Institutional change in the international governance of agriculture: a revised account

Abstract

The place of agriculture in the General Agreement on Tariffs and Trade (GATT) prior to 1986 is usually described in terms of either exclusion or exemption from general trading rules. This paper reevaluates the 'exemption' argument and its corollary that the Uruguay Round Agreement on Agriculture (AoA) represented a punctuated equilibrium in the governance of agriculture. Instead it traces the dynamics of institutional change through the history of the GATT/WTO, distinguishing between multilateral trading rounds and the framework of trade rules as separate but linked contexts for addressing agricultural trade matters; and further disaggregating the latter into broad principles and specific rules. It is argued that the broad principles lacked detail but, paradoxically, initially this facilitated an approach to dispute settlement based on conciliation. Subsequent trade tensions exposed an inability to make definitive legal decisions on the compatibility of specific national rules with broad GATT principles. The AoA is rooted in these institutional antecedents, but claims of the legalization of the trade regime are belied by a continued reliance on political flexibility and bargaining.

Introduction

The academic literature on the history of agriculture in the GATT/WTO can be divided into two broad categories. The first holds that prior to 1986 agriculture was "effectively excluded from the GATT" (Grant 2005, 92) due to successive failures to include agriculture in trade liberalization packages in the early GATT Rounds. Instead, liberalization in agriculture starts with the Uruguay Round Agreement (URA) consisting, inter alia, of quantitative commitments to reduce trade-distorting supports alongside "rule creation" (Wiener 1995, 76) rather than rule enforcement, given agriculture's previous exclusion. The second group of histories, of which Timothy Josling, Stefan Tangermann and Thorald Warley (1996) is the outstanding example, focuses on exemption rather than exclusion. John Barton, Judith Goldstein, Timothy Josling, and Richard Steinberg (2006, 102) summarize it thus: "the GATT did not ignore agriculture: it just treated it differently by exempting it from certain basic disciplines".

Both camps share the view that the URA is the salient and singular event in the international governance of agriculture when stasis was punctuated by a rapid leap to a liberalizing phase. This paper contests this view and presents an alternative history of agriculture in the GATT/WTO which revises but does not contradict existing histories in the second group. In this analysis of the dynamics of institutional change, the URA remains salient by marking a transition point in the overall governance arrangements for agriculture, but this shift is located in the significant processes of institutional change in the GATT/WTO already underway from the mid-1970s.

The paper draws on Christina Davis (2003) to distinguish between two types of institution that promote trade liberalization: comprehensive packages of liberalizing commitments linking agriculture with other sectors (referred to in the present paper as 'type A' institutions), and the legal framework of trade rules that apply to individual policy cases ('type B' institutions). The present paper reveals how these two institutional contexts in agriculture coevolved sequentially, with time-lags between cause and effect: the trust required for the adoption of packages of commitments linked across sectors followed from collaboration on the design of more specific trade rules and credible enforcement mechanisms in response to perceived rule failures in agricultural trade disputes from the mid-1970s.

The legal framework of GATT rules applied to agriculture from 1947. While the sector was indubitably exceptional in terms of the regulation of the use of two key policy instruments, quantitative restrictions (Article XI) and export subsidies (Article XVI), longitudinal analysis reveals learning and the beginning of the adaptation of these type B institutions from the mid-1970s. A set of codified, specific rules was thus made available in the early 1990s via the URA. This facilitated the quantitative commitments to reduce trade barriers and domestic support under type A institutions.

Disputes over agriculture prior to the Uruguay Round are therefore critical precursors to key elements of the URA in 1994. 40% of the disputes dealt with under the GATT were over agricultural issues (McMahon 1998, 128; Wolfe 1998, 53), with this figure rising to about 50% between the Tokyo and Uruguay Rounds (Chaytor 1998, 260 and see below). Indeed, prior to 1986, dispute settlement mechanisms offered the principal multilateral channel by which countries could address agricultural trade concerns.

This paper contends that there were important lessons drawn by international trade policy actors from these disputes, particularly about rule specificity and credible enforcement mechanisms, which affected both the URA and the subsequent development of the international governance of agriculture.

The initial GATT dispute settlement mechanism was heavily influenced by U.S. domestic interests. The potential authority the International Trade Organization (ITO) would have over domestic U.S. interests was a key reason for the U.S. never ratifying the Havana Charter. Thus: "The ITO Charter would have established a rather elaborate dispute-settlement procedure, but the GATT…..had only a few paragraphs devoted to this subject" (Jackson 1997, 114). Trade rules were left "underspecified, making it difficult to determine whether or not a specific behavior was consistent with a country's obligation." (Barton et al 2006, 27).

The negotiating context of early GATT decision-making was based on high trust between contracting parties rather than trust in the GATT rules. It was built on long-standing personal relationships among delegations in Geneva who shared norms and beliefs about the process of governing agricultural trade. The early GATT was described rather than governed by very general rules: it resembled a closed, technical policy community observing older diplomatic negotiating traditions: disputes were settled by "old GATT hands" who made decisions "trying not to upset either party in a dispute too much" (Baldwin 2000, 35-36). Such "judgment of one's peers" (interview senior DFAT official) was accepted by the parties: as defendants could veto dispute Panel reports (as these, like other GATT activities, required unanimous agreement), there was an incentive for Panels to adopt an approach based upon

"conciliation" (GATT 1955a, 2), considering the interests of all parties. This approach was further facilitated by the underspecified rules applying to agriculture. Thus rule 'enforcement' could accommodate such flexibility.

Charles Lipson (1983, 249-250) describes, in positive terms, the governance style of the early GATT:

> "Rules cannot anticipate all contingencies and, even if they could, some differences of interpretation are bound to arise. Resolving such differences was the GATT's special strength during its first decade…..The whole process was facilitated by the contracting parties' representatives, most of whom had helped draft the treaty and held shared understandings about the rules' implicit aims and meanings. Their sustained communication created an informal case law and eroded any false antithesis between legalism and pragmatism".

The subsequent history of agriculture in the GATT is a movement away from this norm-governed context of shared beliefs and high trust transactions towards a more formally structured interaction among actors in international trade policy – a movement conditioned, in part, on the exposure through disputes of the limitations in the extant (general) rules and on the increasing complexity of national policy instruments. Type A and type B institutions coevolved in the GATT/WTO revealing a dynamic between legalism and pragmatism: ambitions for a more formalized set of type B institutions required the political flexibility available in type A institutions for their implementation. This is so because the laws governing international agricultural

trade are not, nor cannot, be separated from politics – they are agreed and enforced by bargaining and tradeoffs negotiated between self-interested states.

The history of agriculture in the GATT prior to 1986 presented in the present paper points to important evidence of a sequence of feedback effects from the breakdown in trust between GATT members. This came in the wake of the E.C.'s emergence as a major agricultural exporter and of growing volatility in international commodity markets.[1] This story of inter-temporal feedback between negotiating contexts and the shift towards the formalization of GATT/WTO trading rules is not a functional one. Instead it is more accurately described as a process of institutional adaptation, in which agents have learned about the relative merits of different rules and developed expertise in the specificities of different policy instruments in the context of upheavals in international commodity markets.

Within type B institutions, an important distinction is made in the paper between general and specific trade rules. The former act in the manner of constitutional principles and apply broadly either to proscribe or limit certain trade distorting actions; the latter have a narrow application in terms of specific policy instruments, on specific commodities and over specific periods. The latter can also refer to specific national policy responses to general rules agreed collectively by countries. The distinction has, as its corollary, a core problem of contemporary governance: whether rules should draw precise distinctions that leave little room for clarification; or consist of vague statements of principle, permitting policymakers and judges to exercise discretion in, respectively, their design and enforcement.

As will be seen below, general trade rules such as “equitable market share”, describing the limit on the extent to which export subsidies could be used, ultimately proved sufficiently vague and legally unenforceable that, subsequently, they were abandoned. The post-UR rules either replaced vague language with precise quantitative limits to policy interventions (for example with export subsidization), made the policy instruments illegal (for example import quotas), or removed the ambiguous concepts entirely (for example “equitable shares”). The URA did not clarify fully all issues however. For example with domestic support, ambiguity remains over the extent to which some national policies decouple support from production and, thus, how they fit into the Green Box, Blue Box and Amber Box classification.

The trend from general to specific rules is not equivalent to the legalization of agriculture in the GATT, as some maintain (see below). Problems of enforcement persist and single legal case disputes may reenter, post-ruling, multi-sector negotiations under type A institutions in order finally to be resolved. Indeed, the two institutional arenas identified by Davis only emerged as distinct contexts as tensions grew in international agricultural markets from the 1970s; they remain separable but linked. More codified and specific rules now structure and shape interactions in international agricultural policymaking processes but they do not determine outcomes. These remain ultimately political processes. In these terms, the UR remains prominent but other key elements should be taken into account.

The paper presents a history of the development of agricultural trading rules in the GATT/WTO focusing on the key policy instruments of quantitative restrictions and

export subsidies. It thus helps establish a point missed in 'punctuated equilibrium' accounts of agriculture in the GATT/WTO – the emergence of learning processes in the development of specific trade-liberalizing rules. The paper then considers the continuing coevolution of liberalization contexts in terms of the critical recent cotton case in the WTO. This was one of the first cases in the post-1995 to challenge domestic support arrangements successfully. It also illustrates the interconnectedness of dispute settlement and multilateral negotiating arenas.

Establishing Agriculture's Exception in the GATT

The development of the GATT was shaped fundamentally by domestic U.S. policies and politics – including treating agriculture differently from industry. Industrial trade liberalization had been promoted from before World War II but, from 1933 and the Agricultural Adjustment Act (see, inter alia, Ingersent and Rayner 1999, especially 94-102), agriculture had been protected, notably with quantitative import barriers shielding high prices. From the outset, Article XI:1 of the 1947 GATT Agreement prohibited quantitative import restrictions on industrial trade. Article XI:2, however, allowed for their use in agriculture – subject to certain conditions influenced by domestic U.S. policy, for example if the domestic product was itself subject to production or marketing controls.

In addition to Article XI the other key agricultural exception – export subsidies – was created in 1955. From late 1954 a Review Session was held, given that "GATT was only a provisionally applied executive agreement between governments" (Josling et al 1996, 25). The draft Havana Charter would have prohibited export subsidies for

industry but allow them, conditionally, for agriculture. In the end, Article XVI of GATT 1947 contained just Article 25 of the draft Havana Charter. This allowed, for both industry and agriculture, "any form of income or price support" which had the effect of increasing exports or reducing imports, subject to certain conditions. The 1955 revision to the GATT Agreement, by introducing the prohibition on industrial export subsidies intended for the ITO, thus established the agricultural exception. This latter feature was important to the U.S. who, despite the wording of the draft Havana Charter, "believed that, in practice, the ITO would never give permission for it to use agricultural export subsidies" (Josling et al 1996, 16).

Thus on primary products, countries were merely exhorted to "seek to avoid the use of" export subsidies (Article XVI:3). Where an export subsidy was granted, it:

> "shall not be applied in a manner which results in that contracting party having *more than an equitable share* of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product." (emphasis added).

Note that actions were possible against any subsidy, including agricultural subsidies, if "serious prejudice...is caused or threatened" to the interests of other countries.

1955 also saw the Article XI exception extended. Despite the different treatment accorded agriculture, as early as 1949 Congress discussed legislation giving primacy

to U.S. domestic policies over the GATT (Josling et al 1996, 23 and 27). This principle was later embodied in Section 22 of the Agricultural Adjustment Act – for which the U.S. sought and was granted a waiver in the GATT in 1955. Specifically, it protected domestic policy measures from challenge under Article XI (see, inter alia, GATT 1955b). This also followed a successful challenge in 1952 by The Netherlands against quantitative restrictions on U.S. milk imports. The Dutch were "even allowed – the one and only time in the history of GATT – to take retaliatory measures against the United States" (Delcros 2002, 222), although they did not take such action given a U.S. threat to withdraw from the GATT.

The waiver also covered 'import fees' as set out in Article II. Whilst Article II:2(b) allows "any anti-dumping or countervailing duty applied consistently with the provisions of Article VI [Anti-dumping and countervailing duties]", the U.S. continued to apply levies in accordance with domestic legislation that, the E.C. claimed in a 1976 case over beef, was done without investigating "whether the material injury from third-country subsidized exports was proportional to the countervailing duty" (Davis 2003, 262). Thus only some U.S. were unambiguously sheltered from challenge. For Article XVI measures and non-U.S. Article XI measures, shelter from action was only provided if other conditions were met.

The U.S. is not alone: the Common Agricultural Policy

The E.C. and the Emergence of the CAP

The first decade of the GATT saw the U.S. dictate the terms of agriculture's exception to general GATT rules, gaining a waiver to prevent possible actions against some

measures. The next two decades, however, were to be dominated by E.C.-led policy exception – albeit facilitated by earlier U.S. actions. From 1958 and the Stresa Conference, the Common Agricultural Policy (CAP) started to take shape. The core policy instruments were to be those of price support, in part reflecting national precedents (see, inter alia, Ackrill 2000; Ingersent and Rayner 1999) – the legality of price support and use of export subsidies having been confirmed in 1955.

In addition to the subsidy on exports, prices in the E.C. would be kept above the levels prevailing on international markets through a variable import levy that moved with world prices. Variable levies introduced a legal 'grey area' into the GATT that remained unresolved until the Uruguay Round: not defined specifically in GATT, it was unclear if they should be treated as tariffs that varied a lot;, as quantitative restrictions, since importers "had to apply for a license [for a certain quantity of the commodity concerned] on which the applicable rate of duty was stamped" (Barton et al 2006, 122, footnote 13); or if they were simply "a measure that had somehow evaded the scrutiny of the drafters of the GATT." (ibid).

It was the U.S. (still the key player), in the Dillon Round talks of 1960-62. They allowed the E.C. to adopt price support, in return for a side-payment: the E.C. agreed to have zero duty bindings on oilseeds imports, for which it had a significant requirement: production was approximately 40% of domestic demand until the mid 1970s, by far the lowest for any CAP commodity (Ackrill 2000, 74-75) with most imports coming from the U.S.. The specifics of the CAP were thus approved, primarily through a type of agreement that would be seen repeatedly: bilateral negotiations and side-deals.

This process also indicates how the lack of specificity in the broad GATT trading principles, hindered clear determinations on increasingly sophisticated forms of domestic agricultural support. With support prices not agreed, the future impact of the CAP could not be determined by the GATT contracting parties. As a result, it could not be established definitively that the E.C. would respect their obligations under the GATT. Indeed, the CAP was established without the legality of variable levies being ruled upon (see also Josling et al 1996, 40).

Increasing Agitation over Agriculture

As the E.C. established the CAP, price levels were set high and increased subsequently (Ackrill 2005, 457-458), driving up production, surpluses and exports. Meanwhile the U.S. was shifting from high prices to deficiency payments (see Ingersent and Rayner 1999, 181-189). This, combined with productivity gains, "transformed U.S. agriculture into an internationally competitive, export-oriented sector" (Davis 2003, 7). Thus the 1971 Williams Commission report, "United States International Economics Policy in an Interdependent World", saw a major role for agriculture in correcting the United States' balance of payments deficit "and urged the administration to pursue negotiations in GATT to address barriers against U.S. agricultural exports" (ibid).

As a result, the E.C. emerged as a subsidizing exporter at the same time that the U.S. was adopting a more aggressive outward-oriented stance on agricultural trade policy. It was the growing tensions resulting from this that precipitated the shift from trust between contracting parties toward an agenda of designing GATT institutions which

sought to command respect. The U.S. launched GATT actions against E.C. policies "despite its own waiver from the same obligations." (Cohn 1993, 28). The U.S. response to criticisms of hypocrisy was to argue that "if the E.C. wanted the same legal freedoms as the United States, it too should seek a waiver" (ibid).

As subsidized E.C. exports grew, attention focused increasingly on Article XVI. Whilst subsidized exports were permitted for primary products, they should not cause, or threaten to cause, serious prejudice to the interests of other countries; nor should those exports represent more than an equitable share of trade in that product. Thus the use of agricultural subsidies had limits that could be challenged. The problem was the vagueness of the language used in defining those limits. Only five cases were ever brought under Article XVI. Of these, only in the 1958 case brought by Australia against French wheat exports, did the ruling support the complainant and the defendant comply.

The intention had been that the ITO would determine the meaning of 'equitable share' with reference to market-related criteria (GATT, 1983: 47, 64). Even with the limited GATT framework, however, the simple approach taken by the Panel in the 1958 case was respected by the parties. The Panel looked at market shares, the use of subsidies and unit trade values. A rising market share and differences in unit values between France and other exporters led to the conclusion that France had gained more than an equitable share through subsidy-use (see also GATT 1983, 51-52).

Subsequent cases saw much discussion of the special factors that Article XVI:3 permitted, to cloud attempts at defining equitable share. Rules thus existed to limit the

use of agricultural export subsidies; the difficulty facing exporters was that "they knew that the Agreement was deficient in content, legal precision, and standing as a basis for pressing their claim for fair and liberal trade in agriculture…But it was all they had, and they appealed to it immediately, repeatedly, and with vigor in the resolution of agricultural trade disputes" (Josling et al 1996, 22).

This is a key dynamic in the tendency to move towards more specific type B institutions for agriculture over time. It is difficult to estimate whether the wording of Articles XI and XVI or flawed dispute settlement process compromised more the ability of the GATT to effect change in domestic agricultural policies. The central point remains, however, that the GATT was a single entity in the early years, in which there was not in practice a separate negotiating context for legal cases in which we can examine the symbiotic relationship between rules and their enforcement.

The response in the Kennedy Round (1964-67) to emerging trade conflicts was to try, unsuccessfully, to include agriculture in a comprehensive trade liberalization package and thus provide "acceptable conditions of access to world markets for agricultural products" (McMahon 1998, 128); it did not seek to reform dispute settlement or trade rules. In the end, only "modest" (Josling et al 1996, 69) tariff cuts on agricultural and food trade were agreed, averaging 22% and with cuts of over 50% made on $1.6 billion worth of trade. Robert Wolfe (1998, 61) identifies several factors that explain these limited results, notably, that agricultural trade was still growing "briskly".

The Tokyo Round: an attempt at liberalization and key institution building

Attempts to get agriculture on the negotiating agenda intensified in the Tokyo Round (1973-79), where "agriculture was made a high priority issue by the United States and other countries, particularly with an attempt to restrain a number of practices of the European Community that were having considerable damage [sic] to world agricultural trade" (Jackson 1997, 313-314). The U.S. sought to integrate agriculture into a single comprehensive liberalization package (see, in particular, Davis 2003, 256-270), with industrial and agricultural tariffs negotiated jointly under a common tariff-cut formula. The E.C., however, insisted the talks on agriculture be conducted separately, based on 'request-offer'. This disagreement held up talks for four years, until the U.S. conceded to E.C. demands.

Negotiations based on a tariff-cut formula would leave the non-tariff majority of protectionist measures untouched (Davis 2003, 152); yet 'request-offer' also allowed countries to shield particular policies or commodities from liberalization. Ultimately, agricultural tariffs were cut by nine developed countries, by an average of 40% on the product lines affected (Josling et al 1996, 89). The Tokyo Round also saw some countries resort to bilateral talks. Indeed, most gains to U.S. agriculture came through market access agreements signed with Japan and the E.C. – although the latter was subsequently fundamentally undermined by an E.C. ban on imports of hormone-treated beef (Davis 2003, 266-268 and chapter 9).

The Tokyo Round thus saw only minor success incorporating agriculture into the liberalization talks. It was, however, the first GATT Round that sought to address trade rules – in particular on subsidies and countervailing measures (and was thus the first attempt to tackle non-tariff trade barriers in the GATT). That said, in order to get

E.C. agreement for the changes the U.S., through a secret letter, promised not to use the revised terms of Article XVI:3 to challenge the CAP directly (Davis 2003, 263; Josling and Tangermann 2003, 220). The first part of the Tokyo Round Subsidies Code (henceforth Tokyo Code) sought to clarify importers' use of countervailing duties in countering the impact of export subsidies. As well as setting out how injury should be determined and placing a limit on countervailing duties it also sought, in Article 10(2), to clarify the meaning of 'equitable shares'. It did so, however, in ways that left scope for interpretation and thus disagreement over meaning and application.

First, a share would be 'more than equitable' if the subsidy displaced exports from another GATT signatory, "bearing in mind the developments on world markets". Second, trade flows into new markets would have as their benchmark "traditional patterns" in the "region or country" where the new market was situated. Third, the "previous representative period" was defined as "*normally*…the three most recent calendar years in which *normal* market conditions existed" (emphasis added). The Tokyo Code thus failed fundamentally to clarify matters, because it retained the idea that equitable market shares and export subsidy-use could be compatible.

The Tokyo Code also emphasized displacement in specific markets, whereas E.C. exports affected world prices more generally. This illustrates why there are broader problems with export subsidization: import restrictions inhibit trade, but export subsidies affect third countries via world prices (and see below). Opposition thus grew, to such policies and their principle source, the E.C..

Learning Processes: persistence of the Panel problems

Some commentators give a positive reading of the Tokyo Code, describing it as a key milestone in "the legalization of the trading system…strengthening…trade remedy laws" (Ostry 2000, 101). Indeed, "[t]he revised dispute settlement procedure of the Tokyo Round was so highly regarded that contracting parties, especially the U.S., began to utilize it to pursue the concessions which could not be procured during the Round." (Chaytor 1998, 260; Ostry 2000, 101). Over the next 10 years, more or less half of all GATT cases related to agriculture (59 out of 120), of which 44% were brought against the E.C. and its members (Chaytor 1998, 260).

An alternative reading of these events paints a different picture. Beatrice Chaytor (1998, 260-261) admits that, in keeping with previous convention, "panels were still searching for conduits to compromise rather than producing legal analysis of disputes. It seemed that panels were more eager to avoid a confrontation with the E.C. concerning CAP than in making legally sound decisions". This was magnified by the E.C. becoming more defensive over challenges to the CAP. In effect, by leaving the principal *general* type B institution, "equitable market shares" intact, the Tokyo Code failed to make *specific* domestic subsidy policies more actionable, as was soon to be seen.

In 1981 the U.S. used Article 10:2 of the Tokyo Code against E.C. exports of wheat flour – an action that "failed disastrously",[2] with the U.S. ultimately blocking the report. In 1982 the U.S. then brought an action against E.C. exports of pasta – which, with the wheat flour case, arguably marked the nadir of the multilateral dispute settlement system. The report, delivered in May 1983, found three to one in favor of the U.S.A, but the E.C. blocked its adoption (Josling and Tangermann 2003, 218).

This was the first time the E.C. had done this and was put down to "a growing sense of confidence in the E.C. in international commercial relations" (ibid). Note that both the wheat and pasta cases came after the secret U.S. letter, noted above.

The other cases prior to the Uruguay Round challenging agricultural export subsidies came in 1978, brought by Australia and Brazil against E.C. sugar policy (see GATT 1979; GATT 1980; McMahon 1998). They highlight concerns over ambiguities in trade rules and weak enforcement mechanisms. The Panels could not determine whether the rising E.C. export share was inequitable,[3] but they did find the E.C. policy caused or threatened to cause serious prejudice to the interests of Australia and Brazil. Thus Article XVI still offered a way to challenge export subsidies. However, after two GATT Working Parties and over two years of further negotiation, the parties failed to agree on what the E.C. should do to remove the serious prejudice. The E.C. also argued that the new Tokyo Code required Australia to produce quantitative proof of the harm caused it by E.C. exports: evidence which was not provided.[4] On this point at least, the Tokyo Code appears to have raised the evidentiary bar.

Australia had only signed the Tokyo Code reluctantly and late, under U.S. pressure. When, in 1982, Australia and nine other countries brought a further (short-lived) action against the E.C. sugar regime, Australia refused to bring the action under the Tokyo Code, using GATT 1947 instead. They felt the Tokyo Code "made little contribution to the reduction of tensions" (GATT 1982, 1), and "has done little, if anything, to integrate rules on subsidies on agricultural products more fully into the GATT framework" (GATT 1982, 2).

This illustrates a crucial point about this period of the GATT. On the one hand, it was moving towards taking an increasingly formal approach to disputes, since agricultural conflicts could no longer be resolved to the satisfaction of all parties by compromise and conciliation. On the other hand, there was neither a strengthening of the enforcement mechanisms of dispute settlement, nor sufficient integration between dispute settlement and negotiating Rounds to offer countries an alternative remedy should one avenue fail.

Whilst some commentators (see, inter alia, Barton et al 2006, 23; Ostry 2000, 101) refer to the legalization of the GATT system from the 1970s, reduced compliance with GATT rules leads Lipson (1983, 251) to describe this as a period of "antilegalism". The present paper, from a policy perspective, prefers the notion of formalization of the international agricultural policy process. In effect, the GATT post-Tokyo was a halfway house. Conflicts were growing, there was greater resort to dispute settlement and the Tokyo Code amended key GATT Articles for agriculture. Despite this, legal avenues alone could not force policy reform on countries; and there was no sense that countries could address agricultural trade concerns and respect for rules (type B institutions) equally in the dispute settlement and negotiating Round arenas, as agriculture was still largely excluded from the latter, type A institution.

The Uruguay Round – A Single Undertaking

For comprehensive discussions of agriculture in the Uruguay Round see, inter alia, Davis 2003; Josling et al 1996; Wolfe 1998. For the present paper, the key issue is the interaction between GATT legal cases and bargaining contexts, dealing with type B

and type A institutions, respectively. An important example of this occurred during the Uruguay Round, with the resolution of a U.S.-E.C. dispute over the E.C. oilseeds regime and which was crucial to approval of the Agreement on Agriculture (AoA). This had been ongoing since 1988 and had grown out of the Dillon Round deal to allow the E.C. to use variable import levies in the nascent CAP if it agreed to a zero tariff-binding on oilseeds imports.

The E.C. introduced a production payment paid to E.C. producers indirectly via oilseeds processors. The U.S. targeted this payment on two grounds: the payment made E.C.-produced oilseeds more attractive to processors than imported oilseeds (violating Article III and national treatment); whilst the resulting rise in domestic production, stimulated by the payments, resulted in reduced imports from the U.S.. This nullified or impaired the benefits the U.S. could reasonably expect from the zero tariff binding. Thus as with export subsidies, domestic subsidy payments were permitted by Article XVI, but they still had to respect broader GATT obligations.

The E.C. delayed the establishment of the panel by many months, but it began work eventually and reported in December 1989. It found for the U.S. on both counts – and whilst the E.C. expressed reservations over the findings, it did not block the adoption of the report. Instead it reformed the policy, adopting in 1991 a payment made directly to farmers and paid per hectare of land. Whilst this removed the problem of 'national treatment' however, it did not address U.S. concerns over the expected benefits of the zero tariff binding.

This issue was resolved bilaterally, within the broader Uruguay Round talks. The E.C. and U.S. met in November 1992 and, in the Blair House Accord (see, inter alia, Josling et al 1996; Davis 2003; Wolfe 1998), reached agreement on a range of mutual concerns over the ongoing agricultural negotiations. In these talks, however, a solution to the oilseeds dispute was found as well, when the E.C. agreed to impose a ceiling on the area that could be planted to oilseeds, so limiting domestic production. An area-based ceiling, rather than a direct production ceiling, corresponded with the new area-based support payment. Indeed, the nature of this agreement matched that of the original deal struck in the Dillon Round: a bilateral deal about domestic policy, but with wider implications, negotiated within a multilateral forum.

This case is profoundly important for the GATT system – and not just because the E.C. responded positively to a negative GATT Panel finding. Of central importance to the thesis in the present paper is that because the Uruguay Round had incorporated agriculture into comprehensive liberalization talks (the type A institution), a policy issue arising from a legal action elsewhere could be resolved, to the satisfaction of both parties, in that institution. This was a forum that enabled the E.C. negotiators to exploit tradeoffs available to them to reach agreement on something that, when considered in isolation, they have failed to address satisfactorily. Moreover, there had been concern over the action from its supporters, despite (or because of) the certainty they would win, as they did not wish to upset the E.C. just as they were starting to engage on agriculture in the Uruguay Round talks.[5] Their willingness to accept talks in the alternate forum was also crucial to the successful resolution of the dispute.

Specifically, the CAP reform in May 1992, brought oilseeds into a multi-commodity arable regime, with area-payments covering all arable crops. Thus the ceiling imposed on oilseeds area represented less of a constraint on producers than otherwise would have been the case. Many commentators regard the 1991 payment introduced for oilseeds as the precursor for the 1992 arable payments, but the tradeoffs afforded the E.C. negotiators by having the wider arable regime are usually overlooked. Indeed, the proposal for the 1991 oilseeds payment, dated 31 July 1991, came five months after the initial proposal for what, in 1992, would become the arable payment.

Thus the idea of the Uruguay Round as a single undertaking did not just facilitate the AoA (see, in particular, Davis 2003): its consequences are ongoing as it created linkages between negotiating Rounds and dispute settlement to the benefit of both. Interviews conducted over October and November 2007 with Australian, U.S. and Brazilian government officials confirmed all view the WTO as a single process, within which there are different avenues for dispute resolution. The recent case of Upland Cotton, brought by Brazil against the U.S. and discussed below, shows how a complex case can be moved between negotiating fora in order to allow the defendant to resolve politically-sensitive issues.

Reforming the trading rules

The Uruguay Round also changed type B agricultural trade institutions. The AoA represents "bespoke rules for international agricultural trade to replace the more general provisions of the…GATT previously applicable" (Rogers and Cardwell 2003, 1). That said, because the URA was a single undertaking the AoA was interconnected

with the other elements, including dispute settlement, thus "bespoke rules" does not mean rules isolated from the other elements of the URA.

First, a key development in getting agriculture to conform with the general principles of the GATT was the tariffication of the many non-tariff barriers (NTBs) on trade. Indeed, Josling et al (1996, 215) argue agriculture is now less reliant on NTBs than industry. Representing a vast technical exercise, however, tariffication inevitably raised problems. Notably, there was no "procedure for verifying the new tariff levels" (Schott 1994, 50). This led to 'dirty tariffication', where the new tariff levels provided more protection than their erstwhile non-tariff 'equivalents', through the internal and external prices chosen for the calculation.[6]

Such high tariffs can also contain considerable 'water', where 'bound' tariff rates are higher than 'applied' rates. Bound rates are those that have been agreed as the maximum permissible within the GATT and which have been reduced in the multilateral agreement. Applied tariffs can be below this – and can be increased (up to the bound rate) without warning and without needing to compensate trade partners. Also, future talks to cut bound rates will have to eliminate the water before *actual* domestic market protection is reduced and market access improved. Furthermore, if the *applied* tariff is prohibitive, tariff cuts would have to exceed the amount of water before market access improved (see also Podbury and Roberts 2003, 4).

These problems notwithstanding, tariffication was central to allowing the tariff-cut formula approach to be applied to agriculture rather than 'request-offer', as used in the Tokyo Round. Moreover, U.S. support for tariffication marked a key shift in

agriculture's place in the GATT, as it meant giving up the 1955 waiver. It was only in December 1990 that the other countries, even close allies the Cairns Group, finally realized the U.S. was prepared to do this.[7] Once again domestic policy reform was achieved, albeit in this case voluntarily rather than after a negative dispute ruling, in the context of multilateral talks where quid pro quo bargains could be negotiated. Overall, border protection was not reduced in the Uruguay Round by as much as hoped for, nor by as much as the headline figures implied; but tariffication facilitated both the AoA and future negotiations.

Second, changes to GATT rules were required to aid actions against specific national policies believed to be inconsistent with those GATT rules. The discussion earlier highlighted the difficulties caused by the ambiguous meaning of the phrase "equitable share" in Article XVI:3. In the action against E.C. pasta exports there was even disagreement over the meaning of 'primary product'. That case was resolved by bilateral negotiation, prompted by the action. The wheat flour case, however, led to a transatlantic subsidy war and was a key element in the 'Farm Wars' of the early 1980s (Wolfe 1998). Yet despite the cases brought against agricultural policies, especially from the 1960s, retaliation was extremely unusual – if a multilateral solution could not be found, recourse was more often to bilateral solutions. Open conflict was, arguably, the clearest defining feature of the immediate pre-Uruguay Round period.

These cases also show that, independent of the dispute settlement mechanisms per se, the language of the rules they seek to enforce matters greatly. It was noted earlier how, in the Panel reports on the 1978 actions against the E.C. sugar regime, the term "equitable share" could not be defined: this *general* principle, set down in the GATT,

was so vague even the GATT-established Panels could not given it meaning when seeking rulings on individual countries' *specific* trade rules.

The URA addressed these problems directly and simply. To avoid disputes over the meaning of 'primary product', Annex I of the AoA specifies exactly which commodities are covered by the Agreement. Meanwhile the notion of equitable shares was excised entirely. This could not have been achieved, however, without complementary changes. This came with agreement to impose ceilings on both the volumes of subsidized agricultural exports permitted and the expenditures incurred on those exports. By specifying these limits in absolute terms reference to market *shares*, equitable or otherwise, could be removed: developments in type A institutions allowed for the removal of this most problematic of type B institutions. Thus when Australia, Brazil and Thailand brought a subsequent joint action against essentially an unchanged E.C. sugar regime (WTO 2004; WTO 2005), the judgment was facilitated by having an unequivocal benchmark.

The other term that arose in, for example, the 1978 sugar cases discussed earlier was "serious prejudice". Even the Australians, having won on this point, recognized that it remained problematic as it also was ambiguous.[8] This cautious response was well-merited, given the subsequent failure to get agreement from the E.C. on how to remove the threat of prejudice, as discussed above. Indeed, the extent of the cut in subsidized exports needed to remove this threat remained undefined. Whilst the term "serious prejudice" is in neither the AoA nor Dispute Settlement Understanding (DSU), it is in the Subsidies and Countervailing Measures (SCM) Agreement, again illustrating the importance of the Single Undertaking in how disputes may be

actioned. Furthermore, Article 6.3 of the SCM Agreement sets out four criteria that, individually or together, can give rise to serious prejudice.

As the Upland Cotton case, discussed further below, illustrates, this has aided disputes brought under this Article. The Panel and AB reports made clear distinctions between those policy elements deemed to have caused Brazil serious prejudice; and those where Brazil failed to show any causal link between the measures targeted and the price suppression claimed. "Nullification and impairment", as seen in the oilseeds case, has also had its definition clarified: if a country breaches its (clearly quantified) export commitments, this constitutes a "*prima facie*…case of nullification or impairment" (DSU, Article 3.8, emphasis in original).

Overall, these changes represent a shift, at the GATT level, from general principles to more narrow, specific rules. Furthermore, some of the most important changes represent a shift from the qualitative/descriptive to quantitative limits on trade-distorting actions. This conforms to a key objective for some negotiators. It was known going into the Uruguay Round that the rules on agriculture needed addressing, with Article XVI seen as particularly important. That said rather than have as the primary goal changes to individual rules, the goal was "talks about an entirely new regime for agriculture".[9] This would include removing trade distorting domestic policies and export subsidies, eliminating non-tariff barriers and reducing tariffs. The outcome was a compromise, but it reflected these goals and represented a step towards their achievement. The changes to rules "fell out of that" agenda (ibid).

The role of the major economies in rule changes is also interesting. Barton et al (2006, 205) note that "[f]rom the creation of the GATT through to its rebirth as the WTO, the choice of international rules….reflected the interests of the larger economies" – yet two of the most significant actions against agricultural policies since 1994 have against E.C. sugar and U.S. upland cotton. Barton et al also note (page 2) that whilst the earlier informality in dispute settlement was helped by the small GATT membership, changes to the "interests of powerful domestic constituencies" have made "cooperative solutions" harder. Yet despite this, the major agricultural disputes have featured Australia, Brazil, the U.S. and/or the E.C. – of which the UK and France, with these other three countries, were among the 23 GATT founder members.

It is also worth noting the parallel between the creation of a "new regime for agriculture" and broader changes in economic policies. Liesbet Hooghe and Gary Marks (1997) identify the shift from Keynesianism to Neoliberalism as a shift from national policies to a situation where national barriers to trade are constrained. The Uruguay Round occurred at a time when the major E.C. economies, the U.S. and Australia were all making this shift domestically. Thus the changes made to the institutions of agricultural trade also reflect this wider change in policy emphasis. The historical context of the Uruguay Round therefore also represents the opening of a 'window of opportunity' (Kingdon 2003), when the conditions for the institutional changes seen in agricultural trade came together.

Dispute Settlement

It is clear from the foregoing that changes made to dispute settlement are linked inextricably to changes made elsewhere in the URA. Three of the major barriers to

successful challenge of agricultural policies under the pre-Uruguay Round mechanisms were the U.S. waiver, the ambiguous legal status of variable import levies and the ambiguous meaning of equitable shares of world trade – all of which were removed. Thus rule-changes, of themselves, improved the functioning of the dispute settlement process; but changes to the process itself have also made the new DSP better-suited to its task: changes to broader type B institutions, narrowed and specified in quantitative terms, will facilitate the making of clear judgments against specific domestic trade policies.

A single Dispute Settlement Body (DSB) now undertakes cases, given the interconnectedness of the components that make up the URA. Reference can thus be made to Articles across agreements in cases.[10] Its creation also addressed the fragmentation between the previous GATT and Tokyo Round Codes, which "had separate dispute settlement rules and procedures with different bodies having authority over those mechanisms" (Steger and Hainsworth 1998, 30; see also Lipson 1983, 252). As well as the DSB there is an Appellate Body (AB), seen by Steger and Hainsworth (1998, 33) as one of the most significant developments in the URA.[11] As well as its role in adjudicating on individual cases, it also has a vital role "encouraging the development of WTO jurisprudence and practice in the future" (Steger and Hainsworth 1998, 30). In the sugar panel ruling, for example, the AB findings were conditioned significantly by their earlier rulings on the Canada-Dairy case.[12]

The creation of the AB was part of a broader and, perhaps equally profound, change. Under the GATT, reports had to be accepted unanimously – defendants could veto reports that found against them. Under the DSU, however, reports are accepted

automatically unless rejected unanimously. Having lost the right of veto, the quid pro quo for countries was the establishment of the AB "to review issues of law and legal interpretation in panel reports" (Steger and Hainsworth 1998, 31). The rules on enforcement are also stricter than before. Should a defendant fail to respond adequately to a ruling within a "reasonable" period of time, the parties can negotiate compensation instead. If agreement is not reached on compensation, the DSB authorizes the complainant to take retaliatory action. It is initially the defendant in a case who proposes what "reasonable" might mean, but if the complainant disagrees the issue can go to an independent arbitrator.

The DSP is now subject to a clear timetable, with a more mechanistic movement from one stage to the next. This reflects the move away from pragmatism seen since the 1970s (see, inter alia, Ostry 2000, 101; Barton et al 2006, 23). Whilst intended to speed up the process of dispute settlement, however, this has not been everyone's experience. One senior Australian government official noted that whilst the AB works "pretty well", the new process was more draining and, from their experience, took longer.[13] Note also that, these changes notwithstanding, decisions still are not legally enforceable in the manner of domestic law: compliance still requires cooperation from the defendant – especially with the largest and richest countries, against whom retaliatory actions would have the least impact. As the cotton case shows, however, the legal process may be more formal but WTO members now have multiple negotiating fora to resolve disputes: commitment to the WTO process does not necessarily require direct unilateral compliance with negative Panel and AB rulings.

The Untangling of Cotton

Brazil, in September 2002, requested consultations with the U.S. over support arrangements for upland cotton. It is beyond the scope of the present paper to explore in detail the legal issues at stake.[14] However, the cotton case offers a powerful example of the way in which an integrated WTO structure can affect the execution of disputes. It is on this aspect of the case that this section focuses.[15]

Brazil had some, but not all, complaints upheld by the DSB and AB. U.S. reaction to compliance was twofold. There were some concerns that could be addressed directly and straightforwardly by domestic policy changes. So-called "Step 2" payments were made to both domestic cotton users and exporters to compensate for purchasing higher-priced U.S. cotton. As a transfer to domestic recipients, the U.S. declared the payments to the WTO as part of the Amber Box of coupled domestic support. The ruling, however, noted two trade-related concerns: the payments to exporters were effectively export subsidies; and the payments to domestic users illegally promoted domestic cotton over imports. The Step 2 payments were eliminated by domestic program reform in August 2006 (Schnepf, 2008: 18), in accordance with Article 7.8 of the SCM.

The other concerns, however, had implications for U.S. policy that went well beyond cotton – in particular the export credit guarantee programs of the Commodity Credit Corporation. As a result, "U.S. officials have said that they prefer to resolve the cotton case through trade negotiations in the WTO Doha Round rather than a separate settlement" (Schnepf, 2008: 17). If this program was unpicked for cotton, it would

open up a "Pandora's Box" of concerns[16]. Rather than simply refuse to address the matter, therefore, the U.S. sought the alternative context for compliance talks.

Initially Brazil was willing to accept this approach – even if it would take longer – given the possibility of a successful conclusion to the Doha talks and the negotiation, through 2007, of a new Farm Bill in the U.S.. However, in July 2006, the Doha Round talks were suspended indefinitely. Shortly thereafter, "on August 21, 2006, Brazil submitted a request for a WTO compliance panel to review whether the United States had fully complied with panel and AB rulings" (Schnepf 2008, 19). In other words, Brazil accepted partial 'direct' compliance and partial compliance to be negotiated in the multilateral talks arena, the type A institution. Once the latter option was lost, Brazil returned to the dispute settlement arena. The WTO compliance panel report was issued, confidentially, to the U.S. and Brazilian governments in October 2007 and made public in December 2007. It concluded that the U.S. was in breach of its obligations under the WTO – unsurprisingly, given its decision not to act on some of the Panel and AB findings up to mid-2006. At the time of writing, the future actions of the U.S. regarding the cotton case remain uncertain (Schnepf 2008).

In July 2007 Tom Harkin, Chair of the Senate Agriculture Committee recognized that:

> "it would be far preferable [sic] to settle these disputes through careful negotiation instead of WTO litigation. While, of course, the United States needs to defend our programs in the WTO, we must also recognize reality, solve the problems in our programs and move on. It is far more important to prepare for the future so American agriculture

can succeed in this new century than to continue fighting losing cases before the WTO" (Polk County Democrats 2007).

The example of cotton shows how entwined the rules, dispute settlement and negotiating Round arenas have become. Disputes may be a way of raising concerns over specific policies and rule-violations, but a fully integrated WTO system offers more than one way to resolve disputes. Liberalization agreed through the type A institution of the Doha Round may head off further recourse to the DSP – so long as member states' specific trade rules are brought into conformity with the resulting framework of type B institutions.

Conclusion

Agriculture has been a part of the GATT from the outset. It was, however, subject to trading rules that differed in key respects from those applying to trade in industrial goods. Such a pattern of rule differentiation reflected the domestic policies and trade preferences of the U.S.A – preferences that also kept agriculture out of the early multilateral negotiating Rounds. The rules that applied to agriculture imposed limits on the use of trade distorting policy instruments, thus agriculture was still subject to challenges under the GATT dispute settlement procedures. The broad principles governing agricultural trade were fairly loosely specified, but in the early years dispute settlement was managed by "old GATT hands" who had helped create the trading system. Their approach was to seek compromise in the reconciliation of specific national trade rules and broad GATT principles – an approach that, at that time, was accepted by most parties.

By the 1970s, however, the institutional context of international agricultural trade management had undergone fundamental change. Greater export competition and economic spillovers between exporters led to growing trade tensions. No longer was conciliation an acceptable approach to dispute settlement: the vagueness in the general trading principles of the GATT that, in the early years had provided flexibility, now rendered them increasingly unenforceable in the face of more sophisticated national policy rules. Shortcomings in trade rules and dispute settlement were magnified because agriculture was largely excluded from comprehensive multilateral trade negotiations, which denied countries an alternative forum in which to address trade issues. Changes made in the Tokyo Round to specific international trade rules failed to improve the functioning of the dispute settlement system, because the (ill-defined) broad principles remained unaltered.

The significance of the Uruguay Round to the management of agricultural trade is thus a matter of nuance and evolution. First, it is not a singular event but must be seen as a turning point for institutions that had been under growing pressure for many years. It transformed both the broad principles of agricultural trade and defined more clearly specific international trade rules. Combined with this, important changes were made to the system of dispute settlement. Together, the means of addressing specific national agricultural trade policies whose operation was incompatible with the (now) WTO structures was clarified and enhanced greatly. Moreover, bringing agriculture within the ‘Single Undertaking’ of the Uruguay Round Agreement meant that, as well as being able to address trade concerns through dispute settlement channels, countries

could also address both broad and specific trade rules within multilateral liberalization talks that now embraced agriculture.

It is argued in this paper that every key change negotiated in and embodied by the Uruguay Round had antecedents in the functioning of the previous institutions for the governance of international agricultural trade. Changes were needed both to the broad principles and the detailed rules of the WTO in order to address more effectively incompatibilities between these and specific national policies. Despite claims to the contrary, it is argued here that the post-1986 system represents an increasing formalization of the trade governance process, but it does not represent its legalization. This is because the system not only required political agreement and compromise in its design, in the Uruguay Round as much as in the 1940s; it continues to rely on flexibility of interpretation and of implementation by member states in order to function – as case studies illustrate. Thus whilst the Uruguay Round is a key event in the story of agriculture's place in the GATT/WTO, it represents neither its beginning nor its end.

ENDNOTES

[1] The present paper uses E.C. throughout rather than E.U., reflecting GATT and WTO convention.

[2] Interview with a senior Australian government official, Canberra, 30 October 2007.

[3] Davis (2003, 273) discusses how the Panel in the wheat flour case also stumbled over this.

[4] Australian Financial Review, 8 February 1980. See also GATT 1983, 36; McMahon 1998, 132.

[5] Interview with former senior GATT official, Brisbane, 21 November 2007.

[6] Alan Swinbank (2004) argues that, for E.C. sugar at least, claims of dirty tariffication are exaggerated, although a recent interview with a senior UK sugar industry official (London, 22 February 2008), raised doubts about this conclusion.

[7] Interviews with former senior Australian government official, Canberra, 30/31 October 2007.

[8] Interview with senior Australian government official, Canberra, 30 October 2007.

[9] Interview with retired senior Australian government official, Canberra, 30 October 2007.

[10] For example, in the case brought by Australia, Brazil and Thailand against the E.C. sugar policy, the complaint about export subsidies referred to relevant articles in both the AoA and the SCM Agreement.

[11] This view was expressed also by European Commission officials. Interview, 19 February 2008.

[12] Interview with European Commission officials, 19 February 2008.

[13] Interview in Canberra, 30 October 2007.

[14] Documentation for the case (DS267) can be found on the WTO website: www.wto.org. See also Schnepf 2008.

[15] This discussion draws, in particular, on Schnepf, 2008; and on an interview with senior U.S. diplomats and policy officials in Canberra, 14 November, 2007.

[16] Interview in Canberra, 14 November 2007.

References

Ackrill, Robert. 2000. *The Common Agricultural Policy*. Sheffield: Sheffield Academic Press.

Ackrill, Robert. 2005. "Common Agricultural Policy." In *Handbook of Public Administration and Policy in the European Union*, ed. Peter van der Hoek. Boca Raton: CRC Press, 435-487.

Avery, William P. 1993. "Agriculture and Free Trade." In *World Agriculture and the GATT*, ed. William P. Avery. Boulder: Lynne Rienner, 1-16.

Baldwin, Robert E. 2000. “Pragmatism Versus Principle in GATT Decision-Making: A Brief Historical Perspective.” In *From GATT to the WTO: The Multilateral Trading System in the New Millennium*, ed. WTO Secretariat. The Hague: Kluwer Law International, 35-44.

Barton, John H., Judith L. Goldstein, Timothy E. Josling, and Richard H. Steinberg. 2006. *The Evolution of the Trade Regime: politics law and economics of the GATT and the WTO*. Princeton: Princeton University Press.

Chaytor, Beatrice. 1998. “Dispute Settlement Under the GATT/WTO: the experience of developing nations.” In *Dispute Resolution in the World Trade Organisation*, ed. James Cameron and Karen Campbell. London: Cameron May, 250-269.

Cohn, Theodore H. 1993. “The Changing Role of the United States in the Global Agricultural Trade Regime.” In *World Agriculture and the GATT*, ed. William P. Avery. Boulder: Lynne Rienner, 17-38.

Davis, Christina L. 2003. *Food Fights Over Free Trade: How International Institutions Promote Agricultural Trade Liberalization*. Princeton: Princeton University Press.

Delcros, Fabian. 2002. “The Legal Status of Agriculture in the World Trade Organization: State of Play at the Start of the Negotiations.” *Journal of World Trade* 36: 219-253.

GATT. 1955a. “*Remarks of the Chairman of the Contracting Parties Ambassador L. Dana Wilgress (Canada), Delivered at the Conclusion of the Ninth Session of the Contracting Parties to the General Agreement on Tariffs and Trade*.” L/348, 8 March.

GATT. 1955b. “*Waiver Granted to the United States in Connexion With Import Restrictions Imposed Under Section 22 of the United States Agricultural*

Adjustment Act." Working Party 9 on U.S. Waiver (AAA): Draft Report of the Working Party. W.10/29, 26 November.

GATT. 1979. "*European Communities – Refunds on Exports of Sugar: Complaint by Australia. Report of the Panel*." L/4833, 25 October 1979.

GATT. 1980. "*European Communities – Refunds on Exports of Sugar: Complaint by Brazil. Report of the Panel*." L/5011, 7 October 1980.

GATT. 1982. "*Contribution to Ministerial Meeting: Communication from Australia*." SCM/24, 1 June 1982.

GATT. 1983. "*Analysis of the Drafting History of Article XVI and of the Work of Past Panels and Working Parties as Regards Subsidies on Agricultural Products: Note by the Secretariat*." AG/W/4, 12 September 1983.

Grant, Wyn. 2005. "Agricultural Trade." In *The Politics of International Trade in the Twenty-First Century*, ed. Dominic Kelly and Wyn Grant. London: Palgrave, 92-107.

Hooghe, Liesbet, and Gary Marks. 1997. "The Making of a Polity: The struggle over European integration." *European Integration online Papers* 1: 1-26.

Ingersent, Kenneth A., Anthony J. Rayner. 1999. *Agricultural Policy in Western Europe and the United States*. Cheltenham: Edward Elgar.

Jackson, John H. 1997. *The World Trading System: Law and Policy of International Economic Relations*. Second edition Cambridge MA: The MIT Press.

Josling, Timothy, and Stefan Tangermann. 2003. "Production and Export Subsidies in Agriculture: Lessons from GATT and WTO Disputes Involving the U.S. and the E.C.." In *Transatlantic Economic Disputes: The EU, the U.S., and the WTO*, ed. Ernst-Ulrich Petersmann and Mark A. Pollack. Oxford: Oxford University Press, 207-232.

Josling, Timothy, Stefan Tangermann, and Thorald K. Warley. 1996. *Agriculture in the GATT*. Basingstoke: Macmillan.

Kingdon, John W. 2003. *Agendas, Alternatives, and Public Policies*. Second edition New York: Pearson Education.

Lipson, Charles. 1983. "The Transformation of Trade: The Sources and Effects of Regime Change." In *International Regimes*, ed. Stephen D Krasner. Ithaca: Cornell University Press, 233-271.

McMahon, Joseph A. 1998. "Going Bananas? – Dispute Resolution in Agriculture." In *Dispute Resolution in the World Trade Organisation*, ed. James Cameron and Karen Campbell. London: Cameron May, 128-147.

Ostry, Sylvia. 2000. "Looking Back to Look Forward: The multilateral trading system after 50 years." In *From GATT to the WTO: The Multilateral Trading System in the New Millennium*, ed. WTO Secretariat. The Hague: Kluwer Law International, 97-112.

Podbury, Troy, and Ivan Roberts. 2003. "Opening Agricultural Markets Through Tariff Cuts in the WTO." *Australian Bureau of Agricultural and Resource Economics eReport* 03.2/*Rural Industries Research and Development Corporation Publication* 03/011. Available online at http://www.rirdc.gov.au/reports/GLC/03-011.pdf.

Polk County Democrats. 2007. *Harkin Disappointed with WTO Decision on Compliance in Brazil Cotton Case*. Press Release, Friday, July 27, 2007. Available online at http://www.polkcountydemocrats.org/ht/display/ReleaseDetails/i/1045663/pid/318480.

Rogers, Christopher P., and Michael N. Cardwell. 2003. "The WTO, International Trade and Agricultural Policy Reform." In *Agriculture and International Trade: Law, Policy and the WTO*, ed. Michael Cardwell, Margaret R. Grossman, and Christopher P. Rodgers. Wallingford: CABI Publishing, 1-25.

Schnepf, Randy. 2008. "Brazil's WTO Case Against the U.S. Cotton Program." *Congressional Research Service Report for Congress*, order code RL32571, updated January 25, 2008. Available online at: http://www.nationalaglawcenter.org/assets/crs/RL32571.pdf.

Schott, Jeffrey J. 1994. *The Uruguay Round: an assessment*. Washington DC: Institute for International Economics.

Steger, Debra P., and Susan M. Hainsworth. 1998. "New Directions in International Trade Law: WTO Dispute Settlement." In *Dispute Resolution in the World Trade Organisation*, ed. James Cameron and Karen Campbell. London: Cameron May, 28-58.

Swinbank, Alan. 2004. "Dirty Tariffication Revisited; The EU and Sugar." *The Estey Centre Journal of International Law and Trade Policy* 5: 56-69.

Welch, Catherine, and Ian Wilkinson. 2005. "Network Perspectives on Interfirm Conflict: Reassessing a Critical Case in International Business." *Journal of Business Research* 58: 205-213.

Wiener, Jarrod. 1995. *Making Rules in the Uruguay Round of the GATT: A study of international leadership*. Aldershot: Dartmouth.

Wolfe, Robert. 1998. *Farm Wars: the political economy of agriculture and the international trade regime*. Basingstoke: Macmillan.

WTO. 2004. "*European Communities – Export Subsidies on Sugar. Complaint by Australia: Report of the Panel*." WT/DS265/R, 15 October 2004.

WTO. 2005. "*European Communities – Export Subsidies on Sugar. AB-2005-2: Report of the Appellate Body*." WT/DS265/AB/R, 28 April 2005.