

International Agricultural Trade
Research Consortium

**Has the Uruguay Round Agreement
on Agriculture Worked Well?**

by
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1 Introduction

The Uruguay Round (UR) of GATT negotiations was a big step forward in international trade relations. Among the many innovations it generated were a completely new set of rules for agricultural trade, embodied in the Agreement on Agriculture (AoA), a related body of quantitative commitments for agricultural policies of all participating countries, and a fresh attempt at regulating the difficult area of the many specific technical barriers in the agriculture and food sector, through the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). An enormous amount of negotiating effort was spent on designing these new rules for agriculture, and at times it looked like the whole of the UR might break down over the difficulties to achieve agreement on how agriculture should be treated in the future. However, in the end the new framework for agriculture emerged, and it looked rather different from what had previously existed in the GATT for nearly fifty years.

The implementation period for the reductions to be made under the UR AoA is now over, at least for the developed countries, and a new round of negotiations on agriculture has already started. In this situation it is time to consider how well the agricultural rules established in the UR have worked, and it is the purpose of this paper to make a minor contribution to answering that question. Given the experiences made since 1994, was the UR successful on agriculture? Quite obviously, observers disagree widely on this question. Some stress the new quality of the rules established in the UR and point to their potential effect on future policy making in world agriculture. Others argue that the quantitative commitments agreed under the UR AoA were so generous that they did not require major, if any, policy changes, and hence that the UR did not result in an actual liberalization of global agricultural trade.

There is no doubt that, in the final analysis, success of any international trade agreement has to be assessed with a view to the effects it had on actual policy making, and through that on the extent to which trade flows were allowed to develop without being unduly hampered by protectionist government policies. However, in practice this is difficult to do as long as one does not have a particularly good hypothesis on how policies would have developed in the absence of the trade agreement concerned. Fortunately, in the case of the agriculture and the UR, one alternative measure of success is also relevant. It is whether the agreements concluded in the UR have achieved the improvement in the system of international trading rules that they were hoped to bring about. This intended improvement was to bring agriculture better in line with the mainstream of the international trade regime than had ever been the case since the establishment of the GATT in the late 1940s. After all, as many commentators had observed, under the regime existing before the Uruguay Round, agriculture had essentially remained 'outside the GATT'. A first question then is whether the UR agreements have managed to

bring agriculture back on the main track of GATT rules. Section 2 of this paper will look at that question.

Another dimension of success for an international trade agreement is whether the countries concerned have lived up to the rules, or whether these rules were violated more than honored. Of course this is a potentially problematic question, because compliance with rules may indicate no more than that the rules themselves were weak and did not impose constraints on the behavior that governments would have exhibited anyhow. However, combined with the first question, this second criterion of success should potentially make some sense. If it turns out that the UR has managed to bring agriculture better in line with the mainstream of the international trading regime, then this implicitly says that rules for agriculture have been strengthened, rather than weakened. And if we then find that governments have, by and large, lived up to these strengthened rules, then this can also be considered as an indication of success. Section 3 of this paper will deal with that question.¹

2 Is Agriculture on the Way to Become a ‘Normal’ Sector in the WTO?

As far as the relevant legal provisions are concerned, agriculture looked like a nearly ‘normal’ sector in the GATT even before 1994. The whole text of the GATT, in force since decades, applies to all goods, and agricultural products are of course goods in that sense. There is no doubt that all the fundamental principles of the GATT and all its detailed provisions are fully applicable to agriculture. The standard phrase, often expressed before the Uruguay Round, that “agriculture was left outside the GATT” was certainly not true in a formal sense.

The ‘old’ GATT had only two important special provisions for agriculture that exempted this sector from disciplines applicable to all other goods trade, namely Article XI:2(c)(i) on quantitative restrictions and Article XVI:3 on export subsidies.² One of these two agricultural exceptions had nearly no practical effect. Article XI:2(c)(i) set the hurdles for allowable quantitative restrictions in agriculture so high, and made the test for meeting the relevant conditions so difficult, that it was nearly impossible to make use of this provision in practice

¹ Large parts of this paper are identical with Tangermann, 2000.

² The five other GATT provisions where foodstuffs, agricultural/primary products or commodities are mentioned specifically are Articles VI:7 (no material injury caused by domestic price stabilization), XI:2(a) (export restrictions to relieve critical shortages); XI:2(b) (restrictions related to standards for the classification, grading or marketing of commodities in international trade); XX(b) (measures to protect human, animal or plant life and health); and XX(h) (obligations under international commodity agreements). In addition, primary products are mentioned in three places in Part IV of the GATT which deals with trade and development. For an excellent legal analysis of the specific rules for agriculture in the ‘old GATT’ and of their history, see Davey (1993).

(Josling, Tangermann, Warley, 1996; Hudec, 1998). Although, Article XI:2(c)(i) kept the dispute settlement machinery of the GATT busy, particularly at a time when the Uruguay Round had already started (Hudec, 1998), the outcome cannot be described as one which made this agricultural exception a wide hole in the GATT's legal framework. Among the 16 GATT disputes that addressed Article XI:2(c)(i), there was not one single case in which the disputed agricultural trade barrier was found to be consistent with this provision.³ In other words, this legal exception for agriculture, though existing on paper, did not in practice make agriculture much special in the 'old' GATT.

Quite the contrary is true for Article XVI:3, which excepted agriculture from the general ban on export subsidies. A lot of use was made in practice of this exception, and the vagueness of the conditions attached to this provision meant that it opened a huge hole in the GATT's legal framework, allowing this notorious element of agricultural trade policies to go essentially unconstrained. Article XVI:3, too, was a favorite target of disputes, as it happens in exactly the same number of cases as Article XI:2(c)(i).⁴ However, in these disputes about agricultural export subsidies it proved difficult to interpret the meaning of Article XVI:3, and panels generally shied away from firm interpretations. Hence, this agricultural exception did indeed contribute to making agriculture a special case in the 'old' GATT. In summary, with a bit of simplification and exaggeration it can be said that the GATT as it stood until the conclusion of the Uruguay Round had no more than one special provision for agriculture that was really relevant in practice, i.e. Article XVI:3. This provision contained no more than nine lines of text.

This was to change fundamentally in the Uruguay Round. A whole special Agreement on Agriculture was concluded, with 30 pages of text. In addition, there is the Agreement on the Application of Sanitary and Phytosanitary Measures, with 16 pages of text.⁵ Moreover, among the WTO membership there are now several thousands of pages of country Schedules on agricultural policies, specifying in quantitative detail the commitments countries have accepted

³ For a list of these disputes, see Hudec (1993 and 1998).

⁴ Based on Hudec's (1993) list, a total of 16 GATT disputes dealt with the exception of agriculture from the ban on export subsidies, this number being exactly equal to the number of disputes dealing with Article XI:2(c). Out of the 16 cases relating to export subsidies, nine addressed Article XVI:3, and six related to Article 10 of the Subsidies Code. In addition there was the case of 'US/EEC: Subsidies on Pasta Products', Complaint 105 in Hudec's list, which did not address Article XVI:3 because the issue was whether the subsidies concerned were subsidies on a non-primary product prohibited under Article XVI:4. In economic terms, though, this case essentially dealt with a subsidy on the primary product content of a processed product. In addition to complaints addressing the agricultural exception from the ban on export subsidies, there were a few disputes involving agricultural export subsidies which did not question the legality of the subsidy, but related to countervailing duties or to non-violation nullification and impairment.

⁵ My page counts are based on WTO (1995).

under the AoA.⁶ Quite apart from the pure quantity of text and pages devoted to agriculture in the post-Uruguay Round legal framework, the actual nature of the rules now governing agricultural trade deviates in many regards quite significantly from the general provisions applicable to trade in manufactures. In other words, under the WTO legal framework agriculture is now much more special, in formal terms, than it ever used to be under the GATT 1947.

This legal specificity of agriculture established in 1994 contrasts markedly with the claim that the Uruguay Round negotiations have finally managed to set agriculture firmly on a track that will lead to the main road of international trading rules. Was it really necessary to make the rules for agriculture more different from those for other goods, in order to impose discipline on a sector that had always escaped the disciplines that worked reasonably well in other sectors of international trade? And is it true that agriculture is now more special than it ever used to be under the ‘old’ GATT? The answers are “probably yes” for the first question, and “not really” for the second. To see why, let us go through the three areas of disciplines for agriculture now conveniently structured in the AoA, i.e. market access, export competition and domestic support. Moreover, let us also take a brief look at the new rules governing product attributes of agricultural and food products, in particular the SPS Agreement.

2.1 Market Access

In the area of market access, the content of the new rules of the AoA means that, in spite of the new specific text now regulating this area, the post-Uruguay Round provisions for agriculture are overall definitely less special than before the Uruguay Round, with one legal and two substantive exceptions. Less special is agriculture now because Article 4.2 of the AoA has effectively done away with Article XI:2(c)(i) of the GATT 1947. To be sure, Article XI:2(c)(i) still exists in the GATT 1994. However, as Hudec (1998) has phrased it, “although Article XI:2(c)(i) still stands as one of the rules of GATT 1994, it has effectively been rendered a nullity by the Agreement on Agriculture’s commitment [in Article 4.2] to remove all non-tariff barriers, and will probably never be heard from again.”⁷ More important in practice, AoA Article 4.2 has at the same time eliminated all country-specific derogations under which non-

⁶ The Schedule of the European Communities, for example, has about 150 pages, of which around 100, though, relate to tariff bindings (and hence are not special in the sense of containing commitments of a nature that does not exist outside agriculture).

⁷ For a non-lawyer like the present author, it is not quite clear what the legal relationship really is between a provision in the GATT 1994 and a more restrictive rule contained in one of the Uruguay Round Agreements. Moreover, if the WTO Members really wanted to do away with the options provided by GATT Article XI:2(c), why was the text of the GATT then not amended at this point? A similar question can be asked regarding GATT Article XVI:3. As this provision has been effectively superseded by Part V of the AoA and the respective quantitative commitments in the country Schedules, why was it not eliminated?

tariff barriers had been maintained in agriculture before 1994 (and thereby, for example, put the infamous 1955 U.S. waiver from GATT Article XI:2(c)(i) eventually to rest).

Most important in terms of removing the special status of agriculture, under the AoA tariffs are now firmly bound for nearly all tariff lines in agriculture.⁸ This has done away with the large number of unbound tariffs in agriculture prior to the Uruguay Round, which permitted countries to set domestic support prices at any level desired and to defend them through border measures like variable levies. Before the Uruguay Round, no more than 35 per cent of all agricultural tariff lines in GATT member countries had bound tariffs, while after the Uruguay Round practically 100 per cent of all agricultural tariffs in WTO Members are bound (see Table 1).⁹ As a matter of fact, agriculture is now ahead of (and less ‘special’ than) industry in this regard, as 17 per cent of all tariff lines for industrial products continued to lack tariff bindings after the Uruguay Round (see Table 1).

Table 1: Tariff Bindings on Industrial and Agricultural Products, Pre-Uruguay Round and Post-Uruguay Round

Country group	Industrial Products		Agricultural Products	
	Pre-UR	Post-UR	Pre-UR	Post-UR
Percentage of <u>tariff lines</u> bound				
Developed countries	78	99	58	100
Developing countries	21	73	17	100
Transition economies	73	98	57	100
Total	43	83	35	100
Percentage of <u>imports</u> under bound tariffs				
Developed countries	94	99	81	100
Developing countries	13	61	22	100
Transition economies	74	96	59	100
Total	68	87	63	100

Source: GATT Secretariat (1994, p. 26)

Was it necessary to agree on a special text for agriculture, in order to bring agricultural trade on the main GATT track in this area? It probably was in order to make it crystal clear

⁸ Even the most notable exception, maintained under the ‘rice clause’ (Annex 5 of the AoA), i.e. Japan’s import restriction on rice, was eliminated in April 1999, when Japan decided to convert it into a (rather high) bound tariff.

⁹ The 100 per cent figure in the GATT Secretariat’s table cited here is probably due to rounding (of a figure which must have been in the order of magnitude of 99.9 per cent), because there are a few tariff lines where agricultural tariffs remained unbound after the Uruguay Round (rice in Japan, Korea and the Philippines; pigmeat, cheese and milk powder in Israel).

that everybody (with very few exceptions) had to move to bound tariffs in agriculture, irrespective where countries were coming from. The text saying that in the AoA is no more than a few lines, and could probably even be done away with in the next round, given that (nearly) all tariffs in agriculture are now really bound.

The one important legal exception in the area of market access that has indeed made agriculture more special in the Uruguay Round are the new Special Safeguard Provisions available for products that have undergone tariffication in the Uruguay Round (Article 5, making up the bulk of the text on market access in the AoA, in addition to the large amount of text on the 'rice clause', i.e. Annex 5). These provisions were certainly not necessary in any legal or technical sense. However, politically there was probably no way around them as some of the countries giving up on protective and stabilizing devices such as variable levies, in particular the EU, might otherwise not have accepted the principle of tariffication. In practice the Special Safeguard has so far been used less than some critics had feared.¹⁰ However, the Special Safeguard Provisions for agriculture are a clear anomaly that should be eliminated as soon as possible.¹¹

This has also to be seen in the context of the first substantial exception for agriculture that still exists after the Uruguay Round. In agriculture, many tariffs are still extremely high. The (trade weighted) average of all industrial tariffs after the Uruguay Round is no more than 3.8 per cent (GATT Secretariat, 1994, p. 12). In agriculture, to my knowledge nobody has so far estimated an average of all tariffs, probably because it would be extremely difficult to calculate average tariffs, not the least as there are so many specific tariffs and complex combinations of specific and ad valorem tariffs, with minimum and maximum rates and other complicating features. However, a superficial view at some selected cases shows that in agriculture there are still many tariffs with towering levels, often in the order of several hundred per cent (see Table 2). Not only does this make the substance (rather than the legal basis) of agricultural tariffs very special. It also makes one wonder why there should still be a need for Special Safeguard Provisions, over and above tariff levels of such magnitude.

¹⁰ However, in a few cases the Special Safeguard has become a quasi-regular feature of policy regimes. Sugar in the EU is a case in point.

¹¹ In their proposals for the new round of agricultural negotiations in the WTO, some countries (in particular the United States, Australia and New Zealand) have already argued for eliminating the Special Safeguard Provisions. The EU, on the other hand, has expressed strong interest in maintaining the Special Safeguard.

Table 2: Post-UR Tariffs (Final, Year 2000) for Selected Agricultural Products in Selected Countries (ad valorem equivalents)

	EU	US	Japan	Switzerland
Sugar	219.2%	183.6%	214.2%	249.1%
Butter	162.6%	117.3%	558.5%	965.6%
Beef	111.4%	26.4%	50.2%	251.6%

Source: OECD (1995)

The second substantial exception for agriculture in the area of market access is the large number of tariff rate quotas (TRQs) now existing in agriculture. On aggregate over all product groups in agriculture and all WTO Members, there are now 1371 TRQs (WTO Secretariat, 2000a).¹² Though some of these TRQs already existed before the Uruguay Round, a large part of them were established in the process of tariffication as achieved in the Uruguay Round. In that sense this specificity of agriculture is ironically a by-product of making agriculture less special in the WTO. There were two reasons for creating so many new TRQs in agriculture, mirrored in the terms “current access” and “minimum access” as used in the Uruguay Round modalities for establishing commitments in agriculture. Current access TRQs were needed to make sure that tariffication did not run counter to the interests of those exporters who had special access conditions before the Uruguay Round.¹³ For example, if the EU had converted its voluntary export restraint agreement on manioc from Thailand into a tariff equivalent to the difference between the domestic EU price and the going world market price, then Thailand would have lost all of the quota rent that used to compensate it for restricting its manioc imports into the EU. Instead, a country-specific (low-tariff) TRQ for manioc from Thailand now maintains the old access conditions for Thailand after the EU has bound a (much higher) tariff in the Uruguay Round. Minimum access TRQs were hoped to provide at least some immediate access to markets where tariffication (at the expected high tariff levels) would not directly open up new trading possibilities.

The fact that TRQs now play a much larger role in agriculture than in manufactures is not based on any specific legal exceptions for agriculture. Nothing in the GATT or any WTO agreement prevents countries from granting access to their markets at tariffs lower than the bound rates, but then to constrain that improved access to limited quantities. The prevalence of

¹² In terms of the number of TRQs per country, Norway holds the record with 232 TRQs, followed by Poland (109), Iceland (90) and the EC (87). As far as broad product categories are concerned, TRQs are most widespread for fruit and vegetables (355), meat products (247), cereals (217) and dairy products (181).

¹³ Current access TRQs were also supposed to guard against general reductions in market access as resulting, for example, from ‘dirty tariffication’. However, it appears that very few TRQs have actually been established with that objective in mind.

TRQs in agriculture is the mirror image of the high levels of tariffs in that sector, which make exporters interested in gaining better access for at least some part of their shipments. Nevertheless, a lot of criticism has been advanced regarding the host of TRQs that now exist in agriculture, often based on the argument that TRQs can have effects essentially equivalent to those of quantitative restrictions.¹⁴ However, it would appear that much of that criticism is misguided. Fundamentally the problem is not the existence of many TRQs, but the dominance of extremely high tariffs in agriculture. If and when these tariffs are brought down to levels similar to those in industry, the TRQ problem in agriculture disappears automatically. In the new round of WTO negotiations on agriculture, the bulk of negotiating efforts in the area of market access should therefore be spent on tariff reductions, rather than on improving the functioning of TRQs.

Having said that, it should also be acknowledged that effectively binding TRQs are probably going to remain a characteristic feature of agricultural trade for some time, as tariffs of several hundred per cent are not easily negotiated down to one-digit levels in a few years time. The negotiations can therefore not completely disregard the issue of how TRQs are implemented, and how their administration can possibly be improved. When turning to this issue it is reassuring to note that around one half of all TRQs in agriculture are administered on the basis of what the WTO Secretariat calls “applied tariffs”, i.e. unlimited imports are allowed at the within-quota tariff or below (see Table 3). In other words, one half of all TRQs are effectively not constraining the actual import quantities, and rather act like a regime in which only the in-quota tariff is charged. Another quarter of all TRQs is administered through “licences on demand”, i.e. licences are allocated to applicants on a first-come, first-served basis or licence requests are reduced pro rata where their aggregate exceeds the TRQ volume. One tenth of the TRQs are administered on a “first-come, first-served” basis where the physical importation determines the order of requests and hence the applicable tariff. All these methods, though not necessarily economically optimal, are at least relatively impartial in the sense that they avoid overt discrimination among traders and interference with access conditions.

One might tend to have a less friendly impression of some other methods of administering TRQs. However, if quota fill rates in the first five years of implementing the AoA (1995 to 1999) are any indication of the smooth functioning of TRQ administration, this feeling is at least not supported by the figures published by the WTO Secretariat (see Table 3). On this account, TRQs implemented through imports by state trading enterprises fare best, with an average fill rate of 85 per cent. Fill rates of TRQs allocated to historical importers (77 per cent) do not look much worse, and even for the potentially most suspicious method of

¹⁴ If the above-quota tariff is prohibitive while the within-quota tariff is not, then a TRQ indeed acts like a quantitative restriction.

administration, i.e. by domestic producer groups or associations, the average fill rate (71 per cent) is still marginally better than where “applied tariffs” dominate (68 per cent).¹⁵

Table 3: Principal Administration Methods of Agricultural Tariff Rate Quotas: Shares of All TRQs and Average Fill Rates, 1995 to 1999

Administration method	Average share of all TRQs ^{a)}	Average fill rate, per cent ^{b)}
Applied tariffs	49.0%	68
First-come, first-served	9.8%	53
Licences on demand	24.5%	55
Auctioning	3.4%	46
Historical importers	4.9%	77
Imports by state trading enterprises	1.6%	85
Producer groups/associations	0.6%	71
Other	1.3%	46
Mixed allocation methods	4.4%	82
Non-specified	0.6%	49
Overall	100%	63

^{a)} Simple average across all countries, products and years 1995 to 1999

^{b)} Annual simple average fill rates across all countries and products from 1995 to 1999, weighted by the number of TRQs included in the analysis for the respective year and administration method.

Source: Calculated from figures in WTO Secretariat (2000b)

From an economic perspective, much can be said for auctioning licences to TRQs, because that is the method under which competition works best, and hence where results are likely to come closest to what free trade would have achieved, in terms of which exporting countries and which trading firms get which shares of the market. However, no more than around five per cent of all agricultural TRQs are administered on that basis. In part this may have to do with the resistance of governments to collect money for administrative actions which make life anyhow more difficult for the companies involved, or rather with the inclination of policy makers to let these companies skim off pleasant rents from domestic consumers. In part, though, governments also shy away from auctioning licences to TRQs because they are afraid that this might be GATT illegal. In this situation, it would be useful if a clear cut decision could be taken in the WTO that the auctioning of licences is consistent with the GATT. In considering this decision, note should be taken of the economic fact that any auctioning fee collected does not impede trade flows, but simply turns a private windfall profit (the quota rent earned by the trading company getting hold of a licence) into government

¹⁵ In an update of its earlier survey of TRQ administration, the WTO Secretariat has provided useful information on the changes in administration approaches made after 1995, and on some resulting changes in quota fill rates (WTO Secretariat, 2000c).

revenue. Moreover, it should also be considered that there is no other way of allocating quota licences which honors the competitive strength of the individual exporting countries and trading companies equally well, without inducing them to engage in rent-seeking activities and the consequent misuse of economic resources.

2.2 Export Competition

In the area of export competition, the Uruguay Round Agreement has made agriculture substantially more special than it used to be under the GATT 1947 – in a formal sense. Not only is there now a text of three pages of legal provisions on a type of subsidy that is plainly prohibited in manufactures trade. Country Schedules now also contain quantitative commitments (on allowable quantities of subsidized exports and outlays on export subsidies) of a nature that does not at all exist outside agriculture. What is more, under the ‘peace clause’ (Article 13 of the AoA) export subsidies that are consistent with the provisions of the AoA and the country Schedules are now exempt from actions under GATT Article XVI and the Subsidies Agreement. This creates an air of legitimacy for a trade policy instrument that should not, according to basic GATT principles, exist at all, but can now be shamelessly used in agriculture.

As far as substance goes, the AoA has, however, made agriculture less special than it was in practice before the Uruguay Round. The “equitable share” rule of GATT Article XVI:3 did not at all serve as an effective constraint on agricultural export subsidies, and governments could essentially subsidize whichever amounts of market surplus they wanted to dump on the world market, with subsidy expenditure that was practically unlimited under the GATT. The situation is now quite different. Particularly important is the fact that the vague concept of the “equitable share” has been replaced by precise quantitative limits for each country and product group, with corresponding notification requirements and the transparency they create in the WTO Committee on Agriculture. Equally important is the fact that new export subsidies, on products for which countries do not have non-zero commitments in their current Schedules, must not be introduced. Though politically difficult (for some countries), it is now easily conceivable that further reductions to the allowable magnitudes of export subsidization in agriculture are agreed in the current negotiations and future rounds, to the point where only zeros remain in the respective parts of the country Schedules. If and when that point is reached, the specificity of agriculture in the area of export competition is eliminated, and the text of the relevant part of the AoA is then only a reminder of what history looked like, but no longer anything that makes agriculture special in the sense of being less tightly controlled than trade in manufactures. It will then be an interesting issue whether the specific list of agricultural export subsidies subject to reduction commitments (i.e. at that point in time subject to zero

commitments) as contained in the AoA (Article 9) should remain in existence or be merged with the illustrative list of prohibited export subsidies in Annex I of the Subsidies Agreement.

The AoA provisions on export subsidies are of course globally applicable to all WTO Members, and that is important even for those countries that have no non-zero commitments on export subsidies in their Schedules, because they cannot now begin to use this type of support policy. However, it is probably not wrong to say that the reduction commitments on ‘old’ export subsidies are targeted mainly at the EU. In no year since the beginning of the AoA implementation period has the EU had a share of less than 87 per cent of all notified agricultural export subsidies among all WTO Members, and on average over the 1995-98 period the EU’s share in all export subsidies notified was 89 per cent (see Table 4). Over the 1995-98 period, Switzerland’s share in all notified export subsidies was slightly above five per cent, the USA had a share of 1.6 per cent, Norway had a share of 1.3 percent, and no single other WTO Member has a share of more than 0.5 per cent in total notified export subsidies. Thus, in a way it is mainly EU policies in the area of agricultural export competition that are special, and hence any specificity of the treatment of agriculture in the GATT/WTO in this area is in practice primarily due to the EU.

Table 4: Notifications of Export Subsidy Expenditure

		1995	1996	1997	1998	1995-98
All WTO Members ^{a)}	million US \$	6812	7857	5921	5533	26134
EU	million US \$	6058	7088	5262	4849	23257
EU share in worldwide export subsidies	per cent	88.9%	90.2%	88.7%	87.6%	89.0%

a) Subsidy outlays reported are not comprehensive for the years 1996 to 1998 as some countries had not yet notified their export subsidies by the time the WTO Secretariat produced its background paper.

Source: Calculated from figures in WTO Secretariat (2000d).

2.3 Domestic Support

In the area of domestic subsidies, legal conditions for agriculture now certainly look significantly more special than what used to be the case before the Uruguay Round. In the GATT 1947, rules on domestic subsidies (which though were weak anyhow) did not distinguish between primary products and manufactures. The Uruguay Round Agreement now makes an explicit distinction. In agriculture, the AoA has established three explicitly defined

categories of domestic support (dubbed green, amber and blue) that do not have a direct parallel in industry. The size of agricultural support now has to be measured, in a very peculiar way, with definitions (like the Aggregate Measurement of Support) that exist only in agriculture, and has to be notified by all WTO Members with respective commitments – again something that has not the slightest parallel in industry. Rules on actionable subsidies as established for manufactures in the Subsidies Agreement are explicitly not applicable to agriculture, where the ‘peace clause’ provisions have created rather special conditions – so long as that clause is in force. In all these regards agriculture is now a very special case in the area of domestic support.

A look at the details of AoA rules on domestic support and an attempt at finding at least rough parallels with the respective provisions for industry, however, shows that the differences are not quite so pronounced as far as economic substance goes. In terms of classifying different categories of subsidies, subsidies in industry can also be categorized along the lines of traffic light colors, into ‘green’ (non-actionable), ‘amber’ (actionable), and ‘red’ (prohibited). In agriculture, ‘green’ and ‘amber’ types of support have their own definition in the AoA, and ‘red’ subsidies also exist, though in talk about agricultural support they are usually not referred to using that color term. How do these colored boxes compare between industry and agriculture? With some simplification, the comparison yields the results presented in Table 5.

In industry, the border line between green (non-actionable) and amber (actionable) subsidies, as defined in the Subsidies Agreement, is specificity (to an enterprise or industry). Moreover, for the first five years of existence of the WTO green subsidies for industry also included those on the list of ‘benign’ subsidies for ‘acceptable’ purposes such as research, assistance to disadvantaged regions and environmental purposes (Article 8.2 of the Subsidies Agreement, expiring after five years according to Article 31). All of the agricultural subsidies falling into the agricultural green box as defined in Annex 2 to the Agreement on Agriculture are certainly specific in the sense that they apply to only one industry (i.e. agriculture). These green agricultural subsidies would therefore be amber in industry, except for those that could be justified under the research, regional and environmental programmes defined in Article 8.2 of the Subsidies Agreement. However, the peace clause provisions in the Agreement on Agriculture explicitly make these quasi-amber agricultural subsidies non-actionable (during the implementation period defined in the AoA), and therefore upgrade them to the green category in the sense of the Subsidies Agreement.

Table 5: Subsidy Rules for Manufactures and Agricultural Products

Type of Subsidy	Manufactures	Agricultural Products
‘Green’		
Definition	non-specific (to enterprise or industry) domestic subsidies, and certain subsidies under research, regional and environmental programs (only for first five years after entry into force of WTO Agreement – later ‘amber’)	minimally trade distorting domestic subsidies (list of measures in Annex 2)
Rule	non-actionable	non-actionable, exempt from reduction requirement
‘Amber’		
Definition	all other domestic subsidies	trade distorting domestic subsidies (not falling under Annex 2), export subsidies existing in the base period
Rule	Actionable	‘half-actionable’, to be reduced (except for <i>de minimis</i> and certain subsidies in developing countries)
‘Red’		
Definition	export subsidies	export subsidies not existing in the base period, and export subsidies in excess of country commitments
Rule	Prohibited	Prohibited
‘Blue’		
Definition	not existent	domestic subsidies and production-limiting programs
Rule	not existent	‘half-actionable’, not to be reduced

In agriculture, amber subsidies (i.e. subsidies with a more than minimally trade distorting effect) are ‘half-actionable’, i.e. somewhat less actionable than in industry. The peace clause calls for due restraint in initiating countervailing duty investigations, and exempts them from other GATT challenges as long as (product specific) support does not exceed the level decided in 1992. However, as a quid pro quo, ‘amber’ subsidies in agriculture have to be reduced under the Domestic Support commitments.

The category of red (i.e. prohibited) subsidies covers all export subsidies in industry. In agriculture, export subsidies are red which did not exist in the base period. Moreover, export

subsidies in agriculture which exceed the levels covered by Schedule commitments can also be called red. Agriculture, finally, has one more color category that does not even exist in industry, i.e. ‘blue’. This category of agricultural subsidies, granted domestically under so-called (but not necessarily really) production-limiting programs (AoA Article 6.5), falls somewhere between the agricultural categories of green and amber. They are green in the sense of not being subject to reduction commitments, but amber in the sense of being ‘half-actionable’. Treated in essentially the same way, though not called blue in WTO jargon, are those agricultural subsidies that fall under the *de minimis* provisions (AoA Article 6.4) as well as certain subsidies in developing countries (AoA Article 6.2).

In addition to being confusing, some of these differences between agriculture and industry in the area of domestic subsidies are less easy to justify than differences in export subsidies and market access. In the latter two areas, governments have given up some scope for policy design, and differences between agriculture and industry will tend to disappear gradually due to reduction commitments. The remaining differences in these two areas, thus, in a way indicate how far one has already gone in removing the specificity of agriculture. In the area of domestic subsidies, on the other hand, a completely new distinction has been created, by calling certain subsidies green in agriculture which have not been green before and are not green in industry. Also, there is no indication of the intention to bring the agricultural green box under the stricter rules for green industrial subsidies in the future.

However, it can probably be argued that the new distinctions between agriculture and industry created in the area of domestic subsidies were a reasonable price to be paid in order to make progress towards less special rules for agriculture in the areas of export subsidies and market access. Indeed, if governments had not had the option of paying some form of direct income support to agriculture it is unlikely that they would have agreed to a reduction in market price support and to an opening up of domestic markets to international competition.

2.4 Product Attribute Issues

As far as product attributes are concerned, the Uruguay Round has, again, made agriculture much more special in formal terms, through the wholly new SPS Agreement. All of that agreement applies only to food and agricultural products, and in that sense the UR has created another large body of specific provisions just for agriculture. Before the UR, the relevant GATT rule was that of Article XX(b), saying in very few words no more than that countries could adopt measures “necessary to protect human, animal or plant life or health“, as long as these measures did not “constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade“. After the UR, there is now a long and complex agreement, regulating the relevant

measures in much detail. What is more, that agreement for agriculture and food is separate from the Agreement on Technical Barriers to Trade (TBT), also concluded in the UR, regulating measures of a similar nature for the totality of all traded goods. Hence, it may really look like the UR has, in the area of technical standards as well, made the rules for agriculture more different from those for other sectors. Was that formal differentiation between agriculture and industry also necessary to bring agriculture back to the main track of the international trading regime?

That would appear to be a wrong impression, for several reasons. First, it would be difficult to argue that under the 'old' GATT agricultural trade had, in the area of technical standards, deviated from trade in other goods as much as it had with regard to the directly economic measures such as tariffs, export subsidies and domestic support. Certainly, there had been all sorts of cases where governments had adopted SPS measures of a doubtful nature, probably directed more at protecting economic interests of domestic producers rather than human, animal and plant health (Hillman, 1978; Jaeschke, 1986). However, similar tendencies have always existed in industry as well. Given the difficulties of establishing complete surveys of the relevant measures in both sectors, assessing the justification of the measures concerned, and evaluating their economic impact, it is not easy to come up with a good empirically based statement on whether agricultural trade in general suffered more or less than trade in manufactures from unjustified technical standards. However, anecdotal impression might suggest that this was not the case. After all, before the UR the GATT disciplines on purely economic measures were so weak anyhow that governments may often not have felt the need to resort to technical standards in order to provide the intended protection to their farmers. From that perspective one may say that in the area of technical standards agricultural trade was, under the 'old' GATT, less of a special case than in the area of directly economic measures. Hence, one can argue that in this area there was less of a need to bring agriculture more closely into line with other sectors of trade.

But if that is the case, why was a completely new SPS agreement negotiated in the UR, and why was it made different from the overall agreement on TBT? This is not the place for a comprehensive discussion of the SPS agreement (see Roberts, Orden and Josling, 1999, and the literature cited there). However, two reasons can be mentioned why the UR was a timely occasion for negotiating an agreement on SPS measures. First, the few lines of text on SPS measures in the GATT 1947 were simply not sufficient to deal with the complexity of these measures. In particular, they did not suffice to regulate clearly which of the measures concerned were acceptable from the perspective of an open international trading regime, while still providing the level of protection to human, animal and plant health that countries have a right (and governments a political need) to establish. Second, there was the fear, probably justified, that with the increasingly restrictive regime on economic measures established by the AoA, governments might have a tendency to resort increasingly to SPS

measures when they saw no other way to provide the intended protection and support to their domestic farmers. Thus it was probably a good idea to establish more effective and operational rules for technical standards in agriculture at the same time as the provisions on economic measures were strengthened.

But why was the area of technical standards in agriculture and food regulated separately from TBT measures for trade in general? Is that an indication of a tendency to make agriculture more specific in the GATT? In a way, that question is not properly formulated. After all, the TBT agreement applies to “all products, including industrial and agricultural products”, as explicitly regulated in its Article 1.3. The distinction between the TBT agreement and the SPS agreement, then, is not based on the sectors affected, but on the measures concerned. The point simply is that certain types of measures, namely sanitary and phytosanitary measures, by their very nature are relevant only for certain types of goods, namely those produced in the agriculture and food sector. It is, then, a matter more of a practical nature rather than of substance whether these measures are regulated in the same agreement as the rest of technical standards, or whether it is legally and institutionally more useful to have two separate agreements. The decision was taken for that latter approach, and probably for good reasons.

In other words, as far as product attributes are concerned, one can argue that agriculture was not really special under the ‘old’ GATT, and that the UR therefore did not have to, and did not effectively, change that status. SPS measures are now regulated in more detail, and that is good. However, this cannot be said to have been necessary in order to bring agriculture back to the main track of the international trading regime.

In summary, there is no clear-cut answer to the question of whether agriculture is more or less specific after the UR than used to be the case under the ‘old’ GATT. In terms of formal legal treatment, the many new rules of the AoA certainly mean that there is now a large body of specific agricultural provisions in the WTO. As far as economic substance goes, however, the effects of these specific legal rules tend to be such that there is at least the chance that agriculture will be treated less differently than industry in the future. In other words, the somewhat ironic conclusion is that rather specific legal rules were needed to make agriculture less specific in economic terms. In the area of product attributes, the new SPS agreement has not really made agriculture more specific than it was before the UR. Only future will show whether the new road for agriculture established in the Uruguay Round will eventually really take agriculture back to the main track. The next section will discuss whether experience since 1995 can possibly justify some optimism in this regard.

3 Have the New Rules for Agriculture Established in the Uruguay Round Improved the Situation?

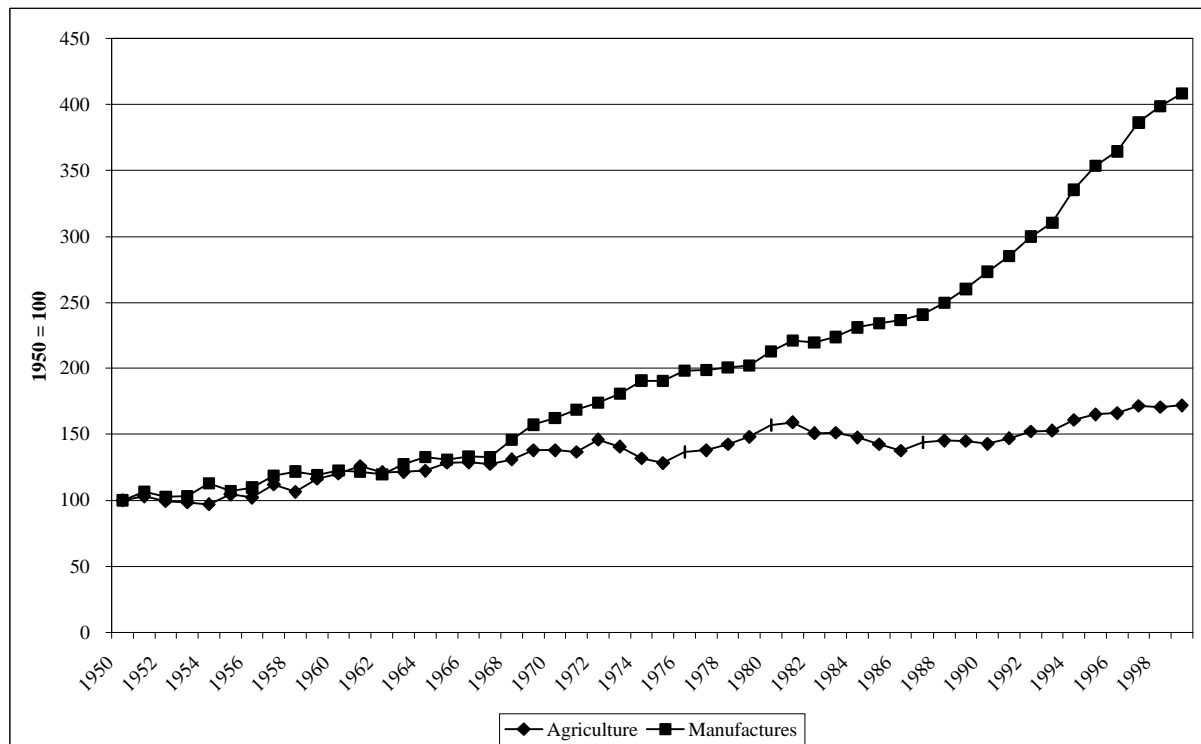
One definitely positive effect of the new rules for agriculture established in the Uruguay Round is that there is now much more transparency in the WTO about what countries do in their agricultural policies. The ample notification requirements agreed under the AoA have created a large body of quantitative and qualitative information on agricultural policies in WTO Members that did not exist in the same form before. As a matter of fact, that amount of information is so large that it is difficult to consume and evaluate it. However, the WTO Secretariat has done an admirable job in summarizing the most important aspects of that information, through the Background Papers prepared in the context of work in the WTO Committee on Agriculture and now extended, and above all also made accessible to the general public, in the context of the new round of negotiations.

In the past, internationally comparable information on agricultural policy developments was provided only by the OECD, and only for a more limited number of countries, under the monitoring and outlook reports on agricultural policies in OECD member countries. The nature of that information was and still is different from what one can learn from the country notifications in the WTO under the AoA. Moreover, given its completely different mandate, the OECD can also process, evaluate and assess the agricultural policy information made available to it, while the WTO Secretariat necessarily has to adopt a much more detached role. However, combining both sources of information (WTO notifications and OECD reports), policy analysts now have a very rich base of information on agricultural policy developments at the international level.¹⁶ Yet, even this combined information, and information from other sources, still does not (and for reasons of analytical logic cannot possibly) provide an answer to the question of whether the UR AoA has improved the situation in international agricultural trade and in agricultural policy making around the world. In order to work towards that answer one would have to make the appropriate with/without comparison, and reconstruct the hypothetical world that we would have seen today had the UR not come up with the AoA. To do so, we cannot simply assume that in this hypothetical world no policy change would have taken place since the times of the UR. However, precisely which alternative policies would have been pursued in that case, and how they would have affected agricultural markets and trade is nearly impossible to say.

¹⁶ In several of its reports, the OECD Secretariat itself has indeed combined information from its own traditional sources (i.e. information coming directly from member country governments) with information from country notifications to the WTO. It has also engaged in analyses of WTO country notifications, most recently in a report on implementation of the UR AoA by OECD countries (OECD, 2000b).

In the absence of such analytical information, a (rather weak) substitute is to look at developments over time, to see whether the world has moved towards more or towards less liberal agricultural trade since the end of the UR. No global indicator is available that would provide aggregate and comprehensive information of that sort. However, one first impression may be gained by looking at the development of world exports relative to world production, to see whether the share of trade in global output has increased since the Uruguay Round. In Graph 1, this is done for the sectors of agriculture and manufactures. The good news is that in agriculture, trade has expanded again relative to production in the 1990s, after that relation had been essentially stagnant since the early 1970s. The less good news, however, is that this process has been much less dynamic than in the manufactures sector.

Graph 1: World Exports Relative to World Production, Agriculture and Manufactures, 1950 = 100

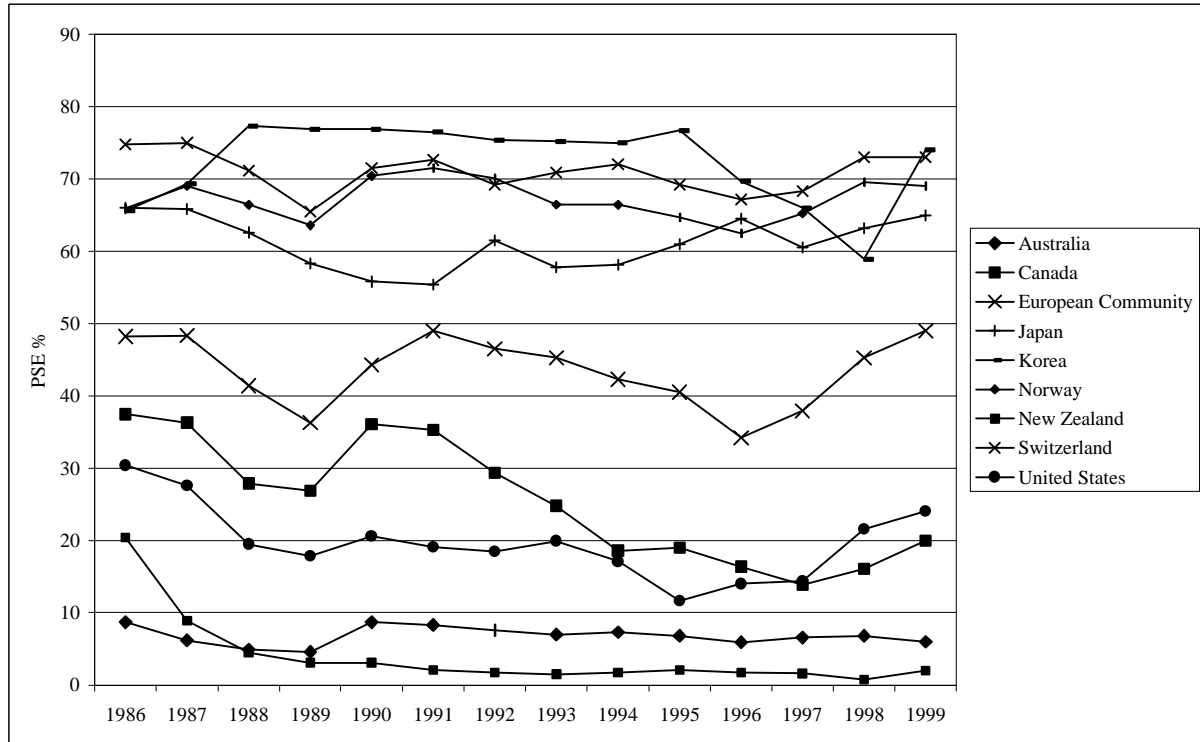


Source: WTO Secretariat (2001)

As far as policies are concerned, the OECD's Producer Support Estimate (PSE) contains information that is useful in this context. Graph 2 shows the development of the percentage PSE over the period 1986 to 1998 for selected OECD countries. The PSE percentages have fluctuated over time. However, it would be difficult to argue that there was any noticeable overall reduction in the levels of support after 1995, i.e. after the new Uruguay Round rules for agriculture in the WTO began to apply. As a matter of fact, in a number of countries support to agriculture, as measured by the percentage PSE, has risen again in recent years after having

declined somewhat in 1995 and 1996. To a large extent, these changes in PSEs reflect fluctuations in world market prices for some agricultural commodities, which tended upward in 1995-96 and downward again more recently.

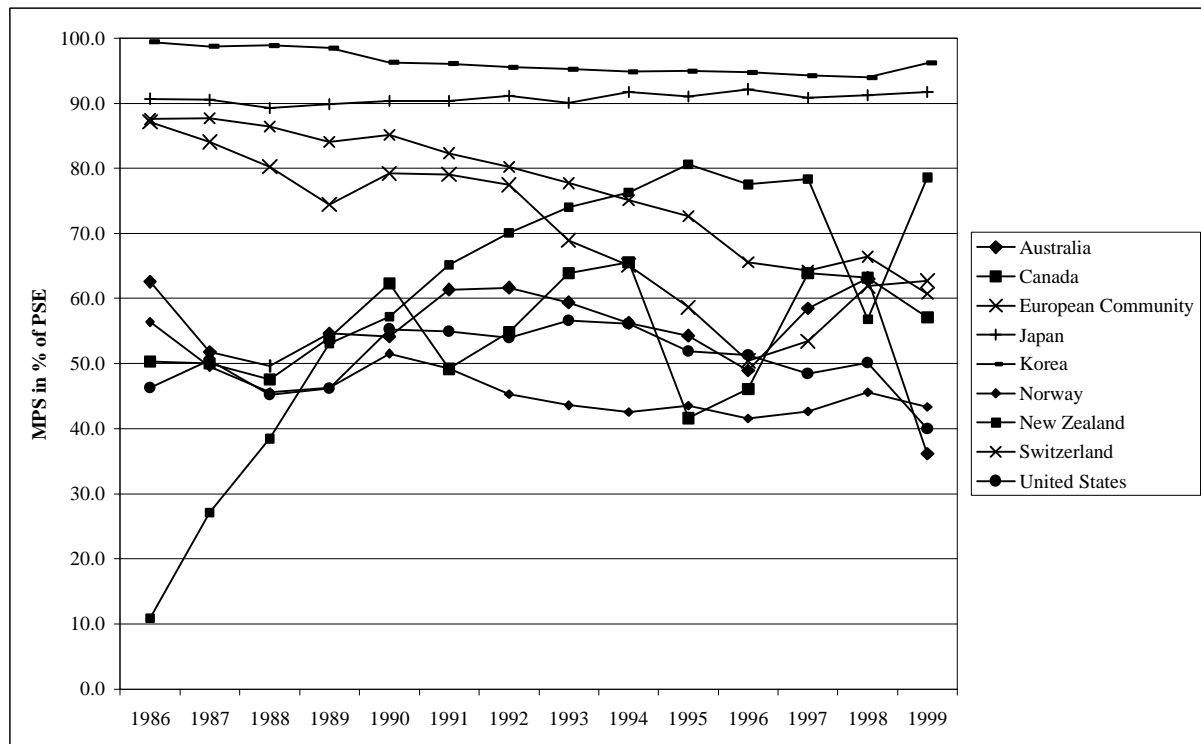
Graph 2: Producer Support Estimates for Selected OECD Countries, Per Cent



Source: OECD (1999 and 2000a)

If overall levels of support in agriculture have not systematically declined after the Uruguay Round, has at least the extent to which agricultural policies interfere with market forces been reduced as a result of the Uruguay Round AoA? One other indicator that could potentially provide information on this question is the share of Market Price Support, as defined by the OECD, in the total value of the Producer Support Estimate. This indicator is shown in Graph 3. Again, unfortunately no systematic improvement in this regard can be found for the selected OECD countries included here. In some countries, the share of Market Price Support in total PSE has indeed declined significantly after 1995 (Switzerland, United States). In other OECD countries, that share has remained constant, or has even increased (the latter was the case in Canada and the European Union).

Graph 3: Market Price Support in Percent of Total Producer Support Estimate, Selected OECD Countries



Source: OECD (1999 and 2000a)

Does this then say that the AoA had no effect on actual policies, and hence that the new rules for agriculture established in the Uruguay Round did not improve the situation? This is not the place for a general discussion of how agricultural policies in major countries have developed in recent years. Overall, it can well be argued that at a worldwide level there has been, since about the mid-1980s, a tendency to reform agricultural policies in the direction of more market orientation and less government interference.¹⁷ This global tendency towards agricultural policy reform has certainly been a major driving factor behind the fundamental changes made to international rules for agriculture agreed in the Uruguay Round. At the same time the Uruguay Round negotiations have contributed to triggering reform in some countries. In that sense, the relationship between the UR AoA and worldwide agricultural policy reform is a hen-and-egg question. Which came first and which second is difficult to say. In any case, the country-specific quantitative commitments accepted in the UR and the new rules of the AoA have certainly had the effect of locking in the agricultural policy reforms in many countries. However, in some cases it can clearly be argued that the UR has had a very

¹⁷ For an account of this tendency to reform agricultural policies worldwide, see Josling (1998).

noticeable effect on domestic agricultural policy making, in the direction of more liberal market and trade policies.¹⁸

The most prominent case of an agricultural policy reform that was directly caused by the GATT negotiations of the Uruguay Round is the 1992 reform of the EU's Common Agricultural Policy (CAP), known as the MacSharry reform. Even though this reform was at the time domestically in the EU explained to farmers as being necessary for purely domestic reasons, there can be little doubt that it was made in direct response to the ongoing Uruguay Round negotiations, and designed in a way that made it finally possible for the EU to accept a constructive outcome on agriculture in the Round, after the disastrous breakdown of the negotiations in December 1990 in Brussels.¹⁹ The MacSharry reform has set the CAP on a new track, and the strategy of reducing price support and replacing it (on a temporary basis?) with less market and trade distorting direct payments, as first adopted by MacSharry, has since become the standard model for agricultural policy reform in the EU.

This strategy was pursued further in the Agenda 2000 decisions taken in 1999. The reasons that were explicitly given for this most recent reform of the CAP were the EU's WTO commitments, current and future, and the need to prepare for Eastern enlargement. Though the latter factor was certainly part of the picture, it can well be argued that the Agenda 2000 CAP reforms were not really targeted at Eastern enlargement. After all, this reform did not at all address the mega-topic of the agricultural element in the enlargement negotiations with the countries in Central Europe, i.e. the future of the large direct payments to farmers under the CAP, and the issue of whether they should also be granted to the farmers in Central Europe (Buckwell and Tangermann, 1999). From this perspective it can well be said that the 1999 CAP reform responded mainly to the EU's WTO commitments. The same can be said about the 'mid-term review' of the CAP scheduled for 2002/03. In preparing for that next step of CAP reform, the EU Commission and agricultural policy makers in the member states of the EU explicitly refer to the UR AoA and to the current new round of WTO negotiations on agriculture. There is no doubt that in the EU the WTO rules on agriculture are now a decisive factor driving agricultural policy reform, in addition to purely domestic policy concerns.

In other countries, the WTO factor may play a less important role in the agricultural policy debate. However, it appears that agricultural policy makers around the world are now at least reasonably well informed about the WTO rules, and are prepared to consider them in designing strategies for future policy development.

¹⁸ The IATRC has provided ample information on the nature and implementation of the UR commitments in major countries and on policy changes made in that context (Josling et al., 1995; Tangermann et al., 1997).

¹⁹ For a discussion of the relationship between the Uruguay Round negotiations on agriculture and the EU's MacSharry reform, see Coleman and Tangermann (1999) and Tangermann (1998).

More directly relevant for the discussion in the context of this paper is the question of whether the new rules of the AoA have been effective in the sense of establishing well defined disciplines for agricultural policies which governments have then also honored, contrary to the situation under the 'old' GATT where rules for agriculture were partly vague and largely not respected in practice. Indications for this sea change, or the absence of it, should be whether there were prominent cases in which the new rules were disregarded, and if so whether disputes were launched against such cases, and whether these disputes were successful in terms of bringing the disputed policies back on rule track. After all, before the Uruguay Round there were only very few cases in which countries changed their policies because the GATT required them to do so.²⁰ The three areas of market access, export competition and domestic support again provide a useful structure for discussing experiences made since 1995.

3.1 Market Access

In the area of market access, the primary test of the effectiveness of the new rules is whether countries have indeed moved to bound tariffs, and whether tariffs actually applied have remained within their bound constraints. The answer to both questions is generally in the affirmative. With the exception of very few cases, mentioned above, all WTO Members have in fact bound tariffs on all agricultural products, and four years after the start of the AoA implementation period even the major exception to this rule was eliminated when Japan replaced its quantitative import restriction on rice by a tariff in 1999. A number of WTO complaints²¹ have claimed that importing countries had violated the requirement not to maintain, resort to, or revert to any non-tariff measure that was required to be converted into

²⁰ For a history of the GATT's dealing with agriculture, see Josling, Tangermann and Warley (1996). – One most notable case in which an agricultural policy was changed because of rules under the 'old' GATT and in response to a dispute ruling was the EU's oilseed subsidy, found to be inconsistent with GATT rules in the soybean dispute brought before the GATT by the United States in 1988. The particular nature of the change to its oilseed regime which the EU then implemented foreshadowed the design of the MacSharry reform. Ironically, this dispute was effective even though the economic logic of the panel ruling in the oilseeds dispute was far less than fully convincing, see Josling, Tangermann and Warley (1996, pp. 158-160).

²¹ The account of complaints and disputes referred to in the following is based on the document Overview of the State-of-play of WTO Disputes, issued by the WTO Secretariat on the WTO website, date 23 March 2001. The WT/DS document numbers refer to the respective WTO documents. Complaints and disputes are mentioned here only if they relate to the Agreement on Agriculture. Several other cases involving agricultural products are not mentioned here because they relate to other more general GATT provisions (such as the provisions on safeguards or anti-dumping) and are, therefore, not specific to the agricultural rules of the WTO.

ordinary customs duties (Article 4.2 of the AoA), where in some cases the issue involved was the justification of restrictions based on balance of payments problems.²²

As far as the consistency of tariffs with tariff bindings are concerned, there are many cases, mainly in developing countries, where tariffs applied remain considerably below the levels of (often rather high ceiling) bindings (Tangermann et al., 1997). Only a small number of complaints have been brought before the WTO where it was claimed that a country had applied an import regime that amounted to a violation of its tariff binding.²³

All this is not to say that the nearly universal binding of tariffs in agriculture has completely done away with measures that at least resemble some non-tariff barriers that were in existence before the Uruguay Round. In some cases, countries have established sophisticated tariff regimes which in practice act like non-tariff barriers. The EU's post-Uruguay Round entry price regime for fruit and vegetables comes close to its old reference price system (Grethe and Tangermann, 1999). The variable tariffs implemented by several countries in Latin America have effects somewhat similar to, though much less problematic than, variable levies (Tangermann et al., 1997). The EU's very specific duty regime for cereals, established at the request of the United States as a result of the Blair House II agreement, is effectively a continuation of the old variable levies in a somewhat modified form (Tangermann et al., 1997). It is important, though, to note that all these policies are legally not inconsistent with the tariff bindings accepted during the Uruguay Round, and that the variable tariffs implemented in Latin America, and for cereals in the EU, remain below the tariffs bound.²⁴

²² The complaints relating to AoA Article 4.2 are India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products complaint by the United States (WT/DS90/1); European Communities - Measures Affecting Import Duties on Rice, complaint by India (DS134); India - Import Restrictions, complaint by the European Communities (WT/DS149); Korea - Measures Affecting Imports of Fresh, Chilled, and Frozen Beef, complaint by the United States (WT/DS161/1) and Korea - Measures Affecting Imports of Fresh, Chilled, and Frozen Beef, complaint by Australia (WT/DS169/1); United States - Definitive Safeguard Measure on Imports of Wheat Gluten from the European Communities, complaint by the European Communities (WT/DS166/1); Brazil - Measures on Import Licensing and Minimum Import Prices, complaint by the European Communities (DS183/1); India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products complaint by the United States (WT/DS90/1); Brazil - Measures on Minimum Import Prices, complaint by the United States (WT/DS197/1); Romania - Measures on Minimum Import Prices, complaint by the United States (WT/DS198/1); Mexico - Measures Affecting Trade in Live Swine, complaint by the United States (WT/DS203/1). This list does not contain the complaints that relate essentially to SPS measures.

²³ These cases are Korea - Measures Affecting Imports of Fresh, Chilled, and Frozen Beef, complaint by the United States (WT/DS161/1), and the equivalent complaint by Australia (WT/DS169/1); Czech Republic - Measure Affecting Import Duty on Wheat from Hungary, complaint from Hungary (WT/DS148/1); Slovak Republic - Measure Affecting Import Duty on Wheat from Hungary, complaint from Hungary (WT/DS143/1); Belgium - Administration of Measures Establishing Customs Duties for Rice, request by the United States (WT/DS210/1).

²⁴ In the early phase of the implementation of the AoA there was some discussion between the United States (and Canada) and the EU about the particular way the EU implemented its variable tariffs on cereals. However, this did not question the fundamental approach, but only 'technical' aspects of it. The discussion

A potentially controversial element of the AoA rules on market access are the Special Safeguard Provisions. However, it appears that they have not been used very much so far, and up to now there was only one dispute involving these provisions.²⁵ Equally controversial is the administration of the many TRQs in agriculture. Except for the notorious banana case, which is of a very special nature and cannot be taken to say much about the functioning of the AoA, so far only three complaints have addressed that issue, but there is probably more dissatisfaction with it than is apparent from formal WTO complaints.²⁶

3.2 Export Competition

Many observers have considered the new rules on export subsidies to be the most important element of the AoA, in terms of improvement of rules for agriculture over the ‘old’ GATT, in terms of establishing effective constraints on existing agricultural policies, and hence also in terms of actual impact on trading conditions. The effectiveness of the implementation of AoA rules on export competition should, therefore, be a most important test for the reliability of the Agreement, and the improvement it brought relative to the conditions existing before the Uruguay Round. Based on this criterion, the AoA appears to have worked rather well.

As far as the new quantitative commitments are concerned, which effectively replaced the “equitable share” rule of the GATT 1947, it appears that there was so far only one case in which a country flagrantly exceeded its commitments on the volume of subsidized exports or budgetary outlay, and/or granted export subsidies on products not specified in its Schedule. The country concerned was Hungary, which claimed that it had erroneously overlooked some export subsidies that had actually been granted in the base period, and hence had wrongly specified commitments in its Schedule. The case resulted in long and heated debates in the Committee on Agriculture, and a complaint was brought before the WTO.²⁷ In the end, Hungary was granted a waiver that allowed it to exceed its commitments on export subsidies by given margins, for an interim period ending in the year 2001. From 2002 on, Hungary will

was settled when the EU adjusted its regime. More recently, Chile’s price band regime was challenged in the WTO, but at the time of writing that case has not yet been settled, see [Chile – Price Band System and Safeguard Measures relating to Certain Agricultural Products](#), complaint by Argentina (WT/DS207/1).

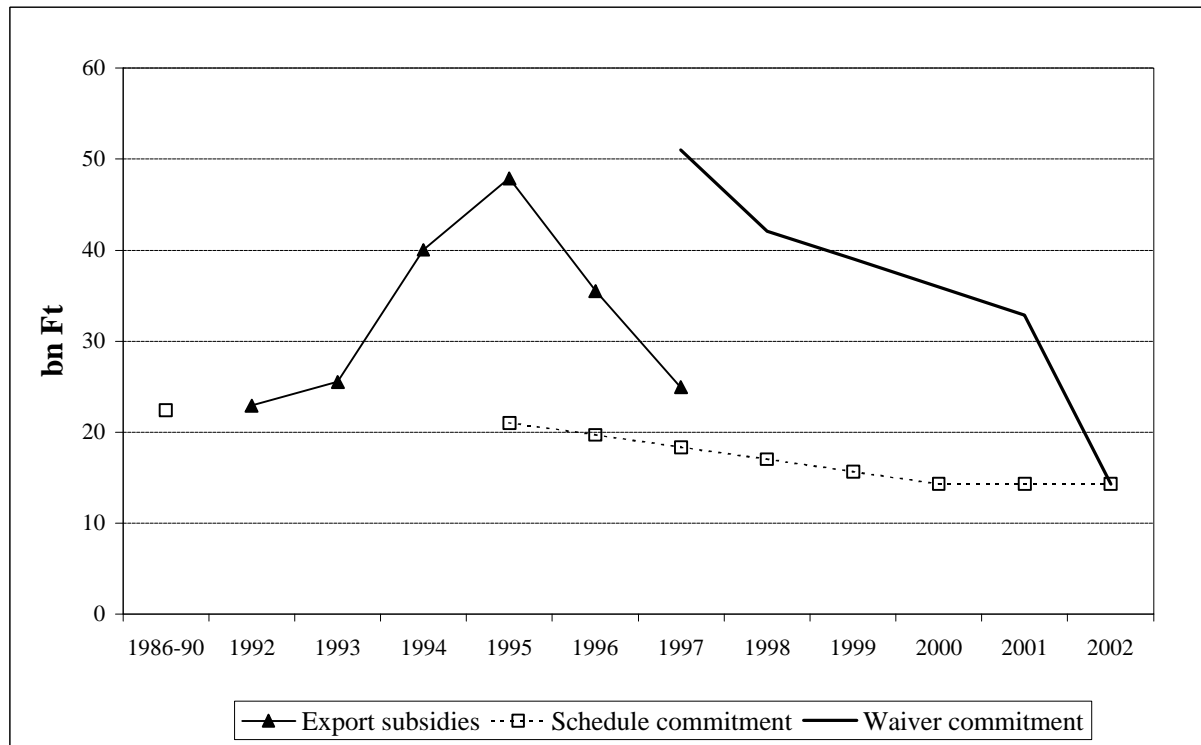
²⁵ [European Communities - Measures Affecting Importation of Certain Poultry Products](#), complaint by Brazil (WT/DS69)

²⁶ Complaints that have addressed the administration of agricultural TRQs are [Philippines - Measures Affecting Pork and Poultry](#), complaint by the United States (WT/DS74/1); [European Communities - Measures Affecting Importation of Certain Poultry Products](#), complaint by Brazil (WT/DS69); [Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products](#), complaint by the United States (WT/DS103/1); [United States - Tariff Rate Quota for Imports of Groundnuts](#), complaint by Argentina (WT/DS111/1).

²⁷ [Hungary - Export Subsidies in Respect of Agricultural Products](#), complaint by Argentina, Australia, Canada, New Zealand, Thailand and the United States (WT/DS35).

then again have to constrain its export subsidies to the levels originally bound in its Schedule (see Graph 4).

Graph 4: Hungary's Aggregate Export Subsidies: Actual Outlays, Schedule Commitments and WTO Waiver



Source: Twesten (1999) and sources given there

For a while there was also a debate in the Committee on Agriculture on whether the 'credit' provisions in Article 9.2(b) should really allow countries to exceed their annual commitments on export subsidies if they had 'underutilized' them in previous years. However, this practice was finally accepted, and happily used in a number of cases (in particular by the EU). There was, on the other hand, never any question that the 'credit' provisions no longer applied in the last year of the AoA implementation period, and hence that developed countries (and in particular the EU) had to live up fully to their commitments in the year 2000. It is also reassuring to know that during the process of reviewing implementation of the AoA in the Committee on Agriculture, the export subsidy commitments were not relaxed in the context of Article 18.5, providing that WTO Members will consult "with respect to their participation in the normal growth of world trade in agricultural products within the framework of the commitments on export subsidies".

In a way it can be argued that many countries over-fulfilled their export subsidy commitments for some or all products, by granting export subsidies at a level much lower than

their obligations under the AoA would have allowed them to do, or no longer at all. Overall, WTO Members on aggregate utilized less than 40 per cent of all allowable export subsidy outlays from 1995 to 1998 (see Table 5). Even the EU, the main target of the new quantitative constraints on agricultural export subsidies, granted less than 50 per cent of the export subsidies it could have spent in accordance with its commitments. The countries with the highest rates of utilization of their export subsidy commitments on average over the 1995-98 period were Switzerland (78 per cent) and Norway (61 per cent). All other countries (that had notified for all years) used less than 20 per cent of their export subsidy commitments in the 1995-98 period. It would most certainly be wrong to say that the 'under-utilization' of export subsidy commitments by WTO Members was due to their efforts to make the AoA work even better than originally planned. There were all sorts of domestic agricultural policy developments behind this phenomenon, and the fact that world market prices for some agricultural commodities were high in some part of the AoA implementation period (in particular for cereals in 1995 and 1996) has certainly also helped. Moreover, to a large extent the 'water' that obviously was contained in the export subsidy commitments also reflects the fact that the base period chosen for setting these constraints was generous in the sense of being characterized by particularly large expenditures on export subsidies. However, based on the aggregate quantitative experience made with the export subsidy commitments so far it would be difficult to say that this part of the AoA was not successful.

It is also important to note that the mere existence of this new type of rule for agricultural trade policies, and the expectation that further reduction commitments will be negotiated in the next round(s) of WTO negotiations, are important factors in the domestic agricultural policy debate in a number of countries. EU policies are, again, a prime example. In particular, the further cuts to CAP support prices decided in 1999 were hoped to make it possible for the EU to reduce, if not eliminate, export subsidies for at least some of the major products concerned. One of the major objectives of the 'mid-term review' of the CAP in 2002/2003 will be to reduce dependence of EU agricultural policies from export subsidies even further. At least in the EU case, and probably in other countries as well, the new rules for agricultural export subsidies established under the AoA have really proved effective, and improved the situation compared to what it was before the Uruguay Round.

Table 5: Export Subsidy Outlays: Commitments and ‘Utilization’

		1995	1996	1997	1998	1995-98
All WTO Members						
(1) Commitments	mill. US \$	21036	19800	17432	12987	71255
(2) Notifications ^{a)}	mill. US \$	6812	7857	5931	5533	26134
(3) ‘Utilization’ [(2)/(1)]	per cent	32.4%	39.7%	34.0%	42.6%	36.7%
European Communities						
(4) Commitments	mill. US \$	14573	13870	12100	8333	48876
(5) Notifications	mill. US \$	6058	7088	5262	4849	23257
(6) ‘Utilization’ [(5)/(4)]	per cent	41.6%	51.1%	43.5%	58.2%	47.6%

^{a)} Subsidy outlays reported are not comprehensive for the years 1996 to 1998 as some countries had not yet notified their export subsidies by the time the WTO Secretariat produced its background paper.

Source: Calculated from figures in WTO Secretariat (2000d)

All these positive comments on implementation of the export subsidy provisions in the AoA are not to say that no WTO Member has ever tried to find a way around its commitments in this area, by interpreting the definition of export subsidies and the rules governing them in its own favor (a strategy that is different from flagrantly violating the quantitative commitments). Two such cases have become known, and resulted in complaints before the WTO. One of them targeted a particular approach the EU had adopted in order to relieve the pressure resulting from the fact that its commitment on export subsidies for cheese began to be strongly binding already early in the AoA implementation period. In this situation, it was considered in the EU that processed cheese could effectively be taken out of the cheese category by producing it in customs storage. Export subsidies would then only have to be made under the categories of butter and milk powder, to be combined (with some subsidized exported EU cheese) into processed cheese outside the customs territory of the EU. The EU Commission, though, feared that this might not be WTO consistent. However, an approach was then adopted under which processed cheese produced from imported cheese was treated under inward processing rules, and export subsidies were paid only to EU butter and milk powder added in processing the cheese. But even that approach was not considered consistent with the EU’s obligations by some exporters of dairy products, and a complaint was brought before the WTO.²⁸ The case did not go to the panel stage because a settlement was found bilaterally, under which the EU

²⁸ European Communities - Measures Affecting the Exportation of Processed Cheese, complaint by the United States (WT/DS104/1).

essentially continues the practice, but promised to use a certain minimum quantity of imported cheese in its interesting inward processing activity.

The other, much more complicated and also more important, case had to do with some specific features of Canada's dairy regime, which some countries felt were inconsistent with Canada's obligations, in particular in the area of export subsidies.²⁹ Though technically rather complex, the case at hand essentially dealt with what in agricultural policy jargon is called a producer-financed export subsidy.³⁰ As this practice is not uncommon in agricultural market policies, the dispute has implications that transcend far beyond the Canadian dairy regime. The matter was whether the particular price pooling regime implemented in Canada amounted to an export subsidy as defined in Article 9 of the AoA, and hence whether Canada, which had exported dairy products in quantities above its export subsidy commitments, had violated its obligations. The panel found that Canada's regime in fact amounted to a producer financed export subsidy, and the Appellate Body agreed.³¹ Canada accepted the outcome, and embarked on the process of adjusting its policy. However, the complainant countries feel that the changes actually made by Canada were more cosmetic than substantial, and it currently looks like this dispute may go on for some time.

Different from the somewhat opaque outcome of the EU/processed cheese case, the result of the Canada/dairy case, once it is finally settled, has the potential of contributing significantly to strengthening the export subsidy provisions of the AoA and their applicability in the complex practice of day-to-day agricultural market and trade policies. Canada has at least not denied the need to adjust its policy regime in response to the original outcome of the case. It remains to be seen whether the changes actually made are considered satisfactory or whether the more recently established regime will (have to) be adjusted again. In any case, the original ruling of the panel and the Appellate Body was rather firm, and the defendant country actually started to change its policy. One only needs to compare this outcome with the ineffective disputes over GATT Article XVI:3 in the time before the Uruguay Round to see how much the AoA has improved the situation in the area of agricultural export subsidies.

²⁹ Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products, complaint by the United States (WT/DS103/1), and Canada - Measures Affecting Dairy Products, complaint by New Zealand (WT/DS113/1). Both complaints were examined by the same panel.

³⁰ The term 'producer-financed' is a clear-cut euphemism, as in effect it is the domestic consumers who bear the economic burden, by paying even higher prices than producers receive.

³¹ In this extremely brief summary of a complicated case, the fact that the Appellate Body reversed the panels finding on one point is not important for the overall conclusion.

3.3 Domestic Support

The area of domestic support is where the AoA was most innovative, in terms of establishing completely new rules, which moreover distinguish agriculture significantly from industry as we saw above. Against this background it is somewhat ironic to find that this is the area where country commitments contain most slack, and hence where the effectiveness and workability of the AoA was not yet tested very much. In the period since 1995, in many countries the levels of domestic support subject to reduction commitments, as measured by the Current Total AMS, were considerably below their commitments (see Table 6). In only two cases was the commitment level exceeded in individual years, but both of them were very special.³² The only two countries that have consistently ‘consumed’ their domestic support commitments to more than 90 per cent were Korea and Slovenia.³³ In all years since 1995 for which notifications are available, around one half of all WTO Members with domestic support notifications ‘consumed’ less than 60 per cent of their domestic support commitments.

Table 6: Ranges of Notified Current Total AMS levels, 1995-99

Implementation year	Current Total AMS as a percentage of Total AMS commitment levels (number of notifications)					Total number of notifications (out of 29 as of 1996)
	0-20%	21-40%	41-60%	61-80%	81 and over	
1995	7	2	4	8	6	27
1996	6	5	2	8	4	25
1997	5	5	1	5	6	22
1998	3	2	0	4	4	13

Source: Taken from WTO Secretariat (2000e)

To some extent the significant slack that exists in many countries’ domestic support commitments may be due to generous use of base period data. In the EU, it also has to do with the creation of the blue box, which now shelters a large part of actual support to EU farmers, in the form of direct payments. In other cases, though, the low ‘utilization’ of the domestic support commitments also reflects policy changes in recent years, through which parts of

³² In one case (Argentina, 1995), the point was made that the original Schedule had been established erroneously. In the other case (Iceland, 1998), ‘excessive inflation’ was given as a reason. See WTO Secretariat (2000e) and the WTO documents mentioned there in these two cases.

³³ South Africa and Tunisia exceeded 90 per cent ‘utilization’ in one year each.

support have been decoupled from production and thereby been moved into the green box. The U.S. Fair Act of 1996 is the most prominent case. It can certainly not be said that such policy changes were made just because of the new rules for domestic support under the AoA (Orden, Paarlberg and Roe, 1999). However, the fact that decoupling of support to farmers makes it easier to live with one's WTO commitments on domestic support was at least one factor in the complex equation determining domestic agricultural policy reform. To the extent that this factor played a role, it can be said the AoA has contributed to improving the situation.

Unfortunately, the same country that has made a big step forward in the direction of decoupling a significant part of its support as far as possible from production, i.e. the United States, has more recently made very large extra payments to its farmers, for several years in a row. It still remains to be seen under which category of domestic support these payments will be notified to the WTO, and how they affect the overall picture of 'under-utilization' of the domestic support commitments. However, there is no doubt that the mere fact that these payments have been made, on an ad hoc basis and in large sums, has had a strong impact on other countries' feelings about the reliability of the domestic support commitments under the WTO.

Overall, the fact that in most cases the domestic support commitments did not (yet) prove restrictive may also explain why there was so far no more than one WTO complaint involving this part of the AoA rules.³⁴ This case usefully contributed to reinforcing the methodological requirements to be fulfilled in calculating the AMS, and in that sense also showed that the AoA is effective and operational in this area. A different part of the AoA rules on domestic support, though, still remains to be tested, and that is the eligibility of support policies for inclusion in the green box.

3.4 Product Attribute Issues

As argued above in Section 2, in the area of product attributes the changes made in the UR were of a different nature than those regarding the purely economic measures. In this area, agriculture was not so much specific under the 'old' GATT, and one cannot say that the SPS agreement made it more specific after the UR. However, the question must be asked whether the new rules on SPS measures established in the UR have proven successful. Again the answer to that question cannot be provided here in any detail.

³⁴ Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef, complaint by the United States (WT/DS161/1), and the related case Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef, complaint by Australia (WT/DS169/1) examined by the same panel.

Several disputes before the WTO have dealt with SPS measures, and provided first tests of the validity of the SPS agreement (Roberts, 1998). The most prominent of these cases undoubtedly was the beef hormones case against the EU.³⁵ Has that case shown that the SPS agreement was successful? The answer is yes or no, depending on the perspective one wants to adopt. The case proved success of the SPS agreement in the sense that the new agreement was shown to contain all the elements necessary to reach a finding on the measure concerned, and it was also successful in the sense that both the panel and the Appellate Body could come up with reasonably clear conclusions, stating that the EU had violated its obligations under the agreement. The case was a complete failure, on the other hand, with regard to the expected and required change of the measure found to be inconsistent with the requirements of the agreement: the EU has still not lived up to the conclusions drawn in the case. On the other hand, even this failure was not quite so complete as the EU has in principle accepted the verdict against its measure, tolerates the sanctions imposed on its exports, and is trying to negotiate compensation. From that perspective one can say that even in this case the SPS agreement has proven to be productive.

More fundamental, though, is a somewhat different conclusion to be drawn from this case, which at the same time is also more relevant for the central issue discussed in this paper, i.e. whether agriculture and food have a special status in the international trading regime. The beef hormones case may have shown that in the food sector there are certain political sensitivities which may make it extremely difficult for governments to live up to the requirements of liberal trade. The EU's resistance to the importation of hormone treated beef has little to do with producer protection, but a lot with consumer concerns. In the food sector these concerns of the general public are expressed in an increasingly aggressive way, to an extent which makes it nearly impossible for governments to give internationally negotiated obligations priority over domestic political resistance. This is particularly true in times where, as currently the case in Europe, the general public lives intensively through all sorts of food scares and doubts over modern agricultural production techniques, as triggered by the 'mad cow' problem and the current spread of foot and mouth disease in Europe.

In a situation like that, governments are pushed into domestic political corners from which they find it extremely difficult to escape. Where this happens, an international trading regime which tends to force politicians to disregard domestic concerns can rapidly lose support among the general public. The same type of issues is prevalent, at least in Europe, when it comes to food containing genetically modified organisms, or to animal welfare issues. From that perspective it may be necessary to provide some type of escape clauses or safeguards in the relevant international agreements. Unfortunately such clauses may run against the tendency

³⁵ European Communities - Measures Affecting Meat and Meat Products (Hormones), complaint by the United States (WT/DS26), and Canada (WT/DS48).

to make the global trading regime increasingly open and liberal, though they should be formulated in a way which guards against misuse. Since these types of problems are probably indeed specific to food and agriculture, it may turn out in the end that the attempt to eliminate the special status of agriculture and food in the GATT has gone too far already. However, the nature of the special provisions that may be needed to deal with such types of issues will be very different from those that made agriculture special under the 'old' GATT.

4 Conclusions

Agriculture has always been a very difficult sector in the GATT. This was primarily due to the fact that governments were not willing to subject their agricultural policies to international discipline. In part this was already reflected in vague and weak rules for agriculture in the GATT (in the area of export subsidies, Article XVI:3); in part it showed up in the unwillingness of governments to bind their policies in the GATT (e.g. the small share of tariffs bound in agriculture); in part it became obvious in that governments showed some reluctance to question each others' policies in the GATT; in part it transpired through the difficulties panels had with finding that given policies, in particular in the area of export subsidies, were inconsistent with whatever rules existed.

The Uruguay Round was the first occasion on which something fundamental was done to change the treatment of agriculture in the international trading regime. The Agreement on Agriculture created a whole new body of law for agriculture, and at the same time the quantitative commitments that countries accepted under that agreement established completely new types of measuring rods in agriculture. As a result, and somewhat ironically, agriculture was made more specific in WTO law than it had ever been under the 'old' GATT. However, as far as economic substance goes, the new rules established by the Agreement on Agriculture, and the reduction commitments that countries have accepted in its context, mean that agriculture has now been firmly put on the road towards mainstream in the international trading order. In the area of product attributes, the establishment of the SPS Agreement may also look like having made agriculture more special in legal terms. However, as argued above that is not really the case.

After conclusion of the Uruguay Round Agreement on Agriculture, one big question of course was whether the new rules would stick. Experience made so far was that they have done so, by and large. Countries have generally honored their commitments under the AoA. The number of WTO disputes about provisions in the Agreement on Agriculture has so far been limited, and the findings made by panels and the Appellate Body in these disputes have generally contributed to strengthening the rules of the Agreement, contrary for example to the outcome of disputes over agricultural export subsidies under the 'old' GATT.

However, the reasonably smooth sailing that the Agreement on Agriculture has so far had may also be due to the fact that the quantitative country commitments established under it were rather generous, and have not yet constrained policies very much. This may well change if and when further reductions are agreed in the current round of WTO negotiations, and in further rounds to come in the future. The willingness of countries to agree to such reductions, and to some desirable revisions in the provisions for agriculture, will show whether agriculture is on a fast track back to the mainstream, or whether it will take a long time for agriculture to become more similar to industry in the WTO. For the Agreement on Agriculture, the real test of the pudding will come when significant further reduction requirements are agreed, and when they begin to bite. It is then that countries will look for loopholes in the Agreement, that their willingness to challenge each others' policies will become important, and that the continued clarity of vision of panels and of the Appellate body in interpreting the Agreement on Agriculture will be required. Experience made with the Agreement on Agriculture so far can support cautious optimism that it will prove effective even in such stormier times.

Possibly the best indication of the improvement in the state of agricultural affairs in the international trading order is that a new round of agricultural negotiations has already started, as required under the Agreement on Agriculture, and what is more that no single country has suggested that the Agreement should be fundamentally changed, or that the quantitative country commitments accepted under it should be done away with. Of course, some amendments to the rules for agriculture will be sought in the new round, and countries' views on priorities differ, as their positions will do when it comes to negotiate further reduction rates. However, for the time being it looks like the basic thrust of the Agreement on Agriculture will survive the next round of negotiations and further reductions will be agreed. If the Uruguay Round Agreement on Agriculture should really turn out to show such stability in future negotiations, its architects can be praised for having done a good job.

A completely different set of issues is relevant when it comes to product attributes in the agriculture and food sectors. As argued above, agriculture was not really special in this regard under the 'old' GATT, and the SPS agreement of the UR has not made it more special either. In this area, consumer concerns, and concerns of the general public about issues such as animal welfare, may in future be more politically relevant than old-fashioned producer protection. It is somewhat ironic that, in order to provide the politically unavoidable response to such concerns and to maintain wide public support for and credibility of the international trading order, it may turn out that agriculture and food have to be made somewhat more special in the WTO in future negotiations.

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