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The Estey Centre Journal of **International Law and Trade Policy**

Are Agri-Food Trade Issues Changing?

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Agriculture has been one of the least successful aspects of the WTO negotiations, and it was no surprise that the Doha Development Round collapsed in July 2008 over issues pertaining to agricultural trade. The current agenda for negotiations is focused on the three pillars (market access, export subsidies and domestic support) that were established during the Uruguay Round. However, new trade issues have come to the fore and need to be addressed in future WTO negotiations. This special edition of the *Estey Centre Journal of International Law and Trade Policy* focuses on different aspects of these new trade issues and represents one step in understanding the dynamics of the global market.

Keywords: WTO, Doha Development Round, three pillars, new trade issues

It is generally agreed that agriculture has been one of the most difficult sectors in the multilateral trade negotiations. The completion of the Uruguay Round of trade negotiations in 1994 marked an important moment in the reform of the agricultural trade system. This is because trade in agricultural products had been governed largely outside the General Agreement on Tariffs and Trade (GATT) norms before the conclusion of the Uruguay Round of the GATT. The Uruguay Round Agreement on Agriculture (URAA) established a set of rules with the main goals of improving the conditions under which trade in agriculture takes place and of offering a more stable and predictable environment for agribusiness (Gaisford and Kerr, 2001). The success of the Uruguay Round led to the creation of the World Trade Organization, the reduction or elimination of many residual industrial tariffs and the inclusion of new agreements in the institutional architecture for international trade (e.g., trade in services, intellectual property rights, etc.). However, little progress was achieved in agriculture except for the notion that agricultural trade should eventually conform to WTO norms. The need for a transition period for full integration was accepted by the member states so that the Uruguay Round could be successfully concluded. The use of export subsidies was curbed, domestic support was codified based on the potential to distort trade, bound tariffs replaced quantitative restrictions and in some cases tariff-rate quotas (TRQs) have been instituted as an alternative to tariffication (Josling, 1998).

Article 20 of the Agreement on Agriculture (WTO, n.d.) committed member states to resume negotiations after a five-year respite with the goal of continuing and strengthening the reforms implemented as a result of the Uruguay Round. Thus, a new round of agricultural negotiations was launched which became part of the Doha Development Round. The Doha Round has continued the Uruguay Round focus on what have become known as the three pillars: market access, export subsidies and domestic support. However, the Doha Development Round came to a halt in July of 2008. It was not very surprising that the negotiations collapsed over issues of agricultural trade between the United States, the EU and other developed countries and India, China and Brazil acting as leaders of a large number of developing countries. In particular, India and the United States have disagreed over safeguard mechanisms, which would allow developing countries to protect certain agricultural products in cases of import surges or price declines. However, this specific issue has masked a combination of other unresolved and new issues.

Since the onset of the Uruguay Round when the current negotiating agenda – focused on the three pillars – was established, the world has changed substantially. New trade issues have come to the fore and need to be addressed in future WTO

negotiations. The collapse of the Doha Round suggests that the global economy has witnessed a fundamental power shift. The United States and the EU are losing their economic lead in favour of their Asian rivals, especially India and China, and they were not able to engineer a deal as they did in 1994 (Maclaren, 2008). The WTO membership has become so diverse that the global trade rules cannot be easily addressed, especially when most trade distortions are the result of non-border measures and domestic regulations.

One major conflict at the WTO arises from the tradition of recognizing only one source of pressure for protection, domestic producers. Yet national governments must answer to protection requests of consumers, social advocacy groups and environmentalists, among others. A related feature is the current agreement, which does not allow the imposition of trade restrictions based on production and processing methods. For example, these two limitations of the WTO represent the main sources of conflict regarding trade in genetically modified products. Advances in agrobiotechnology have also led to a new source of conflict related to the protection of intellectual property.

The increased concerns of some consumers and environmentalists regarding human, animal and plant protection have resulted in a variety of domestic regulatory regimes that have large trade distorting effects. Protecting the health and safety of citizens represents one of the fundamental roles of governments and, thus, politicians are not willing to easily give up their sovereignty to an international organization in these areas (Gaisford and Kerr, 2001). In response to concerns regarding food safety and quality, some private sector firms have developed standards; these are not mandatory and are not under the WTO's jurisdiction. Yet, through the market power of agribusiness importers, these private standards can eventually impact international trade by denying foreign producers market access, and they may force exporters to choose between different export markets. Another issue that has garnered considerable attention is consumers and others pushing for the inclusion of labour standards under the WTO. It is argued by some that low and/or poorly enforced labour standards give an unfair competitive advantage to producers in developing countries.

Since the conclusion of the Kyoto Protocol, which was aimed at fighting global warming, countries have implemented a variety of domestic policies targeted at dealing with the effects of climate change; these policies can have an effect on global trade. Even though the relation between trade and environment has been widely debated, there is not, as yet, a solution for how to deal with environmental issues under the WTO umbrella. Trade in biofuels has become a sensitive issue as well, as the WTO does not yet have rules to deal adequately with the desire of governments to

foster the development of these alternative fuels. Countries have increased domestic agricultural subsidies for the production of biofuels because of their possible environmental benefits or for reasons of energy security. The WTO, stuck in its Uruguay Round-era agenda, has not been able to address the issue of biofuels subsidies.

Finally, in the past few years a large number of regional trade agreements (RTAs) have been negotiated, resulting in the development of specific trade relations and a change in the global configuration of trade. Research findings are divided regarding the effects of RTAs on multilateral liberalization. Further, the current WTO rules regarding RTAs mandate that they must include “substantially all trade”. Hence, the relationship between the WTO and RTAs is very vaguely defined, as some of the new RTAs chose to exclude agricultural trade (Gaisford and Kerr, 2001).

The aforementioned list represents just few examples of new issues that have to be dealt with in future negotiations. Of course, the underlying debates are concerned with whether WTO rules and obligations can be expanded sufficiently to deal with all the new issues or whether the WTO should be the only international instrument for managing global economic relations.

The main focus of this special section of the *Estey Centre Journal of International Law and Trade Policy* is on different aspects of the *new* trade problems that have become international trade realities for agribusiness firms. This collection of articles shows that there is a need for more research to find solutions to increasingly important conflicts between different groups of countries and between the WTO and domestic regulatory regimes. The papers in this special section arose from a joint workshop organized by the Canadian Agricultural Economics Society (CAES) and the Canadian Agricultural Trade Policy and Competitiveness Research Network (CATPRN) in Quebec City on October 23, 2009. The workshop was entitled *Beyond the Three Pillars – The New Agenda in Agri-Food Trade* and brought together scholars and practitioners with expertise in agricultural trade issues that have not formed to core of the Doha Round agenda.

The implications of public and private standards for food safety, quality and labour for international trade are tackled in the first two articles of this collection. Jill E. Hobbs investigates in “Public and Private Standards for Food Safety and Quality: International Trade Implications” the circumstances in which private standards for food products have a trade enhancing, diverting or reducing effect. The main difference between public and private standards is that challenges created by public standards are dealt with through the WTO’s Sanitary and Phytosanitary and Technical Barriers to Trade agreements, while private standards are not under WTO jurisdiction.

As private standards have become an important feature of international agri-food markets, the key questions are related to their trade effects and the implications for the WTO. Private standards can be established by different sources, including firms (proprietary standards), independent standard-setting bodies and other non-governmental organizations (third-party standards) and industry bodies or coalitions of firms (voluntary consensus standards). They also perform different economic functions, including product differentiation, enhancement of supply chain management, reputation protection and liability reduction. The author argues that the main factors that determine the impact of private standards on international trade are related to the extent of asset specificity in investment, compliance costs, the food retailing sector's degree of competition and the type of private standards (e.g., proprietary or consensus).

The second contribution, "Labour Standards as a Justification for Trade Barriers: Consumer Concerns, Protectionism and the Evidence", by Samira Bakhshi and William A. Kerr, empirically investigates the impact of low labour standards on trade and the main justifications for the push by some organizations for labour standards being included in multilateral trade agreements. Producers in developed countries argue that lower, or poorly enforced, labour standards in developing countries lead to an unfair international competitive advantage. Two other groups, consumers and social advocates, have joined the traditional protectionist vested interests in lobbying for protection against low labour standards. Their main reasons are, however, related to humanitarian objectives. The empirical analysis uses data from 48 developing countries for 2003. The main results of the study suggest that developing countries improve their competitiveness in unskilled labour-intensive goods when labour standards related to forced labour and union rights are lowered – but the evidence is weak and the magnitude of the effects small. Thus, the authors argue that further empirical work is required before any change in trade policy could be justified. Currently, labour standards come under the jurisdiction of the International Labor Organization (ILO), which does not have any enforcement power. However, a number of preferential trade agreements have introduced labour standards provisions, which may have implications for the WTO's future negotiation agenda.

The third contribution, "Multilateral Trade Liberalization and FDI: An Analytical Framework for the Implications on Trading Blocs", investigates the main effects of multilateral trade liberalization on the incentives for foreign direct investment (FDI) that have already been included in a multitude of regional integration agreements (RIAs). The authors, Pascal L. Ghazalian and Ryan Cardwell, argue that multilateral liberalization may result in reduced FDI activities, which had arisen in response to

provisions of previous RIAs. The authors outline the significant effects that the accession of a country to an RIA would have on the incentives of firms to conduct FDI. Depending on specific factors that induce investment and the degree of liberalization, various permutations of trade and investment diversion and creation can occur: trade creation and investment diversion or trade and investment creation or trade diversion and investment creation between RIA member countries and trade diversion and investment creation from RIA non-member countries to RIA member countries. Ghazalian and Cardwell nonetheless argue that multilateral liberalization will affect firms' incentives to access foreign markets and that preferential market access will lose its importance. The effects on the FDI activities that resulted from RIAs might be significant, and an *ex ante* evaluation of multilateral trade liberalization should be considered before concluding an agreement.

The next contribution, titled "Tariff-Rate Quotas, Rent-Shifting and the Selling of Domestic Access", by Bruno Larue, Harvey L. Lapan and Jean-Philippe Gervais, concentrates on the welfare effects of tariff-rate quotas (TRQs). One of the important results of the Uruguay Round of negotiations was the replacement of some import quotas with TRQs. However, the way TRQs are actually set is not well understood. Using a theoretical framework, the authors show how TRQs can be set strategically to extract rents from foreign firms that would otherwise be lost (if instead a tariff was in place). Different combinations of within-quota tariffs and quota levels can result in optimal rent extraction.

Environmental issues, climate policy and the interaction between border tax adjustments and trade are investigated in the two articles that follow. James Gaisford in "From Kyoto to Copenhagen: Meeting the Climate Change Challenge" tackles the issue of climate change and the need for climate policy change in both developed and developing countries. Most GHG emissions that result from human activity are related to the consumption of fossil fuels. Given that during the Kyoto period (1998-2007) the world consumption of fossil fuels increased by 28 percent, the author considers that there is a need for a closer examination of, and likely a change in, climate policy, which should be concentrated on curbing fossil fuel use. Gaisford proposes environmental taxation or cap-and-trade policies as the best policy instruments that can be implemented to reduce either GHG emissions directly or, alternatively, fossil fuel consumption. For regions that are net fossil fuel consumers, consumption taxes can be applied, or a combination of production taxes, import taxes and export subsidies. Other issues tackled by the author are the incomplete coverage across countries under the Kyoto Protocol and the agreement's lack of credibility. The issues are addressed from fairness, efficiency, effectiveness and credibility perspectives, and

the conclusion drawn by the author is that real progress in reducing GHG emissions can be achieved only by expecting and requiring heavier reduction commitments in developed countries and by having capped emissions in developing countries.

The article by Ian Sheldon, “Climate Policy and Border Tax Adjustments: Some New Wine Mixed with Old Wine in New Green Bottles?”, continues the analysis of domestic climate policies and addresses the economic, legal and implementation issues related to border tax adjustments. Sheldon argues that the connection between environmental policy and trade policy is not a new issue and that there is a longstanding debate regarding the possible outcome of a WTO dispute pertaining to the issue of border tax adjustments. The determination of appropriate border adjustments is a complex process that can result in market protection. Thus, differing market structures and other considerations having to do with the final and intermediate goods sectors should be taken into account when setting border tax adjustments. The author considers that the combination of border tax adjustments and different domestic climate policies (carbon tax or cap-and-trade) can lead to new implementation issues and can be WTO-inconsistent.

The last contribution in this collection, “North America and the ‘Three Noes’”, by Greg Anderson, is an assessment of the future agenda for North America, focused mostly on the governance of borders. North American political and economic integration has not progressed since the implementation of the North American Free Trade Agreement in 1994 because of the “three noes”: no money, no disputes and no legislation. After the events of 9/11, a considerable focus on security issues continues to negatively affect trade and other aspects of integration in North America, especially as the Department of Homeland Security has become the primary agency responsible for overseeing U.S. trade with its North American partners. The situation is worsened by the deteriorating economy. The author concludes that even though no new integration initiatives are envisioned at the national level, a more localized control and coordination of border management has a much more promising future.

The contributions of this special issue offer new views on the dynamics of the global market and the factors that shape its evolution. New sources of possible international conflicts are described, which also represent possible future negotiation themes in agricultural trade. However, the collapse of the Doha Round has raised important questions that have to be answered before new negotiations can, or will, be attempted.

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