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TRADE LIBERALIZATION: A STUDY OF THE AGRICULTURAL TRADE POLICIES OF THE UNITED STATES AND EUROPEAN COMMUNITY AND ITS EFFECT ON DEVELOPING COUNTRIES (AFRICA)

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by

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INTRODUCTION

Trade in agriculture has been a very important part of international trade. It has accounted for about 5% of the total exports of the United States and the European Community but although it consists of such a small percentage of their gross domestic product there has been substantial protectionist policies by these two trading blocks which have prevented the trade in agricultural products to advance. The agricultural trade has been restricted globally through numerous measures and schemes. These are designed to limit the importation of certain agricultural products into these trading blocks while subsidizing through various schemes in order to increase and maintain their respective dominance in world agricultural markets. Measures to restrict trade have included subsidies and the utilization of internal price support schemes which enable the sale of cheaper products on world markets. Also there is the use of quota restrictions and import licenses to restrict the inflow of agricultural products into the United States and Europe. This is done in order to protect the respective domestic industries from outside competition.

Despite all these measures the United States in particular has seen a declining agricultural sector while the European Community has seen its market position strengthened to become the premier market for products such as oilseeds and wheat. Billions of dollars per year has been spent by the United States to maintain its agricultural sector and various Trade and Development Assistance programs promoting its exports.
are in place. Although the United States has seen its market share decline compared to Europe it is still a force to reckon with in the field of agricultural production. Continental Europe has on the other hand been the stronghold of agricultural protectionism through its Common Agricultural Policy, designed to choke off any foreign saturation of the European markets while stabilizing and promoting a better standard of living for its citizens. The European Community has various border measures in place to restrict importation into the community, mostly adopted under the Common Agricultural Policy. This also consists of internal support measures which include minimum producer prices where the community sets by regulation a minimum producer price for which a commodity is almost always above world prices.

These protectionist policies have had a significant effect on developing countries. Positively, as a result of all the subsidization there has been cheaper imports into developing countries especially those that are net food importing countries. However this has also led to dependency and lack of initiative to attempt greater efficiency in agricultural production. Also heavy subsidization of products similarly produced by developing countries has led to the domination of these products by the United States and European Community. This has prevented developing countries from progressing in the export of agricultural products such as wheat, sugar and oilseeds.

The trade policies of the United States and Europe have had a significant effect in the agricultural production of developing countries. Such countries have experienced restrictions in their exports to developed countries and in some instances, and in other instances discrimination which breaches the principles laid down in the General Agreement of Tariffs and Trade has occurred.
In areas of production where there is not subsidization it is observed that multinational companies have heavily invested in developing countries not particularly for the furtherance of these economies but rather for corporate gains. Multinational companies have and continue to capitalize on these countries’ only means of exports and thereby play a controlling role over their political, economic and social life.

The General Agreement on Tariffs and Trade promotes free trade but it was originally contracted in the interest of the United States agricultural community. The European Community has however over the years exploited the same clauses designed to protect Unites States farmers and strengthened its economy. Among several factors hindering development of developing countries is the protectionist activity of the United States and Europe. Developing countries, particularly those that depend solely on agricultural exports for their income, have not enjoyed unrestricted access to world markets and this has contributed to their inability to sustain rapid growth rates. Many developing countries have felt that the General Agreement on Tariffs and Trade has not served in their interest in terms of opening up the world markets of which the European and American markets are the best established.

The purpose of my thesis is to study the various protectionist policies of the European Union and the United States and to ascertain its effect on developing countries. The focus of my thesis will be from the perspective of the Agreement of the World Trade Organization. In the course of this thesis I will deduce that protectionism has limited the advancement of trade in agriculture and the fundamental principles of the General Agreement of Tariffs and Trade have often been disregarded. While I propose freer trade I do not propose the abolition of all barriers to trade since this would lead to the
vulnerability of domestic markets and saturation of imports at the expense of domestic production.

Compliance with the Agreement on Agriculture, put forward by the World Trade Organization will lead to trade liberalization. Through the gradual relaxation of trade barriers world trade in agriculture will be increased. Developing countries would gain more access to world markets thereby improving their capacity to trade in agricultural products which would increase their economic development. Trade will be expanded, there will not be the need for so much protectionism, GATT rules will be more effective thereby eliminating the various non–compliance of its principles.
CHAPTER 1

A study of Subsidies and the Conflict between Domestic Programs and the Principles of the General Agreement of Tariffs and Trade.

Trade liberalization has been constrained due to the pursuit of protectionist policies by the European Community and the United States. As a result, access to the major markets of the world has been restricted and this has contributed to the lack of progress of global trade in agriculture. Policies of developed countries have had the net effect of interfering with the free flow of international trade in agricultural products.¹ There has been encouragement of insulation of domestic markets and producers by the European Community and the United States. Consequently domestic production in excess of demand has been encouraged; the surplus either stored or exported onto the international market.² The products are subsidized in order to help compete on the international markets and the effect of such policies is the curtailment of market access for third countries.³

This chapter discusses the nature of subsidies and the general principles of the General Agreement on Tariffs and Trade. In analyzing the nature of subsidies I will

¹Joseph A. McMahon. Agricultural trade, protectionism and the problems of development, 52 3rd ed 1995
²id at 63
explore how the EC and US organize their domestic laws in order to promote the subsidization of agricultural products in taking advantage of GATT deficiencies.

A. Analysis of Subsidies.

A subsidy is a grant of money made by a government in the aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public. The most difficult issue relates to the problem of distinguishing between legitimate government activities on the one hand and trade distortive subsidies on the other. The theory of efficiency states that ideal economic conditions prevail when goods are produced at the cheapest price. A subsidy tries to set off price and production disadvantages and weaknesses and therefore distorts the equilibrium by misallocating resources.

There are two types of subsidies, domestic and export subsidies. A domestic subsidy is granted to an industry on all of its production of a product. This is done to reduce the price to lower than that of the same product of imports, and effectively drive out the import competition. Therefore the subsidy is protectionist, lowering prices and thus favourable to consumers. An export subsidy by contrast is paid to an industry only on products that are exported. Consequently goods tend to be sold abroad at a price below

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4 The Uruguay Round of Agreement Act 19 U.S.C sec 3571 (1994)
8 id
9 id
that of the goods sold in the domestic market. This distorts resource allocation by inducing production and exportation that is otherwise uneconomic.\textsuperscript{10}

An export subsidy is prohibited per se and a domestic subsidy is prohibited but admissible in instances concerning substantial changes in economic conditions.\textsuperscript{11} They are allowed but not encouraged.\textsuperscript{12} An export subsidy may be defined as any government program or practice that increases the profitability of export sales but does not similarly increase the profitability of sales for domestic consumption.\textsuperscript{13} Examples include government payments to manufacturers that are contingent upon export volume and the manipulation of market determined exchange rates to favor export sales or production for export.\textsuperscript{14} In addition to this there is the provision of goods or services by the government for use in the production of exports on more favorable terms than for use in the production of goods for domestic consumption and a variety of other practices.\textsuperscript{15}

Where it can be determined that a product has been subsidized a government can impose a countervailing duty on the subsidized good.\textsuperscript{16} Government subsidies that cannot be characterized as export subsidies are countervailable under US law only if they fall within the statutory definition of a domestic subsidy. Virtually any type of government program can confer a domestic subsidy if it meets two criteria: it must be sufficiently targeted to a specific enterprise or group of enterprises or industries, and roughly it must provide some opportunity or advantage to the targeted producers that would not

\begin{itemize}
  \item \textsuperscript{10} id at 49
  \item \textsuperscript{11} G Hufbauer & J Erb, \textit{Subsidies in International Trade} 1\textsuperscript{st} ed 24 (1984)
  \item \textsuperscript{12} id
  \item \textsuperscript{13} id
  \item \textsuperscript{14} John Jackson, \textit{Legal Problems of International Economic Relation}, 3\textsuperscript{rd} ed. 149 (1995)
  \item \textsuperscript{15} General Agreement of Tariffs and Trade \textit{Annex A to the Subsidies Code is an Illustrative list of Export Subsidies}, 19 U.S.C.A 1677(5) (A)
  \item \textsuperscript{16} John Jackson, \textit{Legal Problems of International Economic Relation}, supra at 150
\end{itemize}
otherwise be available to them in the marketplace.\textsuperscript{17} The agricultural sector constitutes of large group of industries, which have been heavily subsidized. If a national government finances a program to assist all farmers in the country who require aid, the aid is potentially countervailable.\textsuperscript{18} US law allows only a few adjustments to the subsidy calculation to reflect taxes or other charges paid to the government by the beneficiaries of the subsidy program.\textsuperscript{19} Offsets are allowed for application fees, deposits or similar charges in connection with the subsidy program. But the countervailing duty laws will not look beyond the government program under investigation to calculate net benefits.\textsuperscript{20}

B. Countervailing Duty Laws of the United States

The Tariff Act of 1930 section 303\textsuperscript{21} authorizes the Treasury Department to impose duties on imported merchandise to offset any bounty or grant bestowed upon it. Between 1935 – 1994 there were 24 duties imposed. The Trade Act 1974 made changes to the statute. It required the Treasury Department to make a preliminary decision within six months of the filing date of a petition and a final decision within twelve months. The Trade Agreement Act 1979 implemented the Tokyo Round subsidies code under the US law. Investigations were transferred from the Treasury Department to the Commerce Department’s International Trade Administration.\textsuperscript{22}

\begin{itemize}
\item \textsuperscript{17} General Agreement on Tariffs and Trade 55 U.N.T.S 187 art. VI:6
\item \textsuperscript{18} William T Archy, \textit{Affirmative Countervailing Duty Determination}, 50 Fed. Reg. 25,097,25101 (1985)
\item \textsuperscript{19} Tangermann, \textit{Approaches to Export Subsidies: Disciplines for Export Subsidies in Primary and Non Primary Products}, 55 Subsidies and Countervailing Measures 112 (1989)
\item \textsuperscript{20} id
\item \textsuperscript{21} Tariff Act 1930 sec 303, 19 U.S.C 987
\item \textsuperscript{22} Agreement on the Interpretation and Application of Article V, XVI and XXIII of the GATT, Basic Instruments and Selected Documents 56 (GATT)
\end{itemize}
The Administration proposed a set of regulations for countervailing subsidies but they were never formally adopted due to the pendency of the Uruguay Round. They are however regarded as a valuable statement of practice. Section 355.42\textsuperscript{23} provides that a countervailable subsidy exists where the Secretary determines that:

a) a program provides selective treatment to a product or firm and
b) a program provides a countervailable benefit with respect to the merchandise.\textsuperscript{24}

Section 355.43 provides that:

a) Export programs. Selective treatment, and a potential countervailable export subsidy exists where the secretary determines that eligibility for or the amount of benefits under a program is tied to actual or anticipated export earnings.

b) Where exportation is only one of many eligibility criteria for benefits under a program, the inclusion of exportation as a criteria shall not per se constitute selective treatment within the meaning of paragraph ‘a’.

c) Domestic programs. Selective treatment and a potential countervailable domestic subsidy exists where the Secretary determines that benefits under a program are provided or are required to be provided in law or in fact, to a specific enterprise or industry or group of enterprises.\textsuperscript{25}

In determining whether benefits are specific the Secretary will consider among other things the following factors:

The extent to which a government acts to limit the availability of a program, the number of enterprises, industries, or groups thereof that actively use the program. A factor that will be looked at is whether there are dominant users of a program or whether certain enterprises, industries or groups receive disproportionately larger benefits under the program. The extent to which a government exercises discretion in conferring benefits under a program is also considered.\textsuperscript{26}

C. Analysis of Injury

Before a countervailing duty may be imposed under the General Agreement of Tariffs and Trade, a country must determine that imports of subsidized merchandise have

\textsuperscript{24} id
\textsuperscript{25} id
\textsuperscript{26} id
caused material injury or threatened material injury to the domestic industry producing the like product of that import and are materially retarding the establishment of a domestic industry. 27

The investigation of injury is conducted by the International Trade Commission and is known as the injury test. The injury test requires the ITC to determine whether the domestic industry that competes with the imports at issue is materially injured or is threatened with material injury by reason of the imports that were found to be subsidized by the ITC. 28 The procedure determines whether unfairly traded imports cause or threaten material injury or retard the establishment of an industry. Consequently the application of the injury test requires only two or three stages of analysis. The relevant domestic industry must be defined so that the impact of imports on it can be assessed and the domestic industry must be examined for signs of material injury or threats of such injury. 29

A preliminary injury investigation occurs after a case has been filed but before the Department of Commerce has made a determination whether the alleged unfair practice actually exists. In this preliminary investigation the International Trade Commission decides whether there is a reasonable indication that the injury test can be satisfied. 30 If subsidization is determined to exist the parties return to the International Trade Commission for the final injury investigation. Here the injury test is applied more stringently and the petitioner’s standard of proof is higher. Injury investigations under United States Law are not governed by the Administrative Procedure Act and they are

27 GATT Article VI, 55 U.N.T.S 187 art VI:6
28 International Trade Commission 50 Fed.reg. 25097, 25101
29 John Jackson, Legal Problems of International Economic Relations supra at 152
30 Tarrif Act 1930 Section703, 733; 19 U.S.C sec 1677
typically much less formal structured than proceedings before many other federal regulating agencies.\textsuperscript{31}

D. The Agricultural Policies of the EC and US dealing with Subsidization

In the United States, strong political support for farm programs is a driving force behind protectionism. Farm groups and agricultural industries have a powerful lobby in congress and farm states have a strong voice in Congress. The US senate is structured so that rural agricultural states such as North Dakota and Nebraska enjoy equal representation with New York or California.\textsuperscript{32}

Agricultural liberalization is especially subject to legislative opposition in most countries due to classic prisoner's dilemma. The US and EC are major players in the General Agreement of Tariffs and Trade and they stand to benefit if the restrictions on agricultural trade are removed. However if any of these countries is able to maintain more of its protectionist policies than the other, producers in that country stand to gain dramatically through increased exports and higher domestic prices.\textsuperscript{33}

The primary policy instruments that have been used to support agriculture are internal price supports. The most common price support in the United States is the deficiency payment which pays farmers the difference between a legislated target price and the market price.\textsuperscript{34} There are also border restrictions such as tariffs, quotas, restrictive

\textsuperscript{31} Administrative Procedure Act, 5 U.S.C 701-706 (1966)
\textsuperscript{32} Miguel Montana-Mora, \textit{International Law and International relations Cheek to Cheek} 19 N.C J Int'l, L& com. reg. 1, 12 n.48 (1993)
\textsuperscript{34} Thomas L Schoenbaum, \textit{Agricultural Trade Wars: A threat to the GATT and Global Free Trade}, 24 St Mary's L.J 1165, 1185 (1993)
licensing measures and export subsidies.\textsuperscript{35} The United States has programs subsidizing wheat feed grains, rice, dairy, tobacco, sugar, oilseeds, honey, wool and peanuts.

It must also be realized that US agricultural export gains have not kept pace with increases in productivity. Export of farm products have remained relatively static since 1980. The percentage of Americans employed in agriculture has decreased from 6.7\% in 1975 to 1.6\% in 1993.\textsuperscript{36} The resulting surplus has not been met by increases in consumption or decreases in imports. Instead the US government has been forced to either purchase unconsumed products or pay for their storage. Over the past ten years the US Department of Agriculture has spent an average of 20 billion dollars per year on agricultural programs.\textsuperscript{37}

The resultant inefficiencies and economic distortions further exacerbate the costs. One study estimates that the US government spends over 80,000 dollars per year for each farm job saved. Massive expenditures on agricultural support also shift resources from unsubsidized to subsidized goods and from other sectors of the economy thereby affecting labour and land allocation. Price supports and guaranteed income programs create incentives to use land for agriculture which may otherwise be put to other uses.\textsuperscript{38} On the other hand the benefits of trade liberalization are startling. Studies demonstrate that developing countries stand to gain 26 billion dollars per year in real income through trade liberalization and the United States could reduce its trade deficit by 42 billion dollars.\textsuperscript{39}

\begin{thebibliography}{99}
\bibitem{id} id at 1179
\bibitem{stat} Statistical Abstract of the US Census Bureau, 395 (1994)
\bibitem{budget} Budget of the United States Government, Historical Tables 40-42 (1995)
\end{thebibliography}
In the European Community an important feature of agricultural subsidization has been the creation of the Common Agricultural Policy for all member states. According to the European Community Treaty the functioning and development of the Common Market for agricultural products shall be accompanied by the establishment of a common agricultural policy among the member states. The objectives of the Common Agricultural Policy are:

a) To increase agricultural productivity by developing technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production in particular labour;
b) To ensure thereby a fair standard of living for the agricultural community: particularly by the increasing of the individual earnings of persons engaged in agriculture;
c) To stabilize markets;
d) To guarantee regular supplies; and
e) To ensure that supplies reach consumers at reasonable prices.

The Common Agricultural Policy has had dramatic success in increasing agricultural productivity and assuring the availability of supplies. Although in the 1960s Europe was basically a food importer zone, today the EC is the second largest exporter of farm products in the world. The scheme based on the use of variable levies to prevent imports and exports refunds to foster exports proved to be very successful for the Community at a time when it was a net importer of farm products. The variable levy is a mechanism that is designed to look like a tariff duty, but which effectively, operates as a non-tariff barrier. It is a constantly adjusted tariff duty usually calculated based on the difference between a desired domestic market price and the lowest world market price.

40 The Common Agricultural Policy was established under the Treaty of Rome establishing the European Economic Community. EC Treaty Article 39 (4). U.N.T.S 11, 30
42 Alan Charles Raul, Global Trade in Agricultural Products, 147 PLI Order No. A4-4276
Nonetheless the effects of this scheme on world markets has given rise to a growing number of disputes between the community and the US. During the 1980s the Community became a net exporter of agricultural products while a record number of US farmers were filing for bankruptcy.\textsuperscript{43} Although the causal relationship between the EC's growing exports and the corresponding decline of US exports is much discussed the US has blamed the EC for having stolen its markets. A war of subsidies and other protectionist measures between the EC and the US has ensued becoming the most thorny issue of the bilateral relationships between the two blocks.\textsuperscript{44}

A first step directed at restoring this credibility was the inclusion of agriculture within the agenda of the Uruguay Round of Multilateral Trade Negotiations.\textsuperscript{45} However the irreconcilable differences between the EC and the US in connection with the reduction of public support to farmers has stalled the talks, leading the negotiations to a halt.

E. The GATT rules on agriculture

The GATT rules dealing with agriculture were drafted to suit the interests of US farmers. When the GATT was being formulated the US insisted that a provision should be included which would permit the retention of quantitative restrictions related to the enforcement of domestic agricultural programs.\textsuperscript{46} Due to insufficient international concessions to extend all of the rules governing trade in manufactured goods to trade in agricultural products, exceptions were carved out so that the new rules and disciplines

\textsuperscript{43} id
\textsuperscript{44} Organization de Cooperation et de Development Economiques, Politiques Nationales et Echanges Agricoles: Etude Sur la Cee 161 (1987)
\textsuperscript{45} General Agreement on Tariffs and Trade 33 Basic Instruments and Selected Documents GATT 19 (1987) hereinafter BISD
would not apply with full force in the area of agriculture. The GATT rules were therefore written to fit the agricultural programs then in existence especially in the United States.

For a number of reasons, agriculture has traditionally been a sector protected by most governments. In the 1930s some western countries namely the United Kingdom, France and Germany intervened heavily in agricultural markets to protect their farmers from the crisis of the mid 1920s. The US also laid the foundations for its agricultural policies in this period relying heavily on import quotas, production control programs, price supports and export subsidies.

The regime established by the GATT in 1947 rests on four general principles: a) trade ought be based on nondiscrimination and most favoured nation treatment, b) that non tariff barriers should be eliminated, and c) that the GATT contracting parties should adhere to bound duty rates and meet from time to time to negotiate the reduction of tariffs and that disputes over trade should be settled primarily through consultation. Article 1 of the GATT provides in part “any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”. This article provides for the uniformity in the tariff duties imposed by a GATT member country on all imports of a particular item from all other GATT members.
Article XI of the GATT codifies the prohibition on non tariff barriers to trade. It provides in part “No prohibitions or restrictions other than duties, taxes or other charges whether made effective through quotas, imports or export licenses shall be instituted or maintained by any contracting party”. Article XI provides for the general elimination of quantitative restrictions. According to paragraph one of Article XI “No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party”. To the general prohibition on quantitative restrictions there is an immediate exception applicable to agricultural products. According to paragraph two, import restrictions may be allowed if they are necessary to the enforcement of any governmental measures which aims to:

a) restrict the markets or production of a like domestic product; or if there is no substantial domestic production of the like product of a domestic product for which the imported product can be directly substituted; or

b) to remove a temporary surplus of a like or directly substitutable product by making it available to certain consumers either free or below the current price; or

c) to restrict the quantities permitted to be produced of any animal production where that production is directly dependant on the imported product, if domestic production of that product is small.

To prevent restrictions under these exceptions from being protectionist, any contracting party who wishes to impose quantitative restrictions must give public notice of either the total quantity or the value of the permitted imports of the specified product.

Contracting Parties have however found their way around these articles through illegal

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53 id at art XI:2(a)
54 id at art XI:2(b)
quantitative restrictions. This takes the form of Voluntary Export Restraint agreements or Orderly Marketing arrangements. They provide a level of access for a particular country and once imports have reached this level further imports are excluded. In return for this level of access the exporting countries usually agree not to export beyond the individual quota for the importing country. Such measures help to protect domestic producers.\textsuperscript{56}

Article XVI deals with exports of products with the assistance of subsidies. In relation to export subsidies for agricultural products it declares that contracting parties shall seek to avoid the use of subsidies on the export of primary products.\textsuperscript{57} If however a subsidy is granted it shall not be applied in a manner which results in the party having more than an equitable share of world export trade in that product because there are no statistical definitions of an equitable share in world markets.\textsuperscript{58} The provision in this sense can be exploited. This is due to the vagueness of the article and therefore contracting parties bypass the GATT rules and impose on other contracting parties measures which are contrary to the law and spirit of the GATT. There is therefore a conflict between domestic agricultural programs on the one hand and the law of GATT on the other.\textsuperscript{59} GATT prohibits export subsidies of non primary products for those contracting parties that accepted Article XVI(4).\textsuperscript{60}

\textsuperscript{55} id
\textsuperscript{56} Miguel Antonio Figuero, \textit{The GATT and Agriculture: Past, Present and Future} 5 Kan.J.L& Pub.Pol’y 93
\textsuperscript{57} General Agreement on Tariffs and Trade 55 U.N.T.S 187art XVI
\textsuperscript{58} Jona Filipek, \textit{Agriculture in a World of Comparative Advantage} 30 Harv.Int. L.J 123,135 (1989)
\textsuperscript{59} id
\textsuperscript{60} On November 19, 1960 Austria, Belgium, Canada, Denmark, France, Germany, Italy, Luxemborg, the Netherlands, Norway, Switzerland, the U.K, and the United States signed a declaration giving effect to article XVI(4). E Bruce Butler, Countervailing Duties and Export Subsidization 9 Va. Int.82, 91 (1968)
With regard to primary products the review session produced one of the most ambiguous and criticized articles of the General Agreement :Article XVI(3). According to this provision the contracting parties should seek to avoid the use of subsidies on the export of primary products. The article provides that “if” a contracting party does grant subsidies that operate to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product.61

61 GATT Art.XVI(3)
CHAPTER 2

An Analysis of Protectionist Measures of the United States and European Community

The Worldwide agricultural subsidies plus the cost to consumers resulting from protectionist policies total about 150 billion dollars a year\(^6\). The Uruguay round of Multilateral trade negotiations offered a means to reduce these costs and to enhance the economic well being of agriculture.\(^6\)

In the address by Clayton Yeutter, the Former Secretary of Agriculture to the United States Feed and Grain Council he stated that many governments continue to protect their domestic farmers with border measures which discourage or prevent import competition from many commodities. This has led to an international system of competing subsidies whose consequence is that poor nations unable to match the subsidies of their trading partners are denied any realistic hope of agricultural development.\(^6\)

Due to the lack of enforcement in the General Agreement on Tariffs and Trade it has been necessary for contracting parties themselves to tackle the reduction of protectionist activities in order for GATT to effectively encourage global trade in agriculture. In this chapter I will detail the various forms of protectionist policies which have been in place

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\(^6\) Address by Clayton Yeutter to the US Feed Grains Council Meeting, Aug 7, 1989.
markets. I will also explore the disadvantages of these policies and the various reforms which have been made in an effort to meet the GATT obligations.

The main policies used by the United States and the European Community have been domestic farm subsidies, agricultural export subsidies and barriers to agricultural imports. These policies have been developed to assist farmers maintain farm income, stabilize and market prices.\(^65\)

Each of these forms of protection has effects on domestic and international markets. Domestic farm subsidies stimulate surplus production, which creates structural imbalances in world markets. Export subsidies allow exporters to penetrate foreign markets by selling at less than their cost of production. Beginning in 1985, the United States created the Export Enhancement Program to compete with the EC. Under the EEP the Department of Agriculture pays cash bonuses to US exporters equal to the difference between US domestic price and world prices.\(^66\) Both domestic and export subsidies promote production efficiency and undermine the theory of comparative advantage. In addition import barriers serve to insulate all or part of a domestic market from import competition.\(^67\) The US maintains import quotas on various agricultural products including sugar and peanuts under Section 22 of the Agricultural Adjustment Act.\(^68\) In 1992 US import quotas on sugar increased the price of sugar to twenty two cents per pound or


\(^{66}\) Export Enhancement Program, implemented under the authority of the CCC Charter, Food Security Act sec 1127 (1985)

\(^{67}\) John H Jackson, *legal problems in international law and economic relations* 3\(^{rd}\) ed 158 (1995)

about twice the world price. Moreover this program of support costs US consumers about 3 billion dollars per year in high grocery bills.\textsuperscript{69}

Generally the US has been able to exert great influence over the international market for agricultural commodities since the 1970s. US domestic agricultural policy functions as a constraint on other agriculture exporting nations, especially those in the developing countries where trade tends to be agriculture dependent. Generally US farm policy offers its farmers supplementary income through a variety of mechanisms to compensate for domestic and international market forces that would not otherwise provide sufficient income to justify continued production. Because US exports dominate the world market for certain agricultural products, US farm policy has the potential to shape internal policy and markets in developing countries, as well as export options and earnings power for their agricultural sectors.\textsuperscript{70}

A. United States Agricultural Production

The United States is a leading producer and exporter of major world food commodities. The US produces about half of the world’s corn and soybeans, and US export comprise about sixty eight per cent of the World’s total corn exports and almost seventy three percent of the worlds total soybean exports. In wheat although the United States produces only ten and one half percent of the world total, US exports make up almost forty one percent of total world exports. Similarly, in cotton the United States produces seventeen percent of total world production but supplies twenty eight percent of

\textsuperscript{69} Katherine Monahan, \textit{US sugar policy: Domestic and International Repurcussions of Sour law}, 15 Hastings int’l & comp l. rev 325, 343 (1992)

\textsuperscript{70} D. Gale Johnson, \textit{Agricultural Policy and Trade: Adjusting domestic programs in an international framework} 1st ed 19 (1985)
the world exports. In rice, where domestic production is only one per cent of total world production the high export rate of domestic rice leads to an eighteen percent share of total world exports. Only in sugar is the US only two percent of world market.\(^7\)

**Average US production and export of targeted commodities 1987-1989**

<table>
<thead>
<tr>
<th>COMMODITY OF WORLD</th>
<th>US PRODUCTION AS % OF WORLD PRODUCTION</th>
<th>US EXPORTS AS % OF TOTAL EXPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>CORN</td>
<td>52.4</td>
<td>67.8</td>
</tr>
<tr>
<td>COTTON</td>
<td>17.2</td>
<td>28.4</td>
</tr>
<tr>
<td>RICE</td>
<td>1.4</td>
<td>18.6</td>
</tr>
<tr>
<td>SOYBEANS</td>
<td>48.3</td>
<td>72.7</td>
</tr>
<tr>
<td>SUGAR</td>
<td>5.9</td>
<td>2.2</td>
</tr>
<tr>
<td>WHEAT</td>
<td>10.5</td>
<td>40.6</td>
</tr>
</tbody>
</table>


**B. United States Farm Policy**

United States Farm Policy focuses today less on farm incomes directly and more on improving the US trade balance through expansion of exports in one of the most productive sectors of the domestic economy.\(^7\) The United States has long employed trade based programs to support farm incomes. The Agricultural Trade Development And


Assistance Act was passed to dispose of surplus agricultural commodities and promote the stability of domestic agriculture. It provided for sales of food commodities at market prices to developing countries at highly concessional terms, in some cases granting up to forty years for repayment as well as for outright grants of food aid. During the 1960s the program accounted for a large share of US agricultural exports but has declined in importance in since the 1980s.\textsuperscript{73}

The effect has been that Food Aid has been particularly controversial because of its mixed and uncertain effects on development. It has been denounced for causing a decline in developing countries' local food prices through increased supply, thus discouraging production, stifling development and increasing the long term need for food.\textsuperscript{74} On the other hand food provided through the PL480 program may have made possible a stronger commitment of resources to the industrial sectors in developing countries, thus spurring industrial development.\textsuperscript{75}

The declining role of PL480 food aid program was precipitated by the passage of additional export focused legislation to increase commercial sales. The Export Credit Guarantee Program gives the US government guarantees of repayment to its exporters when export sales are made on credit. Through this program when a domestic producer sells to a foreign buyers, the government guarantees payment to the producer in the event that the foreign buyer defaults. The program is designed to reduce the risk of export sales

\textsuperscript{73} id at 701
\textsuperscript{74} Walter P Falcon, \textit{Whither Food Aid? A Comment in Agriculture and the State} 1\textsuperscript{st} ed 43 (1991)
\textsuperscript{75} E.C Pasour Jr, \textit{The Farm Problem, Government Farm Programs and Commercial Agriculture}, J. Prod. Agric.64 (1988)
for US exporters. Domestic producers then may sell at lower prices than they could if their buyer was not backed by the US government.\textsuperscript{76}

C. The Burden of Domestic Farm Programs in the US

Domestic farm programs have caused structural changes in the US. There are approximately two million farms. Of these two about 1.6 million are smaller farms which gross between 1,000 and 40,000 dollars per year. These farmers receive little government support and do rely on farm revenues as their primary source of income. The average annual farm income for this group of farmers is about $8,100 subsidies included, while their off-farm income is about 11,200. Most US government deficiency payments are received by large relatively wealthy farm enterprises. Farm subsidization overwhelmingly flows to about 363,000 farmers on the high end of the income scale who receive 30 per cent of all farm subsidies.\textsuperscript{77}

D. Effects of Trade Liberalization

Though domestic farm jobs will be lost, employment in manufacturing will increase through investment of savings gained through reallocation of resources away from agriculture.\textsuperscript{78} Without pressure from subsidized products the market price for agricultural goods will adjust upward and global demand will rise as developed countries shift their resources away from agricultural production. As resources move away from agriculture in developed countries they will shift toward agriculture in developing countries. Increased agricultural production and exports in developing countries will yield more

\textsuperscript{76} id
foreign exchange earnings, which will be available to purchase imports or repay debt. Higher trade volume will facilitate reduction of imports tariffs and export taxes, which will reduce distortions in domestic allocation of resources between agriculture industry. Again these adjustment will promote higher demand for imports of industrial goods in developing countries as the developed countries are looking to export more of these goods, and greater supply of agricultural goods for export from developing countries as demand increases in the developing countries.

E. Border Measures of the European Community

Virtually all trading nations utilize some form of border restrictions to protect some sector of domestic farming. Protectionist border measures include the use of prohibitive tariffs, quantitative restrictions, variable duty rates and restrictive import licensing, unnecessary technical standards or unreasonable health and safety requirements.

One of the most effective forms of border restriction used by the EC has been the variable levy system to limit imports of most major agricultural commodities. Through the CAP the EC has managed to restrict import competition and to induce increased production of its major agricultural items. The variable levy is a mechanism that is designed to look like a tariff duty, but effectively operates as a non tariff barrier. It is usually calculated based on the difference between a desired domestic market price and the lowest world market price. Changes in world price are automatically reflected in the

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78 Alan Deardoff, Options for Trade Liberalization; Role of the US 17, 23 Frank J Macchirola ed (1990)
79 Thomas Loo & Edward Tower, Agricultural Protectionism and the Less Developed Countries.
81 id
82 Kenneth Dam, The European Common Market in Agriculture. 67 Col. L. Rev 209, 217 (1967)
amount of the levy. As the price of import competition declines the levy applied to imported goods rises, thus guaranteeing that domestic production, however high the price, will maintain a competitive advantages over imports. The European Commission calculates import levies for each grain on a daily basis. The variable levy has been used in conjunction with various types of internal subsidies to expand the EC's dairy, beef and feed grains sectors with dramatic results. The CAP for dairy begun in 1962, resulted in huge production and surpluses of skim milk powder and butter during the 1970s which continued during most of this decade. These surpluses have only been recently arrested by drastic changes in the program. Similarly the Common Agricultural Policy for feed grains has transformed the EC from a large importer of feed grains to net exporter with significant surpluses. It is plain, therefore that the result of the CAP system of which the variable levy is a key component has been to induce ever increasing amounts of production in the EC and to guarantee that most of that production is purchased within the Community thereby displacing imported goods.

F. Price Support System of the CAP

Implementation of a system of guaranteed prices keeps market prices artificially high for the benefit of Europe's farmers. The EC farmer has incentive to over produce because he is assured a guaranteed price per unit of his commodity. The CAP system of price support is also protected from being undermined by imports. To imported agricultural products, the CAP assigns a minimum import price called the threshold price which

85 America's Farm Subsidies, The economist, June 27, 1992 at 21
constitutes the minimum entry price for imports from non EC states applicable at the
Community's external frontiers. The threshold price is calculated so that the selling
price for imported commodities will be the same as the target price for community priced
agricultural products. It is maintained at a level to prevent imports from undercutting
the target price by subtracting from the target price an amount which takes into account
the internal distribution costs of transport and unloading from the point of entry.
This is enforced so that European farmers are guaranteed a floor below which prices will
not fall.

If the internal market price falls to the minimum price level, intervention mechanisms
come into operation, but the form of intervention depends on the particular product.
Products may either be temporarily or permanently withdrawn from the internal market
by intervention agencies. When market price increases the agencies may re-introduce the
goods in the market or export them.

G. Co-responsibility Levies

As budgetary outlays for the CAP continued to grow the EC devised a system of co-
responsibility levies which are payments made by Europe's farmers directly to the
Community, based on either a fixed rate of the price they receive or on a variable rate
according to the volume of commodity involved. The original goal of this instrument

87 id
88 id
89 Coopers and Lybrand, Agriculture EC Commentaries, Oct 15, 1992
90 John S Markle, Slaying the sacred cow: Looking for Consensus in the Reforming of World agricultural
Trade, 68 N.D. L Rev. 607, 611 (1992)
91 id
92 John Marsh, The Common Agricultural Policy, in the European Community and the Challenge of the
Future. 1989
was to reduce prices to farmers, raise revenue for the community and leave consumer prices unchanged.

The price support systems have been so successful that structural surpluses have been created in several products. As a result measures have been introduced to limit over production within the community. In 1988 substantial reform in agricultural policy finally occurred when the European Council agreed to introduce stabilizers that automatically cut the EC guaranteed price for a commodity if agreed production levels are exceeded. Stabilizers have now become an integral part of the Community's effort to curb production. The premise is that a co-responsibility levy is charged at the beginning of each marketing year and will only be reimbursed if the maximum guaranteed quantity is not exceeded.93

H. The Oilseeds Dispute

The various limitations of access to markets and protection of domestic markets undoubtedly lead to trade disputes of which the most bitter and protracted has been between the US and EC over oilseeds. In 1962 the US secured a zero duty binding for oilseeds from the EC during the Dillon Round of Multilateral Trade Negotiations.94 Consequently, the US export of oilseeds could enter the EC duty free, a practice which the US would like to see continue. The zero binding was granted because Europe needed protein feed components for its rapidly expanding meat sector, and the US, the world's

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93 Eva Basile, *The General Agreement on Tariffs and Trade, the European Economic Community and Agriculture*, Tul. L. J 1993
largest producer of such products, was the EC's principle supplier of oilseeds and oilseeds products. 95

Four years later the Community desiring to bring the oilseed sector under CAP, formulated a system of minimum producer prices and a system of subsidies for oilseed processors to ensure that preference were given to domestically produced oilseeds. Initially the impact on US producers was minimal but by 1987 the US's anxiety over the use of domestic subsidies by the Community to erode the advantage of the 1962 zero duty binding had peaked. 96

In 1987 the American Soybean Association filed a section 301 petition with the United States Trade Representatives as permitted by the United States Omnibus Trade and Competitiveness Act. This alleged among other things that the EC's acts, policies and practices concerning oilseeds were denying the rights allotted to the United States under GATT and were imposing a burden on restriction upon US commerce. 97 The Claim was that subsidy payments made to EC processors for processing EC oilseeds, but not foreign oilseeds violated Article III:4. 98 The USTR initiated an investigation and later initiated consultations with the community as required by Article XXVIII of the GATT. Those negotiations failed and the US requested that the GATT Council of Representatives establish a dispute settlement panel. The newly established panel found that the EC's oilseed subsidies impaired benefits accruing to the US under the duty free tariff bindings on oilseeds granted by the Community to the US. 99

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95 Thomas J Schoembaum, Agricultural Trade Wars: A threat to GATT and Global Free Trade, 24 ST. Mary’s L. J. 1195 (1993)
96 Alan Raul and Kevin Brosch, Global Trade in Agricultural products 510 Practicing Law Institute 1989
99 id
In 1990 the EC Council of Ministers adopted a new oilseed subsidy scheme linked to
direct payments to producers based on a per hectare basis. The GATT Panel
recommended that the Community move more expeditiously to remove the impairment
by either modifying its oilseeds support system or renegotiating EC tariff concessions for
oilseeds under Article XXVIII of the GATT. In 1992 at a GATT Council meeting the
Community indicated it was not amenable to either action.100

The US sought compensation under article XXVIII and the USTR threatened to
impose punitive tariffs on a billion dollars worth of EC agricultural products into the US.
a figure equivalent to the burden or restriction imposed upon US commerce by EC
oilseed subsidies. The Community only offered the US 400 million dollars in
compensation and later refused to submit the dispute to binding arbitration.101

After seven years the Blair House Agreement was signed. First the Community
agreed to permanently limit the level of subsidized oilseed production and in exchange
the US withdrew its threat to impose 200 per cent punitive tariffs. Second, it dealt with
agricultural subsidies, the main stumbling block of the Uruguay Round. Domestic
Subsidies on all agricultural products will be reduced by 20% based upon the average
level of production as determined by the Aggregate Measure of Support. While the
curtailed level of domestic subsidies did not necessitate the granting of concessions by
the community this was not true as far as export subsidies were concerned.102

On December 14, 1989 the GATT Panel released its report finding that community
regulations providing for payments to seed processors conditional on the purchase of

100 id at 801(1992)
101 Dilip Das, GATT Complaints between the United States and the European Community, 18 J. World
oilseeds originating in the community are inconsistent with Article III of the General Agreement\. According to this article imported products shall be given treatment no less favourable than that accorded to domestic products. This applies to all regulations affecting their internal purchase. The GATT Panel recommended that the community bring these regulations into conformity with the General agreement. Secondly, benefits accruing to the US under Article 1(b) of the General Agreement in respect of the zero tariff binding for oilseeds were impaired. This resulted from the introduction of production subsidy schemes which operate to protect community producers of oilseeds. Following the release of the report the EC foreign affairs council expressed its readiness to accept the GATT panel's conclusions and to adapt the community regulation within the framework of the implementation of the results of the Uruguay round.

Another trade dispute resolved earlier was the dispute regarding the subsidized export of sugar and the claim was filed by Brazil and Australia. In the Sugar Subsidy Case the EC's price support program for sugar held the domestic price of EC sugar well above world market prices. The high support price stimulated production above the level of domestic consumption creating a surplus that had to be exported each year. The high domestic price necessitated a substantial export subsidy in order to meet world prices. At times the subsidy amounted to twice the world price. The EC share of the world

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102 USDA Statement of US - EC Accord on Oilseeds and the Uruguay Round. 9 Int'l Trade Rep 2028 (1992)
104 Id
105 Id
market had risen from 8.8 per cent prior to 1976 to 14.3 per cent in 1978. This 75 per cent increase in the EC market share had been achieved through the use of export subsidy.\footnote{Robert E. Hudec , \textit{The GATT Legal System and World Trade Diplomacy} 2\textsuperscript{nd} ed 141 (1990)}

I. Reform of the Common Agricultural Policy

As a result of the dispute and the negative effects of the Common Agricultural Policy the European Commission decided to reform it. The CAP had been overwhelmingly successful but there were several drawbacks. By boosting output too successfully it had generated surpluses that were costly to store. It infuriated farmers too by not propping up their income as much as they would like.\footnote{Vernon Runngen, \textit{Economic Implication of Agricultural Policy Reforms in Industrial Market Economics} 1\textsuperscript{st} ed 30 (1989)} By the mid 1980s policy makers realized that the CAP desperately needed reform due to changes in the European economy and the failure to achieve the policy's stated goals. The cost of the agricultural program was skyrocketing. Annual Farm subsidies cost approximately 46 billion in 1992, representing 56\% of all EC spending for the year. In 1991 the EC Commission estimated that the cost of the CAP would exceed the budget ceiling of approximately 39 billion dollars.\footnote{Rudi Gotzen \textit{EC Perspective of Production Subsidies and Control} 37 Drake .L.Rev 234 (1987)} During the 1980s the imbalance between supply and demand caused a buildup of surpluses and a heavy drain on the EC's budget.

The movement for reform of the CAP began as early as 1985 with Commission’s issuance of a Green Paper.\footnote{It reported that the CAP has failed to provide adequate support for farmers because the existing system did not take adequate account of the incomes of the vast majority of small and medium size family farms. This had resulted in enormous income disparity among farmers in various member states and within the}
The Commission decided that progressive reductions in production of surplus sectors by means of a price policy reflecting market demand should be engaged. This should take into account the income problems of small family farms in a more effective and systematic manner, supporting agriculture in areas where it is indispensable while maintaining social balance and protecting the environment.

In May 1992 the EC adopted reforms of which the main thrust has been to switch from a price support policy to one geared more towards direct aid for producers. at the same time taking account also of growing concerns over the social and economic development of rural areas. The reforms were phased over a three year period, the goals of which are a better balance of agricultural markets, both through more effective control of production and through keener efforts to stimulate demand. Another goal was to make more competitive, European agricultural products on the domestic and international markets was to be achieved through substantial price reductions.

In an attempt to control the markets, European legislators focused on four objectives when making adjustments to the CAP: control of production and expenditure, reduction of stocks, preservation of the European pattern of agriculture and international concerted action.

The Macsharry Plan would allow the target price for cereals to fall by 35% over three years and the intervention price would be 10% below and the threshold price 10%
above the target price. In 1992 the Council of Agricultural Ministers formally adopted the policy which would over three years control production while guaranteeing farmers' income. This called for price cuts, measures to control over production, and a link between subsidies and acreage. This has represented a step in the right direction but it by no means represents a fundamental change in the CAP policies. The effect of the 1992 policy has been that the level of price support for most agricultural products have been reduced.

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CHAPTER 3

Analysis of the Uruguay Round of Multilateral Negotiations

From the analysis above it is observed that agricultural protectionism has hampered trade in agricultural products as the EC and US have sought to protect their domestic markets. Disputes have occurred as a result of agricultural subsidization and there has been the need for constructive steps to reduce subsidies. The essence of the Uruguay Round of Multilateral Agreements was to establish steps to reduce restrictive activities and encourage trade liberalization. The Uruguay Round brought trading in agricultural products under the umbrella of GATT. The GATT Code of rules under the Uruguay Round Became applicable to all products whether or not a tariff concession had be granted on them. It is interesting to observe that the United States did not initially favour the decision to bring all agricultural products within the confine of the non tariff system as it wanted to continue to protect its agricultural market. In this chapter I will be analysing the elements of the Round which have made significant steps to reducing protectionism. Although these steps are designed to promote freer trade they still have loopholes which can be exploited in the aim to secure restrictions to market entry.
A. An introduction to the Uruguay Round Agreement on Agriculture

At the start of the Uruguay Round the effects of protectionism was being felt in the global agricultural trade. Between 1980 and 1985 world farm trade decreased by about 11%. During that period, United States farm exports fell from a record level of 43.3 billion to 26.1 billion dollars while farm exports from the European Community from 29.1 billion in 1981 to 26.1 billion in 1986. Thus the US, once the world largest exporter of agricultural products was now watching its share of the world market decline than its main competitor. 121

The Uruguay Round Agreement contains four parts, one on modalities for the establishment of specific binding commitments under the Reform Program, another on the decision by contracting parties on the application of Sanitary and Photo-sanitary measures, and one on the declaration on measures concerning the possible negative effects of the Reform Program on net food – importing developing countries. 122

It contained specific binding commitments in three important areas- market access, domestic support and export competition. It took into account the distinctive problems of developing countries, especially the least developed countries. Article IX provides a list of export subsidies which shall be subject to reduction commitments. This includes the provision by governments or their agencies of direct subsidies, consisting of payment in kind, to a firm, industry, or producers of an agricultural product. 123

The sale or disposal for export by governments, or their agencies of non commercial stocks of agricultural products, at a price lower than the comparable price charged for the

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120 RE Hudec, The GATT Legal System and World Trade Diplomacy, 2nd ed 56 (1990)
122 id
123 General Agreement on Tariffs and Trade art. IX, 55 U.N.T.S
like product to buyers in the domestic market is also subject to reductions.\textsuperscript{124} The implementation period was between 1993-1999. The contracting parties undertook not to introduce or reintroduce subsidies on the export of agricultural products if such subsidies were not granted during the base period. In addition they may negotiate commitments to limit the scope of export subsidies granted on agricultural products in individual or regional markets.

A proposal was made for the establishment of a committee on agriculture, charged with the supervision of the operation of the agreement. The review process took place on the basis of the notification submitted by the contracting parties and documents prepared by the Secretariat. Consultations and dispute settlement will be governed by Articles XXII and XXIII of the General Agreement.\textsuperscript{125}

A third feature of the document is that it takes into account the special problems of developing countries. Article 14(1) provides for special and differential treatment in respect of commitments. Least developed countries are not required to undertake reduction commitments. With regards to export competition developing countries will not be required to undertake commitments in respect of some of the subsidies in Annex 7. With respect to specific commitments in the areas of market access, domestic support and export competition, developing countries will have the flexibility to apply lower rates to reduction, provided that the rate of reduction in each case is no less than two thirds of that specified for developing countries. In addition they will have an implementation period of ten years.\textsuperscript{126}

\textsuperscript{125}Draft Final Act embodying the results of the Uruguay Round Agreement GATT Doc.No.MTN.TNC Dec 20. (1991) para 15(6)
\textsuperscript{126}id
B. Analysis of the Round’s Provisions of the Uruguay Round regarding trade in Agriculture.

The Uruguay Round Agreement on Agriculture modifies agricultural trade in three principal areas. First, the agreement provides greater market access by bringing agricultural products within the confines of GATT limits on non-tariff barriers. Second, it bans all new export subsidies and establishes measures by which existing export subsidies are reduced. Third, it requires reduction in domestic support by establishing an aggregate measure of support for trade distorting domestic policies and by providing timetables for specified cuts.\(^\text{127}\)

On December 15, 1993 parties to the Uruguay Round signed a Final Act embodying the results of their trade negotiations. The multilateral agreement established a new world trade organization known as the World Trade Organization (WTO) to administer the new multilateral trade system that emerged from the round and to oversee the implementations of the substantive agreements reached in the Round. Under the Agreement on Agriculture GATT Members would commit themselves to three basic measures: to provide greater market access for agricultural imports, to reduce domestic farm subsides and to reduce export subsidies.\(^\text{128}\)

a) Export subsidies

In Jeffrey Steinle’s Article “The Problem Child of World Trade Reform”\(^\text{129}\) he states that prior to the Uruguay Round, GATT rules affecting agricultural trade were far weaker

\(^{129}\) id
than those which governed trade in industrial goods. GATT Article XVI.4 \(^{130}\) provided that contracting parties

shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product in which a subsidy results in the sale of such a product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market." \(^{131}\)

Essentially, the WTO agreement on agriculture neither eliminates nor forbids exports for agricultural products but rather it creates GATT bindings on the amount of export subsidies that a country can provide. Article 2.3 of GATT \(^{132}\) provides that “members shall not provide export subsidies in excess of the budgetary outlay and quantity commitment levels specified in its schedule and shall not provide such subsidies in respect of any agricultural product not specified in the section of its schedules”. Member schedules are schedules calculated with reference to a formula of reductions of export subsidies staged over a six year period, until the commitments reach levels 36 per cent of budgetary support and 21 per cent in terms of export volume. The types of export subsidies subject to reduction commitments are specifically listed in the text. No other forms of export subsidies are permitted at all. Moreover other forms of subsidies or non commercial transactions which might be used to circumvent export subsidy commitments are forbidden by Article X. \(^{133}\)

\(^{130}\) GATT Article XVI.4 33 Basic Instruments and Selected Documents 55 U.N.T.S 187 art XVI:4

\(^{131}\) id

\(^{132}\) GATT article 2, 33 Basic Instruments and Selected Documents (GATT) 19 55 U.N.T.S 187

\(^{133}\) GATT article 10, 33 Basic Instruments and Selected Documents (GATT) 19 55 U.N.T.S 187
b) Domestic support

With regard to domestic support Article 2.2 of the Agreement on Agriculture provides that a member shall not provide support in favor of domestic producers in excess of the commitment levels in its schedule. The agreement does not eliminate domestic support but rather implements a formula based approach to reductions. The commitment is made on the basis of a Total Aggregate Measure of Support. The Aggregate Measure of Support is the measure of the domestic subsidies provided by a country for all agricultural commodities, except for support which is considered to have no or minimal trade distorting effects, or for support which is tied to specific production limiting policies.

It quantifies all forms of agricultural support and creates a composite figure used as the basis for cutbacks. The AMS also forces countries to either effect the reduction of local governmental outlays to agriculture or absorb the local outlays with greater cuts in the central government's programs. Countries must calculate AMS for each individual agricultural product. The advantage of it is that it prevents production and trade distorting countries from eliminating trade barriers in one product area by imposing them in others. Countries are allowed to maintain agricultural policies that are more appealing by making larger cuts in other less essential policies. The EU originally advocated AMS for this specific reason. The United States, was opposed such a measure and instead wanted to concentrate on the elimination of export subsidies. The AMS approach was

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134 id
135 GATT Article 1, 33 Basic Instruments and Selected Documents 19 55 U.N.T.S 187
136 Kenneth E Cooper, Seeking Compliance with International Trade Agreements at the State level, 2 Minn. J. Global Trade 143, 157 (1993)
137 Peter Torday, GATT Talks Floundering in Final Phase, The independent Oct 10, 1990 at 29
ultimately adopted in the Uruguay Round and represents an important stride in breaking down agricultural protectionism.

c) Market access

In seeking to provide greater market access for agricultural imports, the members agreed to convert non tariff barriers into a tariff equivalent. In addition to subjecting non tariff barriers to tariffication, the members are expressly prohibited from maintaining or going back to any non tariff barrier that they were required to convert to a tariff equivalent.  

The market access provisions of the agreement mandate tariffication of all non tariff border measures. Tarification is the replacement of non tariff barriers with tariffs that provide an equivalent level of protection. Tariff equivalents are equal to the difference between the world market price and the domestic price with non tariff barriers in place.

The market access provisions require that members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties.

The measures to be converted include quantitative import restrictions, variable import levies, minimum import prices and discretionary import licensing. The conversion of non tariff border restrictions to tariffs signals that agricultural products are no longer afforded the myriad exceptions that are unavailable for manufactured goods.

The Agreement on Agriculture also requires that the tariff resulting after conversion of non-tariff barriers be reduced. Tariff reductions are based on each country's tariff

\footnotesize{\(^{138}\) id} 
\footnotesize{\(^{139}\) The International Agricultural Trade Research Consortium, The Uruguay Round Agreement on Agriculture: An evaluation 29(Commissioned paper No.9, 1994)}
\footnotesize{\(^{140}\) Jimmy S Hillman, Agriculture in the Uruguay Round 28 Tulsa L.J. 761(1993)}
schedule, averaging a total of 36% over six years for developed countries. This higher level of tariff reduction reflects the fact that developed countries account for about two thirds of the world’s import of agricultural products. Developing countries may reduce their tariffs at a lower rate than developed countries. Scheduled tariff reductions for developing countries average 24% over ten years. For individual tariffs, the minimum reduction is 15%, limiting the extent to which a country may maintain protectionist border measures for some products by reducing tariffs on others. The market access requirement safeguards against trade decreases that could result if tariffication creates greater protection than the original non tariff measure. The Agreement on Agriculture does provide for safeguard measures that allow a member’s imposition of an additional duty on a product not to exceed one third of then current level, if it experiences a surge in imports of that product. However these rules limit the use to one year and require a certain level of surge before an additional duty can be imposed.141

In Terrence McCartin’s Article 142 he states that the increased market provisions with the tariffication of all non tariff border measures will result in a binding on agricultural products. As a result the security of trade in agricultural products will for the first time in GATT’s history be greater than in industrial products, as a hundred per cent of agricultural product tariff lines will be bound. With respect to individual product categories developed countries will cut tariffs by above average amounts on oilseeds, and cut tariffs by below average amounts on sugar and diary products. In the category of

141 Alan C Swan, Cases and Materials on the Regulation of International Business and Economic Relations (1994)
142 Terrence McCartin, WTO Subsidies enforcement by the US Department of Commerce, 1075 Practising L.J 613 (1998)
tropical products, which accounts for half of the exports of developing countries in terms of agricultural products. A 43% reduction in tariffs will be implemented.\(^{143}\)

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<th>Product categories</th>
<th>All sources</th>
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<td>38,030</td>
<td>37</td>
<td></td>
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<td>Coffee, tea, cocoa</td>
<td>9136</td>
<td>8116</td>
<td>35</td>
<td></td>
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<td>Oilseeds, fats and oils</td>
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<td>6,833</td>
<td>40</td>
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<td>Tobacco</td>
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<td>36</td>
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</tr>
<tr>
<td>Spices and cereal preparations</td>
<td>2,767</td>
<td>1,134</td>
<td>35</td>
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<tr>
<td>Sugar</td>
<td>1,730</td>
<td>1,135</td>
<td>36</td>
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<tr>
<td>Grains</td>
<td>5,310</td>
<td>725</td>
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Source: GATT Secretariat. Agricultural Product Commitment for the Uruguay Round\(^{144}\)

Export Subsidy reduction commitments by country

(Millions of US dollars)

<table>
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<th>Participant</th>
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<td>Total</td>
<td>Base</td>
<td>Final</td>
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</table>
| European Union | 13.274 | 8,496 | -36 | Bovinemeat (19%), Wheat (17%), coarse grains (13%), butter (13%).

\(^{143}\) id

\(^{144}\) id
United States 929 594 -36 Wheat (61%) skim milk powder (14%)

Source: GATT Secretariat: Reduction of Export Subsidies as a result of the Uruguay Round.

REDUCTIONS IN DOMESTIC SUPPORT TO AGRICULTURAL PRODUCERS

Reduction in domestic support to agricultural producers

(millions of US dollars)

<table>
<thead>
<tr>
<th>Participant</th>
<th>Base</th>
<th>Final</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>92,390</td>
<td>76,903</td>
<td>-17</td>
</tr>
<tr>
<td>United States</td>
<td>23,879</td>
<td>19,103</td>
<td>-20</td>
</tr>
</tbody>
</table>

Source: GATT Secretariat

The market access provision on the other hand can be exploited to the detriment of trade liberalization. This is due to the fact that tariffs can be overstated by individual countries. The overstatement of tariffs has been labelled dirty tariffication. The tariffication procedures used by a majority of countries resulted in significantly higher tariffs than the estimated equivalent for the 1986-1988 base period.\(^{145}\) The European Union declared that tariffs were higher than the estimated equivalents for some products and the United States has been known to have used dirty tariffication for some products.\(^{146}\) Dirty Tariffication also increases the likelihood that countries will use the flexibility provided in reducing tariffs to minimize trade liberalization. Because

\(^{144}\) GATT Secretariat, B.I.S.D 27th Supp 1994
\(^{146}\) Hathaway & Ingco 18-19
reductions are averaged across all products and are not trade weighted. an incentive exists for countries to protect sensitive products through divergent tariff reductions.147

\[ \text{exports} \]

d) Export competition

The Agreement on Agriculture imposes two major requirements on export subsidies. Programs that constitute export subsidies include payments in kind, subsidized stock exports, producer financed export subsidies, export marketing cost subsidies, and export specific transportation subsidies. Nations are required to reduce their existing export subsidies. 148 Export subsidy rules are important because they cap the future subsidies a country may provide for an exported product. For the first time in the history of the GATT there can no longer be any doubt as to what level of export subsidies a country can grant in agricultural trade. To aid enforcement of these requirements the exporting country has the burden of proving compliance with the reductions or prohibitions.149 This burden of proof should also compel governments to implement detailed reporting procedures to establish that aid to producers is not tied to exports. The dual requirement of reductions in budgetary outlays and export volumes is extremely important. If required reductions in export subsidies are measured only by budget percentages, then as trade increases, smaller subsidy expenditures can subsidize greater quantities of exports. Conversely in a shrinking product market, if required reductions of subsidized exports are measured only by volume, then greater expenditures could be applied without decreasing the quantity of subsidized exports.150

\[ \text{footnotes} \]

148 General Agreement on Tariffs and Trade art. VIII 55 U.N.T.S 187
149 Michael Tracy, The Uruguay Round Agreement on Agriculture 4 Minn J. Global Trade 333 at 352 (1996)
150 id
C. Weakness and Enforcement Difficulties of the Provisions

The degree of trade liberalization afforded by the reductions in domestic support has been significantly weakened by difficulties in enforcing the reductions. The first difficulty is the effect of numerous exceptions within the agreement. The second is the complexity of implementing the provisions and the political incentive for continuing support. The third is the inability of the WTO to enforce the provisions in the agreement. Green Box exceptions may also limit meaningful reduction of domestic support. Political inertia also creates the incentive to preserve more trade distorting measures. Legislators are concerned with the effects of disrupting employment in the agricultural sector by cutting subsidies and politicians loathe to detract from farmers and upset the powerful farm lobbies.\(^{151}\) Also, there is a lack of reporting and verification procedures. Currently there are no procedures in place by which a team of experts can audit agricultural support programs of individual countries.

\(^{151}\) Thomas Hertel, *PSEs and the Mix of Measures to Support Farm Incomes*, 12 World Econ. 17 22 (1989)
CHAPTER 4

Multilateral Trade Agreements and Developing Countries

This chapter discusses the effect of protectionist policies of the United States and European Community on developing countries. The US and EC are the two major markets which can pull developing countries out of balance of payments difficulties. Increased access to these markets by developing countries in relation to the unrestricted sale of agricultural products will encourage the development of third world economies. Developing countries have had to forge special relationships with the US and EC in order to obtain favourable market access. However this has been on the basis of discrimination against other developing countries. The resulting effect has been the favouring of one group of developing countries over another in breach of GATT principles.

It is important to emphasize that developing countries are economically small compared to developed countries and their leverage in global negotiations is correspondingly limited. In addition exports by individual countries are often concentrated on a few product lines so that there is typically substantially more volatility in developing country terms of trade compared to developed countries.

Developing countries have long felt that they had little influence in GATT decisions. For many years developing countries pressed for special treatment in GATT and attempted to create new rules to embody their concept of how the world economy should
operate. In 1984 a GATT sponsored group of experts noted the adverse effect that non-tariff barriers were having on developing country exports and called for their reduction.\textsuperscript{152}

The General Agreement contains several provisions that explicitly allow differential and more favourable treatment for developing countries. These provisions are Article XVIII, XXVIII and XXXVIII. General clauses in the agreement also favour developing countries. Article II requires GATT members to limit tariffs to the binding listed in the schedule of that member. Many developing countries have historically had very short schedules or no schedules at all and have been relatively free to use any level of tariffs for any imported goods as they desire. Furthermore there is an important exception to GATT rules for countries with balance of payment difficulties. Many developing countries have chronic balance of payments difficulties and therefore have constant access to the privileges of this exception.\textsuperscript{153}

A. The Decision on Most Favourable Nation Treatment.\textsuperscript{154}

Following negotiations within the framework of the Multilateral Trade Negotiations the contracting parties decided as follows:

a) Notwithstanding the provisions of Article 1 of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries without according such treatment to other contracting parties.\textsuperscript{155}

b) The provisions of paragraph ‘a’ apply to the following:

i. preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance the Generalized System of Preferences,

\textsuperscript{152} John Jackson World Trade and the law of GATT, Trade policies for a better future (Report of Eminent Persons on Problems facing the International trading system.) 22 (1969)

\textsuperscript{153} id


\textsuperscript{155} id
ii. differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;\textsuperscript{156}

iii. regional or global arrangements entered into amongst less developed contracting parties for the mutual reduction or elimination of tariffs and in accordance with criteria or conditions which may be prescribed by the contracting parties for the mutual reduction or elimination of non-tariff measures on products imported from one another; special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

c) Any differential and more favourable treatment provided under this clause shall be designed to facilitate and promote the trade of developing countries and not to raise barriers or to create undue difficulties for the trade of any other contracting parties.

i. Any differential and more favourable treatment shall not constitute an impediment to the reduction or elimination of tariff and other restrictions to trade on a Most Favoured Nation basis;

ii. shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and if necessary modified to respond positively to the development, financial and trade needs of developing countries.\textsuperscript{157}

d. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to trade of developing countries.

B. The Generalized System of Preferences

The GATT contracting parties authorized the creation of the Generalized System of Preferences by a waiver adopted in 1971. The waiver was for ten years but the need to extend it was eliminated by the 1979 GATT decision on differential and more favourable treatment for developing countries. The idea was that the promotion of developing countries' exports of manufactured products could help free those countries from heavy dependence on trade in primary products, whose slow long term growth and marked price instability contributed to chronic trade deficits. By adopting a deliberate policy of export oriented industrialization, developing countries could benefit not only from employment and production creation, but also from greater export earning potential based

\textsuperscript{156} id

\textsuperscript{157} id
on products for which demand was strong.\textsuperscript{158} To attain these goals however only the markets of the industrialized countries appeared large enough to provide the desired growth stimulus.\textsuperscript{159}

The solution was the creation of a system of generalized non reciprocal preferences under which developed countries would lower the customs duties they assessed on goods imported from developing countries. It followed from that in addition to protection in the home market; developing country producers also needed preferential access to developed country markets to offset their poor export prospects. This led to the establishment of the Generalized System of Preferences which became a central element in the call for special and differential treatment for developing countries in the GATT.\textsuperscript{160} Through this approach producers in the developing countries would benefit from a price advantage over other foreign producers whose goods would benefit from a price advantage over other foreign producers. whose goods would continue to attract duty at the normal rates. At the same time developing country producers would be able to compete on more equal terms with domestic producers in importing countries.\textsuperscript{161} It has proved difficult to assess the actual effects of the Generalized System of Preferences due to the unavailability of relevant statistics and the problem of isolating the Generalized System of Preference from other factors influencing the overall growth of developing countries.

\textsuperscript{158} Joseph McMahon,\textit{ Agricultural trade, protectionism and the problems of development} 258 (1992)
\textsuperscript{159} Sheila Page. The GATT Uruguay Round Effects on Developing Countries 63 (1991)
\textsuperscript{160} The GSP was authorized by the Contracting Parties under Article XXV of the GATT and it took the form of a temporary waiver of GATT obligations for qualifying developing states. Generalized System of Preferences, Decision of the Contracting Parties, June 25, GATT BISD, 18\textsuperscript{th} Supp. (1972)
\textsuperscript{161} \textit{id}
Under the GSP developing country benefits have been eroded by multilateral tariff reductions under the GATT. Firstly, the GSP schemes impose quantitative and country limitations. Also annual review by the President of the US results in annual country or product exclusions. Secondly the system is frequently modified and lack the stability needed for long term planning in developing countries. The EC modifies its ceilings and quotas annually and hence may easily discontinue benefits. There are also numerous exclusions in the provisions of the Generalized System of Preferences.\(^{162}\)

C. The Paradox of the Agreement on Agriculture

In Michelle Gravelle’s article she states that although the Uruguay Round has made significant inroads to promoting free trade there are negative effects arising out of it. While the Uruguay Round aimed to liberalize trade by reducing protectionism, it on the other hand made proposals which could be detrimental to the source of income obtained by developing countries\(^{163}\). The complex nature of trade liberalization is observed in the light of concessionary agreements. On the one hand global trade will be advanced with the limitation of restrictive policies. However on the other hand it is through similar restrictive policies which has enabled many developing countries to obtain a constant and guaranteed source of income. Trade liberalization therefore has to be carefully construed in relation to developing countries.\(^{164}\) During the Uruguay Round there was a lot of African participation and developing countries weakened their joint call for special treatment in the system, and participated in ways which they previously had not.


According to the prevailing view the first potentially negative effect of the Uruguay Round on African countries is preference erosion. The majority of African countries and indeed nearly all the sub Saharan African countries, participate in various preferential tariff schemes which give them margins of tariff preferences in their markets through the Generalized System of Preference. In the European Community the GSP is supplemented by the Lome Convention. These preferences allow a reduced tariff rate to apply to exported products from qualifying African Caribbean and Pacific countries, creating a benefit for these qualifying countries. Preference erosions resulting from the Uruguay round produces trade losses of about 7.5 million dollars, with a loss of about 5.4 million occurring in the EU. A second potentially negative effect identified in the debate over the effects of the Uruguay Round on Africa is the effect on the food importing countries which include a number of African countries. Here the contention is that as a result of the new disciplines agreed to in the Uruguay Round there will be a reduction in the levels of support paid to farm communities in the industrialized states, particularly in Europe. As a result agricultural food prices will rise globally, reflecting reductions in production subsidies – covering both explicit production subsidies, price supports, and export subsidies. Many view these arrangements and subsidies as the reason for increases in supply and relatively low food prices for net food importing countries. The contention is that agricultural

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164 Jack Chen, Going Bananas: How the WTO can heal the split in the Global Banana Trade Dispute 63 Fordham.L.Rev 1283(1995)  
165 John Jackson, Problems of International Economic Relations 1130-31 (1990); 29 I.L.M 783  
166 Peter Madden, Winners and Losers: The impact of the GATT Uruguay Round on Developing countries. (1993)
production in key exporting countries will fall. Export subsidization will be reduced and there will be a global increase in food prices. 167

Another contention is that the extent of agricultural liberalization in the Uruguay Round has been relatively small and the tarrification process in some cases has actually resulted in increased trade barriers for certain products in certain markets. The argument is that along with agricultural liberalization in the developed countries comes agricultural policy discipline in developing countries, which will improve their situation through the elimination of domestic price distortions and changes in domestic pricing arrangements. 168

D. The Lome Convention

The Lome Convention is a multilateral trade agreement which provides preferential treatment for African, Caribbean and Pacific countries. Tariff preferences agreed upon are a central feature of the Lome convention and there are protocols for products which include rice, sugar, beef, veal, rum, and bananas. The concessionary arrangement under the Lome Convention are important for particular African Countries. Under these arrangements a quota operates under which beneficiary countries ship limited amounts of products into European markets for which they receive close to domestic prices in Europe, which often nearly double the world prices.

169 In the case of sugar the EU undertakes to purchase specific quantities of cane sugar at guaranteed prices. Under Protocol 7 to the Lome Convention import duties other than customs duties, applicable to beef and veal originating in the ACP countries are reduced

167 Agreement Establishing the World Trade Organization 33 I.L.M 1144(1994)
by ninety per cent. The reduction in import duties applies to exports to the EU of specified quantities of boneless meat per calendar year for several African Countries.\footnote{170}

The Lomé Convention departs from the principle of reciprocity which has been a hallmark of the earlier agreements. There are no requirements for reverse preference in the Lomé Agreement. Products originating in the ACP states including manufactured goods and textiles enter the community free of customs duties and in most instances quantitative restrictions.\footnote{171} Certain agricultural products are excluded consistent with EEC Common Agricultural Policy.\footnote{172} Quotas have been extended for ACP beef and veal with an increase of almost 25% over Lomé III allowances. Quotas for bananas, sugar, and rum are also in place designed to protect traditional markets for the ACP suppliers of these products. Mechanisms are also available for the admission of certain important agricultural products such as strawberries, tomatoes, molasses and sorghum, particularly during the off-season in Europe. Where the CAP imposes a duty, but no quantitative restriction on agricultural import. ACP products are duty free.\footnote{173} Notwithstanding the very liberal provisions for ACP exports to the Community, the trend in ACP /EEC trade has been negative.\footnote{174} There has been a decline of EEC imports from all developing countries from 20% in 1975 to 15% in 1987.\footnote{175}

The introduction and gradual extension of the Community’s General System of Preferences has considerably eroded ACP preferences. Indeed only about a third of ACP

\begin{footnotes}
\footnote{168 Alexander Yeats, What are OECD Trade Preferences worth to Africa 1\textsuperscript{st} ed 71 (1994)}
\footnote{169 The Lomé Convention, Protocol 8 Containing the Text of Protocol 3 on ACP Sugar, 12, 29 I.L.M at 899}
\footnote{170 Joseph McMahon Agricultural Trade, protectionism and the problem of development, 1992}
\footnote{171 Lomé Convention IV Article 168&169 29 I.L.M 899}
\footnote{172 id}
\footnote{173 id}
\footnote{174 Williams, Political and Social problems of Africa South of the Sahara 1991}
\footnote{175 Watkins, Africa and the EC: The Lomé Conventions, The Courier, NO.121 May-june 1991}
\end{footnotes}
products, primarily agricultural produce and fish enjoy real advantages due to the Lome preferences. The remaining two thirds would enter duty free in any event. ACP countries must compete with other developing countries in the EEC markets for these GSP products. The ACP countries have made the Community comply with article XXIX in the Lome IV, noting that it is conscious of the need to ensure the overall application of the convention and the maintenance of the competitive position of the ACP states where their advantages to the Community market are affected by measures relating to general trade liberalization.\textsuperscript{176}

E. The Banana Trade War

The Banana Dispute illustrates protectionism by both the United States and the European Community and how the principles of GATT have been breached in the achievement of protectionist measures. It is interesting to note that both the EC and US do not have any significant interest in Africa in particular but are protecting the markets for their respective multinational corporate clients.

Since 1988 the EC has been the world’s largest importer of bananas credited with nearly 40% of the global banana market. In 1991 the cumulative volume of fresh bananas in the EC neared 3.63 million tons of which Latin American countries produced two thirds of the total. In 1992 the total supply of bananas in the EC market approximated 3.76 million tons of bananas of which Latin American countries provided 2.4 million tons and ACP countries provided around 0.69 million tons.\textsuperscript{177}

\textsuperscript{176} Fifty First Session of the ACP Council of Ministers: Seeking satisfaction on Trade, The Courier no 125 Jan - Feb 1991
\textsuperscript{177} GATT Dispute Settlement Panel Report - Import Regime for Bananas 34 I.L.M 177,185 (1995)
In 1993 the European Union after five years of procrastination made an attempt at settling what had become a complex and thorny issue of how to regulate the banana trade in the Union. The problem was that some members imported bananas solely from their former colonies in order to guarantee those developing countries a market for their bananas. Meanwhile other countries who were not bound to former colonies bought cheaper bananas from Latin American producers who had modern and cost efficient bananas industries.\(^\text{178}\)

Germany had unimpeded access to bananas under the treaty of Rome and the Lome Convention also guarantees territories and former colonies preferential treatment with regard to their banana exports. The EU obligations under GATT meant that the contracting parties, including the five Latin American banana countries would be given most favored nation status in regards to trade with the EU. GATT therefore obligated the EC to deny preferential treatment to any country at the expense of Latin American countries.\(^\text{179}\)

The effect of this would be that ACP countries economies would be displaced and hundreds of thousands of jobs would be lost. This would be devastating to a lot of the ACP nations whose main source of income is derived from the trade in bananas. However the EU agreed to new banana import rules that took effect in 1993. It reconciled regulating the banana market while at the same time honoring its commitment to the African, Caribbean and Pacific countries that banana exports would be protected. The result was a new banana regime that uniformly enforces all tariffs and quotas throughout Europe. In order to honour its commitments to the ACP banana producing countries, the

\(^{178}\) European Council Regulation 404/93, art 12, 1993 O.J (L47)
new regime allows duty free importation up to 30% of all European banana consumption. Latin American bananas on the other hand which are cheaper are limited to two million tons per year with a 20% tariff. Anything above this level is subject to 170% tariff. This measure was to prevent devastation of the ACP economies which heavily rely on the European banana market.

The Latin American Countries reacted to the new regime. They called on GATT to implement a dispute panel to investigate and rule on the legality of the new banana regime. The Latin American countries argued that the EU’s banana regime was incompatible with GATT and discriminatory.

In an attempt to head of the GATT panel report the EU made the Latin American countries a compromise offer. The offer consisted of a 100,000 ton increase in 1994 and a 200,000 ton increase in 1995 over the original two million annual quota. The offer was non negotiable and conditional on the Latin American producers dropping the ongoing GATT dispute prior to release of the Second Panel report. However some of the countries refused and the compromise dissolved.

The second report criticized the EC who argued that the report was unacceptable due to the dire political and economic consequences it would cause the ACP countries if the EU opened its market to less expensive Latin American Bananas. It argued that its

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180 Bruce Barnard and Miriam Widman, Court Backs EC Controls on Latin Bananas; Germans Say Curbs to Hike Prices, Unemployment J. COM., June 30, 1993
181 Nathaniel Shepperd, Expected Banana Export Boom Turns into Bust for Central America; EC Quotas Add Stiff Tariffs, J. COMM., (1993)
commitments to the ACP countries under the Lome Convention do not permit it to turn its back on the ACP countries.182

1. The African Caribbean and Pacific countries

These are sixty nine in number. These countries’ trade with the EU is governed by the Lome Convention. The EU grants them preferential trading status due to their former colonial status. For most of these developing nations this arrangement is important to their economic and political survival. Of these sixty nine countries at least eight Caribbean and African countries are considered to have significant banana producing industries. They are Belize, Dominica, St Lucia, St Vincent, Grenada, Jamaica, Cote d’Ivoire, Cameroon and Somalia. Prior to the new banana regime 46% of the bananas consumed by the EU came from ACP and EU territories but under the new regime this figure has dropped to 30%.183

2. The Latin American countries

These countries have industrial efficiency in banana production. Compared to the ACP countries they have larger farms and lower costs of production. The banana producing countries are Columbia, Venezuela, Costa Rica, Guatemala, Nicaragua, Honduras, Panama and Ecuador. Of these eight the first five are GATT members and the primary source of income and economic stability are derived from bananas. However the disparity of Latin American production costs with the ACP is due to capital investments by multinational corporations from the United States in the Latin American Banana Industry. Due to the significant investment and the traditional presence of those
multinationals. Latin America plantations are much larger than those of the ACP and significantly more efficient. Consequently the cost of production is considerably less.\textsuperscript{184}

3. The United States involvement

Until September 2, 1994 the United States had refrained from entering the banana war. At that time, Chiquita Brands International Inc. and Hawaii Banana Industry Association, two major American owned multinational enterprises, filed a petition under Section 301 of the 1974 Trade Act with the United States Trade Representatives. Section 301 authorizes the executive branch to retaliate against practices of another country that are considered unfair in trade and commerce, thereby adversely affecting US interests and those of its nationals. United States nationals may petition the government to initiate investigatory proceedings of a country’s trade practices under Section 301. Many foreign countries have strongly criticized section301 because the President through the USTR may retaliate even where there is no showing that the alleged offense violates any international agreement. Additionally, U.S officials may impose these sanctions without any regard to the GATT/WTO authorities or to US international obligations. Section 302 (a) of the Trade Act authorizes the USTR to investigate acts, policies and practices of a foreign country that are unreasonable or discriminatory and burden or restrict US commerce as defined in section 301.

The US cited GATT Article 1:1 as a prohibition against the EC’s duty free treatment of non traditional ACP bananas. Article 1 was also cited as a prohibition against

\textsuperscript{182} Alison Maitland, \textit{Commissioner Rejects Gatt Attack on EU Banana Regime}, FIN. TIMES LIMITED, Feb 23, 1994
\textsuperscript{183} Miriam Widman, \textit{Banana Ban Hurts Ports}, J. COM., Sept. 20, 1993
discrimination. The US rested its challenge on Article XIII which covers non-discriminatory administration of quantitative restriction. This article generally mandates that a GATT member which justifiably employs tariff quotas may do so provided it does not administer the quota scheme in a discriminatory manner.\textsuperscript{185} In its brief to the WTO the US asserted that the EC’s tariff quota offended the equitable market access distribution principle. In support of its argument the US stated that while Article XIII does not prevent a country from providing allocations to countries that do not meet the substantial interest criteria, it underscores that any quota allocations must conform with reasonable expectations that GATT members would have regarding their market shares in the absence of such import restrictions\textsuperscript{186}.

The US claimed that the EC’s actions has injured American banana marketing companies by undermining their ability to obtain the market share they enjoyed prior to the regime. The US attributed this diminution of access into the EC market to discriminatory treatment of Latin America Banana producing countries in favour of ACP countries. However the US, despite its array of legal allegations does not fully have standing in a dispute. It seems that the US’s sole objective was to secure the continued profitability of American multinationals and had no legitimate concerns for the Latin American nations involved.

In 1994 Chiquita Brands International, Hawaiian Banana Industry Association and Dole Foods who produce, distribute and market bananas through their US incorporated parent companies or through their owned and controlled subsidiary entities summoned

\textsuperscript{184} Canute James, \textit{U.S Position on EC Banana Quotas Angers Leaders of Caribbean Nations}, J. COM .., July 1993

\textsuperscript{185} First Submission of the United States of America in European Communities- Regime for the Importation, Sale and Distribution of Bananas, 1996 WL 397092 (GATT), PP 7, 11 (July 9, 1996)
the US government's intervention by alleging their inability to handle the same or larger volume of bananas for marketing and distribution services as a result of the EC banana import regime. On the basis of the violations the United States alleged against the EC, the US under its own laws, must demonstrate that it has interest in the assertion of its legal right to seek redress for the alleged wrong. In doing so it must show that it has suffered a concrete and particularized injury in fact as a result of the EC banana regime. US firms undeniably suffered injury but relief must not be sought under the cover of restrictions against Latin American countries. The injuries to which the United States point undoubtedly affect US based parent firms and US owned subsidiaries in Latin America and Europe that engage in the production, distribution and marketing of Latin American bananas to the EC market. According to Article I, the rights that arose out of negotiated trade concessions in bananas correspond to those countries that not only produce bananas but also export them from within their territory. The EC irrefutably injured the banana trade expectations of these Latin American countries by failing to afford the bananas which originated in these territories treatment as favourable as accorded to other GATT and non GATT members. Therefore the Latin American third countries are each logical claimants to injury resulting from a violation that impairs their ability to export their home- grown bananas.

The injuries alleged by these third countries are entirely different from the injuries the United States alleges its firms' marketing and distributing services incurred. The United States is not complaining about its restricted ability to produce and export US grown

186 id at P75
187 id at P140
188 Lujan v Defenders of Wildlife 504 U.S 555, 560 (1992)
bananas and so it cannot rely on the protection of Article 1 of GATT. In effect its claim of injury resulting from an infringement on its ability to export bananas grown in a foreign territory is misplaced. From this perspective the United States does not have standing to seek relief for injuries that US firms suffered under GATT in terms of trade in goods.

4. Recent developments in the Banana Trade dispute.

Although the United States did not have legal standing it got a go-ahead to impose 100% tariffs on 200 million dollars worth of EU imports on April 6, 1999. The WTO decision on European Union banana import rules was seen as a major victory that could set precedent in other trade disputes. US trade officials said a WTO arbitration panel agreed with the US that new EU banana import rules violate international trade laws. But the panel significantly lowered the amount of sanctions sought by the US in the case. The United States originally claimed $520 million in lost trade due to EU banana rules. The EU is the biggest banana market, estimated to be worth five billion dollars a year at the retail level.\(^\text{190}\)

The United States won a trade dispute which had not been about the effect of quota restrictions on banana producing economies but rather a trade war in the interest of the various multinational companies who trade in the product. Chiquita Brands international, for the nine months ended October 30, 1998, net sales increased 14% to 2.09 billion dollars. Net income applicable increased 61% to 70.3 million dollars. Revenues reflect

\(^{190}\) http://cnnfn/hotstories/washun/9901/22/banana/
the expansion of the vegetable canning operations through acquisitions. This is a company that employs 40,000 people with a market cap of 674.66 million dollars. \textsuperscript{191}

Similarly, Dole Food Company is engaged in the worldwide distributing, processing, sourcing and marketing of growing branded good products including fresh fruits, vegetables, and almonds. For the forty weeks ended October 10, 1998 revenues rose 4% to 3.39 billion dollars. It employs 44,000 and has a market cap of 1.729.10 million dollars. \textsuperscript{192}
CONCLUSION

The global trade in agricultural products has over the years been subjected to trade policies which have been restrictive in nature. The predominant agricultural markets have been that of the United States and European Community. They account for two thirds of the total global trade in agriculture. The United States and the European Community have had border measures which have inhibited the progress of agricultural trade. These border measures have been utilized to protect their respective domestic markets. Methods have included variable duty rates and quantitative restrictions.

Protectionist trade policies have not only been economically detrimental but have been in violation of the GATT rules. The principles of GATT were enacted in international law to promote free trade in agricultural products but some of the principles involved have been disregarded in the desire to protect domestic markets. Over the years the United States and the European Community has engaged in several protectionist conducts which has lead to the principles being rendered ineffective.

Developing countries are economically smaller than developed countries and their ability to negotiate effectively for their regions has been limited. Although developing countries have had access to non reciprocal Most Favourable Nation Treatment they have encountered trade restrictions among which are variable levies and quantitative restrictions.
The effect of protectionism by the United States and Europe on developing countries has been that trade in agricultural products from developing countries has not been extremely progressive. Instead we have seen the violation of GATT rules through illegal discrimination of one group of developing countries against another. Policies of the United States and Europe have therefore hindered the growth in world trade.

The reforms instituted by the Uruguay Round Agreement have been very important in the aim to liberalize global trade in agriculture. The Uruguay Round has reduced the growth of agricultural protectionism. The market access and export subsidy provisions have provided means to reduce protectionist measures in the agricultural trade. The United States and European Union should continue to reduce restrictive and protectionist practices which stifles the advancement of trade and instead redirect its resources to promoting efficiency in the global trade in agricultural. With the full compliance of the Uruguay Round Agreements protectionist trade policies will be limited and economic prosperity will be available for all.
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