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AGRICULTURAL TRADE WARS: A THREAT TO THE GATT AND GLOBAL FREE TRADE

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I. INTRODUCTION

Most people do not associate agriculture with international strife and controversy. On the contrary, our picture of agricultural production is the idyllic family farm located in some picturesque rural area free from wider-world pressures. Regrettably, such is not the case. Agriculture, today, is the center of a set of multi-dimensional international controversies and crises. International agricultural strife threatens the future of the global free-trade system, and it has soured relations between the United States and its principal allies and trading partners: Canada, the European Community (EC), and Japan.[1] The agricultural trade controversy is at the heart of the bitter stalemate of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiations.[2] The deadlock over farm trade has called into

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1. *See* Stuart Auerbach, *GATT Chief in Talks Here on EC Crisis, Dunkel Pact Crucial to World Economies*, WASH. POST, Nov. 17, 1992, at A13 (noting agreement needed to avoid trade war).

2. William Drozdiak, *U.S., Europe Meet on Disputes Blocking Trade Pact*, WASH. POST, Oct. 12, 1992, at A30.

question the very future of the GATT as an international organization.[3] Controversies over agriculture also endanger approval of the recently concluded North American Free Trade Agreement (NAFTA).[4]

How did all this come about? The current crisis concerning international trade is rooted in the 1970s, which was a time of rapidly expanding growth. Global agricultural trade increased from $50 billion per year in 1970 to more than $225 billion a decade later.[5] World areas that had formerly been relatively self-sufficient fueled this rapid growth. Because of adverse weather and population growth, developing countries increased their agricultural imports. The Soviet Union and Eastern Europe became large importers of foodstuffs. Economic growth in countries such as Japan also resulted in higher demand for agricultural products.

Unfortunately, the boom of the 1970s was followed by the bust of the 1980s. Between 1980 and 1985, farm trade decreased by about 11%. The impact on the United States was even more severe.[6] United States farm exports fell from a record level of $43.3 billion in 1981 to $26.1 billion in 1986.[7] The farm exports of the EC, the United States' major export-market competitor, also declined during this period, decreasing from $29.1 billion in 1981 to $26.1 billion in 1986.[8] Thus, the United States, once the world's largest exporter of agricultural products, ran second to the EC.[9]

Since 1986, the world market for agricultural products has recov-

3. *See id.* (reporting that South American agricultural exporting countries walked out of trade meeting after EC, Japan, and South Korea refused to negotiate trade dispute).

4. Peter Behr, *Kantor Questions Key Facets of International Trade Pact, Comments Cast Doubt on the Future of GATT*, WASH. POST, Jan. 20, 1993, at G1 (quoting Trade Representative Kantor that GATT agreement may be unfair and that GATT organization may not be viable).

5. ECONOMIC RES. SERV., U.S. DEP'T OF AGRIC., FOREIGN AGRIC. ECONOMIC REP. NO. 229, GOVERNMENT INTERVENTION IN AGRICULTURE: MEASUREMENT, EVALUATION, AND IMPLICATIONS FOR TRADE NEGOTIATIONS 3 (1987); Jon G. 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, 124 (1989).

6. CONGRESSIONAL BUDGET OFFICE, THE GATT NEGOTIATIONS AND U.S. TRADE POLICY 72 (1987).

7. *Id.* at 74.

8. Jon G. 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, 125 (1989).

9. *See id.* (noting that EC and United States both exported $26.1 billion worth of farm products).

ered partially, while the United States, the EC, and other agricultural exporting nations have attempted to exploit export markets. With the aid of a weaker United States dollar, lower price supports, and agricultural subsidies, the United States has boosted its exports to $42.4 billion this fiscal year.[10] However, the United States and the EC are now aggressively competing to increase their respective shares of export markets. This competition, along with escalating budgetary costs, unpredictable world agricultural markets fluctuations, and severe trade friction, has produced the current agricultural crisis.

II. AGRICULTURE AND THE GATT

The General Agreement on Tariffs and Trade (GATT), with 108 contracting parties, is not only an international organization, but is also the major source of international trade law. Although the GATT has enjoyed great success in securing multilateral custom-tariff reductions on manufactured trade and has progressed in eliminating non-tariff trade barriers, the GATT has been less successful in liberalizing agricultural trade.[11] GATT provisions exempt agricultural trade from several of the organization's customary trade regulations.[12] Because of political considerations, the major agriculture-producing countries have been unwilling or unable to apply the strict regulations controlling trade in manufactured products to agricultural products.

First, the GATT exempts agricultural products from the Article XI ban of all "prohibitions and restrictions" on the importation or exportation of products.[13] Consequently, the GATT does not bar quotas on agricultural products. Under GATT Article XI:2(c), countries may establish quantitative import restrictions on agricultural products to protect domestic farm programs.[14] However, the Article

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10. ECONOMIC RES. SERV., U.S. DEP'T OF AGRIC., FOREIGN AGRICULTURAL TRADE OF THE UNITED STATES 1 (Nov./Dec. 1992).

11. Jon G. 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, 123-26 (1989) (listing inadequacies of GATT).

12. *See id.* at 136 (noting GATT exceptions created for agricultural trade).

13. General Agreement on Tariffs and Trade [GATT], *opened for signature* Oct. 30, 1947, art. XI, 61 Stat. Part 5, A51, T.I.A.S. 1700, *reprinted in International Trade Agreements*, INT'L TRADE REP. (BNA) 75:0807 (Reference File 1987). This Article states that "[n]o prohibitions or restriction other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained . . . on the importation . . . or on the exportation . . . of any product." *Id.*

14. *Id.* art XI, § 2(c). This provision permits "[i]mport restrictions on any agricultural or

XI exemption restricts the level of domestic production to approximately the same level as imports.[15]

In 1951, a GATT working group found that the United States was guilty of violating Article XI by imposing restrictions on dairy-product imports without also restricting domestic production.[16] The United States Congress, however, thumbed its collective nose at the GATT. Congress passed an amendment to Section 22 of the Agricultural Adjustment Act, which required the executive branch to restrict agricultural imports interfering with domestic farm-programs operation, notwithstanding any "trade agreement or other international agreement . . . entered into by the United States."[17] The United States then asked for and received a GATT waiver in 1955.[18] This waiver, which remains in effect today, allowed the United States to disregard the GATT rules with respect to agricultural quotas.[19]

The GATT waiver has profoundly impacted agricultural trade. The United States has used the waiver at various times to restrict imports of many agricultural products—such as dairy, beef, and sugar—but then has not imposed important domestic reduction restraints.[20] Because of the GATT waiver, the United States has been in a poor negotiating position when arguing that other member nations should strictly comply with GATT agricultural trade rules. In addition, the waiver has been cited as a reason why other countries feel compelled to stretch or break the GATT rules.[21]

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fisheries product . . . necessary to the enforcement of government measures which operate . . . (1) to restrict the quantities of like domestic product . . . or . . . (2) to remove temporary surplus . . . ." *Id.*

15. *Id.*

16. *See* JOHN H. JACKSON, WORLD TRADE AND THE LAW OF THE GATT § 27.6, at 733 (The Bobbs-Merrill Co., Inc. 1969) (noting Netherlands' complaint that United States violated Article XI).

17. Act of June 16, 1951, ch. 141, § 8(b), 65 Stat. 72, 75 (amending § 22 of Agricultural Adjustment Act). The amendment provided that "[n]o 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." *Id.*

18. Jon G. 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, 137 (1989).

19. JOHN H. JACKSON, WORLD TRADE AND THE LAW OF THE GATT § 27.6, at 735 (The Bobbs-Merrill Co., Inc. 1969).

20. *See* Jon G. 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, 164 (1989) (stating that dairy, peanuts, and sugar products are heavily protected).

21. *Id.* at 138.

Besides agricultural exemptions, the GATT also contains special liberal treatment for agricultural subsidies. Article XVI of the GATT, which prohibits both direct and indirect export subsidies that can distort trade, contains an exception for agriculture and other "primary products."[22] This GATT agricultural export-subsidies exception contains merely a vague restriction on subsidies to prevent countries from using primary products to capture more than an "equitable share of world export trade."[23] What constitutes a more-than-equitable share of world export trade is left undefined, although Article XVI notes that parties should account for "previous representative periods" and "special factors" affecting trade in a particular product.[24]

During the Tokyo Round of GATT negotiations, which ended in 1979, the member nations concluded a new Subsidies Code that tightened the permissive language in Article XVI. However, the new Code has had only a marginal effect. The Subsidies Code continues to permit agricultural export subsidies, provided that the subsidizer obtains less than an equitable share of world trade.[25] The Code signatories agree to refrain from instituting export subsidies on primary products

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22. General Agreement on Tariffs and Trade [GATT], *opened for signature* Oct. 30, 1947, art. XVI, 61 Stat. Part 5, A51, T.I.A.S. 1700, *reprinted in International Trade Agreements*, INT'L TRADE REP. (BNA) 75:0810 (Reference File 1987). Article XVI 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 interest, and may hinder the achievement of the objectives of this Agreement.
>
> 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 product to buyers in the domestic market.

Id.

23. *Id.*

24. *Id.*

25. Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, Apr. 12, 1979, *reprinted in* LAW AND PRACTICE UNDER THE GATT II.C.1 (Kenneth R. Simmonds & Brian N.W. Hill eds., 1988).

that lower prices below that of other suppliers, or that injure domestic industries or displace products of other signatories located either in the subsidized or third country.[26]

The Subsidies Code also contains an elaborate dispute-settlement mechanism.[27] Agricultural-products disputes have proven difficult to resolve. The first meaningful test of the new Subsidies Code, the case of *EC Wheatflour Export Subsidies*, yielded only an inconclusive and ambiguous GATT decision.[28] The GATT Panel concluded that EC wheat subsidies had indeed caused "undue disturbance to normal United States commercial interest."[29] The trade experts acknowledged that export subsidization had greatly increased the EC's share of the world markets.[30] Nevertheless, the Panel refused to find that the EC undercut prices or used its subsidies to gain more than an equitable share of the world market.[31] The Panel reached these contradictory conclusions because it could not agree on an appropriate base period for defining the EC's equitable share. Because the United States failed to secure relief at the GATT, the United States took retaliatory measures and instituted a wheat-flour export-subsidy program of its own.

In the *EC Pasta Export Case*, a GATT Panel concluded that subsidized pasta exports violated GATT rules; however, the EC blocked the Panel decision by arguing that the GATT should permit export subsidies to offset the high cost of durum wheat.[32] Again, the United States retaliated and imposed a unilateral tariff increase on imported pasta, which caused the EC to raise duties on fresh lemons, walnuts, and citrus fruits. The matter was resolved through bilateral negotiations in 1986: the parties agreed to acceptable pasta-subsidy levels

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26. *Id.*

27. Jon G. 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, 145 (1989).

28. *GATT Dispute Panel Report on U.S. Complaint Concerning EC Subsidies to Wheat Farmers*, 18 U.S. EXPORT WEEKLY (BNA) 899 (1983) (concluding that EC's share of world export market for wheat flour increased but not finding share inequitable). The Panel Report in this case is not official because it was never adopted by the Subsidies Code Committee.

29. *Id.*

30. *Id.*

31. *Id.*

32. *GATT Pasta Panel Report on U.S. Section 301 Complaint Against European Community Subsidies*, 8 U.S. IMPORT WEEKLY (BNA) 468, 469 (1983). This Panel Report was also never adopted.

and a truce in the citrus-products war.[33] The United States and EC also agreed not to pursue the issue of GATT legality of the pasta-subsidy levels.[34] Obviously, the resolution of this dispute was only a temporary truce, not a meaningful agreement.

The EC has not been the United States' only agricultural nemesis in the GATT. The United States also objected to Japan's import quotas on twelve different agricultural items. In the *Japanese Import Quota Case*, a GATT Panel concluded that ten of Japan's twelve import quotas were contrary to Article XI.[35] The import quotas concerned a variety of products: (1) prepared and preserved milk and cream; (2) processed cheese; (3) lactose; (4) dairy-food preparations; (5) dried, leguminous vegetables; (6) starch; (7) glucose; (8) brown nuts; (9) prepared and preserved bee honey; (10) fruit juices, purée, and paste; (11) prepared and preserved pineapples; and (12) tomato juice, tomato sauce, and catsup.[36] Japan accepted the Panel's decision and agreed to liberalize eight of the items by 1990.[37] Although Japan did not completely liberalize starch, it did agree to reduce progressively the tariff quota on corn; it also agreed to enlarge import quotas for prepared and preserved dairy products.[38] The GATT Panel upheld Japan's quotas on leguminous vegetables and ground nuts because Japan had implemented measures to reduce domestic production in accordance with Article XI: 1(c).[39] Although these two products were exempt from GATT restrictions, Japan agreed to open its market progressively to imports of these products as well.

One of the most bitter and protracted agricultural trade disputes is

33. *Id.* at 468.

34. *Id.*

35. *Japan—Restrictions on Imports of Certain Agricultural Products (U.S. v. Japan), reprinted in* HANDBOOK OF GATT DISPUTE SETTLEMENT at 391-419 (Pierre Pescatore et al. eds., 1988).

36. *Id.* at 391-419.

37. *See* Paul Blustein, *Instead of a "Managed" Trade Policy, Why Not Just Cut the Budget Deficit?*, WASH. POST, Aug. 23, 1989, at B3 (noting that Japan had quotas to protect its agricultural products); Margaret Shapiro, *U.S., Japan Reach Accord on Imports; Quotas, Tariffs Eased on Beef and Citrus*, WASH. POST, June 20, 1988, at A1 (reporting that Japan agreed to ease some trade limitations).

38. *See* Ronald E. Yates, *Japanese Rally Around the Farm; U.S. Attack on Quotas Stirs a Storm*, CHIC. TRIB., Jan. 17, 1988 at C2 (stating that GATT Panel decision required Japan to ease trade restrictions on 10 agricultural products).

39. *Japan—Restrictions on Imports of Certain Agricultural Products (U.S. v. Japan), reprinted in* HANDBOOK OF GATT DISPUTE SETTLEMENT at 418 (Pierre Pescatore et al. eds., 1988).

the current oilseeds controversy between the United States and the EC. In December 1987, the American Soybean Association filed a Section 301 petition with the United States Trade Representative (USTR), claiming that EC oilseed subsidies to oilseed processors nullified and impaired rights of the United States under the GATT because the subsidies undercut the EC's 1962 zero-duty bindings on oilseeds.[40] A GATT Panel agreed, and in December 1989 and January 1990, the EC Council of Ministers adopted a new oilseed-subsidy plan that involved payments to producers on a per hectare basis.[41] The United States attacked this subsidy as well, and, in October 1991, the United States Senate voted 97-0 to urge the USTR to file a second Section 301 action.[42] In March 1992, a second GATT Panel ruled that the new oilseed subsidies nullified and impaired the rights of the United States under the GATT.[43] When the EC refused to accept this decision, the United States sought compensation under Article XXVIII and threatened to impose punitive tariffs on $1 billion of EC agricultural products, including wines, cheeses, and beers. In response, the EC offered the United States only $400 million in compensation. This dispute complicated the agricultural trade-revision negotiations at the GATT Uruguay Round.

Fortunately, the United States and the EC were able to settle this dispute and avoid a destructive "tit-for-tat" trade war. On November

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40. *EEC—Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins (U.S. v. EC), reprinted in* HANDBOOK OF GATT DISPUTE SETTLEMENT at 525 (Pierre Pescatore et al, eds., 1990). The Panel also found that the producer subsidies violated the national treatment obligation of the GATT, Article III:4.

41. *See European Community: Settlement of Oilseed Dispute Continues To Elude EC and U.S.*, 8 INT'L TRADE REP. (BNA) 1588 (Current Rep. 1991) (describing per hectare compensation scheme); *European Community: Head of EC Farm Ministers Council Offers Compromise Agreement on Oilseeds Subsidies*, 8 INT'L TRADE REP. (BNA) 1536 (Oct. 23, 1991) (reporting that new program pays oilseed producers per hectare of cultivated land rather than by production level).

42. *See European Community: U.S. Informs GATT It Intends To Raise Tariffs on $1 Billion in EC Imports*, 9 INT'L TRADE REP. (BNA) 785 (Current Rep. 1992) (acknowledging that in October 1991, United States asked GATT Panel to reconvene to reconsider EC—United States agricultural controversy).

43. *European Community: EC Foreign Ministers Urge Commission To Continue Farm Trade Talks with U.S.*, 9 INT'L TRADE REP. (BNA) 1916 (Current Rep. 1992); *GATT: Panel Reports EC Oilseed Policy on Subsidies Inconsistent with GATT*, 9 INT'L TRADE REP. (BNA) 533 (Current Rep. 1992). The EC defended the oilseed subsidy to producers on the basis of Article III:8(a) of the GATT, which permits payment of subsidies to domestic producers. However, the GATT Panel ruled that the oilseed subsidies still nullified and impaired United States rights under the GATT.

21, 1992, United States and EC negotiators announced an accord on oilseeds and the Uruguay Round as follows:

> (1) The EC agreed to reduce its subsidized oilseed production. If the EC oilseeds exceeds 5.128 million hectares of land, EC oilseeds producers will receive smaller subsidy payments on all oilseed production.
> (2) The EC and the United States agreed to support a GATT Uruguay Round agreement that will require a 20% reduction from a 1986-1988 base in the average level of internal farm-price supports.
> (3) The EC and the United States agreed to support a GATT Uruguay Round agreement that reduces by 21% the volume of subsidized farm exports (reducing subsidy outlays by 36%) based on the 1986-1988 reference period.[44]

This agreement is important in that it settles a nasty outstanding dispute and accepts, in principle, the idea of reductions in both subsidized oilseed production and farm-export subsidies. However, the Oilseeds Agreement is not a fundamental breakthrough. Subsidized oilseed production in the EC will continue, but will fall to between 8.5 and 9.7 million metric tons per year (down from current levels of about 13 million metric tons).[45] Agricultural export subsidies will also continue, although at reduced levels.

III. The History of GATT Negotiations on Agriculture

Agricultural trade has been an important subject of negotiations in the GATT rounds since the 1960s. The so-called Dillon Round of Multilateral Trade Negotiations, 1961-62, focused on the EC's common external tariff and the EC's primary import-protection tool for agricultural products—the variable levy.[46] At the Dillon Round, the United States used its bargaining power to obtain substantial trade concessions from the EC, including zero-tariff bindings for certain agricultural products, such as oilseed and corn gluten.[47] These low tariff bindings, which the EC now wants to withdraw, are at the heart of many current agricultural trade disputes.

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44. *USDA Statement on U.S.-EC Accord on Oilseeds and the Uruguay Round*, 9 Int'l Trade Rep. (BNA) 2028 (Current Rep. 1992).

45. *GATT: U.S., EC Announce Breakthrough in GATT Trade Talks, Oilseed Dispute*, 9 Int'l Trade Rep. (BNA) 1990 (Current Rep. 1992).

46. *See* Jon G. 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, 139-40 (1989).

47. *See id.* at 141 (noting modest reductions in agricultural tariffs).

Several other agricultural trade disputes flared in the 1960s. In the so-called Kennedy Round of Trade Negotiations, 1964-67, agricultural tariffs remained high compared to manufactured goods, and fundamental problems such as the EC's variable levy remained unaddressed.[48] Throughout the decade, the United States and the EC battled each other in the so-called "chicken war," which involved a German effort to limit United States exports of frozen chickens to West Germany.[49] The dispute was unsatisfactorily resolved when a GATT dispute-resolution Panel ruled in favor of the United States, allowing the United States to withdraw equal-trade concessions.[50] The chicken war, however, served to confirm the intractable nature of agricultural trade disputes.

The agricultural trade war continued in the 1970s. During the Tokyo Round of Trade Negotiations, 1974-79, agricultural trade was a separate negotiating topic. Despite this procedural difference, the Tokyo Round failed to make progress in liberalizing agricultural trade. In 1979, the GATT parties concluded international consultative agreements for dairy products and beef, established codes of conduct relating to standards and technical trade barriers, and delineated the use of subsidies.[51] These agreements, however, constituted only marginal improvement.

By the opening of the Uruguay Round, agriculture moved to the top of the negotiating agenda. Because of the crisis in global agricultural trade, declining farm incomes, and lower employment levels in major trading countries, agricultural trade became an even more important GATT issue. In contrast to previous Rounds, agriculture was the linchpin of the Uruguay Round negotiating process. Without a broad agreement on agricultural trade reform, there could never be a successful conclusion to the Uruguay Round. From the beginning of the negotiation, the main protagonists were the United States and the EC. Other countries, such as Japan, the Cairns Group, and nations with significant agricultural export interests—such as Argentina, Australia, Canada, New Zealand, Thailand, and Uruguay—offered

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48. *See id.* at 142 (stating that Kennedy Round resulted in resolution of only two issues).
49. JOHN H. JACKSON, WORLD TRADE AND THE LAW OF THE GATT § 8.4, at 174-75 (The Bobbs-Merrill Co., Inc. 1969).
50. *Id.* § 8.4, at 175.
51. Jon G. 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, 143 (1989).

proposals, but they were generally unable fundamentally to influence the negotiation. The EC and the United States have been required ultimately to compromise their differences to create an opportunity to achieve a Uruguay Round Agreement.

The opening United States negotiating proposal was ambitious. The United States called for a complete phase-out of all agricultural subsidies that directly or indirectly affect trade.[52] Over a ten-year period, the proposal would eliminate not only export subsidies, but also subsidized-crop insurance and research.[53] Only policies that are at least theoretically trade neutral could be permitted: direct income support for farmers and bona fide foreign and domestic aid programs.[54] The United States proposal called for the elimination of all barriers to imports, such as import quotas, variable levies, minimum import prices, tariffs, and state-trading activities over a ten-year period. The United States also urged for the harmonization of standards affecting agricultural trade.[55]

The EC viewed this United States free-trade proposal as "extreme and unacceptable."[56] The EC suggested instead a 30% reduction in subsidies over 10 years, using 1986 as the base year.[57] The EC called for a system of "rebalancing" subsidies and other measures among

52. *Id.* at 148.

53. *Id.* at 149.

54. *Id.*

55. *See* Jon G. 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, 149 (1989).

56. Lyn MacNabb & Robert Weaver, Comment, *The General Agreement on Tariffs and Trade (GATT): Has Agriculture Doomed the Uruguay Round?*, 26 LAND & WATER L. REV. 761, 776 (1991) (noting that "the [EC] was not prepared for an across-the-board reduction of agricultural import barriers as suggested by the United States."); *see also* Sylvia Ostry, *Europe 1992 and the Evolution of the Multilateral Trade System*, 22 CASE. W. RES. J. INT'L L. 311, 312 (1990) (noting EC rejection of United States proposal); Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 961 & n.189 (1991) (discussing United States proposal); *European Community Farm Ministers Back MacSharry on Subsidy Cuts at Talks*, INT'L TRADE DAILY (BNA), Sept. 27, 1990 (noting United States' unacceptable proposal).

57. *See* Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 963 & n.201 (1991). Smith noted that "the EC wanted to accomplish farm trade liberalization by a lumping or a global approach in which all kinds of farm support for a product would be lumped into an aggregate measure of support that would then be reduced by 30% by 1995." *Id.*; *see* Lyn MacNabb & Robert Weaver, Comment, *The General Agreement on Tariffs and Trade (GATT): Has Agriculture Doomed the Uruguay Round?*, 26 LAND & WATER L. REV. 761, 779 (noting EC proposal having 30% reduction of trade barriers over 10 years, using 1986 as base year).

individual commodities, while maintaining the same aggregate level of support. This would ensure that concessions made by converting subsidies into tariffs would be countered by higher tariffs on other products.[58] The EC's proposal appeared essentially defensive, and aimed at maintaining the status quo.[59]

After the agricultural trade negotiations floundered and the Uruguay Round stalled in 1990, the GATT Director General, Arthur Dunkel, attempted to jump-start the Uruguay Round negotiation by introducing a new compromise proposal and draft agreement known as the Dunkel Draft.[60] Dunkel proposed that the GATT nations decouple income support for farmers from trade.[61] In other words,

58. *See* Lyn MacNabb & Robert Weaver, Comment, *The General Agreement on Tariffs and Trade (GATT): Has Agriculture Doomed the Uruguay Round?*, 26 LAND & WATER L. REV. 761, 775 (1991) (explaining that variable levies act like adjustable tariff keeping prices high for farmers); *see also* Sylvia Ostry, *Europe 1992 and the Evolution of the Multilateral Trading System*, 22 CASE W. RES. J. INT'L L. 311, 319 (1990) (stating that "rebalancing" of barriers diluted any previous concessions by United States); *Agriculture: EC Uruguay Round Proposal Would Leave CAP Essentially Unchanged, Back Tariffication*, 6 INT'L TRADE REP. (BNA) 1617 (Current Rep. 1989) (noting that rebalancing would lower certain products' high tariffs and raise or implement new tariffs for products low tariffs); Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 963-64 (1991) (discussing rebalancing concept to reduce variable levy).

59. *See* Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 963-64 (1991) (noting that EC proposal maintains status quo).

60. *See* William D. Hunter, *Key Provisions of the "Dunkel Draft" on Antidumping and Subsidies and Countervailing Duties*, *in* THE COMMERCE DEPARTMENT SPEAKS 1992: DEVELOPMENTS IN IMPORT ADMINISTRATION; EXPORT AND INVESTMENT ABROAD at 13 (PLI Corp. Law & Practice Course Handbook Series No. 789, 1992) (noting that "[i]n an attempt to break the negotiating log jam in the Uruguay Round negotiations on December 20, 1991, GATT Director-General Arthur Dunkel issued a draft agreement on most of the topics covered by the Round . . . referred to as the 'Dunkel text' or the 'Dunkel Draft' "); Kenneth W. Abbott, *The Uruguay Round and Dispute Resolution: Building a Private Interests System of Justice*, 1992 COLUM. BUS. L. REV. 111, 112 n.5 (stating that Dunkel Draft "designed to stimulate an overall conclusion to the Round"); Robert Housman & Durwood Zaelke, *Trade, Environment and Sustainable Development: A Primer*, 15 HASTINGS INT'L & COMP. L. REV. 535, 558-59 (1992) (discussing Uruguay Round's progress toward agreement in "Dunkel Draft").

61. *See GATT: EC Trade, Agriculture Ministers Oppose Dunkel Text, Instructing GATT Negotiations*, INT'L TRADE DAILY (BNA), Jan. 14, 1992 (noting that Dunkel Draft called for cutting link between trade and income supports); *News Highlights: GATT EC Ministers Reiterate Opposition to Farm Proposals in Dunkel Draft*, 9 INT'L TRADE REP. (BNA) 100 (Current Rep. 1992) (discussing EC criticism of Dunkel's ideas). This article recognized the EC argument against Dunkel that "the new form of compensation for farmers purposed in its CAP reform plan would cut the link between the volume of production and the level of subsidy." *Id.* It additionally noted that the Dunkel document distorts trade through income supports. *Id.*

income support would not be linked to the volumes of production, factors of production, or domestic or international prices of commodities. Instead, income support would be based upon other factors decided upon by each particular nation. The Dunkel Draft also proposed a 36% cut in export subsidies, and a 24% cut in the volume of subsidized exports[62] and non-tariff barriers to agricultural trade, such as quotas, variable levies, licensing systems, and minimum import prices.

Under the Dunkel Draft, voluntary export restrictions would be replaced by tariff levels equal to the difference between the domestic and international price of the product in question.[63] This "tariffication" of agricultural trade restrictions would be universal, although there would be two special safeguards: a quantity-trigger safeguard, and a price-trigger safeguard. The quantity-trigger safeguard could be invoked in a year when the quantity of imports of an item exceeds 125% of the average imports over the last 3-year period.[64] Under this circumstance, the tariff could be raised by 30%. The price-trigger safeguard would operate when the import price of an item declined below the trigger price—the average import price for the period between 1986 and 1988.[65] Under these circumstances, a contracting party could impose a tariff equal to 30% of the difference between the import price and the trigger price when the differences ranged between 10 and 40%; the tariff could be 50% when the differences

62. *GATT: Negotiations Have Lasted Six Long Years*, REUTER LIB. REP., Nov. 20, 1992, *available in* LEXIS, Nexis Library, CURRNT File; *see GATT: USDA Preparing $1 Billion Increase in Export Subsidies If GATT Talks Fail*, INT'L TRADE DAILY (BNA), Apr. 2, 1992 (discussing Dunkel's effect on farm export subsidies).

63. *See* A.E. Cullison, *Japan Rejects Dunkel Push for Tariff on Rice, in* THE NEW YORK TIMES CO.: ABSTRACTS, Sept. 2, 1992, at A12 (finding Dunkel's tariffication alternative favorable); *Japan Must Deliver Once U.S., EC Settle Row, Dunkel Says*, JAPAN ECON. NEWSWIRE, Nov. 18, 1992, *available in* LEXIS, Nexis Library, CURRNT File (noting Dunkel urged Japan and other nations with import barriers on some farm products into tariffs); *Keidanren Head Supports Dunkel Proposal on GATT Talks*, JAPAN ECON. NEWSWIRE, Sept. 1, 1992, *available in* LEXIS, Nexis Library, CURRNT File (Dunkel "call[s] for countries to adopt tariffication, which supports converting nontariff barriers on imported farm products into tariffs that are gradually reduced").

64. *Highlights of Dunkel's Final Draft Trade Accord*, JAPAN ECON. NEWSWIRE, Dec. 21, 1991, *available in* LEXIS, Nexis Library, CURRNT File. Any participant is allowed to take advantage of special safeguards if "the volume of imports exceeds a trigger level equal to 125% of the corresponding average quantity during the past 3 years or 125% of the minimum access opportunity and if the import price, including cost of insurance and freight, falls below a trigger price equal to the average 1986 to 1988 reference price." *Id.*

65. *Id.*

ranged between 40 and 60%; 70% when the difference ranged between 60 and 75%; and 90% when the range rose above 75%.[66]

Whether the Dunkel Draft is a viable compromise remains to be seen. Even if a compromise is fashioned along the lines of the Dunkel Draft and the Uruguay Round is successful, the farm-trade controversy will not end. The international trade of agricultural products has created a unique political and economic structure. Unlike many other areas of international trade, there is a direct link between the crisis in international trade of agricultural products and the domestic policies followed by the major participating countries. Any effort to reform the rules of international agricultural trade is doomed unless the nations address the underlying causes of trade controversies and reform their domestic policies on agricultural production. In short, it is not enough to fix farm trade at the GATT; the major developed countries, such as the United States, the EC, and Japan, must make a parallel effort to reform domestic agricultural policies.

The link between international agricultural trade and domestic foreign policies is important because in virtually all other economic sectors there is the same degree of government intervention and control. Nations with free-market economies have two objectives when they intervene deeply in agriculture: (1) to protect traditional farm structures and farmers' standard of living and way of life; and (2) to maintain self-sufficiency in food production.

Countries generally justify the first objective by contending they are preserving jobs, but actually more is involved. Agriculture is a unique industry. Because of weather and other factors, commodity prices can vary widely; consequently, farm income can vary sharply. Market forces are typically hard on individual farmers. Farmers cannot compensate for decreasing commodity prices by cutting expenses because their major expenses—land and equipment—have relatively stable prices. Thus, the individual farmer must have a cushion or a safety net to prevent economic hardship. Governments in developed countries are responsive to such concerns and have been willing to intervene and stabilize farm prices and income at a relatively high level. Moreover, most governments, even in this age of global interdependence, hesitate to abandon the ideal of self-sufficient food production.

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66. *See id.* (discussing tariffs imposed by contracting party under Dunkel Draft).

Paradoxically, as nations improve their economies and increase their gross domestic products, governments have more and more difficulty maintaining high farm prices and income levels. The reason for this anomaly is that as consumer incomes rise, demand for food does not increase significantly. Consequently, consumers spend progressively less, in percentage terms, of their income on food. Yet, because of technological and scientific progress in farming techniques, more and more food is produced with less labor. As a result, government spending for agricultural programs climbs precipitously. Government programs, in turn, encourage overproduction of foodstuffs, and the surplus must be disposed of in some way—usually by selling it on world markets.[67]

IV. National Agricultural Policies

The three major players at the Uruguay Round, the United States, the EC, and Japan, have major programs to maintain farm income and employment. Inevitably, these domestic farm programs require governments to establish policies that affect international trade. To avoid disrupting domestic programs, governments feel compelled to protect domestic markets from international competition and to ensure that agricultural surpluses are sold. Consequently, developed countries employ typically three types of agricultural policies: internal price supports; border restrictions, like tariffs, quotas, and restrictive-licensing measures; and export subsidies.

A. *Japan*

Although Japan has progressively liberalized its restrictions on many agricultural products,[68] including citrus fruits, beef, and other

67. *See* Jonathan Rauch, *What If Congress Won't Act?*, NAT'L J., Mar. 23, 1985, at 637 (discussing improvement in agriculture market if there were no governmental programs); *U.S. Calls for Reduction of Agricultural Subsidies*, XINHUA NEWS AGENCY, Apr. 10, 1987, *available in* LEXIS, Nexis Library, CURRNT File. The reporter noted that "[a]nalysts say that U.S. has a better chance to regain its dominant position in farm trade if all the countries eliminate their agricultural subsidies." *Id.* Furthermore, analysts say that the world farm sector is far from healthy, because overproduction has lowered food prices 38% since 1980. *Id.*

68. *See* Thomas J. Schoenbaum, *Trade Friction with Japan and the American Policy Response*, 82 MICH. L. REV. 1647, 1647 (1984) (finding Japan has "expand[ed] significantly the quotas on beef and agricultural products" and citing *Japan, U.S. Reach Trade Compromise*, THE JAPAN TIMES, Apr. 26, 1984, at 1 (int'l ed.)); *see also* Fusae Nara, Note, *A Shift Toward Protectionism Under 301 of the 1974 Trade Act: Problems of Unilateral Trade Relation Under*

commodities, Japan still maintains import quotas on a variety of commodities, including rice, wheat, barley, milk and dairy products, pig meat, poultry, and tropical products.[69] The rice quota is Japan's most important agricultural import barrier. Under current law, not one grain of rice may be imported legally into Japan.[70] Recently, Japanese officials sought to ban even the import of sushi from the United States on the grounds that it contains rice,[71] although Japanese im-

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International Law, 19 HOFSTRA L. REV. 229, 240 (1990) (stating Japan liberalized restrictions on these products in response to United States retaliation to such restrictions); K. Blake Thatcher, Comment, *Section 301 of the Trade Act of 1974: Its Utility Against Alleged Unfair Trade Practices by the Japanese Government*, 81 NW. U. L. REV. 492, 524 (1987) (contending that "threat[s] of both Section 301 and GATT filings helped induce Japan to accept increased quotas on beef and citrus imports); *Japan Agrees To Buy More U.S. Beef, Citrus; U.S., Industry Drop Plans To File Complaints*, 27 INT'L TRADE REP. (BNA) 838 (Current Rep. 1984) (discussing Japan's increased quotas).

69. K. Blake Thatcher, Comment, *Section 301 of the Trade Act of 1974: Its Utility Against Alleged Unfair Trade Practices by the Japanese Government*, 81 NW. U. L. REV. 492, 524 (1987) (discussing Japan's restrictive practices regarding rice and other goods); *Bilateral Talks on Japan's GATT-12 Compliance Continue, GATT Council Meeting a Benchmark*, 5 INT'L TRADE REP. (BNA) 975 (Current Rep. 1988) (stating that Japan refuses to liberalize protection on powdered and concentrated milk and other products, maintaining it would mean disaster for domestic products of these commodities).

70. *See International Trade: Japan Will Have To Make 'Political Decision' on Rice Imports, Officials Say*, DAILY REP. FOR EXECUTIVES, Dec. 3, 1992, § 233, at Dll (noting that Japan "will have to make a decision about the Uruguay Round multilateral trade talks [and] until then, Japan's total ban on rice imports will remain in force" and citing *Japan as No. 1 Myth*, WALL ST. J., Sept. 2, 1986, at 30, col. 1). *The Daily Report for Executives* stated:

> Rice farmers are a powerful political lobby in Japan. The Liberal Democratic Party (LDP), the ruling political party in Japan since 1955, obtains much of its support from farmers and other rural voters, and any attempt to liberalize restrictions on rice would prompt mass demonstrations at the Diet and disastrous results at the polls for the LDP.

Id. The Japanese government recently faced just such a situation when it purposed to cut rice subsidies by a mere 38%. The protest from ruling party politicians was so great that the government had to back down. *Id.*; *see Japan Must Deliver Once U.S., EC Settle Row, Dunkel Says*, JAPAN ECON. NEWSWIRE, Nov. 18, 1992, *available in* LEXIS, Nexis Library, CURRNT File (reporting that "Japan . . . bans rice imports on the grounds that it needs to maintain self-sufficiently in food supplies. . . ."); *Japan Will Have To Make "Political Decision" on Rice Imports, Officials Say*, INT'L TRADE DAILY (BNA), Dec. 3, 1992 (reporting that Japan would have to make political decision based on rice imports). *But see* K. Blake Thatcher, Comment, *Section 301 of the Trade Act of 1974: Its Utility Against Alleged Unfair Trade Practices by the Japanese Government*, 81 NW. U. L. REV. 492, 524. Thatcher noted, "United States successfully completed bilateral negotiations with Japan, in which Japan agreed to severely limit exports of subsidized rice to rest-of-world (ROW) markets. This agreement benefited United States rice growers, increasing their ability to sell rice in ROW markets by reducing the supply of subsidized rice." *Id.*

71. Tom Gorman, *Sushi Maker Hooks New Distributor*, L.A. TIMES, Oct. 30, 1992, at B4. Gorman wrote:

> The Sushi Boy chain initially announced its desire to buy American Sushi because the cost

port restrictions do not apply to processed foods.[72] Eventually, the sushi imports were permitted, but over the objection of the Ministry of Agriculture. The Japanese government has resisted liberalizing rice, even to a small degree, no doubt because farm groups are influential supporters of the ruling Liberal Democratic Party. The arguments in favor of maintaining an import ban are familiar: (1) rice is a basic staple of the Japanese diet, and Japan cannot be dependent upon foreign supplies; and (2) immediate liberalization of the rice market will disrupt Japan's carefully constructed rice production-adjustment program.

In addition to import quotas, Japan stifles importation by imposing stringent health, safety, and quality standards on many agricultural products. Japan also imposes tariffs on farm products averaging 18%, the highest of any developed country.[73] Japan protects other commodities, such as silk, through the use of state trading authorities with exclusive power to import the protected products.[74] The purpose of these import restrictions is to protect the integrity of domestic farm programs; 50% of all farm production in Japan is covered by price supports, resulting in food prices significantly above world

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> of both rice and fish is substantially cheaper in the United States. Earlier this month, Japanese government officials formally approved the import of sushi—despite its ban on foreign rice after conceding that sushi is a processed food as long as it contains no more than 80% rice product.

Id.; *see Sushi Boy Chain Drops Frozen Sushi Import Plan*, JAPAN ECON. NEWSWIRE, Nov. 24, 1992, at 1 *available in* LEXIS, Nexis Library, CURRNT File (importing sushi permitted provided that raw fish on top of rice account for at least 20% of total weight of sushi).

72. Fusae Nara, Note, *A Shift Toward Protectionism Under Section 301 of the 1974 Trade Act: Problems of Unilateral Trade Retaliation Under International Law*, 19 HOFSTRA L. REV. 229, 251 (1990) (describing Japan's agreement to comply with GATT ruling in dispute over processed-food products), *Japan Agrees To Comply with GATT Ruling in Dispute over 11 Processed Food Products*, 5 INT'L TRADE REP. (BNA) 1057-58 (Current Rep. 1988) (detailing that Japan agreed to end its import quotas on processed foods, such as sushi, by April 1, 1990).

73. *Hata Criticizes Dunkel's Proposal To Conclude GATT Talks, Kyodo News Service*, JAPAN ECON. NEWSWIRE, Sept. 1, 1992, at 2 *available in* LEXIS, Nexis Library, CURRNT File; *see Japan Urged To Cut Tariffs on Processed Farm Products Kyodo News Service*, JAPAN ECON. NEWSWIRE, Dec. 12, 1992 at 1 *available in* LEXIS, Nexis Library, CURRNT FILE (noting Washington's concern over Japan's high tariff on farm goods). Because of Japan's high tariffs on farm goods, it "has been strongly opposed to tariffication, which would convert the barriers to farm product imports into tariffs that would be gradually reduced, as proposed in the Dunkel paper. . . ." *Id.*

74. *See* John H. Jackson, et al., *Implementing the Tokyo Round: Legal Aspects of Changing International Economic Rules*, 81 MICH. L. REV. 267, 318 (1982) (noting silk prices stabilization law was designed to protect only domestic producers of raw silk).

levels.[75] For example, the price of rice in Japan is five times the price on world markets. These restrictions cause the average Japanese family to spend a greater portion of its income on food than a comparable family in any other industrialized country.

B. *The European Community*

The Treaty of Rome, which established the European Economic Community in 1957, provides for a common market in agriculture among member states in order to increase farm productivity, ensure a fair standard of living for farmers, stabilize agricultural markets, assure the availability of supplies, and maintain reasonable prices for consumers.[76] For these purposes, the EC established the Common Agricultural Policy (CAP).[77] The CAP is extremely complex, but it establishes essentially a single market in agricultural policies through a system of price supports, common financing, and coordinated administration of farm income-support programs. The CAP is administered by the authorities of the member states on a commodity-by-commodity basis. For most commodities, government intervention is designed to maintain relatively high prices. For each commodity, the EC Council of Agricultural Ministers annually sets a minimum price that farmers should receive for their products.[78] To ensure that this

75. *See* Gregory C. Shaffer, Note, *An Alternative to Unilateral Immigration Controls: Toward a Coordinated U.S.-Mexico Binational Approach*, 41 STAN. L. REV. 187, 189 (1988) (contending that import restrictions enhance countries' competitiveness).

76. Jon G. 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, 132-33 (1989); Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 949 (1991). Smith stated, "The CAP has five goals: (1) to increase farm productivity; (2) to ensure a fair standard of living for farmers; (3) to stabilize agricultural markets; (4) to assure the availability of suppliers; and (5) to maintain reasonable prices for consumers." *Id.*

77. *See* Wim Brussaard, *Protecting Agricultural Resources in Europe: A Report from the Netherlands*, 24 IND. L. REV. 1525, 1533-34 (1991) (discussing agricultural resources protected by legislation and CAP of EC); Robert Housman & Durwood Zaelke, *Trade, Environment, and Sustainable Development: A Primer*, 15 HASTINGS INT'L L. & COMP. L. REV. 535, 561 (1992) (noting that CAP grants subsidies to protect environmentally sensitive farmlands).

78. Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospect for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT'L L.J. 123, 140 (1989); Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 949 (1991). Smith explained that "[t]he CAP works this way: a common price for the same farm product in all EC countries is achieved by the EC Council of Farm Ministers setting each year a target price as well as an intervention price for all protected farm products." *Id.*

price will be maintained, EC officials also set an intervention price. If the free-market price for any commodity falls below the intervention price in any part of the community, member-state authorities are required to purchase stocks to support the price.[79] The funds to finance these government interventions come from the EC budget. The financing of the CAP accounts for over 60% of the total EC budget.[80]

To prevent imports from disrupting the EC's price-support system, the EC maintains a common external tariff. This tariff consists of a variable levy equal to the difference between a present minimum import price, which is known as the threshold price, and the world-market price.[81] The variable levy acts as a filter to ban low-priced farm products that might compete with the high-priced domestic commodities.

Under the CAP, huge commodity surpluses resulting from government authorities' intervention are sold on world markets through the use of export subsidies. The EC also provides an export subsidy to private firms that sell agricultural products on world markets. Because of the CAP, the EC has become a major food exporter.

The CAP's combination of domestic price supports and export subsidies has produced several EC budget crises and overproduction of commodities, such as cereals, beef, butter, and milk. In 1991, the EC Commission estimated that CAP costs would exceed the EC budget

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79. Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 949-50 (1991). Smith noted that "[i]f the price of non-EC food imports is lower than the established target price, a variable levy is tacked onto the import's cost . . . [acting] like an import quota. . . ." *Id.*; *see* Jon G. 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, 133 (1989) (discussing non-EC food import prices lower than target price).

80. BRIAN HILL, THE COMMON AGRICULTURAL POLICY: PAST, PRESENT AND FUTURE 84 (1984) (discussing CAP's effect upon EC budget); Allen Neely, Comment, *British Resistance to European Integration: An Historical and Legal Analysis with an Examination of the United Kingdom's Recent Entry into the European Monetary System*, 10 DICK. J. INT'L L. 113, 125 (1991). This article states that "since CAP requires approximately three-quarters of the community budget, CAP expenditures figure prominently in budget debates." *Id.*

81. B.T. Oleson, *Linkage of Agricultural Policy and Long Term Prospects in the International Grain Trade*, 32 CAN. J. AGRIC. ECON. REV. 186, 198 (1985). Oleson explains, "In the E.E.C. price-support system, the import levy is the difference between world market prices expressed as prices C.I.F. Rotterdam and the threshold prices." *Id.*; *see* Alan Raul & Kevin Brosch, *Global Trade in Agricultural Products*, *in* INTERNATIONAL COMMERCIAL AGREEMENTS, at 229 (PLI Com. Law & Practice Course Handbook Series No. 501, 1989) (explaining tariff duty that is constantly adjusted).

ceiling of approximately $39 billion.[82] As a result, the member states initiated reforms to correct the imbalance between growing agricultural productivity and static demand. In May 1992, the EC Council of Agricultural Ministers reached a compromise agreement, which requires the EC to cut price supports 29% for grains, 15% for beef, 5% for butter, and similar amounts for several other commodities by 1997.[83] As a result, production levels and export subsidies will decrease. The EC will compensate individual producers for lost income through direct payments equal to the difference between current and reduced target prices. The compensatory payments are contingent upon the producers setting aside at least 15% of their arable land.

These CAP reforms are a step in the right direction, but do not represent a fundamental change in CAP policies. The system of price supports remains intact; the variable-levy system remains in place; and export subsidies continue to be used to dispose of surpluses.

The EC justifies its agricultural policies on social policy and environmental grounds. It also maintains that agricultural subsidies are essential to prevent the depopulation of rural areas and to maintain a minimum of social infrastructure. Many analysts believe that fundamental changes in the CAP will have catastrophic effects on farm incomes and will threaten the economic viability and environmental quality of EC agricultural and world regions.

C. *The United States*

The United States began to forge a national farm policy in the 1930s as a part of President Roosevelt's New Deal, which was designed to bring the nation out of the Great Depression. The most recent farm law, the Food and Agriculture Act of 1990, essentially continues the programs established by the Agricultural Adjustment Act of 1933.[84] Roosevelt's New Deal farm programs are, therefore,

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82. *See* Allen Neely, Comment, *British Resistance to European Integration: An Historical and Legal Analysis with an Examination of the United Kingdom's Recent Entry into the European Monetary System*, 10 DICK. J. INT'L L. 113, 125 (1991) (noting CAP costs have little long-term benefits).

83. Alan Yonan, *U.S. Receptive to Proposed Cut in EC Price Supports*, UNITED PRESS INT'L, May 22, 1992 (discussing various EC price-support cuts).

84. *See* Katherine E. Monahan, Note, *U.S. Sugar Policy: Domestic and International Repercussions of Sour Law*, 15 HASTINGS INT'L & COMP. L. REV. 325, 328-37 (1992) (discussing Agricultural Adjustment Act of 1933); Matthew D. Roazen, Recent Decision, 65 TEMP. L. REV. 1103, 1105 (1992) (explaining Agricultural Adjustment Act of 1933).

essentially still in place. The United States justifies its farm programs using familiar reasoning: (1) while United States farms have a productive capacity that far exceeds domestic demand, farming is marked by cycles of overproduction and low prices, followed by cycles of short supplies and higher prices; (2) individual farmers cannot influence prices to any degree; and (3) agriculture is subject to unpredictable and uncontrollable forces, such as droughts, hail, freezes, and floods.

It is the policy of the United States Congress to pass an Omnibus Farm Bill every five years. Like the old Soviet Union, American agricultural authorities seem to like five-year plans. In similar fashion to the programs in the EC and Japan, the heart of the American farm program is a system of price supports for agricultural commodities.[85] For each commodity subject to the program, the government sets a "target price."[86] The government also sets a "loan rate," which is below the target price.[87] The purpose of the loan rate is to allow the farmers to obtain credit from the Commodity Credit Corporation (CCC) based on this lower crop price. At harvest, the farmer has a choice either of (1) repaying the loan, or (2) defaulting and letting his collateral, the crop, pass to the government. In addition, under the American price supports, the government promises to remit a deficiency payment to farmers. This payment is calculated as the difference between the target price and the loan rate, or the difference between the target price and the market price, whichever is smaller.[88] Thus, the government guarantees farmers a minimum return per unit, whether they are selling to the government or on the free market.

Obviously, this program costs a great deal of money: in 1991 federal appropriations for agriculture reached $52 billion, of which $30 billion was in the form of deficiency-payment subsidies.[89] In order to

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85. *See* Michael Fix & George C. Eads, *The Prospects for Regulatory Reform: The Legacy of Reagan's First Term*, 2 YALE L.J. ON REG. 293, 296-97 n.20 (1985) (recognizing establishment of price supports for agricultural commodities by USDA).

86. B.J. Wynner III & Carol A. Bradley, *Is the 1990 Farm Bill the Opening Shot in a "Quiet Revolution?"*, 44 SW. L.J. 1383, 1389 (1991).

87. *See* Christopher R. Kelley & Alan R. Malasky, *Federal Farm Program Payment-Limitations Law: A Lawyer's Guide*, 17 WM. MITCHELL L. REV. 199, 217 n.35 (1991) (providing example that target price for corn could be $3.03 per bushel and loan rate could be $1.82).

88. *See id.* (noting that, in example, difference between target price and market price for bushel of corn would be $1.09 and this amount is deficiency payment).

89. *See Department of Agriculture Budget Briefing Briefers: Peter C. Meyers, Deputy Secretary of Agriculture, and Stephen Dewhurst, Director, Office of Budget and Program Analysis,*

put an overall limit on deficiency payments, the government specifies each year the permitted acreage that may be planted in regulated commodities.[90] Farmers receive deficiency payments according to individual calculations of their "base acreage" and "program yield" per acre.[91] For many programs, there is also a payment ceiling per person.[92] A wide variety of agricultural commodities benefit from support prices, including dairy products, wheat, wool, feed grains, cotton, rice, peanuts, oilseeds, sugar, honey, and even mohair, the wool from angora goats.[93]

To compete with the EC, the United States also plays the game of subsidizing wheat sales. Beginning in 1985, the United States Export Enhancement Program (EEP) made generous subsidies available to facilitate the sale of American wheat on world markets. Under EEP, the Department of Agriculture pays cash bonuses to United States exporters equal to the difference between United States domestic prices and world prices.[94] Under the 1990 Farm Act, if the Uruguay Round Agreement was not signed by June 30, 1992, Congress must increase export subsidies by $1 billion in 1994 and 1995.[95] As a result, President Bush, on September 2, 1992, announced a new program to make thirty million tons of subsidized wheat available under the EEP to twenty-eight countries.[96] On October 1, 1992, the United

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FED. NEWS SERV., Jan. 9, 1989, *available in* LEXIS, Nexis Library, CURRNT File (noting government outlays for agriculture).

90. *See* Christy Wise, STATES NEWS SERV., Mar. 5, 1990, *available in* LEXIS, Nexis Library, CURRNT File (noting deficiency-payment limits).

91. *See id.* (discussing "base acreage" and "program yield" with deficiency payments).

92. *See* Mary Frings, *Competition Gets Cotton Growers in a Tangle*, FIN. TIMES, Dec. 27, 1985 at 14 (discussing payment ceilings).

93. *See, e.g.*, Alan Raul & Kevin Brosch, *Global Trade in Agricultural Products, in* INTERNATIONAL COMMERCIAL AGREEMENTS, at 229 (PLI Com. Law & Practice Course Handbook Series No. 501, 1989) (stating that price-support and income-assistance programs benefit agricultural products like soybean oil); Katherine E. Monahan, Note, *U.S. Sugar Policy: Domestic and International Repercussions of Sour Law*, 15 HASTINGS INT'L & COMP. L. REV. 325, 342 (1992) (discussing sugar benefit from support prices).

94. *Agriculture: Australian Criticizes U.S. Wheat Plan but Says Main Focus Is on Uruguay Round*, 9 INT'L TRADE REP. (BNA) 1666 (Current Rep. 1992).

95. *See Government Subsidies Vital for U.S. Wheat Exports*, REUTER LIB. REP., Sept. 2, 1992, *available in* LEXIS, Nexis Library, CURRNT File (reporting that "[i]n the 1990 Farm Act, Congress commanded the Agriculture Department to increase EEP subsidy by $1 billion beginning in 1994 if a trade pact was not reached by June 30, 1992").

96. *See Australian Minister Critical of U.S. Wheat Subsidies*, 9 INT'L TRADE REP. (BNA) 1741 (Gen. Developments 1992) (contending that "President Bush announced September 2 that the United States would subsidize sales of 30 million tons of wheat to 28 countries between then and June 1993").

States Department of Agriculture announced that $3.6 billion in export credit guarantees would be made available under the EEP in fiscal 1993.[97]

The United States' move caused dismay in many friendly countries, including Australia, which announced it was filing a complaint with the GATT concerning United States export subsidization. On September 9, the Australian Trade and Overseas Development Minister, John Kerin, accused both the United States and the EC of "an escalation of anti-competitive behavior outside the GATT system."[98] He warned that "an escalation of a subsidy war between the United States and the European Community would put the whole global endeavor of the Uruguay Round at risk."[99] The timing of President Bush's announcement, and the fact that, for the first time, the United States was mounting a comprehensive subsidies program aimed at undermining free trade cast a pall over the GATT Uruguay Round talks.

Besides the subsidies of the EEP, the United States also maintains import quotas on various agricultural products including sugar, peanuts, cotton, dairy products, and even ice cream, under Section 22 of the Agricultural Adjustment Act.[100] Two GATT Dispute-Settlement Panels have addressed the issue of sugar-import quotas. These Panels ruled that, although sugar is basically within the GATT waiver, the provisions of the waiver cannot be used to justify current quotas that restrict imported sugar to 1.25 million tons, about 8% of the 16.5 million tons consumed each year.[101] The support price for sugar is twenty-two cents per pound, about twice the world-market price.

97. *See U.S. Decides To Subsidize Vegetable Oil Exports*, XINHAU GEN. NEWS SERV., Oct. 15, 1992, *available in* LEXIS, Nexis Library, CURRNT File (reviewing EEP that makes exporters buy United States farm products at domestic prices and sell them at lower world prices with USDA making up difference).

98. *See* Alan Riding, *Warning from France on U.S. Wheat Subsidy*, N.Y. TIMES, Sept. 10, 199, at D2 (quoting John Kevin that there is "an escalation of anti-competitive behavior outside the GATT system" by United States and EC).

99. *See id.* (finding that United States and EC put Uruguay Round plan at risk).

100. Dale Hathaway, *The Global Food Regime in the 1990s: Efficiency, Stability and Equity*, 1 TRANSNAT'L L. & CONTEMP. PROBS. 393, 404 (1991) (recognizing United States' "famous Section 22 waiver" which maintains quotas on dairy products, sugar, peanuts, cotton, and other agricultural products).

101. *See* Katherine F. Monahan, Note, *U.S. Sugar Policy: Domestic and International Repercussions of Sour Law*, 15 HASTINGS INT'L & COMP. L. REV. 325, 345-48 (1992) (discussing dual system of sugar control under both GATT and Section 22 of United States Agricultural Adjustment Act of 1933).

This program costs United States consumers about $3 billion per year in higher grocery bills; and one family in Florida benefits particularly from this program: it supplies 15% of United States cane sugar, reaping $52-90 million per year from federal price supports.[102]

V. THE COSTS OF PROTECTIONISM

The present system of domestic farm policies in industrialized countries causes major structural distortions in otherwise free-market economies. These programs stimulate wasteful, surplus production, which leads to structural imbalances in world and domestic markets. Protecting agriculture on this scale is inefficient for several reasons.

Agricultural protectionism is costly to consumers. Consumers foot the bill for the price supports and deficiency payments, as well as the export subsidies. A 1988 Purdue University study estimated that the American economy paid $107,000 in lost non-farm output for every farm job saved by agricultural protectionism.[103] For each protected farm job, Americans suffered $14,000 in higher food costs.[104] According to this study, if the United States unilaterally liberalized farm trade, annual income would rise by $14 billion.[105] The Organization of Economic Cooperation and Development (OECD), based in Paris, found that protecting agriculture causes an annual income loss in the main industrial countries equal to the combined gross domestic products of Ireland and New Zealand. A 1990 OECD study concluded that agricultural trade supports distort the allocation of resources and act as an export tax on nonfood industries and services in member

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102. *See id.* at 343-44 (stating, "High sugar prices have a disproportionate effect on low income households"). Monahon explained that "[b]ecause so many food items contain sugar, the sugar program is similar to a regressive sales tax, taking a higher percentage of smaller incomes." *Id.*

103. *The Trough*, THE ECONOMIST NEWSPAPER, June 27, 1992, at 21. This article stated:

> [A] 1988 study from Purdue University looked at the real cost of America's farm subsidies. In 1987 dollars, it estimated, per farm job saved, the American economy paid $107,000 in lost non-farm output, $80,000 in federal expenditures, and $14,000 in higher food costs. Were the United States unilaterally to liberalize its farm trade, annual national income, by this estimate, would be $14 billion higher.

Id.

104. *Id.*

105. *See id.*; *see also* Katherine E. Monahan, Note, *U.S. Sugar Policy: Domestic and International Repercussions of Sour Law*, 15 HASTINGS INT'L & COMP. L. REV. 325, 326-27 (1992) (noting that agricultural supports act as sales tax).

countries.[106] According to the OECD study, if all agricultural support policies were eliminated, household real income would increase as much as 2.7% per year in New Zealand and as little as 0.3% in the United States. Japan and the EC would gain 1.1% and 1.4% respectively.[107]

Current farm programs typically do not benefit the majority of farmers. In the United States, government deficiency payments are overwhelmingly targeted at large, relatively wealthy farm enterprises. For example, according to the United States Department of Agriculture (USDA) there are approximately two million farms in the United States.[108] About 1.6 million of the smaller farmers, those with gross sales between $1,000 and $40,000 per year, make less than $200 in annual profits.[109] These families obviously farm part-time and do not rely on farm revenues as their primary source of income. They receive little governmental support. About 286,000 farmers, on the other hand, earn annual sales of $40,000 to $100,000.[110] Their farms are small, usually under 200 acres, and do not provide the household its principal means of support. These farmers' average annual farm income is $8,100, subsidies included, while their off-farm income is $11,200.[111]

Only 363,000 farmers receive federal farm deficiency payments, the

106. *See Agriculture: World Bank-OECD Study Cites Benefits of Agricultural Trade Liberalization*, 7 INT'L TRADE REP. (BNA) 737 (Current Rep. 1990) (noting that study indicates trade liberalization would increase world production of agricultural products, stabilize prices, and shift production to developing countries).

107. *See id.* (contending that prices would stabilize, income would increase overall, and countries would experience a $50 billion net annual economic gain).

108. *See* Neil D. Hamilton, *The Study of Agricultural Law in the United States: Education, Organization and Practice*, 43 ARK. L. REV. 503, 503 (1990) (noting that there are over two million farms in United States); Stephen Yale Loehr, *Foreign Farm Workers in the U.S.: The Impact of the Immigration Reform and Control Act of 1986*, 15 N.Y.U. L. REV. & SOC. CHANGE 333, 356 (1986) (discussing immigrant workers on "the nation's 2 million farms").

109. *See America's Farm Subsidies*, THE ECONOMIST, June 27, 1992, at 21 (stating that "the smallest 'farmers,' those with gross sales between $1,000 and $4,000, make less than $200 in profits each year—if they do not actually lose money"); *see also* Sonja Hillgren, *On the Farm Front*, INT'L TRADE DAILY (BNA), Oct. 11, 1985 (noting that "farm policies continue to induce massive surpluses that drive down prices, hurting smaller farmers"); Nell Margolis, *Can You Find the Farmer in This Picture*, INSIDER, Dec. 12, 1986, at 14 (discussing economic squeeze on small farmers).

110. *See America's Farm Subsidies*, THE ECONOMIST, June 27, 1992, at 21 (stating that "[e]ven for most of the 286,000 farms that had annual sales, during the 1980s, of $40,000-$100,000, farming is not the household's principal activity").

111. *See id.* (finding that average annual income in "the 1980s was $8,100, subsidy included; off-farm income was $11,200").

top echelon of producers.[112] Farm subsidization overwhelmingly flows to these farmers on the high end of the income scale; the farm enterprises receive 30% of all farm subsidies. Perhaps, it is no coincidence that there are 300,000 farmers in the United States who enjoy a net worth of over $1 million. However, nearly one-half of all United States farms, including those under the greatest financial stress, receive no payments at all. The following table shows graphically that the distribution of government largesse is inversely related to the income of farmers.

Distribution of United States Government Commodity Program Outlays by Sales Class

	Percent of all farms	Percent of total crop & livestock	Percent of total outlays	Percent of farms receiving	Average outlay per recipient
Sales Class					
$500,000 and up	2.1	31.3	14.7	56	$105,000
$250,000-499,999	5.1	20.0	22.0	62	$ 58,000
$100,000-249,000	14.6	26.7	38.1	66	$ 33,000
$40,000-99,999	18.4	14.3	19.8	57	$ 15,000
Less than 40,000	59.8	7.7	5.4	18	$ 4,000

Protecting agriculture is also inefficient because government farm-subsidy programs often encourage corruption and fraud. According to the *Wall Street Journal*, a team of federal auditors concluded in 1990 that a family-farm operation in Arkansas, which controlled 35,000 acres of wheat and rice, had improperly collected $2.8 million in federal subsidy payments, the largest recorded abuse of America's farm-subsidy system.[113] This farming operation collected the improper payments by avoiding the current cap of $250,000 per year, per farmer. The owner of the farm avoided the cap by dividing his farm holdings into smaller pieces, each separately incorporated and each directed by a different family member.

Current farm protectionist programs encourage a growing and

112. *See id.* (concluding that "the number of farmers who got federal farm handouts in 1986 was a mere 363,000").

113. Thomas M. Burton, *Cash Crop: Many Farmers Harvest Government Subsidies in Violation of Law, Wall St. J.*, N.Y. TIMES, May 8, 1990, at A1. This article indicates that the Conner family, which owned a "farming operation control[ing] 35,000 acres of wheat fields and terraced rice land . . . in Jackson County, Arkansas. . . . improperly collected $2.8 million in federal payments—[the] largest recorded abuse of America's farm subsidy program. . . ." *Id.*

wasteful bureaucracy: the 129,000 employees of the USDA maintain offices in 94% of the nation's counties, although significant farming occurs in only 16%. If the number of USDA bureaucrats is compared to the number of deficiency-payments recipients, one discovers the astounding fact that it takes approximately one USDA employee to dole out subsidies to three recipients. The number of USDA employees has been growing, despite a drastic drop in farm employment. According to the USDA, the total number of people employed on United States farms dropped from ten million in 1950 to just less than three million in 1990.[114] During the same period, the number of USDA employees rose from 84,000 to 129,000.[115] It is interesting that if these two trends are extrapolated on a linear fashion, the day will arrive about ten years from now, in the early part of the next century, when there will actually be more USDA employees than there are farmers.

This bureaucracy is wasteful, expensive, and cannot be justified in the face of high United States budget deficits. Taxpayers shell out several times to support farming. They pay the bill for the huge deficiency payments that add $400 annually to the food bill of the average American family of four. They also pay taxes to support the enormous bureaucracy and to finance overly generous federal farm subsidies, most of which go to a handful of relatively wealthy farmers. In 1991 alone, federal appropriations for agriculture reached $52 billion.[116]

Perhaps the most pernicious impact of the industrialized countries' domestic-farm programs is their effect on the Uruguay Round of Trade Negotiations. The Uruguay Round, which commenced in 1986, comprises fifteen negotiating groups, encompassing a wide range of trade issues: intellectual property, safeguards, textiles, services, tropical products, the functioning of the GATT system, dispute settlement, tariffs, trade-related investment measures, non-tariff measures, multinational trade agreements and arrangements, subsidies and

114. *See* Douglas E. Kneeland, *Urbanization of Rural U.S. Called Peril to Farmland*, N.Y. TIMES, June 16, 1981, at B8, (noting employment drop from 10 million to 2.9 million).

115. *See Critics Say Rivalries Hurt Work of Food Groups*, N.Y. TIMES, Nov. 9, 1981, at D4 (discussing number of USDA employees).

116. Richard Orr, *Consumers Could See Price Breaks on Food*, CHIC. TRIB., Aug. 19, 1991 at 3. The net farm income is the value of production, plus government subsidy payments, minus all costs in a calendar year. *Id.* Orr reports, "For 1991, the department forecasts net cash income at $52 billion to $57 billion. . . ." *Id.*

countervailing duties, GATT articles, and natural resource-based products, in addition to agriculture. The negotiating countries reached agreement on virtually all of these issues, but agreement stalled in regard to agriculture. Yet, the nature of the negotiation dictated that the completed agreements were "on hold" until the agriculture talks were resolved. The terms of the Uruguay Round dictated that there must be an agreement on all issues or there would be no agreement at all. Thus, the farm-trade impasse held hostage a wide range of agreements. When the agriculture negotiations broke down in 1990, many feared that other agreements of the Round protecting intellectual property rights and liberalizing non-agricultural trade would be jeopardized. The successful completion of the Uruguay Round could pump approximately $5 trillion into the world economy over the next 10 years, approximately $1 trillion into the American economy, and additional cumulative income of $17,000 for the average American family of four.

The agricultural trade mess has also severely impacted trade relations between industrialized countries and developing countries. The rival subsidy programs of the United States and the EC have caused a transatlantic trade war. As each attempts to out-subsidize the other, both have dumped farm products onto world markets. This trade war is an unmitigated disaster, both for the participants and for the friendly agricultural exporting countries caught in the middle, such as Australia, Canada, and Argentina.

One might think that this trade war constitutes a boon for developing countries because the primary focus of export-subsidy competition is to sell cheap food to developing-country markets. Although developing countries experience a short-term benefit, in the medium and long terms, the impact is particularly pernicious. Many developing countries are rural in character and depend on agricultural production to maintain income and employment levels. The farm protectionism of the developed world discourages developing countries from exporting agricultural products, reduces developing countries' earnings, and slows down or stunts their economic development. This situation is counterproductive to the developed countries as well. If developing countries were allowed to build the agricultural sectors of their economies, they might experience the economic growth necessary to become customers for developed countries' exports.

Subsidized exports by developed countries also lower the international market price for commodities, thus eliminating potential buyers of the developing counties' more expensive exports. These artificially low world-market prices depress domestic agricultural prices in developing countries, reduce domestic farm incomes, and lessen the incentive to plant food crops. Thus, international agricultural trade must be reformed to stimulate industrial development in developing countries. This would also facilitate the creation of agricultural processing industries, an initial level of industrial development, which could begin the process of alleviating world poverty.

VI. Conclusion

First, it is imperative to cut a deal at the GATT Uruguay Round negotiations. The world economy is in the doldrums. No other single event would have more impact than would a Uruguay Round agreement. Not only will the current atmosphere of trade friction among the EC, Japan, and the United States be alleviated, but a whole variety of positive actions will stimulate the world economy, including: protection of intellectual property rights; new frameworks for trade in services, investment flows, and textiles; and a strengthening of the GATT multilateral trading system. A GATT agreement is also important because it would indicate that the major trading nations can compromise on agricultural trade, despite a dismal record in past negotiating rounds.

What should be the elements of an agricultural trade compromise at the Uruguay Round?

(1) The United States should voluntarily agree to relinquish its GATT waiver, which allows the United States to impose quotas on agricultural imports.

(2) Japan should agree progressively to open its market to rice and other commodities.

(3) The EC should reform its variable-levy system, which acts as a quota.

(4) All import restrictions on agricultural products, such as quantitative restrictions, variable levies, minimum-import prices, mixing regulations, state trading, and voluntary-restraint agreements should be converted into fixed tariffs. The EC's variable-levy system could be converted into a tariff by placing an upper limit on variable levies. To satisfy the EC, this "tariffication" could be combined with some "rebalancing," that is, an increase in tariffs on certain products with GATT-bound zero levies, such as oilseeds and corn gluten.

(5) The member nations should limit the use of subsidies by (a) instituting a subsidies freeze, (b) classifying subsidy programs according to their effect on trade, and (c) banning those subsidies that have a direct effect on trade, such as export subsidies.

It is not enough, however, to reform international agricultural trade without recognizing the equally deleterious effect of inefficient and expensive domestic farm policies. The major industrialized countries—the United States, the EC, and Japan—are all experiencing the same problems with respect to their domestic farm policies: budget imbalances, overproduction of stocks, and trade dislocation. Although diversity should be allowed in national agricultural programs, a framework for reform should be adopted to include:

(1) progressively lower price supports—target prices and loan prices;
(2) "decoupled" payments to farmers to replace lower deficiency payments—the decoupled payments would be structured to reach middle class "family" farmers, and
(3) a Rural Conservation Reserve program to preserve the environment and biodiversity.

These reforms would allow a gradual transition to market-oriented farming in both the international and domestic arenas. The global community should reject both the present system of massive and expensive government intervention and the siren song of managed agricultural trade.