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978-1-107-41710-6 - WTO Disciplines on Agricultural Support: Seeking a Fair Basis for Trade

Edited by David Orden, David Blandford and Tim Josling

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PART I

Overview of domestic support issues and WTO rules

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Introduction

DAVID ORDEN, TIM JOSLING AND DAVID BLANDFORD

One of the more innovative achievements associated with the conclusion of the Uruguay Round of trade negotiations in 1994 was the introduction of a multilateral architecture of rules and commitments disciplining domestic support measures for agriculture. These rules are contained in the Agreement on Agriculture, one of a number of agreements attached to the Marrakesh Treaty that established the World Trade Organization (WTO). As stated in the preamble, to achieve the long-term objective of establishing “a fair and market-oriented agricultural trading system” the WTO members sought “to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets.” The rules and commitments on domestic support are particularly important in this context because of the market-distorting effects of many of the policy measures countries have enacted. In addition, without constraints on domestic support it is hard to envision success in multilateral negotiations to reduce agricultural tariffs, as some countries provide support for their farmers primarily through domestic measures while others rely more heavily on border protection.

Further discussions were initiated in 2000 under a clause of the Agreement on Agriculture that committed the members to continued negotiations on lowering support and protection. When a full new round of trade negotiations – the Doha Round – was launched in 2001, the agricultural negotiations were incorporated into it. Three topics – market access, export competition and domestic support – formed the core of the negotiations on agriculture, as they had in the Uruguay Round. From the start, attention in the new round centered on whether tighter disciplines could be agreed on domestic support, how to achieve balance across the three focal areas (exchanging reductions in domestic support for increased market access through lower tariffs and the reduction or elimination of export subsidies) and what trade-offs were possible between agricultural and non-agricultural components.

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As negotiations progressed significant changes occurred in world agricultural markets. International prices that had been depressed in the early years began to increase after 2005. This raised the possibility that a long-term structural shift was taking place toward a tighter balance between global agricultural supply and demand, driven in part by the emergence of new markets for farm-based biofuels. In 2008, this outcome looked increasingly plausible as commodity markets were rocked by sharp price increases, causing anxiety about the supply of food and its affordability for poor consumers in developing countries. Within months a global financial crisis had triggered a deep worldwide recession and commodity prices fell. Despite this, world agricultural prices remained significantly higher through 2010 than when the Doha negotiations began, inducing a positive supply response in global agricultural production and higher farm incomes.

The tightening of food supplies, and especially the market instability of 2008, led many countries to enact short-term measures to stabilize their domestic markets, despite these measures exacerbating the variability of world prices at high cost to others. Calls for new agricultural support initiatives to ensure food security also arose, particularly among developing countries, and there remains uncertainty about the balance between food availability and demand. Agricultural trade potentially plays a constructive role as a complement to domestic production in these circumstances. Trade can alleviate the worst of market volatility and contribute to short-term and long-term global food security. The risks inherent in unilateral responses by countries to price-raising developments in agricultural market were evident in 2008. The relevance of multilateral rules to guide the global agricultural trade system became apparent in an environment of high prices just as it was earlier in the decade when concern focused on the price-depressing effects of agricultural support policies.

Domestic support rules

The rules in the WTO Agreement on Agriculture (hereafter, often the Agreement) divide domestic support measures into four distinct categories. These broadly reflect their potential to distort trade, but also the need to accommodate the negotiating positions of influential countries in the Uruguay Round. The Agreement exempts three categories of measures from any expenditure commitments. First, some measures are agreed to have “no, or at most minimal, trade-distorting effects or effects on production” (WTO 1995). By leaving levels of support in this category (denoted the green box) unconstrained, the Agreement encourages the adoption of policies that fit the criteria for the category.

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All other measures are considered to be trade distorting, at least to some extent. Nonetheless, a second category with no expenditure limit is comprised of payments made in conjunction with production-limiting programs, for which the argument was made that the supply constraining aspect limited their trade-distorting effect. Eligibility criteria for this category (the blue box) relate to the fixity of area, yields, livestock numbers, or the amount of production on which payments are made relative to a base level. The blue box emerged as a late compromise in the negotiations that left key support programs at that time in the European Union (EU) and the United States (US) exempt from caps or reduction commitments.

A third exemption, restricted to developing countries, is for investment support generally available to agriculture and for input subsidies generally available to low-income and resource-poor farmers. These subsidies are agreed to be an integral part of development programs. Support through trade-distorting measures of this type in developed countries is subject to constraint. The development program exemption provides a form of special and differential treatment for developing countries, which is one of the fundamental principles built into the WTO framework of rules.

The remaining domestic support measures fall into a less precisely defined residual category (often called the amber box) of interventions and subsidies on output or inputs that are the target of the disciplines. Support under these measures is counted through an Aggregate Measurement of Support (AMS) for each product (product-specific AMS) and a separate total for support that is not specific to particular products (non-product-specific AMS). Among the product-specific measures are production-related direct payments to producers that are not exempt under the green and blue boxes or development programs. Also included in the product-specific AMS is market price support (MPS), calculated “using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price” (WTO 1995).

The yearly sum of trade-distorting support, the Current Total Aggregate Measurement of Support (Current Total AMS or CTAMS), is subject to a ceiling specified in each country’s schedule of commitments. After a phase-in period, this commitment became the Final Bound Total AMS (FBTAMS).¹ However, the Agreement provides for exemptions from the support that is counted in the CTAMS to assess compliance

¹ A country’s schedule was established in the Uruguay Round or when the country acceded to the WTO. For ease of exposition, the phase-in Annual Bound Total AMS and FBTAMS commitments will be referred to interchangeably as a commitment, ceiling, limit,

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with the FBTAMS limit. These exemptions are under product-specific and non-product-specific *de minimis* allowances. A product-specific AMS is excluded from the calculation of CTAMS if it is below a value corresponding to a specified percentage of the product's nominal value of production. Similarly, the non-product-specific AMS is excluded if it is less than a specified percentage of the total agricultural production value. Developing countries are allowed larger exemptions than developed countries under each of the *de minimis* provisions (up to a threshold of 10 percent of the value of production as opposed to 5 percent for developed countries).

The ceiling commitments for CTAMS were determined by levels of support provided in this category during a base period 1986–88, with a few exceptions for members acceding since the conclusion of the Uruguay Round. Countries that did not include a ceiling commitment on CTAMS in their schedules have an implied zero ceiling and are required under the rules of the Agreement to maintain AMS support within the *de minimis* allowances.

If the international rules on agricultural domestic support are to be effective, compliance must be monitored and enforced. Promulgated rules are subject to differences in interpretation. For these reasons, the Agreement established a Committee on Agriculture and mandated that, among other things, it should serve as a forum for reviewing the implementation of commitments based on notifications submitted by members. The Committee established the process and format for such notifications during its initial meetings in 1995. The WTO members agreed to identify their policy measures, indicate how they were to be classified within the categories in the Agreement, and report levels of MPS and budgetary expenditures or revenue forgone under these measures. The notifications are designed to provide transparency about the domestic support policies of each member. Alleged violations of the rules and commitments can be challenged under the WTO dispute settlement process.

Scope of the book

This book provides a detailed analysis of both compliance and evaluation issues relating to WTO disciplines on domestic support. The submitted

constraint, or cap. When context is clear, either may be called simply the Bound Total AMS. Further commitments that might be made in a Doha agreement will be referred to using similar terms.

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and likely future notifications are assessed in depth for a selected group of eight countries. The authors describe the diverse policies that underlie the notifications, illuminate substantial differences in approaches to notifying policy measures and support levels, project support through the mid 2010s, and evaluate those projections with respect to existing and potential WTO commitments.

The analysis focuses on four developed countries (the EU, US, Japan and Norway) and four middle-income developing countries (Brazil, India, China and the Philippines).² Among the developed countries, the EU, US and Japan have accounted for nearly 90 percent of the total support (measured in US dollars) subject to ceiling commitments under WTO rules. The EU emerged as a net exporter in the 1980s under its agricultural programs but subsequently modified its policies to reduce price-support incentives to production. The US has traditionally been a low-cost agricultural exporter but increased its subsidies immediately prior to and following its farm program legislation in 2002. Japan is a key agricultural importer with some highly protected sectors, particularly rice. Norway provides an example of an inherently high-cost agricultural producer with high protection and support for domestic products that compete with imports. Japan and Norway are members of the G10 group of countries within the WTO that has sought to retain support and protection for agriculture.

The four developing countries are major agricultural producers and consumers. Brazil, India and China are leading members of the WTO's G20 group of developing countries that has sought tighter disciplines on agricultural support in developed countries. Brazil has successfully challenged agricultural measures of the EU (sugar) and US (cotton) through WTO dispute settlement. Scrutiny of the policies of these emerging-market developing countries, along with those of the developed countries, can facilitate dialogue on a new agriculture agreement and help to minimize future disputes. Brazil is export-dependent in beef, soybeans, cotton

² While the WTO refers to its members, within this book we will often refer to them as countries. There were 153 members of the WTO in 2009, one of which is the European Union (EU27 or EU for short), which until November 30, 2009 was known as the European Communities (EC) in WTO documents. The twenty-seven members of the EU are members of the WTO in their own right but in the case of agricultural domestic support the EU applies a single schedule of commitments in place of the schedules of its member states. We shall refer to the EU as a country in this context; when we refer to the EU with fewer than twenty-seven members this is made clear in the text. Switzerland and Liechtenstein apply one common schedule of commitments. Consequently there were 125 schedules of domestic support commitments in the WTO on December 31, 2009.

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and sugar. China and India have the world's largest domestic markets for agricultural products. While their volume of trade has been relatively low compared to the size of domestic production, variations in their trade have significant international implications. The Philippines is a populous country for which support for agriculture, particularly rice production, is a key government policy. As a net food importer, the Philippines has played a leading role in the G33 group of countries that are concerned about their continued ability to protect domestic agriculture. Brazil and the Philippines are also members of the Cairns Group, which has argued for more market-oriented rules for agricultural trade.

The framework of WTO rules on domestic support is set out in Chapter 2. It traces the history of the multilateral negotiations on agriculture, provides a comprehensive description of existing rules and commitments on domestic support, describes the review of notifications by the Committee on Agriculture, and discusses those dispute settlement cases in which interpretations of the domestic support rules have been addressed. The new rules and commitments being negotiated in the Doha Round with their tighter and even more complex disciplines are detailed. A global overview of the magnitude of trade-distorting domestic support that developed and developing countries could provide under these rules compared to the continuation of the Agreement frames the country analyses in the chapters that follow. The Doha draft modalities of December 2008 (WTO 2008), though not agreed as final, are shown to reduce significantly the scope for domestic support by developed countries in the disciplined categories; less so for the developing countries.

The notifications of domestic support by the countries covered in depth are analyzed in the following eight chapters. Each chapter provides a concise review of past and anticipated future national policies and the political economy underlying these decisions, with a focus on the measures that governments include in their WTO domestic support notifications. Notifications made since 1995 are presented along with notification information estimated through 2008 for those years for which governments had not submitted notifications to the Committee on Agriculture by June 2010. These "shadow" notifications are based on procedures the authors developed to replicate as closely as possible the most currently available notifications at the time of their assessments by drawing on published data, unpublished documentation and field interviews. The shadow notifications include sufficient commodity and policy coverage to provide estimates of key support components. Shadow information had to be

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generated for one or more years in all cases because of lags in the notifications. India had only notified its domestic support for 1995–97 and China and the Philippines only through 2004 as late as mid 2010. Relatively long-term shadow notification exercises had to be undertaken in those cases, particularly for India.

In a final chapter we draw together the main conclusions reached from the analysis. We summarize the developments in the forms and levels of support revealed in the country chapters and discuss the changes in support in relation to WTO rules. We provide an assessment of the extent to which the disciplines included in the Agreement have constrained domestic support policies and the extent to which proposed commitments in the Doha Round would serve this function in the future. While it is extremely difficult to change the framework of WTO rules and commitments disciplining agricultural support we offer some suggestions on challenges that will remain to be faced even with successful completion of the Doha Round.

Key issues in the analysis

The analysis presented in the following chapters addresses seven important questions:

1. Do the notifications show that countries have complied with their commitments on domestic support under the Agreement?
2. Do the notifications provide accurate and meaningful measurements of the support provided to farmers by governments?
3. Do the notifications track accurately changes in the nature of agricultural domestic support policies?
4. Have the notifications contributed to greater international transparency on domestic agricultural policies and the support that these provide to producers?
5. Have the disciplines in the Agreement contributed to the reform of agricultural policies and the progressive reduction of trade distortions created by domestic support?
6. Have the disciplines in the Agreement contributed to policy convergence among developed and developing countries and between these groups of countries?
7. Would the proposed disciplines in the Doha negotiations provide stronger constraints on the provision of trade-distorting domestic support and more substantial incentives for policy reform?

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The notifications are intended to make available, in a standardized format, a systematic categorization of policy measures and to quantify the amount of support they provide. This is designed to create transparency for the purpose of verifying compliance with the commitments under the Agreement. Unfortunately, many countries have been lax in submitting domestic support notifications and delays have often been protracted. The largest agricultural producing and trading countries have sometimes been many years behind in submitting notifications, as shown for the eight countries in our analysis in Table 1.1. This has made it difficult for the Committee on Agriculture to carry out its mandate of providing a forum for reviewing the implementation of commitments.

Delays in notification also made it difficult to analyze the classification of measures by countries and their levels of support during the Doha negotiations. As late as mid 2007, six years into the negotiations, there had been no notifications relating to controversial US farm program legislation introduced in 2002, nor for the EU following policy changes in 2003. Facing possible legal challenge through WTO dispute settlement as to whether it had exceeded its commitment, the US notified its domestic support for 2002 through 2005 in October 2007. Further US notifications for 2006 and 2007, and EU notifications for 2004/05 through 2006/07, were circulated in February 2009 and January–February 2010. Once submitted, the delayed US and EU notifications sharpened the debate on whether support was being notified accurately and how Doha commitments, if applied in the past, would have related to support levels. Without the notifications, it was less clear how policies might be affected by a Doha agreement. Critical information that might have helped to advance the negotiations was missing at key points in the process.

In the country chapters the notifications and shadow notifications are used to examine compliance with domestic support commitments in the Agreement. We show that, in general, countries have stayed within their commitments. However, many issues of interpretation are identified concerning the ways in which policies have been reported by countries. There is evidence of strategic behavior. This is manifest in changes in the way that support relating to some policy measures has been notified or the shifting of measures across categories in order to remain within the commitments imposed by the Agreement without making real changes in the underlying types of measures or levels of support provided.