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The General Agreement on Tariffs and Trade (GATT): Has Agriculture Doomed the Uruguay Round

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COMMENT

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT): HAS AGRICULTURE DOOMED THE URUGUAY ROUND?

INTRODUCTION

The General Agreement on Tariffs and Trade (GATT)[1] is one of the principal organizations concerned with substantive issues of international trade policy. The principal purpose of GATT is to promote a free and orderly international trading system.[2] Today, world economies are more greatly influenced by international economics than ever before.[3] The importance of GATT in today's world cannot be overstated given the growing economic interdependence among its nations.[4] The current problem with international economics is managing this interdependence, which is one function of GATT.[5] GATT performs at least two functions: (1) it allows governments to refer to a higher authority when faced with internal pressures for protectionism, and (2) it provides an international forum for participants to express their views and air disputes.[6]

GATT is largely a code of conduct. Members agree to conform to conduct prescribed by the GATT Articles.[7] GATT is adhered to vol-

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1. The General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187, *reprinted in* J. JACKSON, WORLD TRADE AND THE LAW OF GATT 802-82 (1969) [hereinafter GATT].

2. *See* A. Raul & K. Brosch, *Global Trade in Agricultural Products*, 510 PLI/Comm 229 (PLI Order No. A4-4276) (Westlaw, INT-TP Database, at Screen 2) (Sept. 18, 1989). *See also* Grey, *The Decay of the Trade Relations System*, in ISSUES IN WORLD TRADE POLICY 19 (R. Snape 1986). One basic GATT assumption is that trade benefits are maximized if import and export decisions are made by private parties responding to market forces, particularly price. *Id.*

3. J. JACKSON, THE WORLD TRADING SYSTEM 2-3 (1989).

4. *Id.*

5. *Id.* at 4-5. GATT rules attempt to prevent foreign governments from acting to favor their own national objectives in the world market, to the detriment of competitors from other countries. *Id.* at 5.

6. Kerr, *International Trade in Beef - Technical Issues for the Current GATT Negotiations*, 10 J. AGRIC. TAX'N & LAW 55, 57 (1988).

7. GATT, 61 Stat. A12. The General Agreement consists of thirty-eight Articles, divided into four Parts. GATT's broadest member requirements are stated in the first article. Article I incorporates the Most-Favored-Nation (MFN) principle, requiring equivalent treatment among GATT members. The MFN doctrine requires that one nation agree to extend to another the most favorable trade concessions it has granted, or may grant, to any third country regardless of whether the latter nation is giving any future concessions in return. *Id.* Art. I at A12-13. Countries applying MFN treatment do not discriminate among supply sources, ensuring free and fair trade. Article I reduces market distortion because imports come from the lowest cost source. Without the MFN principle, countries may engage in discriminatory arrangements tending to increase misunderstandings and disputes among trading nations. Discriminatory treatment also increases the probability that trade will be used as a weapon of foreign pol-

untarily by participants, and thus, is not binding on member countries. GATT rules do not have the same force of law as domestic legislation. Hence, GATT should not be viewed as a purely legalistic entity, but rather as an organization with an external input into domestic political decision-making.[8]

In September 1986, delegates from 107 nations conducted a ministerial meeting at Punta del Este in Uruguay, which was designed to launch a new round of international trade negotiations.[9] A rather ambitious agenda was set for the Uruguay Round, which included several subjects that were new to the GATT system.[10] Among these new areas were services, trade related intellectual property and trade related investment measures.[11] Successful negotiation in these areas, as well as in agriculture, would have further opened international markets and strengthened GATT's role in regulating international trade. The Uruguay Round negotiations failed to reach an agreement by the scheduled December 15, 1990 deadline, however, largely due to the Euro-

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icy. *See* J. BARTON & B. FISHER, INTERNATIONAL TRADE AND INVESTMENT 144-45 (1986).

Article II adds the concept of tariff concessions to GATT, requiring members to keep tariffs at a reduced level to reciprocate another nation's corresponding commitments to tariff reductions. Article II makes tariff negotiations effective by ensuring that concessions on one product will be reciprocated by concessions on another product. GATT, *supra* note 1, at A14-17. The obligations of Article II do contain exceptions, expressed by Articles XXXVI through XXXVIII, permitting more favorable treatment for the developing countries. J. JACKSON, *supra* note 1, at 854-59.

Articles III through VI prohibit specific types of discrimination against foreign products. Article III requires that foreign goods be treated the same as domestic goods. GATT, *supra* note 1, at A18-19. Article IV regulates cinematographic works. *Id.* at A20. Article V requires freedom of transit. *Id.* at A21-22. Article VI regulates dumping and countervailing duties. *Id.* at A23-25.

Article XI bans all restrictive measures, other than tariffs, on the importation or exportation of goods. *Id.* at A32-34. Article XIII prohibits the use of import quotas. *Id.* at A40-43. Article XVI regulates the use of export subsidies. *Id.* at A51-52.

Articles XXII and XXIII deal with the dispute settlement process. Article XXII creates a consultation procedure for disputes. *Id.* at A64. Article XXIII provides a procedure to declare a GATT member in violation of the agreement, and authorizes sanctions, typically the right to exclude exports from reaching the violator. *Id.* at A64-65.

Articles XXXVI through XXXVIII provide for favorable treatment for the less developed countries. J. JACKSON, *supra* note 1, at 854-59. Article XXXVI states, "[t]he developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties." *Id.* at 856.

8. *See* Kerr, *supra* note 6, at 58.

9. *See* J. JACKSON, RESTRUCTURING THE GATT SYSTEM 38-39 (1990), *citing* Ministerial Declaration of Punta del Este, Sept. 22, 1986, *reprinted in* TRADE POLICIES FOR A BETTER FUTURE 1, 145 (1987).

10. J. JACKSON, *supra* note 9, at 111. Topics for negotiation included: tariffs, non-tariff measures, trade related aspects of intellectual property including trade in counterfeit goods, textiles and clothing, tropical products, dispute settlement, safeguards, GATT articles, agriculture, subsidies and countervailing measures, functioning of the GATT system, natural resource based goods, MFN agreements and arrangements, and trade related investment measures. *Id.*

11. *Id.* Although services were not one of the fourteen negotiating groups, a separate structure was established for their negotiation. *Id.* at 39.

pean Community's refusal to make concessions in agriculture.[12] Although GATT's general director, Arthur Dunkel, has attempted to revive the negotiations, the Uruguay Round's continuance depends primarily on whether the United States Congress determines an extension is warranted.[13]

This comment will first detail the origin and development of GATT as an international trade organization. The focus will then shift to the Uruguay Round, including a discussion of the stated objectives and developments that occurred since its inception in 1986. The collapse of the negotiations will then be addressed, particularly the problems involving the agricultural talks. Finally, this comment will discuss the potential impact of a failed Uruguay Round on the world's economy, including increased protectionism, the development of regional trading blocs and bilateral agreements, and the negative impact on less developed countries.

HISTORY OF GATT

At its origin, GATT was not designed to be an international organization.[14] GATT was originally intended as an interim agreement of limited application, pending the development of the Havana Charter[15] and the establishment of the International Trade Organization (ITO).[16] The ITO never came into existence, largely because the United States, the then economically dominant nation, failed to ratify its adoption.[17] These inauspicious beginnings had an impact on the legal framework of GATT.[18] For example, the basic instrument behind GATT scantily mentions voting, rulemaking, finance and administration. GATT has crawled along for over forty years with virtually no constitution designed to regulate its activities and procedures.[19]

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12. Financial Times, Jan. 15, 1991, at sec. 1, p.8.

13. *See infra* note 136 and accompanying text.

14. J. JACKSON, *supra* note 9, at 1.

15. K. DAM, THE GATT LAW AND INTERNATIONAL ECONOMIC ORGANIZATIONS 10-12 (1970). The Havana Charter contained the substantive provisions and negotiating rules for the ITO. The Havana Charter gave decision-making authority to the International Trade Organization in the areas of commercial policy, employment, economic development, foreign investment and restrictive business practices. Roessler, *The Competence of GATT*, 21 J. WORLD TRADE L. 73, 76 (June 1987).

16. J. JACKSON, *supra* note 9, at 10-15. GATT was not originally intended to be a separate international organization, but rather a subset of the ITO. The ITO was to perform all administrative functions of GATT, even though ITO membership was largely limited to GATT members. *Id.*

17. J. JACKSON, *supra* note 1, at 50-51 (1969). The design of the General Agreement came about as a product of the ITO negotiations, not as a framework for conducting them. *Id.*

18. *Id.* For example, the General Agreement did not provide for the subsequent conduct of tariff negotiations. Because the General Agreement lacked substantive provisions for conducting negotiations, GATT members at the first round followed the rules set forth in the Havana Charter. GATT members simply adopted these rules, making changes and additions as the negotiating process required. *Id.*

19. J. JACKSON, *supra* note 9, at 16.

Since 1947, GATT trade negotiations have occurred through a series of lengthy meetings known as "rounds."[20] The early rounds of tariff negotiations proceeded largely in a bilateral fashion between pairs of member nations.[21] The results achieved from these bilateral negotiations became multilateral in that the concessions were extended to all GATT members by virtue of the General Agreement's Most Favored Nation provision contained in Article I.[22]

The bilateral process of negotiation was extremely detailed and grew more cumbersome with time, causing many countries, in particular the less developed countries, to become dissatisfied with GATT. Consequently, proposals were made in the early rounds for reform of the negotiating process.[23] The procedure for negotiation was officially changed at the 1963 ministerial meeting initiating the Kennedy Round. Rather than negotiating each product separately among pairs of countries, member countries negotiated in large groups and tariffs were reduced on many products at one time.[24]

The next round of GATT negotiations occurred in Tokyo in 1975. Prior to the Tokyo Round, GATT negotiators were largely successful in reducing tariff barriers to trade.[25] At the Tokyo Round, GATT members first recognized that non-tariff measures represented a greater threat to trade liberalization than tariffs.[26] Since the Tokyo Round, therefore, GATT negotiations have focused on eliminating

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20. J. JACKSON, *supra* note 3, at 53. The first GATT round was held in Geneva, Switzerland in 1947, the second in Annecy, France in 1949, the third in Torquay, England in 1951, the fourth saw a return to Geneva in 1956. After these rounds were the Dillon Round 1961-62, the Kennedy Round 1964-67, the Tokyo Round 1974-79, and the Uruguay Round 1986-90. *Id.*

21. J. JACKSON, *supra* note 1, at 219-26. Member countries made lists of tariff concessions sought from other member countries, while member countries that were prepared to make concessions made lists of tariff reduction offers. Negotiations then took place between pairs of member countries on a product-by-product basis. Negotiations occurred in a bilateral fashion because of the United States' dominance in international trade and economics in the post-war era. United States domestic law required that its negotiators to GATT receive strict reciprocity from the principal supplier of a particular good to this country. This meant that if the United States made a concession on a particular product, it must receive a comparable concession on another good. *Id.*

22. *Id.*

23. *Id.* The less developed countries had less to offer in bilateral negotiations, and sought group reform as well as favorable treatment. In response to international pressures, the United States Congress changed its domestic laws to allow negotiations on broad categories of goods. *Id.*

24. *Id.*

25. *See* Roessler, *supra* note 15, at 77. Tariff barriers are duties placed on imports to protect the domestic market's locally produced goods. *See infra* note 67 and accompanying text.

26. J. JACKSON, *supra* note 9, at 36-37. Non-tariff measures include subsidies, quotas and other barriers designed to increase the cost of the product to the exporter. Within the agricultural setting, a subsidy is any payment, direct or indirect, to the farmer to decrease his costs and encourage exporting products. *See infra* notes 71-73 and accompanying text. A quota is a number limit an importing country places on a product to limit the quantity that may enter the domestic market. *See infra* note 68 and accompanying text.

non-tariff barriers to trade as well as tariffs.[27] At the current round of negotiations, GATT members hoped to open world trading markets, particularly in agriculture, by eliminating remaining barriers to market access and increasing the regulations on the use of export subsidies, which are significant non-tariff barriers.[28]

AGRICULTURE

Since the conclusion of the Tokyo Round in 1979, agricultural trade relations have declined, largely due to the European Community's (ECC)[29] change from a net importer to a net exporter of commodities.[30] It was hoped that the Uruguay Round would yield substantial progress in eliminating protectionist farm policies of GATT members.[31] Agricultural negotiations were geared to liberalize the world trade market, increase market access for imports by reducing protective barriers, and increase regulations on subsidies for agricultural sectors.[32] The impact of successful Uruguay Round negotiations on the world economy was projected to include all participating countries, including the less developed countries, as GATT members were "[d]etermined to halt and reverse protectionism and remove distortions to trade."[33] According to Carla Hills, United States Trade Representative (USTR), 60 of the 107 countries participating in the current GATT negotiations do so only because of their interest in agriculture, indicating their recognition of agriculture's importance to the world market.[34]

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27. J. JACKSON, *supra* note 3, at 55-57. The Tokyo Round focused on negotiating multilateral agreements whereby non-tariff measures could be controlled, and established codes prohibiting certain practices. *Id.*

28. *Textiles: USTR Hills Says Passage of Quota Bill Could Bring Collapse of Uruguay Round*, 7 Int'l Trade Rep. (BNA) 1358 (Sept. 12, 1990).

29. The current member countries of the European Community include: France, Germany, Italy, The Netherlands, Belgium, Luxembourg, Denmark, Ireland, The United Kingdom, Greece, Portugal and Spain. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT'L L.J. 123, 132 n.73 (1989).

30. Cline, *Introduction and Summary* in TRADE POLICY IN THE 1980S 19 (W. Cline ed. 1983).

31. See TRADE POLICIES FOR A BETTER FUTURE, *supra* note 9, at 150-51. The Ministerial Declaration of Punta del Este recognized the "urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions . . . ." *Id.* at 150. Protectionistic measures are those calculated to insulate the domestic market from any outside market forces that could adversely affect it. *See* Hoekman, *Agriculture and the Uruguay Round*, 23 J. WORLD TRADE 83, 84 (1989).

32. *Id.* at 150-51.

33. *Id.* at 145-46.

34. *See supra* note 28. Participating GATT members include the United States, those in the European Community, Japan, and the Cairns Group, consisting of Argentina, Australia, Brazil, Canada, Chile, Columbia, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay. Although this list is incomplete, it represents the countries who are the main negotiators in the Uruguay Round. Filipek, *supra* note 29, at 131 n.65.

THE AGRICULTURAL HISTORY

Prior to the emergence of GATT, the world economic environment suffered from a collapse of world trade which culminated in the Great Depression of the 1930's. The United States, through the Hawley-Smoot Act,[35] allowed highly protective tariffs. The average duty on imports was almost fifty percent.[36] These high tariff rates prompted other countries to reciprocate in attempts to protect their domestic markets.[37] As market conditions gradually changed and the United States emerged from the Depression, the New Deal farm policy was adopted, which called for alignment of production with domestic demand and government maintenance of prices to guarantee that farm incomes remained at a reasonable level. Implementation of the New Deal necessitated limiting imports of certain agricultural products.[38] Domestic price maintenance, coupled with quotas and export subsidies, were key features of United States agricultural policy.[39] Because the imposition of a quota on imports conflicted with the legal principles of GATT, the United States sought and obtained a waiver from GATT to permit the maintenance of these quotas.[40]

After the Second World War, political leaders had fresh memories of the negative effects of protectionistic measures, such as tariffs and quotas, experienced prior to the Depression.[41] Recognizing the impor-

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35. Tariff Act of 1930, ch. 497, 46 Stat. 590 (codified as amended at 19 U.S.C. § 1526 (1982)).

36. F. STONE, CANADA, THE GATT AND THE INTERNATIONAL TRADE SYSTEM 8 (1984).

37. *Id.*

38. J. JACKSON, *supra* note 1, at 734-36 (*citing* the Agricultural Adjustment Act, 7 U.S.C. § 624 (a), (b)); GATT, 3d Supp. BISD 37 (1955). *Id.* at 735 n.12. Congress limited United States imports by passing Section 22 of the Agricultural Adjustment Act of 1935, which imposed import quotas on products subject to domestic price support programs. Section 22 of the Act permitted the government to impose fees or quotas on imports that might "reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof." Echols, *The GATT Ministerial and International Trade in Agricultural Products*, in MANAGING TRADE RELATIONS IN THE 1980's 109, 122 (J. Rubin & R. Graham ed. 1984).

39. *Id.* In 1951, Congress amended Section 22 of the Agricultural Adjustment Act such that:

> (f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section.

65 Stat. 75. The United States was thus bound to this Congressional enactment, in spite of GATT provisions.

40. J. JACKSON, *supra* note 1, at 735 (*citing* Decision of the Contracting Parties of GATT of March 5, 1955, GATT, 3d Supp. BISD 32 (1955)). *Id.* at n.13. The United States sought and obtained a waiver from GATT, pursuant to Article XXV, exempting it from following the guidelines regarding import restriction. The other GATT members had little choice but to grant the waiver, because they feared United States might be forced to withdraw from GATT without it. *Id.* at 735. This waiver still invites criticism from GATT participants and encourages them to seek their own waivers and/or to justify any protectionist measures as a response to the United States waiver. A. Raul & K. Brosch, *supra* note 2, at screen 14.

41. J. JACKSON, *supra* note 9, at 9.

tance of establishing an institution that would prevent those mistakes from happening again, GATT emerged as the instrument to negotiate the reduction of tariffs.[42]

When GATT was formed in 1947, agriculture was recognized as an important component of international trade, yet was largely excluded from GATT negotiations.[43] At that time, the prevailing view called for agricultural regulation on a national level, with minimal international scrutiny or interference.[44] The natural outgrowth of that view resulted in frustrated attempts at negotiation or reform in agricultural trade because few, if any, procedures had been established to address agriculture.

THE AGRICULTURAL CRISIS

The current agricultural crisis[45] began in the 1970's when world agricultural trade jumped from $50 billion per year in 1970 to over $225 billion in 1980.[46] Excess supply generated during the 1970's boom resulted in the "dumping" of surplus crops onto world markets.[47] This market boom is attributed to several factors: increased demand in the developing countries, increased demand from Eastern Bloc countries and China as their nutrition and dietary standards improved, and increased prices due to financial and weather conditions.[48] The aggregate effect of these factors was an expansion of agricultural trade in the 1970's. The reversal of these same factors resulted in stagnation during the 1980's.[49]

The 1980's ushered in world-wide recession, diminished demand,[50] and great trade competition with agricultural commodities, which prompted GATT participants to implement protectionistic

42. *Id.* at 9-13.

43. A. MCCALLA & T. JOSLING, AGRICULTURAL POLICIES AND WORLD MARKETS 258 (1985).

44. *See* 1 INTERNATIONAL ECONOMIC RELATIONS OF THE WESTERN WORLD 1959-1971 398-99 (A. Shonfield ed. 1976). The Kennedy Round in 1963 treated agricultural products differently, partially due to the competing national interests of the United States and the EC. Roessler, *supra* note 14, at 70-71.

45. The current agricultural climate has been likened to a crisis. *See* Filipek, *supra* note 29, at 124. The indicators of a crisis include extensive governmental intervention and high stockpiles. *Id.* at 125-26.

46. Filipek, *supra* note 29, at 124 (*citing* Econ. Res. Serv., U.S. Dep't of Agric, Foreign Agric. Econ. Rep. No. 229, Government Intervention in Agriculture: Measurement, Evaluation, and Implications for Trade Negotiations 3 (April 1987)).

47. Dumping surplus stocks can be loosely defined as an exporting country selling its surplus of any commodity priced less than the domestic price. *See* J. JACKSON, *supra* note 3, at 221.

48. Filipek, *supra* note 29, at 124.

49. *Id.* (*citing* Econ. Res. Serv., U.S. Dep't of Agric., ERS Staff Rep. No. AGES870521, A Comparison of Agriculture in the U.S. and The European Community 24 (June 1987)).

50. Farm exports suffered in proportion to the reduced market of the 1980's. The United States' value of exports fell from $43.3 billion in 1981 to $26.1 billion in 1986. *Id.* at 125.

measures.[51] The United States and the EC witnessed a large decrease in farm employment[52] due to over-productivity and economic developments such as world-wide recession.[53] Protectionist measures and a shifting agricultural population, coupled with changing roles in the international marketplace,[54] contributed to the current instability in the world market of agricultural trade.

GOVERNMENTAL INTERVENTION

Given an unstable and distorted agricultural trade market during the 1980's, GATT member countries implemented a variety of farm policies designed to protect their domestic markets.[55] The reasons governments intervened in agriculture were: 1) to ensure sufficient food supplies at stable prices; 2) to increase agricultural productivity; 3) to stabilize and increase farm income; and 4) to maintain the maximum number of people engaged in agriculture.[56]

Proponents of governmental intervention claim the farm community is different from other economic sectors due to the problems and benefits associated with its production. One of the most unique forces that affect agricultural supply and demand is the dependence on the weather.[57] An agricultural venture is typically run by a family enterprise, and thus is relatively small compared with an industrial firm. These farmers often experience long-term low income and high debt commitment.[58] Due to the typically low market share of the individual farmer and his fixed expenses (farm equipment, land rental, etc.), the individual farmer often bears the brunt of a bad market.[59] The supply of small-scale farming production is also inflexible in response to price changes.[60] The small market share of the individual farmer renders him unable to influence the price of any particular product, unlike those industries that claim a moderate to large market share.[61] Farm production also differs from industrial production in terms of processing and distribution. Often, an industry will have on-site processing and organized distribution, whereas the farmer typically relies on a separate distribution system.[62] Farmers also differ from big businesses in that they often do not have an organized labor force.

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51. Ahearn, *An Overview of the International Trading Environment* in MANAGING TRADE RELATIONS IN THE 1980's 19 (J. Rubin & R. Graham ed. 1984).
52. G. HALLETT, THE ECONOMICS OF AGRICULTURAL POLICY 30 (2d ed. 1981).
53. *See* Filipek, *supra* note 29, at 125.
54. The EC became a net exporter as its production increased, thus shifting its role from that of a net importer. *See* Cline, *supra* note 30, and accompanying text.
55. Cline, *supra* note 30, at 6-8.
56. G. HALLETT, *supra* note 52, at 6-7.
57. *Id.* at 31.
58. Filipek, *supra* note 29, at 129-30.
59. *Id.*
60. G. HALLETT, *supra* note 52, at 28.
61. *Id.*
62. *Id.* at 27.

Government intervention in agriculture is accomplished through various policies, depending on the role of the individual country in the world market. Governmental policies that affect agricultural trade have been categorized into three groups: restrictive border measures, internal support measures and export subsidies.[63] Border restrictions include tariffs, quotas, and restrictive licensing measures.[64] Internal support measures include a guaranteed minimum price for farmers, and deficiency and intervention systems if the guaranteed price is not met.[65] Subsidies are benefits given to the farmer either for production aid or for export incentives. GATT addresses several different types of governmentally created barriers to imports: 1) tariffs, 2) quotas, and 3) subsidies.[66] Each of these measures will now be discussed, particularly as applied to agricultural production.

GATT negotiators recognize and allow the existence of farm tariffs, but seek to eliminate tariffs which are severely trade distorting. A tariff is a value added to the price of an imported product.[67] Tariffs operate to discourage the domestic consumer from purchasing the higher priced import, and thus protect the manufacturer (farmer) of the lower priced domestic product from being undersold.

Unlike tariffs, import quotas exist when the amount of an imported agricultural product is limited, usually by the importing country's domestic laws.[68] Import quotas are viewed as prohibitive trade barriers by Article XI of GATT, and were sought to be eliminated at the Uruguay Round.[69] Between tariffs and quotas, tariffs are considered more "transparent." The effect and qualitative value of a tariff are readily apparent, while a quota may also distort competition, but in a more subtle fashion. Quotas often encourage the domestic producer to price certain products higher and thereby enjoy a higher, yet perhaps hidden profit. Current GATT rules, as applied to agriculture, do not effectively address internal support measures, restrictive bor-

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63. A. Raul & K. Brosch, *supra* note 2, at screen 5.

64. *Id.* at screen 6. The EC employs a variable levy discussed *infra* notes 103, 104 and accompanying text.

65. A. Raul & K. Brosch, *supra* note 2, at screen 15-16. Minimum producer price and intervention measures are discussed *infra* notes 103-05 and accompanying text.

66. *See supra* note 7.

67. *See* Comment, *The Application of the General Agreements on Tariffs and Trade to the Countertrade Practices of Less-Developed and Developing Countries: Proposed Amendments to the Gatt*, 16 CAL. W. INT'L L.J. 312, 315 n.26 (1986).

68. "A quota is a government decree that in any given period (usually a year) only a specified amount (or value) of a certain product can be imported." J. JACKSON, *supra* note 1, at 305.

69. GATT, *supra* note 1 at A32-34. GATT Article XI prohibits such restrictions and provides in part:

> 1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Id.

der measures or subsidies to production.[70]

Subsidies are defined in GATT Article XVI as "including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or reduce imports of any product to, its territory . . . ."[71] With such a broad definition, practically any governmental action with some directed benefit qualifies as a subsidy.[72] Subsidies can take the form of direct payments to farmers, tax reimbursements and favorable credit terms, to name a few. Export subsidies apply only to those products which are exported and are restricted by GATT because of their negative effect on the world market.[73]

Domestic agricultural policies often affect the world market. This is particularly true in the case of export subsidies.[74] World market prices are distorted when the subsidy is enough to allow the exporter to reduce the price of the product. The price is not reflective of natural market forces such as supply and demand and thus creates an artificial figure.[75] An importer of such a commodity benefits from reduced prices, while the exporting country bears the dual burden of support-

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70. A. Raul & K. Brosch, *supra* note 2, at screen 5.

71. J. JACKSON, *supra* note 1, at 827.

72. An export subsidy can be thought of as a refund to the farmer. The government purchases the commodity at a specified price to ensure the farmer will receive that price for his goods. The government then is free to dispose of the commodity in a variety of ways. It may export the product to other markets or store the commodity for future use. M. Echols, *The GATT Ministerial and International Trade in Agricultural Products*, in MANAGING TRADE RELATIONS IN THE 1980'S 111 (J. Rubin & R. Graham ed. 1984).

73. Article XVI restricts the use of subsidies and provides in part:

> 2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.
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> 3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in any manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period. . . .
>
> 4. Further, as from 1 January 1958 or the earliest practicable date thereafter, 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 which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market.

J. JACKSON, *supra* note 1, at 828.

74. *See* Schwartz & Harper, *The Regulation of Subsidies Affecting International Trade*, 70 MICH. L. REV. 831 (1972).

75. "A subsidy is treated in the GATT framework as a 'distortion' of international trade, that is, as creating a disparity between the actual costs incurred in producing a particular good and those which must be borne by the firm undertaking its production." *Id.* at 833 (footnotes omitted).

ing its own farmers (through export subsidization) and allowing the lower price of foreign consumption.

When prices are reduced as a result of a government subsidy, GATT's restriction on subsidies is violated because the product enters the world market at prices lower than the domestic market prices.[76] Another exporting country of the same commodity may not be able to compete with the lower price and thus loses market share. Developing countries are not financially able to implement export subsidies for their farmers in order to compete in the world market. Consequently, their export capacity is diminished. Through various domestic agriculture policies, government intervention functions to protect individual interests in particular commodities. The Uruguay Round was aimed to reduce export subsidies, which negatively affect agricultural trade.[77]

Domestic agricultural policies, whereby the farmer is guaranteed a set price regardless of world market price, insulate the domestic economy from the fluctuating world market and stabilize farm income.[78] Internal intervention to stabilize domestic markets, however, causes instability of world markets because the domestic output and consumption will not reflect external supply and demand.[79] The farmer gets paid regardless of how much he produces or sells.

For countries that are largely importers, border measures such as tariffs and quotas[80] are common examples of domestic agriculture policy for farm products. Border measures hurt the domestic consumer by increasing price, limiting imports and restricting supply.[81] Countries that are largely exporters implement policies geared to increase the domestic value of output by increasing the amount of exports. Thus, export subsidies, favorable credit terms and domestic controls are common.[82] Frequently, an individual country will use a combination of import and export controls, tailored to the domestic market for a particular commodity. Both approaches place the financial burden on the taxpayer and consumer.[83]

The instability of world market farm prices, brought about in

76. This is counter to Art XVI, *supra* note 73, at section 4.
77. *See* TRADE POLICIES FOR A BETTER FUTURE, *supra* note 9, at 151.
78. Anderson & Tyers, *Internal Effects of Agricultural Policies*, in ISSUES IN WORLD TRADE POLICY, *supra* note 2, at 95.
79. Carlson, *Hunger, Agricultural Trade Liberalization, and Soft International Law: Addressing the Legal Dimensions of a Political Problem*, 70 IOWA L. REV. 1187, 1213 (1985).
80. Border measures include "prohibitive tariffs, quantitative restrictions, variable duty rates, restrictive import licensing, unnecessary technical standards, or unreasonable health and safety requirements." A. Raul & K. Brosch, *supra* note 2, at screen 6.
81. G. HALLETT, *supra* note 52, at 207.
82. Domestic controls are measures taken to ensure less output for a certain crop. One such method is the embargo, which the United States used in the 1973 soybean shortage and the 1975 grain embargo to the Soviet Union. *See* Mayer, *U.S. Agricultural Export Policy: The 1980's*, 1 WIS. INT'L L.J. 42 (1982).
83. G. HALLETT, *supra* note 52, at 207.

part by domestic controls, was discussed by major GATT members in the Uruguay Round. The positions of the United States, Japan, and the European Community are described in the following sections.

IMPORTANT PLAYERS AT THE URUGUAY ROUND

The Uruguay Round of GATT had 107 member countries that participated in the negotiations which concluded in December 1990. Certain countries play a larger role in GATT than others because of their large trading volume and economic strength.[84] The negotiating stance of the three major trading parties, the United States, EC and Japan, will be next be contrasted and then compared with the stance of the less developed countries (LDCs).

United States

The United States' negotiating position during the Uruguay Round called for global agricultural reform, and no commodity area or support program was insulated from reform.[85] Perhaps the most sweeping aspect of the United States' position was the proposal to eliminate ninety percent of export subsidies within a five-year period.[86] Export subsidies were targeted because they were considered the most trade-distorting tactic employed by countries in attempts to protect their domestic markets.[87]

The United States proposed that trade-distorting measures other than export subsidies, such as variable levies[88] or quotas, would be subjected to "tariffication."[89] Under the "tariffication" theory, one would measure the total benefits conferred to individual agricultural product sectors by tariff barriers, non-tariff import barriers (quotas or

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84. *See* TRADE POLICIES FOR A BETTER FUTURE, *supra* note 9, at 165-66.

85. *Agriculture: U.S. to Present Comprehensive Agriculture Plan at GATT Oct 25, Hills, Yeutter Say*, 6 Int'l Trade Rep. (BNA) 1370 (Oct. 25, 1989).

86. *U.S. Advances Final Farm Proposal Calling for 90% Cuts in Export Subsidy Levels*, BNA Int'l Trade Daily, Oct. 16, 1990.

87. The United States' position was that export subsidies were considered "more pernicious" than internal support measures (tariffs, levies, quotas). *European Community Farm Ministers Back MacSharry on Subsidy Cuts at Talks*, BNA Int'l Trade Daily, Sept. 27, 1990.

88. A variable levy operates in the same manner as a tariff or a tax placed on the imported product. The amount of the tax varies depending on market forces at the time of the import. The variable levy is not a fixed constant, but is subject to change, usually in order to guarantee the farmer the target price. Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209, 217-18 (1967).

89. Tariffication involves converting non-tariff trade barriers into a value which is then treated as a tariff for purposes of reduction. Tariffication is not the only method proposed to eliminate or reduce import barriers. Domestic programs and export subsidies also play a significant role in the agricultural problems faced by the GATT negotiators. Because of their direct effect on prices, export subsidies are singled out for expedited reduction. *See generally, Agriculture: USTR Hills Criticizes Community's Response to U.S Agriculture Proposal Before GATT*, 6 Int'l Trade Rep. (BNA) 1421 (Nov. 1, 1989).

levies), internal controls and supports, and internal (non-export) subsidies. These total benefits would then be quantified into a single term, called the "aggregate measure of support" (AMS). Countries would then propose methods of *reducing* the AMS over a ten-year period. If agreed upon by the contracting parties, the proposal would provide a schedule for the reduction and eventual elimination of market-insulating programs.[90] The United States' proposal called for a seventy-five percent reduction on these areas over a ten-year period.[91] Similar to certain reductions made in previous GATT rounds, the "aggregate measures" would have provided clarity, as well as confirmation that disparate programs were reduced in an equitable manner and pursuant to a fixed schedule.[92]

The United States' proposal stressed the need for substantial reform in all aspects of negotiations: conversion of import barriers to tariffs and then reducing them; modification or elimination of internal trade distorting measures; and elimination of export subsidies.[93] With respect to internal measures, such as domestic price support programs and technical assistance to farmers, the United States' proposal classified all such measures into one of three categories: (a) those which are wholly "trade distorting," to be phased out over a period of years; (b) those which interfere with trade to a lesser extent, to be monitored and reduced over a period of years; and (c) those which have a relatively minor impact on trade, to remain in place provided that they meet specific criteria.[94]

The United States' proposal recognized that developing nations might not be able to implement the suggested reforms in their entirety, or on the same schedule as the industrialized nations.[95] The United States' position recognized the potential benefits to developing nations from a fully liberalized trading system for agricultural prod-

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90. *Fact Sheet on U.S. Agricultural Proposal*, 7 Int'l Trade Rep. (BNA) 1594 (Oct. 17, 1990) [hereinafter *U. S. Fact Sheet*]. *See also U.S. Advances Final Farm Proposal Calling for 90% Cuts in Export Subsidy Levels*, BNA Int'l Trade Daily, Oct. 16, 1990 [hereinafter *U.S. Advances*].

91. *U.S. Advances*, *supra* note 90.

92. Not all United States farmers support tariffication, as evidenced at the International Trade Commission hearing where representatives of the United States' dairy and sugar industries stated tariffication could counter the United States' goal by increasing market instability and domestic prices, as well as costing United States' jobs. Increased imports create fear that United States businesses will not be able to survive at their present capacity. *See Agriculture: U.S. Dairy, Sugar Groups Raise Objections Over U.S. Farm Tariffication Proposal*, 7 Int'l Trade Rep. (BNA) 1262 (Aug. 15, 1990).

93. *U.S. Fact Sheet*, *supra* note 90.

94. *See supra* note 85. An example of a trade distorting policy would be variable levies imposed on imported goods, or quotas that limit the amount of imports allowed. A lesser trade distorting policy may include subsidized crop insurance, research, and structural investment. Only two policies which have a relatively minor impact on trade are recognized by the United States. They are 1) direct income support unrelated to production volumes; and 2) foreign and domestic aid programs. *U.S. Fact Sheet*, *supra* note 90.

95. *U.S. Advances*, *supra* note 91.

ucts.[96] The proposal suggested waiver of the reforms by developing nations on a case-by-case basis.[97]

European Community

In contrast to the United States' proposal for agricultural reform, the European Community (EC) held to its Common Agricultural Policy (CAP). More than an economic program, CAP is regarded as one of the cornerstones of EC unity, the product of years of political compromise within the EC. In 1957, Europe aligned several countries in a common agricultural policy through the Treaty of Rome and established the European Economic Community (EEC).[98] Recognizing the importance of agriculture as an economic and social force, Article 39 of the Treaty addressed production and trade of agricultural products.[99] The EC's CAP gained pre-eminence over the agricultural programs of individual member states.

The main tenets of the CAP focus on common financing, common pricing and common import restrictions.[100] The common financing of the CAP is by a common budget, funded by a value added tax (VAT),[101] variable levies, and import duties. The financing of CAP via the VAT has the effect of burdening well-populated and developed countries (e.g., Great Britain, West Germany) which have a small farm sector. Their farmers receive small subsidies due to their relatively small output, while their developed economies and greater populations generate large sums through the VAT. Conversely, countries with a large farm sector and with a poor economy gain the greatest benefit from the existing CAP practices. These opposite positions of the member states are beginning to strain the fabric of CAP.[102]

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96. In agreement with the United States' proposal, a World Bank study cited benefits to developing countries. If world trade were liberalized, developing countries would benefit approximately 12 billion dollars. *Agriculture: World Bank-OECD Study Cites Benefits of Agricultural Trade Liberalization*, 7 Int'l Trade Rep. (BNA) 737 (May 23, 1990).

97. *U.S. Fact Sheet*, *supra* note 90.

98. Treaty Establishing the European Community, Mar. 25, 1957, 298 U.N.T.S. 11. The original members were France, West Germany, Italy, the Netherlands, Belgium, and Luxembourg. Later members are Denmark, Ireland, the United Kingdom, Greece, Portugal and Spain. *See* G. HALLETT, *supra* note 52, at 313.

99. The Treaty articulated a Common Agricultural Policy (CAP) of member states with the objectives: 1) to increase farm productivity; 2) to ensure fair standards of living for farmers; 3) to stabilize agricultural markets; 4) to ensure availability of supplies; and 5) to maintain reasonable prices for consumers. Filipek, *supra* note 29, at 132-33.

100. *Id.* at 133 (*citing* VOGT & WOMACK, *The Common Agricultural Policy of the European Community and Implications for U.S. Agricultural Trade* in Studies prepared by Congressional Research Service for the use of Republican members of the Joint Economic Committee 35-37 (1986)).

101. Value Added Tax is imposed on all goods sold within the EC. These funds are then channeled into the European Agricultural Guidance and Guarantee Fund to buy specific commodities when those prices fall below the guaranteed price to farmers. Dam, *supra* note 88, at 246.

102. *See* Note, *American Agricultural Exports and the EEC's Common Agricul-*

Implementation of guaranteed prices and variable levies acts to keep prices high for farmers. Variable levies act like an adjustable tariff. The method to determine the amount a variable levy will fluctuate is relatively simple. Member states, through their representatives, agree on a target sales price for a given commodity within the EC. If imports of the commodity are priced below the target price, the variable levy will be added to make up the difference.[103] A variable levy acts as a buffer between the low import price and the higher domestic price. This levy effectively prevents any significant amount of commodity imports from entering the EC. When local prices are lower than the set price, purchasers are not likely to buy higher priced imports, and thus variable levies are not necessary.[104]

The CAP uses export subsidies, import barriers, price supports, and other interventionist measures to control prices for agricultural commodities.[105] A prominent aspect of CAP is a dual pricing system, whereby internal markets are insulated from the world market price by means of variable import levies and subsidies on exports. The proposal of the United States and the major exporting nations was designed to limit dramatically each of the measures on which CAP relies.[106] To ensure a fair standard of living for farmers, the EC responds to the world market by adjusting domestic prices to protect the farmer.

Export subsidies are a major price support tool in the EC, because of its policy to support farmers no matter how much is produced. In fact, the EC farmer has incentive to over-produce because he is assured a guaranteed price per unit of his commodity. The effect of these subsidies is to reduce world market prices, forcing the United States in some cases to support domestic growers so they can avoid bankruptcy.

While export subsidies affect United States internal programs and force price support for United States farmers, the most detrimental effect of subsidies to the United States is the effect on the world

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tural Policy (CAP), 1 WIS. INT'L L.J. 133, 137-40 (1982).

103. For example, if a certain import is $1 per unit less than the guaranteed price set by the EC, the variable levy will be $1 per unit to meet the guaranteed price. *See* Dam, *supra* note 88, at 217.

104. *Id.*

105. Secretary of Agriculture Carl Yeutter estimates CAP spends $11 billion annually on export subsidies, an amount which is "more than the rest of the world combined spends on agricultural exports subsidies." *Agriculture: Yeutter Seeks Support for U.S. Gatt Proposal During Visits with Southeast Asian Officials*, 7 Int'l Trade Rep. (BNA) 1307 (Aug. 22, 1990).

106. The primary purpose of the CAP is to accomplish the goals set forth by the Treaty of Rome. The EC's objections to agricultural reform must be viewed in the context of the collective effect of the farm lobbies in the constituent nations. Each of the member countries has its own unique interest in maintaining the programs of the CAP. It should be noted that the CAP represents a delicate political compromise among the member countries, and the political desire to reduce government involvement in European agriculture is absent. *See* Newsweek 44 (Dec. 17, 1990).

market. The EC's subsidization of exports lowers the selling price and undermines the United States' position in markets which had been dominated by the United States.[107]

Initially, the United States voiced only subdued objection to the operation of CAP, as long as there was no impact on trade of agricultural products by non-EC members. With the shift of the EC's status from importer to exporter and the imposition of export subsidies, CAP moved into territory traditionally dominated by the United States.[108] Consequently, trade disputes and threatened retaliatory trade measures against the EC occurred through GATT.[109]

The EC's negotiating position was essentially defensive, seeking to maintain the *status quo* or perhaps to permit limited modification of the EC's farm policy. The EC was not prepared for an across-the-board reduction of agricultural import barriers as suggested by the United States. The Chairman of the agriculture negotiating group, Mr. Aart de Zeeuw of The Netherlands, proposed a draft text which had been accepted by the EC member states for possible use as a final negotiating text. The EC's proposal suggested a gradual thirty percent reduction of subsidies over a period of ten years, but did not offer specific figures regarding the amounts.[110] This reduction of the domestic farm support payments and external trade barriers would be calculated by using 1986 as the base year.[111]

The proposal also focused on a system of "rebalancing" subsidies and other measures among individual commodity groups, while maintaining the same aggregate level of support. Instead of identifying specific support levels for individual commodities and then reducing them (as per the United States' proposal), the European approach was to reduce the most price-distorting payments while "balancing" payments in weaker segments of the farm economy.[112] The effect of "rebalancing" is that concessions made by converting subsidies into tariffs would be countered by the higher tariffs on other products.[113]

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107. *See* Yannopoulos, *United States Trade Interests and EC Enlargements*, 21 J. WORLD TRADE L. 49, 52-53 (Aug. 1987).

108. *Id.* at 54.

109. *Id.* at 51-54. For example, in 1981, the United States filed complaints with GATT against the EC citing the EC's subsidized exports resulting in export refunds on sugar, poultry meat and wheat flour. The United States retaliated with the inception of its own export aids geared to help the American farmer dominate those markets taken by the EC. *Id.* at 54.

110. *European Community Farm Ministers Back MacSharry on Subsidy Cuts at Talks*, BNA Int'l Trade Daily, Sept. 27, 1990.

111. *Agriculture: EC Uruguay Round Proposal Would Leave CAP Essentially Unchanged, Back Tariffication*, 6 Int'l Trade Rep. (BNA) 1617 (Dec. 13, 1989) [hereinafter *Agriculture: EC Proposal*].

112. Rebalancing would lower high tariffs for certain products and raise or implement new tariffs for those products with low or no tariffs. For example, the high tariff on cereal would be lowered and the nonexistent tariff on soybeans would be implemented to make up for the difference in the tariff of the cereal. *Id.*

113. *See GATT: EC Advances GATT Agriculture Proposal, U.S. Expresses Disappointment with Plan*, 7 Int'l Trade Rep. (BNA) 4 (Jan. 3, 1990).

In summation, the EC proposal had two main strands for negotiations: the thirty percent reduction of trade barriers over ten years, using 1986 as the base year, and the rebalancing system, whereby high tariffs would be lowered and low tariffs would be raised.

Japan

Japan was considered a main player in the Uruguay Round due to its immense volume of international trade. Japan's trade stance during the round was closely connected to its rice crop. Japan currently has a near-total ban on rice imports.[114] Agricultural protectionism is defended in Japan under the guise of food security.[115] Japan justifies its position by asserting fears that if the rice market were to open, more agriculturally oriented countries could undersell Japan's market and thus make Japan dependent on outsiders for food. Japan claims that its food security would be inadequate if it cannot effectively feed its own people with its main food item.[116] Japan fears the other countries might use food as a weapon to force Japan into trade negotiations that would be detrimental to Japan's world economic position. Japan's rice-growing sector also represents its culture, and Japan fears that opening the rice market may eliminate the Japanese farmer, which would significantly weaken the Japanese culture. Japan supported the EC's proposed gradual reduction of only thirty percent of internal price support systems, and denounced the United States' proposal as being "impractical."[117] Japan rejected United States proposals that import quotas on food staples, such as rice, be replaced by tariffs.[118]

Less Developed Countries

The economic situation of many less developed countries (LDCs) has dramatically worsened since the conclusion of the Tokyo Round in 1979.[119] One author has suggested that the "debt bomb" of the LDCs is the single most differentiating factor between the Tokyo and Uruguay Rounds.[120] The LDCs hoped the Uruguay Round negotiations would reduce certain trade barriers implemented by the developed countries and thus reduce their tremendous debt.

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114. *Japan's New Agriculture Minister Says Compromise on Rice Needed for GATT Talks*, BNA Int'l Trade Daily, Jan. 9, 1991.

115. *Japan's GATT Strategy Unchanged, Officials Say*, The Reuter Library Report, Mar. 6, 1991 [hereinafter *Japan's GATT*].

116. *Id.*

117. *Id.* Japan proposed to cut subsidies on rice, wheat, and barley by 26 percent of 1986 levels by 1996. *See also Agriculture: USTR Hills Criticizes Community's Response to U.S. Agriculture Proposal Before GATT*, 6 Int'l Trade Rep. (BNA) 1421 (Nov. 1, 1989).

118. *Japan's GATT*, *supra* note 115.

119. J. BARTON & B. FISHER, *supra* note 7, at 165.

120. *Id.*

The United States, the European Community and Japan largely had a stranglehold on the negotiations.[121] The less developed countries were largely a silent majority at the Uruguay Round.[122] Although the less developed countries formed a numerical majority at GATT, they were unable to exercise their voting clout because decisions must be made by a consensus.[123] The LDCs also assumed a minor role in GATT negotiations due to their relatively weak political and economic power. One author suggests that by obtaining a "back seat position" the LDCs took advantage of a free rider position.[124] By largely remaining silent during GATT negotiations, the LDCs' own trade restrictions were safeguarded by the preferential treatment afforded by Article XXXVI, while they simultaneously obtained the benefits of developed countries' tariff reductions through Article I's Most Favored Nation treatment.[125] According to another author, however, the LDCs may be "more vulnerable" at GATT today than at any other time, because of a lack of cohesion and the absence of a common negotiating stance.[126]

The LDCs were primarily interested in the agricultural negotiations, since agriculture constitutes much of their productive output.[127] The LDCs wanted the developed countries to reduce or eliminate the use of import barriers, quotas and export subsidies on agricultural products. The LDCs, therefore, largely supported the United States' proposals in agriculture.[128] In return for concessions in this negotiating area, the LDCs may have been willing to increase the amount of intellectual property protection they provide, and to reduce the use of trade related investment measures (TRIMs).[129]

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121. *GATT Delegates Ask 'What Went Wrong?' As Concluding Uruguay Round Session Begins*, BNA Int'l Trade Daily, Dec. 7, 1990 [hereinafter *GATT Delegates*]. Statement of GATT Director General Arthur Dunkel.

122. A partial list of GATT LDC members includes: Algeria, Argentina, Brazil, China, Egypt, India, Indonesia, Jamaica, Malaysia, Mexico, Nigeria, Peru, Pakistan, Senegal, Yugoslavia and Zimbabwe. *India Invites Developing Nations to Meeting to Discuss Strategy for Uruguay Round Talks*, BNA Int'l Trade Daily, Jan. 16, 1991 [hereinafter *India Invites*].

123. *Gatt Delegates*, *supra* note 121.

124. Desai, *The Politics of India's Trade Policy*, in DOMESTIC TRADE POLITICS AND THE URUGUAY ROUND 105 (Nau ed. 1989).

125. *Id.*

126. *India Invites*, *supra* note 122. Statement of Indian Foreign Secretary Muchkund Dubey.

127. *Id.* India's Commerce Minister estimates that processed agricultural products could increase from 215 million dollars to 2 billion dollars per year within five years through GATT liberalization.

128. *Id.*

129. *Id.* Currently, LDCs provide little or no protection to intellectual property, resulting in lost revenue to artists, computer programmers, and anyone else desiring protection of his work. TRIMs are limits imposed by developing countries on foreign investment by industries of developed countries. TRIMs assume a variety of forms, but the most common types require foreign investors to use local services and locally produced goods in their production plants. This is often not the most economically advantageous scheme for the foreign investor. Note, *The Role of India's Foreign Investment Laws in Controlling Activities of Multinational Corporations*, 14 SYRACUSE

FINAL NEGOTIATING POSITIONS

When GATT negotiations ended December 15, 1990, the position of the United States remained to eliminate export subsidies, thereby making the modest reform suggested by the EC unacceptable.[130] The United States maintained that the EC's proposed thirty percent reduction of subsidies, using 1986 as a base year, was practically useless. By using 1986 as the base year, the EC would get credit for any reductions already in place, effectively trimming the net subsidy reduction to fifteen to twenty percent.[131] The United States tried to limit government intervention via the elimination of export subsidies and reliance on a tariffication system whereby all trade distorting measures could be gradually reduced. The United States believed that use of export subsidies distorted world price and demand by creating artificial market conditions.

The United States supported across-the-board, commodity-specific reductions, claiming this would not hinder free trade and would open new trade markets. The United States' position on the EC's proposed rebalancing system was that any tariffs that were lowered by the EC would be countered by increased tariffs in other areas. The United States maintained that government intervention and poor governmental management were the cause of trade distortions.

The final EC negotiating position was opposed to significant reductions of export subsidies. The EC refused to reduce export subsidies on farm products beyond its proposed thirty percent maximum. The EC claimed that subsidies did not distort world market prices. EC negotiators opposed final United States proposals to reduce export subsidies more quickly than other support measures. The EC supported "rebalancing" of subsidies, provided that overall levels were reduced. The EC rigidly adhered to its policy of protecting its farmers at any cost, and did not agree that export subsidies alter market price and demand.[132] The EC argued that problems with price and demand were the reasons for the current market instability.[133]

The significance of the difference between the United States and EC negotiating stance goes to the crux of the problem facing the Uruguay Round negotiations. When agricultural negotiations between the EC and United States stalled, the progress made in other negotiating

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J. INT'L L. & COM. 519, 534-36 (1988) (authored by Ronald A. Nair).

130. *Head of IMF Urges GATT Members to Strive for Successful Conclusion of Uruguay Round*, BNA Int'l Trade Daily, Jan. 17, 1991.

131. *Agriculture: EC Proposal*, *supra* note 111. In a letter to President Bush, Senator Dole (R-Kan) noted that the U.S. spent $312 million on farm subsidies in 1990, while the EC spent $12 billion in export subsidies. *Dole Urges President to Strengthen Support for Commodity Export Programs*, BNA Int'l Trade Daily, Jan. 28, 1991.

132. *EC Advances GATT Agriculture Proposal, U.S. Expresses Disappointment with Plan*, 7 Int'l Trade Rep. (BNA) 4 (Jan. 3, 1990).

133. *Id.*

groups stopped. Because the basic economic and political differences between the United States and the EC were not resolved, the Uruguay Round of GATT failed to meet its scheduled deadline.

POST-GATT RESPONSE

Efforts to revive the collapsed talks were initiated in January 1991, by GATT director Arthur Dunkel.[134] However, it is unlikely an agreement will be reached in the short amount of time remaining for the United States' negotiators under United States law. GATT negotiation results would be implemented into United States law under the fast-track procedure of the Omnibus Trade and Competitiveness Act of 1988.[135] Through fast-track, President Bush has until June 1, 1991 to sign the text of any agreement, which Congress may then either approve or disapprove in its entirety and without amendment.[136] After June 1, Congress may amend the text of any agreement.[137] Congressional amendment would effectively terminate any chance of reaching an agreement, because GATT member countries would refuse to negotiate an agreement, "fearing that any agreement would be unraveled by a host of congressional amendments."[138] If Congress refuses to extend the fast-track procedure, the extended Uruguay Round negotiations will likely terminate, because the major trading parties will not likely enter into a multilateral agreement without the participation of the United States.[139]

One alternative measure exists for the Bush Administration under fast-track. According to the 1988 Act, the President must notify Congress of his intention to enter into an international agreement, or request an extension of the deadline, ninety days before the deadline, or in this case by March 1, 1991.[140] President Bush sent to Congress the Administration's request for a two-year extension of the fast track authority on March 1, 1991.[141] Either house of Congress can kill the President's request by adopting a resolution against the requested ex-

134. *Uruguay Round Negotiations Back on Track as Participants Agree to Tackle Farm Trade*, BNA Int'l Trade Daily, March 1, 1991.

135. Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 2903(a) (1988).

136. 19 U.S.C. § 2191 (1988).

137. *Id.*

138. *Rep. Dorgan Tables Resolution Opposing President's Bid for Fast-Track Extension*, BNA Int'l Trade Daily, Mar. 6, 1991. Statement of USTR Carla Hills to the National Association of State Departments of Agriculture made on March 4, 1991.

139. *President, as Expected, Requests Extension of "Fast-Track" Trade Authority Until 1993*, BNA Int'l Trade Daily, Mar. 4, 1991 [hereinafter *President, As Expected*].

140. 19 U.S.C. § 2903 (b)(1)(B)(i)-(ii). The President can receive a maximum extension of two years if he can show that the negotiators have made significant progress to justify the extension. 19 U.S.C. § 2903(b)(2)(B).

141. *President, as Expected, supra* note 139. Members of the textile industry, labor, environmental, and some sectors of the agricultural community oppose extending the fast-track procedure. *Id.*

tension by June 1, 1991.[142] Disapproval resolutions have been introduced in both the Senate and the House of Representatives.[143]

ANALYSIS

Impact of a Failed GATT on Protectionism

Should Congress refuse to grant the Administration's request for fast-track extension, the Uruguay Round will have failed in meeting its stated objectives of reducing trade distortions and opening international markets.[144] A failure of the Uruguay Round will not automatically result in the collapse of GATT, but it will undoubtedly mean lost opportunities to improve world trade. USTR Carla Hills claims the United States and the EC will lose $1 trillion each in economic output if the Uruguay Round is not salvaged.[145] Deputy USTR Julius Katz stated that the world trading system will come under great strain if current GATT negotiations should fail.[146]

One possible result of a failed Uruguay Round is increased protectionism in the United States and abroad. Certain United States legislators have stated that they will seek domestic remedies to address current distortions in world trade. For example, Sen. John Danforth and House Majority Leader Richard Gephardt suggested that the United States reinstitute the so-called "Super 301" provision of the 1988 trade act.[147] The provision, which was valid only for 1989 and 1990, required the USTR to identify "countries with a consistent pattern of trade barriers and market distorting practices" and to determine which barriers most severely restrict United States exports.[148] Super 301 further authorized the administration to retaliate if bilateral attempts to open these markets fail.[149] In light of the success of Super 301 in opening foreign markets[150] and the apparent failure of GATT, Congress may now be inclined to extend Super 301.

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142. 19 U.S.C. § 2903(b)(1)(B)(ii).

143. *Helms Expresses Skepticism on Request for Fast-Track Extension*, BNA Int'l Trade Daily, Mar. 15, 1991.

144. *See supra* note 9 and accompanying text.

145. *Uruguay Round of Multilateral Talks Tops U.S. Trade Agenda for 1991 as Administration, Congress Prepare to Deal with Other Range of Issues*, Int'l Trade Rep. (BNA) Jan. 9, 1991.

146. *Id.* Katz claims that the inability to reach an agreement would mean the "loss of great benefits that would come from an agreement and it would run the risk of a serious trade dispute which could poison the international trading environment." *Id.*

147. *Id.*

148. 19 U.S.C. § 2420(a) (as amended).

149. *Id.*

150. *See supra* note 144. Senator Max Baucas claimed that Brazil liberalized its import licensing system under threat of Super 301 action, and that South Korea and Taiwan had taken "significant steps" in reducing trade barriers when threatened with Super 301 retaliation. *Id. See also* Recent Developments, *The Implementation of "Super 301," Omnibus Trade and Competitiveness Act, §301, 19 U.S.C. §2411 (Supp. VII 1989)*, 31 HARV. INT'L L.J. 359 (1990).

Max Baucas, chairman of the International Trade Subcommittee of the Senate Finance Committee, echoed similar sentiments regarding the need for protectionistic domestic remedies. Baucas proposed stricter enforcement of Section 301 of the 1974 trade act and the negotiation of free trade agreements with countries in Latin and South America.[151] Section 301 authorizes the USTR to respond to any foreign practice that violates any trade agreement or is "unjustifiable and burdens or restricts United States commerce."[152]

The Bush Administration has also shown interest in providing greater protection for United States farmers. The President recently requested additional funds for the Agriculture Department's Export Enhancement Program (EEP), to allow United States farm exports to better compete with subsidized EC agriculture.[153] The EEP provides for the use of cash bonuses to subsidize United States exports in markets where there are subsidized goods.[154] The EEP has a spending limit of $425 million for fiscal year 1991. Presently, $364 million has been spent on farm subsidies.[155] On March 1, 1991, the House Agricultural Committee approved legislation that would repeal the EEP spending limit and authorize an additional $475 million to fund the agricultural program.[156] It is, therefore, apparent that Congress and the Bush Administration are committed to protecting United States farmers' interests in international markets.

Even if Congress chooses not to seek domestic remedies, certain changes in the United States government's farm spending will occur automatically. Lawmakers in the United States previously designed an amendment to the Food, Agriculture, Conservation and Trade Act of 1990, which functions as a safety net for United States agriculture, should the EC and Japan fail to open their markets under GATT.[157] According to the Act, unless an agreement on farm subsidies is reached through GATT, the agriculture secretary must lift some of the restraints on farm spending and increase spending on export subsidies by $1 billion, beginning in 1992.[158] If no agreement is reached by June 30, 1993, the Act, at a minimum, requires the Secretary to

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151. *Id.* Section 301 is codified at 19 U.S.C. §§ 2411-16.

152. 19 U.S.C. § 2411(a)(1)(B) (1988). For additional discussion of section 301 application, *See* Bliss, *The Amendments to Section 301: An Overview and Suggested Strategies for Foreign Response*, 20 LAW & POL'Y INT'L BUS. 501 (1989).

153. *Administration Urges More EEP Funds to Pressure EC in Multilateral Talks*, BNA Int'l Trade Daily, Feb. 21, 1991.

154. Food, Agriculture, Conservation, and Trade Act of 1990, 19 U.S.C. § 1531.

155. Bliss, *supra* note 152.

156. *House Agricultural Committee Approves $475 Million in Emergency EEP Funding*, BNA Int'l Trade Daily, Mar. 4, 1991. The House of Representatives' bill, H.R. 805, originally authorized an unrestricted $5 billion in farm subsidies for the next five years. *Id.*

157. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-58, § 1302(a), 104 Stat. 1388.

158. *Id.* at § 1302(b).

strongly consider scrapping all farm spending cuts.[159] These safety net measures will undoubtedly protect the interests of United States farmers, but will also increase the budget deficit, taxes and consumer prices.

Impact of a Failed GATT on Developing Countries

The biggest losers of a failed Uruguay Round may be the developing countries. These countries' economies rely heavily on the exportation of agricultural products, and are facing serious barriers at the EC and Japanese borders.[160] The LDCs are severely injured as a direct result of import restrictions and export subsidies of the developed nations. The import restrictions implemented by the governments of developed nations substantially reduce the earnings of the LDCs.[161] Import restrictions limit the LDCs' access to major consumer markets. The developed countries' exportation of agricultural surpluses at artificially created prices tends to lower international market prices and eliminate buyers for LDC exports. Artificially low world market prices created by the developed countries' governments also depress domestic farm prices in the LDCs.[162] Lower domestic prices reduce domestic farm incomes and lessen the incentive to produce farm crops. Because the majority of the LDCs' labor force is employed in farming, agricultural development is essential in solving their economic problems.

A healthy agricultural sector in the LDCs would also stimulate their industrial development. The processing of agricultural products would allow the LDCs to develop basic industries. Agricultural processing industries are ideally suited to the LDCs: the technology is unsophisticated, raw materials are plentiful and start-up costs are relatively low.[163] The development of LDC processing industries is severely restricted, however, by the economic policies of the developed world. For example, developed countries typically impose high tariffs on processed agricultural goods, even though little or no tariff may be imposed on the unprocessed form of the product, thus creating obstacles to basic industry development in the LDCs.[164]

Impact of a Failed GATT on Developed Countries

From a different perspective, it is important to consider the effect of failed negotiations on trade among developed nations. According to Deputy USTR Katz, regional trading blocs and bilateral agreements may result from a failed Uruguay Round, which he described as exclu-

159. *Id.* at § 1302(c).
160. G. CASADIO, TRANSATLANTIC TRADE USA-EEC CONFRONTATIONS IN THE GATT NEGOTIATIONS 159 (1973).
161. Carlson, *supra* note 79, at 1213-18.
162. *Id.* at 1214.
163. *Id.* at 1217.
164. G. CASADIO, *supra* note 160, at 158-59.

sionary and harmful to multilateralism and world trade.[165] There is some indication from USTR Hills that the United States will attempt to "lead by example" and demonstrate to the EC and Japan that economic growth will occur from reduced trade barriers within the western hemisphere.[166] Three regional trading blocs may initially develop from bilateral agreements if the Uruguay Round negotiations are not extended through 1991. These blocs would likely consist of the Americas, Europe, and an Asian-Pacific trading group.[167] United States policy makers might be tempted to negotiate additional bilateral agreements within the western hemisphere and with the EC and Japan to replace GATT.[168]

Bilateral trade agreements are a poor substitute for the multilateral GATT approach. The problems associated with bilateralism are both economic and political. From an economic standpoint, a series of bilateral trade agreements would prevent the efficient use of the world's resources. Bilateralism places economic obstacles in the path of the free movement of goods and capital. Goods are not purchased from the lowest priced source, but rather are purchased according to political affiliation. The political shortfalls of bilateralism are those that develop when a country shows favoritism. Tensions with third countries often arise because of the discriminatory treatment of trade, producing both resentment and distrust in the excluded nation. The effect of bilateralism on developing nations may be particularly severe, because these countries are often excluded from bilateral agreements since they have little to offer economically. Bilateral agreements also tend to have a self-propagating effect. Pressure to negotiate bilateral agreements increases as the number of bilateral agreements increases, because the market share of excluded countries shrinks and the discriminatory treatment of trade increases.

The United States, EC and Japan cannot afford to be in rival trading blocs. Although the United States has cause for frustration with Japan over market access, and with the EC for halting the Uruguay Round, western cooperation remains important for strategic and

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165. There ia also some indication that Australia and New Zealand are solidifying trade talks that will join the two countries into a trading bloc by July 1, 1990. *GATT Failure May Result in Closer Relations for Australia and New Zealand, Official Says*, BNA Int'l Trade Daily, Jan. 29, 1991.

166. *Threat of War Puts GATT Talks on Hold*, Investors Daily, January 16, 1991, at 1. The United States currently participates in a free trade agreement with Canada and is currently negotiating a combined free trade agreement with Mexico, which could bring all of North America into one trading bloc. President Bush has also discussed extending a free trade agreement to include Latin America. *Id.*

167. *Rising Regionalism From Failed GATT Round Would Not Benefit Third World, Study Says*, BNA Int'l Trade Daily, Feb. 13, 1991. Bilateral trade agreements have recently become quite popular in the United States and in Europe. The United States is currently negotiating a free trade agreement with Canada and Mexico, while the EC has unified into a large region of free trade. *Supra* note 166.

168. Baucas, *A New Trade Strategy: The Case for Bilateral Agreements*, 22 CORNELL INT'L L.J. 1, 12 (1989).

security reasons.[169] Furthermore, a fragmented trading system of friction and discrimination increases consumer prices and decreases economic efficiency. Just as rival trading blocs would be a disaster for the major trading parties, the United States, EC and Japan should not enter into bilateral agreements with each other. Such an agreement would severely restrict United States trade negotiators' options. For example, one author has suggested that the United States might someday wish to join sides with the EC in a multilateral forum on the issue of market access to Japan. At another time, the United States may need to align with Japan in a multilateral consensus to ensure that the EC does not use its recent unification to discriminate against outside interests.[170] It is important, therefore, that these countries resolve their trade disputes in a multilateral forum such as GATT.

Although not an ideal institution, GATT's multilateral approach is better for world trade than successive bilateral agreements. GATT's Most Favored Nation (MFN) principle, embodied in Article I, prohibits member countries from discriminating among supply sources.[171] MFN minimizes distortions in the market because imports come from the lowest cost source. MFN also promotes trade liberalization since each GATT member must open its markets equally to all member countries. Politically, MFN tends to reduce tension among nations by fostering equality and guaranteeing newcomers access to international markets.

CONCLUSION

Although GATT is certainly not an ideal institution to manage international trade, it is currently the best organization available for resolving the world's complex trading problems. It is in the best interest of the United States and the majority of its trading partners to resolve their differences through GATT. Failure of the Uruguay Round is synonymous with the loss of great financial benefits for all trading parties. Increased governmental intervention in international trade, in the form of stronger internal border measures and export subsidies, will likely result if GATT negotiations fail. Increased governmental spending, consumer prices, and taxes will be required to fund these intervention programs. The Uruguay Round failure also

169. Nance & Wasserman, *Regulation of Imports and Investment in the United States on National Security Grounds*, 11 MICH. J. INT'L L. 926 (1990). The United States and its trading partners are paying increased attention to what kind of actions, with respect to foreign trade and investment, are necessary to protect their national security interests. *Id.*

170. Aho, *More Bilateral Agreements Would be a Blunder: What the New President Should Do*, 22 CORNELL INT'L L.J. 25, 33 (1989).

171. *See supra* note 7.

means stunted economic growth for the LDCs, perpetuating world hunger and the need for additional foreign aid.

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