not damage the prospects of the U.S. agriculture proposal, because it enjoyed the support of most of the membership of the WTO, except for the EU and Japan. The developing world and the Cairns Group supported the initial U.S. proposal, which arose from the guidance of TPA, even more strongly than they denounced the Farm Bill.

However, the collapse of negotiations in Cancun in September 2003 demonstrates that finding an agreement that accommodates the export-friendly TPA language of the Trade Act of 2002 will be exceedingly difficult. The initial U.S. proposal did accommodate this legal requirement, and even in light of the hated Farm Bill, developing countries and the agriculture-exporting countries of the Cairns Group still stood to gain more from the U.S. agriculture proposal than from the proposals of the EU and Japan. However, upon scaling

⁴³ *U.S., EU Offer Ag Negotiating Framework*, WASH. TRADE DAILY, Aug. 14, 2003, at 1.

⁴⁴ Elizabeth Becker, *Delegates from Poorer Nations Walk Out of World Trade Talks*, N.Y. TIMES, Sept. 15, 2003, at A1.

⁴⁵ *Id.*

⁴⁶ *U.S. Proposes to Cut Domestic Spending by \$10 Billion, Reduce Ag Tariffs*, INSIDE U.S. TRADE, July 26, 2002, at 1.

back this proposal in its August 2003 compromise agreement with the EU, the United States lost the support of the developing world, and the Doha Round negotiations collapsed. It will take a reassertion of the export-oriented principles of TPA for the Round to get back on track.

III. THE POLITICS AND PROMISE OF TPA

Constitutional scholar Harold Koh has noted that “[o]ne cannot read the Constitution without being struck by its astonishing brevity regarding the allocation of foreign affairs authority among the branches.”⁴⁷ Because of this “astonishing brevity,” it has been said that the Constitution “is an invitation to struggle for the privilege of directing American foreign policy.”⁴⁸ However, while vagueness and ambiguity may indeed characterize much of the Constitution’s guidance on foreign affairs, the document could not possibly be more clear and direct with regard to international trade: “The Congress shall have Power . . . to regulate Commerce with foreign Nations.”⁴⁹ According to the U.S. Supreme Court, the “complete power of Congress over foreign commerce” is “exclusive and absolute.”⁵⁰ The Court continues, “the power to regulate commerce with foreign nations is expressly conferred upon Congress, and, being an enumerated power, is complete in itself.”⁵¹

Trade Promotion Authority, however, delegates that “exclusive and absolute” power. It transfers most of the trade-negotiating initiative from the Congress to the president, giving the president the authority to negotiate and conclude trade agreements that will be presented to Congress for a yes-or-no vote with no amendments.⁵² This authority is indispensable in the multilateral negotiations of the WTO; it is virtually inconceivable that Congress, a body with 535 members, could successfully negotiate a comprehensive trade agreement within the framework of the WTO, an organization with 146 member nations.⁵³ The widely diverse interests that motivate the members of

⁴⁷ HAROLD HONGJU KOH, *THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN-CONTRA AFFAIR* 67 (1990).

⁴⁸ EDWARD S. CORWIN, *THE PRESIDENT: OFFICE AND POWERS 1787-1984* 201 (Randall Bland et al. eds., 5th ed. 1984).

⁴⁹ U.S. CONST. art. I, § 8.

⁵⁰ *Buttfield v. Stranahan*, 192 U.S. 470, 493 (1904).

⁵¹ *Id.* at 492.

⁵² See generally Carrier, *supra* note 8.

⁵³ See *Members and Observers*, WORLD TRADE ORGANIZATION, at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Mar. 4, 2004).

Congress, and those that motivate the 145 other WTO member countries, would inevitably erode any possible accord. Similarly, without TPA, any agreement that the president might negotiate with other trading partners could easily be torn apart bit-by-bit by myriad amendments proposed by individual members of Congress. Accordingly, U.S. leadership—or even participation—in the Doha Round is not practically possible without presidential TPA.

Unfortunately for proponents of free trade, this presidential authority invariably comes at a protectionist cost. Economist Fred Bergsten argues that President Bush's signature on the protectionist Farm Bill in May 2002 was only the most recent example of a long-standing presidential strategy to obtain this authority: "Every president who has wanted to obtain the domestic authority to conduct new international liberalizing negotiations has had to make concessions to the chief protectionist interests of the day. The entire history of U.S. post-war trade policy can be characterized as 'one step backward, two steps forward.'" ⁵⁴ According to Bergsten, this political game is an inescapable part of a strategy in which the president trades small protectionist measures for the TPA that will allow him to substantially liberalize trade. ⁵⁵

Despite initial complaints from advocates of free trade, this approach has succeeded in each of the three major episodes of post-war U.S. trade policymaking. It gave rise to the Kennedy Round under Presidents Kennedy and Johnson and the subsequent Tokyo Round under Presidents Nixon, Ford, and Carter. Most recently, both the Uruguay Round and NAFTA were carried out under Presidents Reagan, George H.W. Bush, and Clinton. ⁵⁶

⁵⁴ C. Fred Bergsten, *A Renaissance for U.S. Trade Policy?*, FOREIGN AFF., Nov./Dec. 2002, at 92-93.

⁵⁵ *Id.* at 94. Bergsten explains that in this two-part strategy, the President successfully seeks international agreement to launch new negotiations. But he is blocked from obtaining the necessary domestic authority by the protectionist interests of the day. He thus has no choice but to placate those interests sufficiently to neutralize their opposition to his proposed negotiations. With those interests assuaged, Congress provides the needed authority. The president then completes the international negotiations. He essentially trades protection that is modest and temporary . . . for liberalization and international rule-making that is sizable and permanent.

Id.

⁵⁶ *Id.* at 90. In the wake of World War II, when the foundations of today's international economic system were being built, President Harry Truman side-stepped a protectionist Congress to sign the General Agreement on Tariffs and Trade (GATT), the predecessor of the WTO, as an "executive agreement." The GATT never received congressional approval; indeed, despite the explicit language of the Constitution granting Congress the power to "regulate Commerce

President Kennedy sought congressional approval of the Trade Expansion Act, which would allow him to launch the Kennedy Round of multilateral trade negotiations, the "centerpiece of both his overall foreign policy . . . and his economic policy."⁵⁷ Fearing that the legislation would be blocked by the textile lobby, Kennedy "directed his administration to negotiate the first comprehensive U.S. import quotas on cotton textiles, paving the way for more than 40 years of extensive protection for that sector."⁵⁸ With this move, Kennedy gained the support of the textile industry for the proposed legislation.⁵⁹

President Nixon followed a similar strategy a decade later. "To combat the first widespread surge of postwar protectionism and pave the way for Congress to approve the launch of the Tokyo Round in 1974, . . . Nixon had to go even further than Kennedy did."⁶⁰ He expanded the protection of the cotton industry to other areas of the textile and apparel industry.⁶¹ Later, President Carter would have to protect the shoe, steel, and television industries in order to maintain domestic support for the negotiations, and, eventually, to gain congressional approval of the Tokyo Round.⁶²

As the seminal Uruguay Round got underway in 1986, President Reagan continued the trend. Because of huge trade deficits due to the over-valuation of the dollar during his administration, Reagan (in the words of Treasury Secretary James Baker) "granted more import relief to U.S. industry than any of his predecessors in more than half a century."⁶³ The Reagan Administration tightened existing quotas on textiles and apparel even further, muscled its trading partners into "voluntary export restraint" agreements on such items as automobiles and steel, and "accepted the infamous 'Super 301' authority that permitted retaliation against 'priority foreign countries' of whose trade policies the United States disapproved."⁶⁴ These concessions to protectionist interests

with foreign nations," Congress was never consulted on the agreement that founded the modern international trade system. John K. Setear, *The President's Rational Choice of a Treaty's Preratification Pathway: Article II, Congressional-Executive Agreement, or Executive Agreement?*, 31 J. LEGAL STUD. 5, 7 (2002).

⁵⁷ Bergsten, *supra* note 54, at 93.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 94.

yielded congressional renewal of fast-track authority in 1988, which was indispensable for the completion of the Uruguay Round, already underway.⁶⁵

Armed with fast-track authority, the Clinton Administration “enjoyed a spectacular start on trade”:⁶⁶

It completed the Uruguay Round in 1993 . . . and won congressional approval for both [that] round and [NAFTA]. It launched the Free Trade Area of the Americas (FTAA) and the Asia-Pacific Economic Cooperation initiative (APEC) aiming to achieve “free and open trade and investment” in that huge and dynamic region by 2010 or 2020.⁶⁷

The Uruguay Round, which transformed the GATT into the WTO, was completed and approved by Congress within a year of NAFTA. Together, these two trade agreements brought revolutionary changes to U.S. and global trade. Bergsten writes that President Clinton’s first two years in office “represented the zenith of post-war U.S. trade policy.”⁶⁸

After these two landmark agreements, however, “the situation deteriorated rapidly”⁶⁹ with the expiration of fast-track authority in June 1994. As Clinton failed year after year to regain fast-track authority throughout the 1990’s, little progress was made with the FTAA or APEC, and the attempt to launch a new round of multilateral WTO trade negotiations in Seattle in 1999 was a spectacular failure.⁷⁰ Also, efforts to come to bilateral free-trade agreements with Jordan, Singapore, and Chile were left incomplete.⁷¹

President George W. Bush faced a “Herculean task” in “regenerating U.S. trade policy.”⁷² The Doha Round and other trade negotiations high among the Bush Administration’s list of priorities, such as the proposed FTAA, assumed even more importance after the attacks of 9/11. The attacks underscored the urgency of positive engagement with the international community and with the

⁶⁵ *Id.*

⁶⁶ *Id.* at 88.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* See also *Clueless in Seattle*, *supra* note 17.

⁷¹ Bergsten, *supra* note 54, at 88. Bergsten asserts that even the free-trade successes of the late Clinton years—permanent normal trade relations with China and significant trade liberalization with Africa and the Caribbean—were “replete with limitations.” *Id.*

⁷² *Id.* at 89.

developing world in particular. Two months after the attacks, Bush's Trade Representative, Robert Zoellick, went to Doha intent on launching a bold new round of multilateral trade negotiations, and although the Bush Administration went to Doha without TPA, the launch was a success. The trade officials of the member countries of the WTO left Doha having agreed on an ambitious agenda for the round of negotiations and agreed to a target date of January 1, 2005, for completion of the Round.⁷³

As described in Part II, most of the goodwill the Bush Administration had gained in the international trade community from its key leadership role in launching the Doha Development Round in November 2001 had thoroughly dissipated by the spring of 2002. First, the United States became embroiled in an ugly dispute with Canada over lumber imports.⁷⁴ Then Bush gave in to pressure from steel-producing states such as Ohio, Pennsylvania, and West Virginia, to impose thirty percent tariffs on imported steel.⁷⁵ Then came the Farm Bill.

As explained above, the near-doubling of agriculture subsidies in the Farm Bill shook the international trade community, particularly developing countries, and called into question the United States' commitment to liberalization of world agriculture markets. "The United States was very supportive of some of the positions that those of us from the developing countries took at Doha. What happened at Doha gave us hope that we could work together," said Dr. Kofi Apraku, Ghana's Minister of Trade and Industry.⁷⁶ The Farm Bill, though, caused Dr. Apraku's mood to change: "There has been a lot of concern and a lot of worry in our country about the United States' commitment to carry forward the momentum that was created in Doha."⁷⁷

Zoellick was dismissive of these complaints, saying that "many countries had to stretch politically [at Doha] and then had to deal with sensitivities back home."⁷⁸ In this view, the Farm Bill simply represents part of the political

⁷³ See Doha Declaration, *supra* note 4. Multilateral negotiations such as the Doha Round invariably take years to complete. For instance, the Uruguay Round, which created the WTO, was begun at Punta Del Este, Uruguay in 1986 and was completed in 1994. See *What is the WTO?*, at http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (last visited Mar. 4, 2004).

⁷⁴ Bergsten, *supra* note 54, at 86.

⁷⁵ *Id.*

⁷⁶ Altman, *supra* note 19.

⁷⁷ *Id.*

⁷⁸ *Id.*

maneuvering that takes place in the negotiation of agreements. “A pause for repositioning,” Zoellick said, “is understandable.”⁷⁹ For the Bush Administration, this “pause for repositioning” was not only understandable, but also absolutely necessary—indeed, powerful political forces demanded this “repositioning” for TPA to have any chance of passing.

Thus, the true impetus behind “America’s farm idiocy,” opined *The Economist* at the time Bush signed the Farm Bill, “is electoral.”⁸⁰ The Senators and Representatives from large farming states in the Midwest initiated this legislation,⁸¹ and while Bush did not originally support it, he apparently felt that vetoing the bill would be too politically risky. The power of the farm lobbies in states such as Iowa, South Dakota, and Missouri were too politically frightening for Bush to veto the bill.⁸²

However, this Note contends that Bush’s refusal to veto the bill was at least in part a calculated political strategy centered around regaining TPA. In addition to pandering for new Senate and House seats for Republicans in the upcoming November elections (or even for electoral votes in the presidential election of 2004), Bush gave in to the farm lobby’s protectionist demands specifically because of his desire to liberalize global trade, including agriculture trade. TPA provides the explanation for this paradox of trade liberalization through protectionism, writes *The Economist*: “Many Washington free-traders argue that all such protectionist measures have been a price worth paying for the greater good of winning TPA. In politics, they argue, you often have to take one step back to move two paces forward.”⁸³

This is precisely Bergsten’s thesis,⁸⁴ and the fast-moving developments in trade diplomacy since Bush gained TPA illustrate the point well. As Zoellick explains, TPA unlocked the door to dynamic “competitive liberalization”:⁸⁵

In the 100 days since Congress granted the president fast-track authority, the United States has completed the substance of [a Free Trade Agreement (FTA)] with Singapore and started talks for FTA’s with the five nations of the Central American Economic Community, the five countries of the Southern African

⁷⁹ *Id.*

⁸⁰ *Trade Disputes, supra* note 16.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Bergsten, *supra* note 54.

⁸⁵ Zoellick, *supra* note 22.

Customs Union, Morocco, and Australia. We have almost completed an FTA with Chile . . . [and have] helped push forward the negotiations . . . for a Free-Trade Area of the Americas.⁸⁶

TPA was the crucial condition for that significant trade negotiating activity. "The alternative," writes Zoellick, "would have been a prolonged U.S. absence from serious international trade negotiations."⁸⁷

These strides forward toward liberalized trade, however, came at the cost of what many consider several significant steps backward to protectionism: the steel and lumber tariffs, and, of course, the Farm Bill. In Bergsten's opinion,

none of these [protectionist] steps is defensible on its merits. All of them, in fact, represent extremely bad policies. Most of them were directly related to electoral politics. But they were also essential components of restoring an effective U.S. trade policy. The entire strategy could not have even begun without congressional passage of TPA Unsavory political bargains simply had to be struck to get the basic approach off the ground.⁸⁸

Bergsten notes that Bush regained TPA by only "paper-thin majorities."⁸⁹

Indeed, this Note contends that had Bush vetoed the Farm Bill, his effort to gain TPA would have failed. While the bill passed by the comfortable 64-34 margin in the relatively trade-friendly Senate, it barely passed in the House by the slim margin of 215-212.⁹⁰ Absent the Administration's action to protect the steel industry, and absent its acquiescence to the enormous increases in agriculture subsidies contained in the Farm Bill, TPA likely would not have had this three-vote victory in the House. Had only two Representatives voted against the Trade Act of 2002, the bill would have failed by a vote of 213-214. Of the 215 Representatives who voted for TPA, 127 had earlier voted for the

⁸⁶ *Id.*

⁸⁷ Bergsten, *supra* note 54, at 98.

⁸⁸ *Id.* at 92.

⁸⁹ *Id.* at 89.

⁹⁰ *Votes on Fast Track Trade Promotion Authority, 1974-2002*, BROOKINGS INSTITUTE, at http://www.brook.edu/dybdocroot/comm/policybriefs/pb91_Fasttrack.htm (last visited Jan. 16, 2004). According to *FIN. TIMES*, Aug. 1, 2002, at 14, Bush himself made a rare trip to Capitol Hill to lobby for the bill and "stayed up six hours after his normal ten p.m. bedtime" to lobby wavering Representatives.

Farm Bill as well.⁹¹ If Bush had vetoed the Farm Bill in May 2002, it is nearly certain that the powerful farm lobby could have pried away at least two votes from among the 127 Representatives who voted for both the Farm Bill in May and also for TPA in July. To put it simply, Congress would not have granted Bush TPA if he had vetoed the Farm Bill.

If this theory is correct—that the Bush Administration’s protectionist stance on agriculture helped it gain TPA—then the crucial question is whether a protectionism-tainted TPA will be useful for anything in the Doha Round, given the importance of developing countries to the success of the negotiations, and the importance of agriculture to the developing countries. “The Doha agenda is based on a gamble: that poor countries, who felt they were given a raw deal by the previous Uruguay Round . . . will now feel that rich countries are prepared to open their markets. If poor countries are not convinced of this, the Doha round will fail.”⁹²

The export-oriented language of the TPA guidance from Congress is clear on this issue, and it provides hope that the United States can gain the trust of the developing world. Whether the subject is tariffs or subsidies, “the principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets.”⁹³ On the issue of agriculture, perhaps the crucial element of the Doha Round, the powerful U.S. farm lobby communicated its desires clearly to its representatives in Congress. In turn, through the explicit and implicit TPA language of the Trade Act of 2002, Congress has given the president his marching orders for agriculture negotiations in the Doha Round: promote export opportunities for U.S. farmers.

Trade Promotion Authority, then, is actually an export promotion requirement. It is the U.S. farmers’ good fortune that this goal also resonates with the export-oriented interests of developing countries. What is good for U.S. agricultural exports is good for those of developing countries as well.

⁹¹ From a comparison between the *Final Vote Results for Roll Call 123 (Farm Bill)*, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, at <http://www.clerkweb.house.gov>, and *Final Vote Results for Roll Call 370 (Trade Act of 2002)*, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, at <http://www.clerkweb.house.gov>. Moreover, of the 127 Representatives who voted “yea” on both bills, fourteen were Democrats who obviously owe no party allegiance to President Bush. *Id.*

⁹² *Trade Disputes*, *supra* note 16.

⁹³ Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, Division B (Bipartisan Trade Promotion Authority).

IV. THE FARM BILL AND THE INITIAL U.S. AGRICULTURE PROPOSAL

Unfortunately for proponents of agriculture trade liberalization, "agriculture is an issue where people really dig their heels in."⁹⁴ Policymakers should be unapologetic in their protection of their countries' agriculture sectors, says French Agriculture Minister Hervé Gaymard, because "farm products are more than marketable goods."⁹⁵ Unlike other sectors of the economy, farming plays a unique role in a nation's culture because it is "literally rooted in the land: farmers, unlike manufacturers, cannot simply switch from one location to another."⁹⁶ Perhaps because of this peculiarity, agriculture has always been a unique sector in international trade. Under the GATT, agriculture was given exceptional treatment that left the sector virtually unregulated by the international trade community, allowing governments to implement protectionist and mercantilist farm policies.⁹⁷

The Agreement on Agriculture of the Uruguay Round, which finally brought agriculture into the purview of the global trading system, established "three pillars" of agricultural trade regulation: (1) export competition,⁹⁸ which involves government programs that promote a country's exports in international markets; (2) market access,⁹⁹ which refers to the tariffs and quotas that determine a nation's level of acceptance of imports; and (3) domestic support,¹⁰⁰ which deals mostly with government subsidies for domestic agriculture production.

This section will address each of these three pillars in great detail, because the U.S. agriculture proposal calls for significant changes in all three. First, though, it will focus on the third pillar, domestic support, because it is in this field that the Farm Bill operates. During the Uruguay Round, the United States was among the twenty-eight countries that agreed to cap their "aggregate measurement of support" (AMS) at certain negotiated levels.¹⁰¹ These ceilings

⁹⁴ Harbinson *Disappointed with Latest Round of WTO Ag Talks, Promises Modalities Draft*, BUREAU NAT'L AFF. TRADE DAILY, Jan. 27, 2003, at A3.

⁹⁵ *The Case for the Defence*, ECONOMIST, Jan. 11, 2003, at 42.

⁹⁶ *Id.*

⁹⁷ See Dale E. McNeil, *Furthering the Reforms of Agricultural Policies in the Millennium Round*, 9 MINN. J. GLOBAL TRADE 41 (2000).

⁹⁸ Agreement on Agriculture, art. 4, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND, 33 I.L.M. 1154 (1994).

⁹⁹ *Id.* art. 6.

¹⁰⁰ *Id.* art. 8.

¹⁰¹ *Aligning U.S. Farm Policy with World Trade Commitments*, AGRICULTURAL OUTLOOK,

differ country-by-country, and the United States' agreed limit is \$19 billion per year.¹⁰² The Uruguay Round Agreement on Agriculture categorizes domestic support measures into three distinct "boxes":¹⁰³

* "Green box" supports. These subsidy programs are not tied to (or in WTO-speak, are "decoupled" from) production or price levels. Examples of "green box" supports include income insurance and environmental payments, which do not distort trade, or do so only minimally. This form of support, which the United States gives lavishly, is exempt from a country's calculation of its AMS.¹⁰⁴

* "Blue box" supports. These subsidies actually limit production, so they have a relatively benign trade-distorting effect. An example of "blue box" support is direct payments to farmers to let fields lie fallow. The United States presently makes no such payments to U.S. farmers. These measures are also exempt from inclusion in a country's AMS.¹⁰⁵

* "Amber box" supports. The "amber box" contains the support measures tied to production or price levels that significantly distort global trade in agriculture. The most familiar example of "amber box" subsidies is price support programs, such as those in the Farm Bill, that allow farmers to sell their crops at artificially low prices. These "amber box" subsidies constitute the support that counts against a country's allowed AMS.¹⁰⁶

Under the "amber box" category of support, there are two significant loopholes built into the agreement—termed "*de minimis* exemptions"¹⁰⁷ due to their supposedly minimal effects—that governmental trade lawyers can use to exclude certain subsidies from their nation's AMS calculation.

Jan.-Feb. 2002, at 12.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

The two *de minimis* exemptions are: (1) any product-specific support that is less than five percent of the value of that particular product's total production value, and (2) any non-product-specific support that is less than five percent of the value of the country's total agricultural production.¹⁰⁸ A country's AMS is calculated, then, by adding all the "amber box" trade-distorting support and then subtracting those programs that fall under one of the two *de minimis* exemptions. Under the Agreement on Agriculture, the United States is limited to \$19 billion per year of "amber box" support, as explained above.¹⁰⁹

Each country must notify the WTO each year of its total AMS,¹¹⁰ and, of course, this total must be under that country's AMS ceiling to remain compliant with the Agreement on Agriculture. Until recently, the United States held the negotiating high ground among wealthy countries in this area. First, the United States' AMS commitment to limit trade-distorting support to a ceiling of \$19 billion per year is substantially lower than the EC's limit of \$60 billion per year and Japan's limit of \$30 billion.¹¹¹ Further, in the years immediately following the Uruguay Round Agreement on Agriculture, the United States' AMS was regularly well under its ceiling.¹¹²

The Freedom to Farm Act of 1996, the first major farm bill after the AMS commitments of the Uruguay Round, significantly cut subsidies and began the process of decoupling the remaining subsidies from production.¹¹³ The Freedom to Farm Act greatly reduced "amber box" subsidies to the point that in 1998, the U.S. AMS totalled only \$10.4 billion, about half of its allowable support.¹¹⁴ It was understood then in the international trade community that these cuts were the first steps toward subsidy-free agriculture in the United States.¹¹⁵ This position gave the United States the support of developing countries, and thus a sort of moral authority to push hard for cuts in the EU's enormous agriculture subsidy program, the Common Agricultural Policy (CAP),¹¹⁶ as well as similar protectionist regimes in Japan and elsewhere.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *U.S. Proposal, supra* note 30, at Domestic Support section.

¹¹² *Aligning U.S. Farm Policy with World Trade Commitments, supra* note 101.

¹¹³ Federal Agricultural Improvement and Reform Act of 1996 (Freedom to Farm Act), Pub. L. No. 104-127, 110 Stat. 888.

¹¹⁴ *Aligning U.S. Farm Policy with World Trade Commitments, supra* note 101.

¹¹⁵ *Id.*

¹¹⁶ Former USTR Agriculture Ambassador Peter Scher has called the CAP the "world's

However, in the years following the subsidy cuts of the Freedom to Farm Act, Congress legislated several emergency support measures for certain commodities in the wake of agriculture commodity price crises such as those that followed the East Asian financial crisis of 1997.¹¹⁷ These emergency measures, which came in the form of supplemental legislation outside the auspices of the Freedom to Farm Act, greatly added to the United States' AMS. In 1999 and 2000, the AMS was nearly sixty percent higher than it had been in 1998, bringing the U.S. close to its AMS limit of \$19 billion per year.¹¹⁸

According to the U.S. Department of Agriculture's Economic Research Service, the implication for lawmakers of this close approach to the AMS limit is not that subsidies should be reduced, but rather that "some future programs may need to be carefully crafted to assure they fall into an exempt category in order to keep the AMS within the ceiling."¹¹⁹ The Farm Bill of 2002 was "carefully crafted," passed and signed in this political and legal context. As discussed above, Bush's signing of this legislation outraged America's trading partners, who accused the Administration of hypocrisy and of betraying the aims it had put forward in Doha.¹²⁰ After all, the United States itself had insisted on placing a high priority on liberalization of agriculture in the Doha Round.¹²¹

For the purposes of this Note, the author assumes that the Farm Bill will keep the U.S. within (if *just barely* within) its AMS commitment of \$19 billion per year.¹²² In any case, the Farm Bill vastly increased subsidies for soybeans,

largest single distortion of agricultural trade." Ambassador Peter Scher, *The WTO and America's Agricultural Trade Agenda*, 9 MINN. J. GLOBAL TRADE 1, 3 (2000). For more information on the CAP, see *Activities of the European Union: Agriculture*, EUROPA, at http://www.europa.eu.int/pol/agr/index_en.htm (last visited Mar. 4, 2004).

¹¹⁷ *Aligning U.S. Farm Policy with World Trade Commitments*, *supra* note 101.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Becker, *supra* note 25.

¹²¹ *Id.*

¹²² There has been much consternation in the international trade community over the potential illegality of the Farm Bill under the present WTO Agriculture Agreement. The issue will turn on three questions: (1) whether the U.S. can classify certain aspects of the new subsidies as "green box" instead of "amber box"; (2) whether some of the supports will be small enough to fit under the *de minimis* exemptions; and (3) whether the U.S. Secretary of Agriculture could act to stop the subsidies in the event that they approached the AMS levels. Not surprisingly, the United States' trading partners are skeptical about all three of these questions. See Tassos Haniotis, *The New U.S. Farm Bill from an EU Perspective*, at <http://www.europa.European Union.int/comm/agriculture/external/wto/usfarmbill/tassos.pdf>.

wheat and corn.¹²³ It resurrected subsidy regimes for honey, wool and mohair that had been eliminated in 1996,¹²⁴ and it created altogether new subsidies for peanuts, lentils, chickpeas, and dairy products.¹²⁵ U.S. trade officials argue that criticism regarding the Farm Bill's potential non-compliance with the present WTO obligations is unfounded; U.S. Secretary of Agriculture Ann Veneman, for instance, argues that the Farm Bill does nothing more than stabilize pre-legislation subsidy levels.¹²⁶ The counter-cyclical price supports that are the subject of withering criticism from the United States' trading partners, she says, simply replace the ad hoc supplemental emergency measures that had in recent years become a predictable part of the U.S. agricultural economy.¹²⁷

Still, the Farm Bill constituted a strong signal from the Bush Administration that it will vigilantly guard the interests of U.S. farmers. As discussed above in Part III, Congress likely would not have entrusted Bush with TPA had he not first granted farmers the protection afforded by the Farm Bill. It follows that the political reality for U.S. trade negotiators in the Doha Round is that they must negotiate an agreement on agriculture that gives U.S. farmers a better deal from the government than they were getting from the market.¹²⁸

The primary goal of the U.S. agriculture industry in international trade negotiations is clearly to promote agricultural exports. In the words of former USTR Agriculture Ambassador Peter Scher:

Trade liberalization creates the opportunities that our farmers and ranchers need for growth. We must have the ability to export to the 96 percent of humanity that lives beyond our borders. In fact, with one in three American farm acres now producing for foreign markets, we must export to remain profitable at home.¹²⁹

As explained above, these export-oriented goals are also in the interest of developing countries, whose economies largely depend on agricultural exports such as rice and sugar. It is no coincidence that the three aims of liberalization

¹²³ *Aligning U.S. Farm Policy with World Trade Commitments*, *supra* note 101.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *See U.S. Proposes to Cut Domestic Spending by \$10 Billion, Reduce Ag Tariffs*, *supra* note 46.

¹²⁹ Scher, *supra* note 116, at 2.

stated in the Doha Declaration—significant reductions in barriers to market access, eventual elimination of export subsidies, and significant reductions in domestic support—all work in favor of exports from developing countries trying to gain access to the highly protected markets of wealthy countries. This is also the aim of U.S. exporters, who seek access to markets in Europe and East Asia.¹³⁰

From these aims came the initial U.S. agriculture proposal, which not only tracked the language of the Doha Declaration on each of the three pillars, but also is the natural extension of the export-oriented TPA language of the Trade Act of 2002. According to the U.S. Department of Agriculture, the proposal “would result in reductions in trade barriers for agricultural products, greater equity in world agriculture, and expanding growth opportunities for the sale of agricultural products.”¹³¹ The provisions of the proposal are detailed below. This item-by-item analysis shows that the much-maligned Farm Bill of May 2002 and the highly-praised U.S. agriculture proposal of July 2002 can peacefully coexist.¹³²

In the field of export competition, the United States proposed:

* Elimination of export subsidies over a five-year period.¹³³ This provision would barely affect present U.S. policy, as the U.S. spent only \$20 million on export subsidies in 2000; in contrast, the European Union spent over \$2 billion in the same year.¹³⁴ The Farm Bill contains only one minor provision that affects export subsidies.¹³⁵

* Elimination of state-controlled export monopolies such as Canada’s Wheat Board.¹³⁶ The United States has none of these so-called “state trading enterprises.”¹³⁷

¹³⁰ See *infra* Part V.

¹³¹ U.S. Proposal, *supra* note 30.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ The Farm Bill revives an old program that had fallen into disuse in recent years called the Export Enhancement Program, which provides subsidies to counter other countries’ export subsidies. *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

* Elimination of export taxes that encourage the export of processed food products with higher value-added than raw commodities.¹³⁸ An exception would be made for developing countries that use such taxes for revenue-producing purposes.¹³⁹ The Farm Bill contains no export taxes.

* Establishment of rules specifically governing export credit and insurance.¹⁴⁰ The United States employs some of these devices,¹⁴¹ but the Farm Bill addresses none of these and adds no new export credit programs.

* Expansion of reporting requirements in the WTO for food aid.¹⁴² The Farm Bill does not address food aid at all.

In the field of export competition, then, the U.S. proposal would have brought major changes only in areas that do not affect U.S. policy. With the exception of one insignificant export subsidy program, the export competition field of the U.S. agriculture proposal would have left the Farm Bill completely undisturbed.

The market access provisions of the U.S. agriculture proposal followed a similar track of minor adjustment to U.S. agriculture policy in general, and no effect at all on the Farm Bill in particular. In the field of market access, the United States proposed:

* Harmonization (i.e., reduction) of agricultural tariffs. The United States proposes the so-called "Swiss formula," by which countries with high tariffs (such as the EU and Japan) must make far more substantial cuts than those with low tariffs (such as the United States).¹⁴³ After a five-year phase-in period, no tariff on any agricultural product would exceed 25 percent.¹⁴⁴ The United States further proposes that WTO members set a date for the

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* The equation for the "Swiss formula" is as follows: $T1 = (T0 \times A)/(T0 + A)$, where T1 is the new tariff, T0 is the current tariff, and A is a standard coefficient of twenty-five. *Id.*

¹⁴⁴ *Id.*

eventual total abolition of all agricultural tariffs.¹⁴⁵ This proposal disproportionately affects U.S. trading partners, as the world average tariff for agricultural products is 62 percent, whereas the U.S. average tariff for agricultural products is 12 percent.¹⁴⁶ The Farm Bill does not address tariffs at all.

* Expansion of tariff-rate quotas (TRQs) by twenty percent and elimination of in-quota duties.¹⁴⁷ The United States maintains TRQs for only six products,¹⁴⁸ so the proposal would have a minimal effect on its policy relative to that of many of its trading partners. The Farm Bill contains no provisions regarding TRQs.

* Elimination of the special agricultural safeguard in the Agreement on Agriculture.¹⁴⁹ U.S. trading partners have used this safeguard far more than the United States.¹⁵⁰ The United States can use it only for five products, and has not used the safeguard "in any meaningful way" even for those products.¹⁵¹ Again, the Farm Bill does not address the special agricultural safeguard.

In the field of market access, then, the U.S. proposal would have disproportionately affected the farm policies of U.S. trading partners. Moreover, as with the field of export competition, the market access provisions of the U.S. agriculture proposal would have left the Farm Bill completely undisturbed in all its elements.

It is in the field of domestic support that the U.S. proposal trespassed into the territory of the Farm Bill. However, the possibility exists for even the much-reviled increases in "amber box" domestic support under the Farm Bill to remain unchanged. With regard to all three types of domestic support, the United States proposes:

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* The six products are beef, dairy, peanuts, sugar, tobacco, and cotton. *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* The five products are beef, dairy, peanuts, sugar, and cotton. *Id.*

* Maintenance of present criteria for “green box” support and the exemption of this category from countries’ AMS calculations.¹⁵² Much of the U.S. domestic support regime falls under this category, and the (much-disputed) U.S. position is that many of the provisions of the Farm Bill are within the “green box” exemption as well.¹⁵³

* Elimination of the “blue box” category of support (i.e. rolling that category into the “amber box” of trade-distorting support).¹⁵⁴ The U.S. has no support programs that fall within the “blue box.” The Farm Bill contains no provisions that fall into this category.

* Reduction of “amber box” support so that no WTO member country’s trade-distorting support exceeds 5 percent of that country’s total value of agricultural production.¹⁵⁵ The vast majority of WTO members are poor developing countries which can afford only minimal, if any, programs for trade-distorting “amber box” support.¹⁵⁶ Therefore, this proposal, which would leave in place the two *de minimis* exemptions discussed above, constitutes an attack on the policies of wealthy trading partners such as the European Union and Japan, whose AMS ceilings are far higher than that of the United States.¹⁵⁷

As discussed above, the United States has significant “amber box” programs. Whether these programs were increased by the Farm Bill is the subject of contentious debate¹⁵⁸ and is the question on which the relationship between the U.S. agriculture proposal and the Farm Bill turns. This section will address this question in greater detail below, but for now it is important to note simply that this “amber box” provision of the U.S. agriculture proposal is the only provision that bears any significant relevance to the Farm Bill.

In the field of domestic support, the U.S. proposal would again have disproportionately affected U.S. trading partners, namely the EU and Japan.

¹⁵² *Id.*

¹⁵³ See *supra* note 122.

¹⁵⁴ *U.S. Proposal*, *supra* note 30.

¹⁵⁵ *Id.*

¹⁵⁶ See generally Lichtenbaum, *supra* note 37.

¹⁵⁷ See *infra* Part V.

¹⁵⁸ See *supra* note 122.

The “green box,” which is central to U.S. farm policy, would remain unchanged. The “blue box,” which is not used by the U.S., would be eliminated altogether, becoming part of the “amber box.” Therefore, the U.S. agriculture proposal would have a significant impact only on America’s “amber box” support programs. The proposal to reduce this trade-distorting support to five percent of a country’s total value of agricultural production would lower by almost half the United States’ AMS ceiling, from the present \$19 billion per year to \$10 billion per year.¹⁵⁹ However, the U.S. proposal would have left the two *de minimis* exemptions described above completely unchanged. With skillful legal maneuvering, these exemptions could possibly permit the United States to maintain all of its present programs under its proposal, even the new support measures contained in the Farm Bill.

U.S. trading partners complain that these *de minimis* exemptions would make it possible for the United States to halve its AMS ceiling from \$19 billion to \$9.5 billion “and still spend about \$30 billion . . . on trade-distorting [amber box] support.”¹⁶⁰ In other words, as with the export competition and market access fields of the proposal, the domestic support provisions of the highly-praised U.S. agriculture proposal potentially would leave the much-maligned Farm Bill undisturbed in its entirety.

In short, the initial U.S. agriculture proposal sought deep cuts in the protection regimes of its trading partners, thereby allowing U.S. negotiators to strike a self-righteous tone. U.S. Agriculture Secretary Ann Veneman declared that “by putting forward this new proposal we are saying very clearly that we want to maintain a leadership position in these negotiations and that we are willing to make changes to our farm programs if other countries are willing to do the same.”¹⁶¹ However, these supposed “changes” to U.S. farm programs could effectively leave America’s subsidy regimes, including those of the reviled Farm Bill, largely or even completely in place, while other wealthy countries would have to undergo major revisions to their farm policies. The U.S. proposal therefore essentially said, “We increase and keep ours, you cut yours,” giving the lie to the hubris of U.S. negotiators.

Still, this strident U.S. strategy held the potential of being successful because of the support its export-oriented approach engendered from the bulk of the WTO membership. The United States lost this potential for success by

¹⁵⁹ See *Aligning U.S. Farm Policy with World Trade Commitments*, *supra* note 101.

¹⁶⁰ *U.S. Agriculture Proposal Criticized at WTO Market Access Talks*, INSIDE U.S. TRADE, Aug. 2, 2002.

¹⁶¹ *U.S. Agriculture Proposal Receives Mixed Reviews*, *supra* note 41.

backing off from this stance and allowing the EU to water down its proposal in the joint compromise agriculture proposal of August 2003. As Part V will demonstrate below, the United States and the EU are no longer the only significant players in global trade negotiations, a fact that the September 2003 collapse in Cancun made clear. The United States may prove unable to find an agreement that will simultaneously satisfy the demands of the Congress and also bridge the gap between the demands of the developing world and the EU.

V. THE DOHA ROUND AND U.S. AGRICULTURE EXPORTS

Since the GATT established a global trade regime in the wake of World War II, the United States and Europe have largely set the tone for international trade.¹⁶² Now, however, "that hegemony is under challenge."¹⁶³ Developing countries, led by heavyweights such as Brazil and India, "feel that they were short-changed in the Uruguay Round, and they are determined not to let that happen again."¹⁶⁴ This dissatisfaction on the part of developing countries prevented a launch of new multilateral negotiations at Seattle in 1999: "The reason for the collapse at Seattle was [the] failure of the self-appointed vanguard of America and Europe to respond to the concerns of developing countries."¹⁶⁵

Specifically, the agreement on Trade-Related Intellectual Property Rights (TRIPS)¹⁶⁶ was a far-reaching new program that asked much of the developing world and relatively little of wealthy members, such as the United States, the European Union, Japan, and Canada, which had had well-developed intellectual property laws in place for decades. This new regime has required heavy implementation costs and has stretched already-thin technical and legal resources in developing countries. "In exchange for acceptance of [the TRIPS agreement], poor countries were meant to get a warm welcome for their exports of labour-intensive goods such as farm products and textiles."¹⁶⁷

¹⁶² See *The Trade Agenda: A Different, New World Order*, ECONOMIST, Nov. 11, 2000, at 141 [hereinafter *The Trade Agenda*].

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See TRIPS, WORLD TRADE ORGANIZATION, at http://www.wto.org/english/tratop_e/trips_e/trips_e.htm (last visited Jan. 19, 2004).

¹⁶⁷ *The Trade Agenda*, *supra* note 162, at 141.

In the eight years between the completion of the Uruguay Round and the launch of the Doha Round, though, developing countries saw little reward for their concessions. In the words of *The Economist*:

Frustration with rich countries' intransigence reaches from grass-roots protesters in Seattle . . . all the way to the top; even [former WTO Director-General] Mike Moore [of New Zealand] bemoans the snail's pace at which America and Europe have implemented reforms to their markets for agriculture products and textiles. "Sometimes I feel like joining the kids outside," he says. "When they say the system's unfair, they're not always wrong."¹⁶⁸

Developing countries are still digesting the provisions of the Uruguay Round, and having realized their new weight in the WTO, they are no longer amenable to being pushed around. Again, in the words of *The Economist*:

The days when two trading blocks could set trade policy for the world have gone . . . [Instead,] it may be the emerging powers who will increasingly take the lead. The [U.S. and the EU] will have to get used to that if they are to preserve and strengthen the world's multilateral trading system.¹⁶⁹

Curiously, it is actually the good fortune of U.S. farmers, whose export interests coincide with those of most developing countries, that the collective group of developing country WTO members have been so dissatisfied with the Uruguay Round. This dissatisfaction manifests itself in concrete demands for liberalization of global agriculture trade, which is precisely what U.S. agriculture exporters want. Though the breadth of issues at play in the Doha Round is vast—competition policy, services, manufactured goods, textiles, anti-dumping and countervailing duties, and of course agriculture are among the areas of possible negotiation¹⁷⁰—agriculture is the "centrepiece of the Doha Round."¹⁷¹ "If we don't have major reform in agriculture, I don't think we will successfully close the round," says Sergio Marchi, Canada's ambassador to the

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See Doha Declaration, *supra* note 4.

¹⁷¹ *Europe's Meagre Harvest*, *supra* note 5.

WTO.¹⁷² This political reality plays into the hands of U.S. demands for new export opportunities for its agriculture market, because the TPA language—which, as discussed above, requires the president to seek export opportunities for U.S. farmers—also encapsulates the agriculture interests of developing countries. In fact, the TPA language (and the U.S. agriculture proposal that sprang from it) is favorable to virtually all members of the WTO except for Japan and the EU. To win support for their agriculture proposals, the U.S., the EU, and Japan will have to compete for the favor of developing countries, which make up approximately three-quarters of the membership of the WTO.

From the beginning, Japan has assumed a position that is mostly defensive, claiming that the “aggressive”¹⁷³ U.S. proposal had put the Doha Round agriculture negotiations at risk because it called for steep reductions in the protection of the agriculture industry of some members (namely, the EU and Japan).¹⁷⁴ Japan complains that the United States’ proposed use of the “Swiss formula” of tariff reductions,¹⁷⁵ which would cut high tariffs more substantially than low tariffs, would “erase” some forms of agriculture from the world.¹⁷⁶ Therefore, Japan urged that the “Uruguay Round formula” for tariff reduction, which provides for percentage reductions in countries’ tariffs, should be used in the Doha Round, lest there be no agreement at all: “There is no middle ground between the Uruguay Round formula and the Swiss formula.”¹⁷⁷ Hiderori Murakami, Japan’s Director General of Agricultural Affairs, said that the U.S. and members of the Cairns Group of agriculture-exporting countries (which, as discussed in Part II received the U.S. agriculture proposal favorably) must “come to their senses.”¹⁷⁸

Japan’s own proposal found no enthusiasts in the developing world. While it did perfunctorily address the three pillars of agricultural trade—export competition, market access, and domestic support—it contained no specific numbers whatsoever. For the first pillar, export competition, Japan proposed that export subsidies be reduced, but called for no specific percentage nor

¹⁷² *WTO Official Says U.S., EU Must Give Ground to Avoid Cancun Overload*, INSIDE U.S. TRADE, Jan. 17, 2003, at 14.

¹⁷³ *Japan Official Blames U.S. for Possible Spring Agricultural Stalemate*, INSIDE U.S. TRADE, Nov. 22, 2002, at 1 [hereinafter *Japan Official Blames U.S.*].

¹⁷⁴ *Id.*

¹⁷⁵ See *supra* note 143.

¹⁷⁶ *Japan Official Blames U.S.*, *supra* note 173.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

quantity of reduction.¹⁷⁹ Regarding market access, Japan proposed reducing tariff rates by an average percentage, as opposed to the U.S.-proposed Swiss formula.¹⁸⁰ Again, the percentage of reduction would be determined later as negotiations continue.¹⁸¹ In the arena of domestic support, Japan proposed that “amber box” subsidies be reduced in the aggregate, as opposed to crop-by-crop, but again the proposal stated no percentage of reduction or proposed amount of reduction.¹⁸² The Japanese proposal was remarkable only for its vagueness.

Despite this vagueness, though, the Japanese proposal does show Japan’s awareness of the importance of making concessions to developing countries. The proposal courts developing countries by allowing more flexibility in implementation periods and reduction rates on all three pillars.¹⁸³ Moreover, the least-developed countries would be exempt from reductions altogether.¹⁸⁴ Still, with no specific numbers to analyze, developing countries find it difficult to support the Japanese proposal.

Given Japan’s failure to engage meaningfully in the ongoing agriculture negotiations, the successful conclusion of a new agreement on agriculture will hinge on the ability of the United States and the EU to reach consensus. Here, too, the onus seems to be on the EU: “It is well known that the prospects for freeing farm trade . . . depend largely on the European Union. The [Doha] Round can succeed only if Europe agrees to deep reductions of its huge, trade-distorting agricultural subsidies.”¹⁸⁵ EU Agriculture Commissioner Franz Fischler agrees that if the EU fails to come up with a compelling plan for liberalization of global agriculture markets, it “deserves to be called a political dwarf.”¹⁸⁶

The EU regained momentum in the negotiations in early 2003 with its own agriculture proposal, which Fischler said “put [the EU] in a real leadership position in the WTO talks.”¹⁸⁷ The proposal, which, as EU negotiators recognize, must be attractive to developing countries to have any chance of

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Europe’s Meagre Harvest*, *supra* note 5, at 70.

¹⁸⁶ *Id.*

¹⁸⁷ *European Union States Approve Offer on Doha Agriculture in WTO’s Doha Round*, BUREAU NAT’L AFF. TRADE DAILY, Jan. 28, 2003, at A8.

success, "would slash tariffs, deeply cut trade-distorting domestic support and even eliminate export subsidies to developing countries for selected commodities."¹⁸⁸ This initial EU proposal put forth specific and significant reductions in each of the three pillars.

For the first pillar, export competition, the EU proposed an average cut of forty-five percent on export subsidies, with the possibility of elimination of export subsidies for wheat, oilseeds, olive oil, and tobacco exported to developing countries.¹⁸⁹ In contrast, as detailed above, the original U.S. proposal called for eventual elimination of all export subsidies.¹⁹⁰ Developing countries, which generally are too poor to employ export subsidies,¹⁹¹ complain that the EU proposal to reduce export subsidies by less than fifty percent fell far short of "the Doha mandate's call for 'reductions of, with a view to phasing out' export subsidies."¹⁹²

The EU's proposal regarding the second pillar, market access, centered around a thirty-six percent average reduction to agricultural tariffs.¹⁹³ This proposal would allow WTO members, including the EU, to maintain protection for certain sensitive crops by keeping relatively high tariff levels on those crops while compensating with deeper tariff cuts in other crop sectors.¹⁹⁴ In contrast, as detailed above, the initial U.S. proposal would allow no tariff on any single product to exceed twenty-five percent and called for WTO members to set a date for the eventual abolition of all tariffs on agricultural products. Like Japan, the EU proposed using the Uruguay Round formula of tariff reduction,¹⁹⁵ which provides for equal percentage cuts for all WTO members, rather than the "Swiss formula," which, as explained above, would entail disproportionately high cuts for those countries whose tariffs are disproportionately high. The EU argued that the Uruguay Round formula would "ensure 'burden sharing' among developing countries and would avoid drawbacks of the Swiss formula for developing countries that have higher tariffs."¹⁹⁶

¹⁸⁸ *Commission Unveils Ag Proposal; Seeks Clearance from Member States*, INSIDE U.S. TRADE, Dec. 20, 2002, at 1.

¹⁸⁹ *European Commission Ag Proposal Shows Strategic Move on WTO Talks*, INSIDE U.S. TRADE, Dec. 20, 2002, at 1 [hereinafter *European Commission Ag Proposal*].

¹⁹⁰ See *U.S. Proposal*, *supra* note 30.

¹⁹¹ See generally Lichtenbaum, *supra* note 37.

¹⁹² *European Commission Ag Proposal*, *supra* note 189.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

Finally, regarding the third pillar, domestic support, the EU proposed a fifty-five percent reduction in the trade-distorting “amber box” category of subsidies.¹⁹⁷ In contrast, as detailed above, the U.S. proposal would have required WTO members with higher trade-distorting subsidy levels to make deeper cuts in their subsidy programs. The EU proposal would limit its own “amber box” subsidies at approximately \$30 billion per year and would cap the United States’ “amber box” support at around \$10 billion per year, whereas the U.S. proposal would bring those annual ceilings down to \$11 billion and \$10 billion, respectively.¹⁹⁸ The EU also proposed eliminating the *de minimis* exemptions that the U.S. has used in the past to exclude billions of dollars’ worth of domestic support from its tally of allowable support. Still, the aggregate reduction of the developed world’s agriculture subsidies would be far greater under the initial U.S. proposal than under that of the European Union, so on this pillar, too, developing countries logically favored the U.S. proposal.

In any case, the EU’s “long-awaited”¹⁹⁹ agriculture proposal showed a desire on the part of the EU to “end its role as an outcast in multilateral agricultural negotiations and to attract the support of developing countries, splitting them from the Cairns Group.”²⁰⁰ To attract developing countries to the EU’s position, its proposal promised them “specific advantages in terms of market access, domestic supports and a selective elimination of export subsidies for commodities sold to developing countries.”²⁰¹ In addition to the provisions of the proposal that address the three pillars, the proposal also called for wealthy countries to guarantee that at least half of their total agricultural imports come from developing countries.²⁰² Further, it called for all wealthy countries to join the EU’s “Everything But Arms” initiative, which provides unlimited duty-free access for imports from the poorest of developing countries.²⁰³

Developing countries were fully aware they were being courted. “It’s a kind of divide and rule [strategy]. Right now the EU is negotiating against the

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* For information on the “Everything But Arms” initiative, see *European Union Trade and Development*, at <http://www.europa.eu.int/comm/trade/miti/devel/eba.htm> (last visited Mar. 4, 2004).

world," said one developing country negotiator of the initial European Union proposal.²⁰⁴ "The question is now whether or not developing country members of the Cairns group would move away from their current position."²⁰⁵ Developing country members criticized the EU proposal as being "designed to protect the European Union's most sensitive commodities with average tariff reductions, domestic subsidy cuts and by proposing targeted export subsidy cuts for wheat and oilseeds."²⁰⁶ The proposal calls for a reduction in aggregate export subsidies, which would allow the European Union actually to increase export subsidies for certain products.²⁰⁷ Developing countries are not fooled: "If they say the U.S. proposal is self-serving, this is even worse," commented a negotiator from a developing country member of the Cairns Group.²⁰⁸

In early 2003, after both the U.S. and the EU proposals had been aired, it appeared unlikely that the two trading powers would reach a consensus, given their then "diametrically opposed positions."²⁰⁹ According to Stuart Harbinson, chairman of the WTO's negotiating group on agriculture, "If everyone remains camped on their current positions, the prospects for negotiations are not encouraging."²¹⁰ As described in Part II above,²¹¹ though, the United States and the European Union did not remain camped on their positions. In August of 2003, just weeks before the important WTO Ministe-

²⁰⁴ *European Commission Ag Proposal*, *supra* note 189.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *U.S., EU Signal Unwillingness to Compromise on Agriculture Talks*, INSIDE U.S. TRADE, Jan. 10, 2003, at 1. Assistant U.S. Trade Representative for Agriculture Jim Murphy stated at a January 8, 2002 forum sponsored by the Center for Strategic and International Studies that because of "intense political pressure from the agriculture community and U.S. lawmakers," the United States could not and would not give ground on its demands that "WTO members with higher tariffs and more domestic subsidies than the U.S. reduce their tariffs and subsidies disproportionately." Preserving the present system, in which the European Union is allowed significantly higher tariffs and subsidies than the United States, is simply "not in the cards," Murphy continued. "If the bottom line is to achieve an equitable outcome, the biggest sinners are going to have to do more." Congressman Charles Stenholm of Texas, a ranking member of the House Agriculture Committee, was more blunt in expressing his "shock" over the European Union's intransigence: "[T]hat won't get us anywhere. That dog won't hunt." At the very same forum, though, European Union Agriculture Counselor Gerard Keily countered that the European Union "could not drop its approach of an equal cut in agricultural subsidies and tariffs for all WTO members." *Id.*

²¹⁰ *Harbinson Disappointed with Latest Round of WTO Ag Talks, Promises Modalities Draft*, *supra* note 94, at A3.

²¹¹ *See generally supra* Part II.

rial Meeting in Cancun at which WTO members hoped to substantially advance the Doha Round negotiations, particularly on the issue of agriculture, the U.S. and the EU came to a compromise agreement on agriculture.²¹² This joint proposal was significantly less ambitious on all three pillars of agricultural negotiations—domestic support, market access, and export subsidies—than the initial U.S. agriculture proposal.²¹³ As such, it was roundly criticized by developing countries and Cairns Group members alike.²¹⁴

While the United States found common ground with the EU on agriculture in this August 2003 compromise, the climb-down from the trade-liberalizing ambition of its initial proposal set the stage for the September collapse in Cancun. Led by India and Brazil, a coalition of over twenty developing countries walked out of the negotiations, primarily over the issue of agriculture.²¹⁵ This Note contends that the collapse at Cancun was due to the failure of the United States to remain true to the export-oriented guidance contained in the TPA, which the bulk of the membership of the WTO had supported.

VI. CONCLUSION

The language of the TPA pertaining to agriculture is the key to any hope of success for the Doha Round. The TPA language shaped the initial U.S. agriculture proposal in accordance with the Doha Declaration (and also in accordance with the export-oriented interests of the developing world and the vast majority of the membership of the WTO). If the members can reach a consensus that accommodates the language of these documents, the Doha Round stands a good chance of being a success. If not, it will be difficult to salvage the round from failure.

There is an umbilical link between the support from the U.S. farm lobby for the initial U.S. agriculture proposal and the language and intent of the TPA section of the Trade Act of 2002, and in turn between the TPA and the export-friendly agriculture proposal. This Note has argued that the TPA legislation would have failed without the protection offered to the U.S. agricultural sector by the Farm Bill. It follows that any trade agreement negotiated by the president will not gain congressional approval unless it offers provisions favorable to that same sector. The farm lobby, and the members of Congress

²¹² See Meller, *supra* note 42.

²¹³ U.S., *EU Offer Ag Negotiating Framework*, *supra* note 43.

²¹⁴ *Id.*

²¹⁵ See Becker, *supra* note 44.

from states in which that lobby is powerful, will not approve an agreement that does not provide U.S. farmers with a better deal from the international market than the deal they are presently getting from the U.S. government.²¹⁶

When the United States seeks "market access," then, it means lower tariffs in Europe, Japan, and the developing world. When the United States seeks elimination of export subsidies, it points the finger directly at wealthy trading partners such as the EU and Japan, the only countries that employ these programs. Finally, when the United States seeks reductions in domestic support, it means reductions in the domestic support regimes of the EU and Japan. U.S. farmers believe that if European and Japanese farmers were not so heavily subsidized, the huge European and Japanese markets for food and produce would beg for agricultural imports, which would come from, among other places, the United States.

Fortunately for the United States, the developing world agrees on each of these three pillars. For its part, the United States hopes to keep its domestic support regime, even the new programs contained in the Farm Bill of 2002, largely in place. It seeks to liberalize world agriculture trade by having it both ways: keeping the Farm Bill and, with the help of developing country allies, forcing its trading partners to accept the U.S. export-friendly agriculture proposal. U.S. farmers do indeed want a better return from the market than they are now getting from the government, but if possible, they would like to continue reaping the harvest of subsidies even after the Doha Round has liberalized global agriculture trade.

The collapse at Cancun showed that the most important allies the United States has in the Doha Round are the agriculture exporting countries of the developing world and the Cairns Group. These countries share the interests that are captured legally in the congressional TPA guidance of the Trade Act of 2002. When the United States strayed too far from that guidance in August 2003 with its compromise agreement with the EU, the Doha Round collapsed. Finding its way back to the path set by the TPA guidance is the only way the United States can fulfill the promise of agriculture negotiations in the Doha Round. If the members of the WTO fail to find an agreement that follows that guidance, the Doha Round will provide a barren harvest for farmers in both the United States and the developing world.

²¹⁶ See text accompanying *supra* note 46.