
Introduction

Domestic support in favor of agricultural producers is one of three major policy areas subject to the rules and commitments of the Agreement on Agriculture of the World Trade Organization. While the other two areas addressed by the Agreement concern policy measures applying at the border, namely market access and export competition, domestic support concerns the types and amounts of support provided through policy measures applying inside the border. Resulting from the Uruguay Round of trade negotiations from 1986 to 1994, the Agreement imposes limits on some domestic support without applying a test of adverse effects. The inclusion of such provisions in a trade agreement was novel.

The Agreement's Preamble recalls that the long-term objective "is to establish a fair and market-oriented agricultural trading system" and that a process of reform should be initiated "through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines" (Agreement on Agriculture).¹ The objective, the Preamble continues, "is 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 on domestic support measures and commitments on limited amounts of certain support are important in regard to the objective and intent of the Agreement because internal measures can

¹ The Agreement on Agriculture, to which this book refers also as the Agriculture Agreement or the Agreement, is one of the agreements annexed to the Marrakesh Agreement Establishing the World Trade Organization, signed on 15 April 1994, also called the WTO Agreement. Among other agreements annexed to the WTO Agreement are the General Agreement on Tariffs and Trade 1994, also called GATT 1994, the Agreement on Subsidies and Countervailing Measures, also called the SCM Agreement, and the Understanding on Rules and Procedures Governing the Settlement of Disputes, also called the Dispute Settlement Understanding or the DSU. Unless otherwise indicated, references in this book to articles and annexes are to the Agreement on Agriculture.

have market-distorting effects. Without constraints on domestic support, it was hard to envision progress in multilateral negotiations to increase market access or limit export subsidies, as some members support their agricultural producers primarily through domestic measures, while others rely more heavily on border measures.

In pursuing their trade-related objectives, members are to have regard to what the Agreement terms non-trade concerns, including food security and the need to protect the environment. Many members use domestic support to address these and other non-trade concerns, which raises the importance of the rules applying to this policy area. The Agreement notes that special and differential treatment for developing countries was an integral part of the negotiations.

While the rules and commitments of the Agriculture Agreement continue to define the obligations of WTO members, the global landscape of applied domestic support to which these apply has changed dramatically in the nearly 30 years since the negotiations were completed. The WTO has gained additional members and different rules apply in different ways to different groups of members.² World agricultural markets have experienced sustained periods of relatively low and high prices, affecting the timely policy concerns and the support some members provide. Many members, both large and small, have undertaken structural change in the nature and size of their domestic support. Members have changed how they notify support to the Committee on Agriculture and some disciplines on domestic support have been clarified through dispute settlement. Non-trade policy priorities have gained prominence in recent years, including most notably sustainability in the context of the United Nations development goals and the mitigation of and adaptation to climate change.

² While the WTO refers to its members, this book interchangeably mentions members as countries. The WTO had 164 members in April 2022, one of which is the European Union (EU). Until 1 December 2009, the EU was known as the European Communities (EC) in the WTO. In this book, the EU means the EU with the number of member states, up to 28 (EU28), in the year being referenced prior to the completion of the withdrawal of the United Kingdom (UK) at the end of the transition period on 31 December 2020. The EU member states are members of the WTO in their own right but the EU applies a single schedule of commitments in place of their schedules. Members Switzerland and Liechtenstein apply one common schedule of commitments. The number of schedules of commitments was 135 until rising to 136 on 1 January 2021.

The changing landscape of applied domestic support in combination with the nuances and exceptions in the multilateral disciplines contribute to the hurdles faced in reinvigorating the negotiating process. It also contributes to poor public understanding, even in specialized media and academia, of the points of pressure for and resistance to WTO-related reforms of agricultural policies.

A broader crisis of engagement engulfs the rules-based multilateral trade system where the Doha Round negotiations, launched in 2001, failed to secure a comprehensive new legal framework to govern global trade. One manifestation was the aggressive initiation of unilateral trade-restrictive measures by the United States starting in 2017. It triggered retaliation but members otherwise largely avoided emulating these measures. The Appellate Body has ceased to function for lack of appointment of new judges and demands have increased for reform of the WTO. From 2020, the global Covid-19 pandemic brought high levels of illness, mortality and economic disruption, leading to questions about the structure and governance of the world economy in its aftermath. War in Ukraine then disrupted global food, fertilizer and energy markets, sending prices to record levels.

Throughout these changing and challenging circumstances, domestic support for agricultural producers has remained at amounts summing to hundreds of billions of US dollars (USD) each year. On average for 2016–18, the most recent years for which notifications of support under the Agriculture Agreement were reasonably complete at time of writing, the notified support in all categories summed to USD 594 billion. The Organization for Economic Cooperation and Development (OECD), measuring support somewhat differently, reported an average amount of USD 642 billion for 2018–20 for 54 countries (OECD 2021a). These substantial amounts consist of budgetary outlays and transfers from consumers to producers. Thus, it remains a global governance issue to assess what types of support WTO members provide through various measures, how the multilateral rules and members' commitments influence this support and what options might be pursued to further the long-term objective of the Agreement on Agriculture.

1.1 Domestic Support Rules

The rules in the Agriculture Agreement articulated in Art. 6, titled Domestic Support Commitments, divide support measures in favor of agricultural producers into three distinct categories and a residual

category.³ The categorization resulted from the need to accommodate the interests of influential countries in the Uruguay Round of negotiations under the GATT (General Agreement on Tariffs and Trade) in combination with economic considerations in relation to the objective and intent of the Agreement.⁴

The Agreement exempts three categories of measures from limits on support. First, measures meeting a fundamental requirement of having “no, or at most minimal, trade-distorting effects or effects on production” are exempt from limit by Annex 2, titled Domestic Support: The Basis for Exemption from Reduction Commitments and commonly denoted as the green box. Exemption also requires that a measure meet basic criteria of being publicly funded and not having the effect of providing price support. Twelve paragraphs of Annex 2 set policy-specific criteria and conditions for measures under which government expenditures are exemptible from support limits, including expenditures on providing general services to agriculture or the rural community and direct payments to producers under nine headings. Leaving levels of support in these categories without limit encourages the adoption of policies that fit within the green box.

No other exempted measures are required to have at most minimal trade-distorting effects or effects on production. Measures can therefore be exempt from limit even if they distort trade more than minimally. One such category of exempt measures consists of developing countries’ investment subsidies generally available to agriculture, input subsidies generally available to low-income or resource-poor producers and support to encourage diversification from growing illicit narcotic crops (Art. 6.2). Developed countries’ support through trade-distorting measures of this type is subject to limit, so Art. 6.2 is one form of special and differential treatment. A third category of exempt measures consists of payments under production-limiting programs, subject to criteria relating to the fixity of area and yields or livestock numbers or the share of base production on which payments are made (Art. 6.5, commonly denoted the blue box). The exemption is available to both developed and developing countries.

³ The Agreement generally refers to policy measures providing domestic support as measures, but also refers to policies. We follow this convention, often referring to a measure but also to a policy or a program of support. Policy can also have a broader interpretation: a policy might include several individual measures or programs.

⁴ Barton et al. (2006) offers one comprehensive assessment of the political, legal and economic considerations that have driven evolution of the multilateral trade regime from GATT to the WTO. See also, *inter alia*, Hoekman and Kostecki (2009), Martin and Mattoo (2011) and, for agriculture, Josling et al. (1996).

The remaining domestic support measures fall into a residual category under which support is subject to a limit or limits operating in different ways. This category is often loosely called the amber box, a term that is applied with various meanings. The non-exempt support is measured through an Aggregate Measurement of Support (AMS) for each product (product-specific AMS) and a separate sum of support that is not specific by product (non-product-specific AMS). As specified in Art. 1 (Definition of Terms), Art. 6 and Annex 3 (Domestic Support: Calculation of Aggregate Measurement of Support), each AMS includes those direct payments and other subsidies that are not exempted under the green box or, in practice, under Art. 6.2 or the blue box. A product's AMS includes any market price support (MPS) calculated under Annex 3 of the Agreement, which differs from economic market price support.

The Current Total Aggregate Measurement of Support (Current Total AMS or CTAMS) is the annual sum of all AMSs except any AMS that is no larger than its *de minimis* level and exclusive of any Art. 6.2 or Art. 6.5 support. The *de minimis* level is a nominal value of production multiplied by a *de minimis* percentage, which is 5, 8.5 or 10% depending on a member's group identification. Specification of the two higher *de minimis* percentages is another form of special and differential treatment for developing countries.

The CTAMS of 33 members is subject to a positive ceiling specified in their WTO schedules of commitments under the heading Total AMS Commitments. This book refers to the final commitment level after any reductions as the Bound Total AMS (BTAMS). The schedules of most members show a blank, that is, no BTAMS, or a nil or zero BTAMS.⁵ A member with no or a nil BTAMS must keep each AMS within its annual *de minimis* level. A positive BTAMS offers support flexibility by allowing one or more AMSs to exceed the *de minimis* level. The BTAMS of original members derives from the amounts of certain support measured during a base period of 1986–88 (later years for accession members).⁶ The flexibility therefore largely benefits those developed members with the historically largest support.

⁵ This book uses nil BTAMS and zero BTAMS interchangeably.

⁶ The contracting parties of the GATT who participated in the 1994 conclusion of the Uruguay Round negotiations are original members of the WTO. The 36 additional members who had by April 2022 acceded to the WTO under Art. XII of the WTO Agreement are often called Art. XII members or, as in this book, accession members. Accession negotiations for 24 countries were underway as of April 2022.

1.2 Scope of the Book

This book provides an integrated overview of agricultural domestic support of WTO members in relation to the rules and commitments under the Agreement on Agriculture informed by assessments from an economic perspective. It examines the experience of implementation, negotiations and dispute resolution under the Agriculture Agreement and other WTO disciplines affecting agricultural domestic support during the past three decades and draws on this experience to evaluate the prospects for effective future multilateral disciplines.

Chapter 2 articulates the domestic support rules of the Agriculture Agreement and evaluates the policy space it affords different groups of members, including accession members like China, the Russian Federation (Russia), Ukraine and Viet Nam that are major agricultural producers. The different but overlapping disciplines on agricultural domestic support under the SCM Agreement (Agreement on Subsidies and Countervailing Measures) are also discussed.

Chapter 3 surveys key evidence on the relationship between the Agriculture Agreement as a legal entity and the economic impacts of policies in its various categories. The analysis focuses on two issues – income support and measurement of market price support – that have been relevant to dispute settlement concerning domestic support.

Chapter 4 studies the changing patterns of domestic support in agriculture revealed in members' notifications. This involves assessing changes in the notified amounts of different categories of support in aggregate and by selected members providing the largest amounts of support. The evaluation highlights two main developments. First, there has been a substantial global shift since 1995 toward support that members exempt as having at most minimal trade-distorting effects or effects on production (green box support) in contrast to support in categories that do not meet this requirement. This was envisioned as a desirable outcome at the inception of the WTO, but the consequences of leaving green box support exempt from limit were unknown. Second, support is concentrated among a small group of members that now includes China and India as well as the European Union (EU), the United States (US) and Japan. Contrasting the place of China and India among large-support members in later years against their smaller roles when the Agreement was negotiated highlights the need for fresh assessment of the contributions required from various members to achieve balanced and effective constraints on distorting domestic support policies.

Subsequent chapters of the book build on the structural and support analysis to assess the efficacy of the existing rules and commitments. They draw on experience under the Agriculture Agreement to take the long view of how progress can be made in correcting and preventing restrictions and distortions in world markets while having regard to non-trade concerns and special and differential treatment.

Chapter 5 reviews the role of the Committee on Agriculture in providing transparency about domestic support measures and levels. The rules on agricultural domestic support are effective only if compliance is monitored and enforced, but they can also be interpreted differently. The Committee is mandated to review progress in the implementation of commitments based on notifications submitted by members. Timing and formats for notifications were adopted in 1995, requiring members to indicate how they classify their policy measures within the categories of the Agreement and report amounts of support under these measures. Discussion in the Committee has helped to clarify some issues.

Chapter 6 appraises the limited negotiations continuing within the Committee on Agriculture in Special Session (the negotiating forum). Although the Doha Round negotiations faltered, members remain committed to negotiations on continuation of the reform process under Art. 20 of the Agriculture Agreement. Some issues on which negotiations continue relate to agricultural domestic support.⁷ The priority many members give to these issues in the negotiations is linked to the importance of agriculture for many members and to the growing interest in the incidence and impacts of subsidies more generally. Members' support policies, their commitments and their negotiating interests diverge and the domestic support rules and their interpretation remain in play.

Alleged violations of the rules and commitments under the Agriculture Agreement can be pursued through WTO dispute settlement. Disputes involving particularly the measurement of MPS have been raised for adjudication toward Korea on beef, China on wheat, rice and corn and India on sugarcane. Dispute settlement has clarified certain points of interpretation of the Agreement. Chapter 7 reviews the legal findings in these disputes and highlights the contrasting circumstances of measuring

⁷ Domestic support in this book encompasses at various points some or all of the support under a member's "domestic support measures in favour of agricultural producers" (Art. 6.1), i.e., Art. 6 support and Annex 2 support, separately or together. This extends wider than the elements discussed in the domestic support area in ongoing WTO negotiations on agriculture.

MPS for China and India. Even as the calculation of MPS under the Agreement is clarified, the rules remain problematic in terms of effecting reduced economic distortions. An alternative measurement is proposed to address this shortcoming.

Agricultural domestic support was also a concern in the long-running dispute under the SCM Agreement that involved significant price suppression resulting from cotton policies in the United States and in disputes under the Agriculture and SCM Agreements concerning export subsidies arising from the domestic price support regime for dairy in Canada and sugar in the European Communities (EC). In the cotton dispute, payments under certain domestic support measures were found to cause serious prejudice to the interests of Brazil. In the Canada and EC disputes, the finding was that the price support regime created export subsidies that exceeded the member's scheduled limit under the Agriculture Agreement. Review of these disputes is part of the assessment of the experience of disciplining agricultural domestic support under the WTO.

Many of the priorities governments have pursued in agriculture in recent years differ from those when the Agreement on Agriculture was negotiated. Chapter 8 evaluates the policy space that the Agreement allows for domestic support in five selected areas of increased salience: productivity growth, biosecurity in agriculture, water management, sustaining and enhancing biodiversity and mitigation of climate change. Much support addressing these evolving priorities can be accommodated under green box criteria for general services or under environmental programs and other measures making exemptible payments to producers. Some policy measures on the horizon to address twenty-first-century priorities may use innovative designs while being exempted within the green box. For others additional green box provisions would be constructive and compatible with achieving reductions in trade-distorting domestic support.

Chapter 9 brings together the structural, descriptive and analytical assessments. It draws conclusions concerning ways to refresh the Agriculture Agreement with respect to domestic support to be a more effective instrument to achieve a fair and market-oriented agricultural trading system while leaving ample space to address other policy priorities. The assessment is structured around discussion of what has proven through the many years of experience to be the problematic aspects of the Agreement and what has turned out to be less problematic than may have been expected. These insights suggest where trade-offs and improvements might be found that would strengthen the Agriculture

Agreement as a framework for members' commitments and the rules they follow in providing support in favor of agricultural producers.

1.3 Key Questions in the Analysis

The assessment of nearly 30 years of experience concerning domestic support under the Agriculture Agreement addresses eight important questions:

- (1) What are the rules of the Agriculture Agreement on the limits on certain support and how do they apply to different groups of members to determine their policy space for domestic support?
- (2) What types and levels of support have been notified and how has this changed over time?
- (3) Do the notifications provide accurate and meaningful measurement of the support governments provide in favor of agricultural producers?
- (4) Has dialogue about the notifications contributed to international transparency on agricultural domestic policies and the support they provide to producers?
- (5) What issues are on the table in negotiations on domestic support at the WTO?
- (6) Has dispute settlement reinforced constraints on trade-distorting domestic support?
- (7) Are the rules of the Agriculture Agreement sufficiently conducive to addressing evolving policy priorities related to sustainability and climate change?
- (8) How might the rules and commitments be updated to better achieve the long-term objective of the Agriculture Agreement considering that the global landscape of applied domestic support has changed since the Agreement was negotiated?

1.3.1 *Rules of the Agriculture Agreement*

The rules and implications of the domestic support provisions of the Agriculture Agreement on support subject to limit have proven to be easily misunderstood. This is often rooted in overlooking the significance of key distinctions, such as distinctions between measures and support, among measures that are classified in different categories, between applied support and a limit on support and between applied support that counts and does not count towards the limit.

Disentangling these distinctions requires differentiating among several groups of members depending on whether they have a positive BTAMS or not, are eligible for the developing-country Art. 6.2 exemption or not and the applicable *de minimis* percentage. The variety of rules that apply in different ways to different members is a source of tension among members. The Agriculture Agreement's commitments give members that had the largest base-period support the flexibility to maintain AMS support above *de minimis* levels. This negotiated bifurcation has been problematic, especially by allowing some members to offer high levels of support for certain individual products. Conversely, as *de minimis* levels are proportional to nominal values of production, they generally increase over time. Members with larger agriculture sectors can accommodate larger amounts of AMS support within their *de minimis* levels and any positive BTAMS. Thus, China and India, without a positive BTAMS but with large values of production in agriculture, have more room for AMS support than the EU and the United States, respectively, each with a positive BTAMS but with a lower *de minimis* percentage and lower production value.

1.3.2 *Types and Amounts of Support*

While in strict terms an AMS accounts for all support other than green box support, in practice members also exempt from AMSs the support they report under Art. 6.2 and Art. 6.5. The analysis in this book generally follows the convention of this practice. Unless otherwise noted, AMS support refers to the residual support other than Art. 6.2 support, blue box support and green box support. Art. 6 support – sometimes called trade-distorting or non-green-box support – refers to the sum of AMS support whether *de minimis* or larger, Art. 6.2 support and Art. 6.5 support. The distinction between *de minimis* AMSs and AMSs exceeding their *de minimis* levels is often a critical consideration in the analysis.

As few as 10 members account for more than 90% of notified Art. 6 support. In the early years of the WTO, the largest amounts were reported by the EU, Japan and the United States. In later years, China and India have reported the largest amounts. The responsibility of only a small number of members for so much of the Art. 6 support, and the shifting composition of that group, has implications for possible new or updated rules and commitments on domestic support.

AMS support over the period 1995 through 2016–18 followed a downward trend for many years after the Agriculture Agreement took