

2. LEGAL ASPECTS OF TRADE IN AGRICULTURE: WTO AGREEMENT ON AGRICULTURE AND PREFERENTIAL TRADE AGREEMENTS

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2.1 THE INTERNATIONAL TRADING SYSTEM AND AGRICULTURE

Agricultural trade is an important component of many countries' overall economic activity and plays a major role in domestic agriculture production, rural development, and employment as well as consumption and food security. With increasing global specialization in the production of food, goods, and services, growing environmental challenges, and many opportunities for agricultural trade for developing countries, the international trading system is fundamentally important. Agricultural trade is covered by World Trade Organization (WTO) law, in particular by the Agreement on Agriculture (AoA). Through commitments on market access and subsidies, this agreement has helped to reduce trade distortions in the agricultural sector. However, agriculture is still one of the most distorted sectors, and several loopholes in the rules exist. In addition, many developing countries see an imbalance in the commitments, providing unequal advantages to some developed countries that had major distortions during the base period used for the agreement. The fact that, in the Doha round negotiations, agriculture was, for most of the negotiation period, the main sticking point illustrates the importance and sensitivity of the multilateral agricultural trade rules and the difficulty of reforming them. Employment opportunities and challenges are not explicit elements of the negotiations, but they play an important role in determining countries' interest in such trade negotiations.

While multilateral trade negotiations are stalled, regional trade agreements continue to be concluded. One possible explanation is that countries can choose their trading partners, and so liberalization is more targeted (Jansen and Salazar-Xirinachs, 2012). Countries that have very different interests in agriculture would probably not conclude a preferential trade agreement. If agriculture plays a minor role in trade for all parties – for instance, because they have no particular export interest in that sector – they can form a preferential trade agreement that specifically excludes from liberalization agricultural products that are sensitive.

This chapter provides an overview of the international agricultural trading system. In the first section the structure and the main rules of the WTO Agreement on Agriculture are introduced. The current level of agricultural trade distortions in each

Box 2.1: Selected key GATT Articles

- I Most-Favoured Nation** (best treatment accorded to one trading partner is given to all)
- II Schedule of Concessions** (e.g. bound rates, i.e. maximum allowed tariff)
- III National Treatment** (treat foreign and local producers equally once goods have cleared customs)
- XI Elimination of Quantitative Restrictions** (but export restrictions allowed for food security)
- XIX Safeguard** (e.g. emergency action on imports if quantity is increased and causes or threatens to cause serious injury)
- XX General Exceptions** (e.g. right to protect human, animal, or plant life or health)
- XIV Free-trade Agreements** (e.g. regional trade agreements permissible only under certain conditions)

area is described. Progress on the agriculture negotiations discussed in the Doha Round negotiations are summarized in section 2.2. Section 2.3 provides an overview of rules for agricultural trade in preferential trade agreements. Conclusions appear in section 2.4.

2.1.1 The Agreement on Agriculture

Agricultural trade has always been covered by the General Agreement on Trade and Tariffs (GATT), signed in 1946 (WTO, 2000). Nonetheless, before the AoA came into force in 1995 as a result of the Uruguay Round (UR), many important differences between trade in agriculture and trade in industrial goods existed. Some differences persist to this day.

The AoA covers basic agricultural products such as rice, fruits, and live animals and processed products such as bread, chocolate, and sausages. Coverage also includes beverages, tobacco products, and fibres such as cotton, wool, and silk. Neither fish and fish products nor forestry products such as timber and rubber are covered, however.

The long-term objective of the AoA, as stated in the preamble, is “to establish a fair and market-oriented agricultural trading system”. The preamble also refers to food security and protection of the environment but not to employment in agriculture. As part of the WTO agreements, the AoA should, nonetheless, aim to further the objective of ensuring full employment, as stated in the preamble of the Marrakesh Agreement establishing the WTO. WTO member governments are committed to internationally recognized “core” labour standards – freedom of association, no forced labour, no child labour, and no discrimination at work. At the 1996 Singapore Ministerial Conference, members clarified the WTO’s role on labour standards, identifying the International Labour Organization (ILO) as the competent body to negotiate labour standards. There is no work on this subject in the WTO’s Councils and Committees.

All WTO agreements and understandings on trade in goods apply to agriculture, but, whenever there is a conflict, the provisions of the AoA prevail (WTO, 2000).

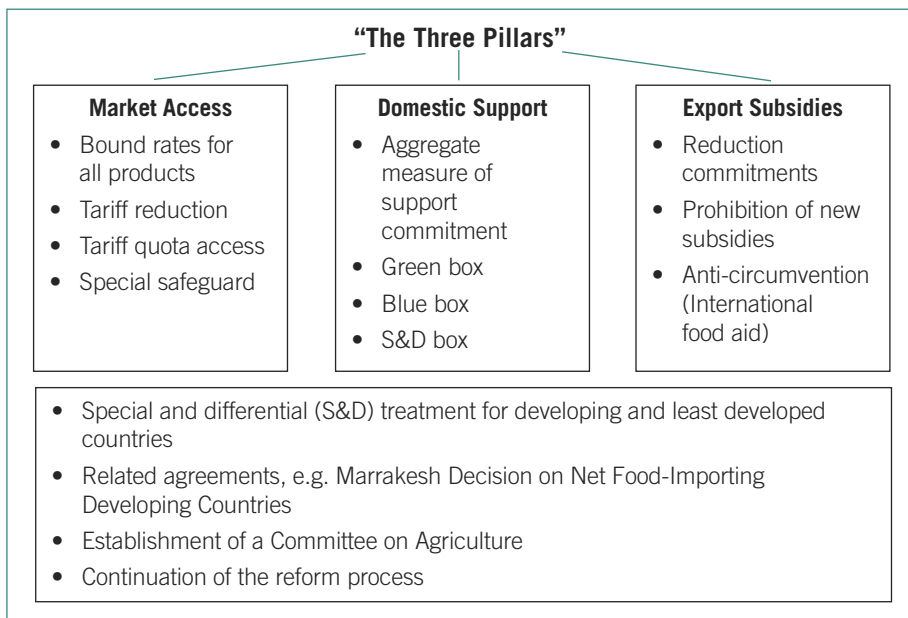
Box 2.1 mentions some important principles relevant for agriculture. Two major GATT/WTO principles are:

- The most-favoured nation (MFN) clause, which specifies that countries cannot (normally) discriminate between their trading partners. This means that, for example, import tariffs on any product are the same for all foreign suppliers.¹
- The National Treatment principle grants that, once a good has cleared customs, the same rights are accorded to foreign suppliers as to nationals. That is, there is no discrimination between domestic and foreign suppliers after customs.

Other WTO agreements that are particularly relevant for agriculture include, for instance, the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, the Agreement on Technical Barriers to Trade (TBT), the Agreement on Subsidies and Countervailing Measures, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The multilateral system allows several trade defence instruments, such as antidumping, countervailing duties, and safeguards provisions, in exceptional circumstances.

The AoA provides provisions for the so-called “three pillars of agriculture”: market access, domestic support, and export competition. As concerns market access, the agreement mainly specifies allowed trade barriers (normally, tariffs under a certain

Figure 2.1: Outline of the Agreement on Agriculture



¹ Exceptions to this general principle include preferential tariffs for least developed and developing countries (non-reciprocal preferential access) and members of regional trade agreements (reciprocal preferential access).

ceiling level), minimum access to agricultural markets, and a special safeguard provision that can protect markets from import surges or price declines. On the subject of domestic support, support measures are categorized according to how much they distort trade. Restricting certain domestic policies that distort trade and production of agricultural goods is an important component of the AoA and other WTO agreements. As for export subsidies, the Agreement also specifies the disciplines and the commitments to reduction.

In addition to the three pillars, the AoA defines special and differential treatment for least developed and developing countries, relations to other agreements, such as the Marrakesh Decision on Net Food-Importing Developing Countries,² and provisions on export prohibitions and restrictions. A Committee on Agriculture was established, and ministers agreed to continue the reform process.

2.1.2 Market access

“Market access” means the terms and conditions under which agricultural products could be imported into WTO member countries. The UR resulted in a systemic change away from various non-tariff border measures, including quotas and import restrictions, and towards a tariff-only system. For each product a maximum, or ceiling level, the bound rate, is determined in each country’s schedule of tariff concessions, which is an integral part of the GATT. Bound rates were determined either by calculating tariff equivalents to former protection measures (tariffication) or by setting ceiling levels. Many developing countries opted for the latter. Currently, bound rates vary from product to product and from country to country.

There remains a considerable degree of protection in market access for agricultural products despite tariff reductions agreed at the Uruguay Round. Table 2.1 shows simple averages of bound and MFN-applied tariffs in developed and developing countries for agricultural and non-agricultural products. Developed countries have an average bound tariff rate of 38 per cent. The average applied tariff rate, at 34 per cent, is close to the bound rate. Developing countries have higher bound and lower applied rates, at 61 per cent and 25 per cent, respectively. Tariffs on non-agricultural goods are, on average, considerably lower. Furthermore, in addition to relatively high tariffs in agriculture, tariff peaks and tariff escalation (i.e. higher tariffs on processed products than on raw materials) also distort trade.

Tariff-rate quotas (TRQs) were part of the tariffication package. They provide for a minimum or “current” import access, generally at low in-quota tariffs. Imports above the quota face higher tariffs. Where import access during the UR base period was insignificant, minimum access opportunities equivalent to 5 per cent of domestic consumption during the UR base period (1986–88) had to be provided. Similarly,

² The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries recognizes that these countries may experience negative effects in terms of food availability from external sources on reasonable terms and conditions during the reform programme.

Table 2.1: Average bound and applied rates

		Bound	Applied
Agriculture	Developed countries	38	34
	Developing countries	61	25
Non-agriculture	Developed countries	4	3
	Developing countries	20	13

Source: UNCTAD Trains and WTO Consolidated Tariff Schedules.

current access opportunities already exceeding that threshold level during the base period were to be maintained in line with UR scheduling modalities. For instance, the European Union (EU) has a tariff on chilled boneless beef (HS 02013000) of €242 per tonne for the first 13,000 tonnes of imports and a tariff of 12.8 per cent of the import value plus €3,034 per tonne for imports above the quota. While TRQs were supposed to respond to agricultural exporters' concerns over lack of access to markets for certain products, another provision, the Special Agricultural Safeguard (SSG), is intended to respond to importers' concerns. The SSG allows countries that reserved their right to use this provision under certain conditions to impose an additional duty on imports in the case of an import surge or a price fall beyond a predetermined level.

Market access must be distinguished from market entry. While market access conditions are determined by the legal and administrative conditions imposed by the importing countries under internationally agreed trade rules, the ability to enter a market is a function of the competitiveness of the exporter and other market entry conditions, such as technical or health standards, set by governments and distribution networks. Rules for some of those non-tariff measures (NTMs) are discussed below. NTMs are becoming more and more important, and they constitute real challenges for developing and especially least developed countries.

2.1.3 Domestic support

The objective of the Uruguay Round regarding subsidies for the production of agricultural goods was to discipline and reduce trade-distorting domestic support while leaving scope for governments to design their own support mechanisms in light of a wide variety of specific circumstances in individual countries and sectors. The approach agreed is to classify domestic support according to its effects on trade and production. Trade- and production-distorting measures are often referred to as “amber box support”. Measures that have “no, or at most minimal, trade-distorting effects or effects on production” are referred to as “green box support” (see box 2.2).³

³ A less important category of measures is so-called blue box support, where payments are direct payments under production-limiting programmes made on fixed areas and yield or a fixed number of livestock. These are not discussed here. Only a few countries have made use of this category, and the amount spent under such programmes is decreasing. In the Doha Round, however, blue box support became an important issue when it was proposed to widen the scope of the box.

Box 2.2: WTO terminology on domestic support policies

Red box: Forbidden policies

Amber box: Policies subject to careful review, reduction commitments, and ceilings (e.g. market price support, input subsidies)

Blue box: Payments in conjunction with production-limiting programmes

Green box: Policies considered acceptable and not subject to limitations (e.g. research, domestic food aid)

Amber box

The trade-distorting domestic support measures in the amber box include market price support measures or payments that are directly linked to production, such as payments based on output or inputs. An administered price, where domestic production must be acquired at a certain price that is above the market price, is a typical example of an amber box support. The AoA establishes a method to quantify this trade-distorting domestic support that is provided to domestic producers per year, the Current Total Aggregate Measurement of Support (AMS). WTO members must annually notify their amber box support, which must be below a determined Bound Total AMS level. The country-specific AMS commitment is the result of such support provided during the base period of the UR minus the agreed reduction commitment. Most developing countries have a nil commitment, either because they had not provided any support during that period or because the amount of such support remained well within the *de minimis* levels.

The total allowed AMS of all WTO members is about US\$190 billion, of which 92 per cent is held by developed countries. However, actual spending is much lower. For example, in 2008 the utilization rate of AMS support by the two biggest subsidizers was 34 per cent in the United States and 17.1 per cent in the EU. One reason that total subsidies are below the allowed maximum is that current commodity prices are high and many support programmes are counter-cyclical, i.e. payments are high if world market prices are low and vice versa. Another reason is that many countries have reformed their support programmes and, for example, decoupled the payments from current production levels so that they now fall into the green box (see below).

De minimis

Trade-distorting support that amounts to a relatively small share of the value of production is exempt from reduction commitments. This *de minimis* support shall not exceed 5 per cent (10 per cent in developing countries) of the product-specific value of production. In addition, non-product specific support that is less than 5 per cent (10 per cent in developing countries) of total agricultural production also is exempt. Members may exclude the *de minimis* support from the Current Total AMS figure.

Green box

Domestic support measures that have «no, or at most minimal, trade-distorting effects or effects on production» (AoA, annex 2) fall into the green box and are exempt

from any monetary limits. The AoA sets forth the criteria and conditions for such measures. The basic criteria are that the support has to come from publicly funded government programmes, have no effect of providing price support to producers, and cannot imply transfers from consumers. Measures include, for example, infrastructure-building, pest and disease control, research and training, income insurance, and domestic food aid. Additional conditions specifically apply in certain domestic support categories. The green box also provides for the use of direct payments to producers, in the form of so-called decoupled support, that are not linked to production decisions.

Indirectly, government efforts to maintain agricultural employment are enabled through instruments of the green box. “Decoupled income support”, “income insurance and income safety-net programmes”, and “structural adjustment through investment aids» are such instruments, permitted under WTO law.

There is debate whether the green box support measures are, in fact, non- or only minimally distorting. For example, if direct payments are based on historical yields and not on current production levels, it can be argued, on one hand, that they might not influence the production decisions of farmers. On the other hand, if the base periods are updated from time to time and if farmers anticipate this, decoupled payments may influence their production decisions.

Green box payments are high in many developed countries. In 2008 the European Union notified to the WTO spending of €62.6 billion, and the United States provided in the same year US\$86.2 billion, most of it in domestic food aid. This compares with €12.4 billion and \$6.3 billion actual spending under the limited AMS support. Other main users of the green box are Japan, Republic of Korea, Switzerland, and Norway.

Development issues

Under the AoA developing countries have benefited from some special and differential (S&D) treatment in the domestic support pillar. Their reduction commitment for AMS support was lower, their de minimis level is higher, and a few provisions in the green box contain more flexibility for developing countries. Furthermore, certain programmes that encourage agricultural and rural development are exempt from limitations. These include investment subsidies that are generally available to agriculture; agricultural input subsidies generally available to low-income and resource-poor producers in developing countries; and measures to encourage diversification from growing illicit narcotic crops. With its reference to rural development, the AoA refers indirectly to employment in agriculture in developing countries.

Despite these S&D provisions, it is often argued that, inter alia, because of the AoA provisions on domestic support, the agreement is tilted against developing countries and that reform is needed. Arguments put forward include the imbalance of AMS allowances, of which 92 per cent are held by developed countries, the green box provisions that were tailored for developed-country needs, and, generally, the large amount of subsidies provided to farmers in developed countries, which has an adverse effect on producers in the South.

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The Organisation for Economic Cooperation and Development (OECD) measures annually the total support to agriculture in OECD countries (OECD, 2012). The methodology differs from the WTO method for calculating support to agriculture. The OECD definition of the total support estimate is broader; for example, it includes transfer from consumers (e.g. through higher product prices due to import tariffs). In 2010 OECD countries provided US\$366 billion in support to the agricultural sector for a total value of production at the farm gate of US\$1,115 billion. Thus, the total support is about one-third of the total value of production – high despite the reduction commitments of the UR.

In contrast to its definition of total support, the OECD producer support estimate *excludes* transfers from consumers to producers. On average, OECD countries provide producer support amounting to 18.3 per cent of the value of production, with a variance from 0.5 per cent in New Zealand to 61 per cent in Norway. Support also varies significantly over time. Support is usually higher when world market prices are low. In the US, for example, the producer support estimate, as a share of the value of production, decreased from 23.3 per cent in 2000 to the current level of 7.0 per cent. In general, developing countries provide a lower level of support for agriculture, although according to OECD estimates a few countries, especially where the inequality between urban and rural areas is increasing, provide significant and increasing support to producers.

Anderson and a group of researchers (Anderson, 2009) estimate the Nominal Rate of Assistance (NRA) for farm products over a long time period (see table 2.3). The NRA is the percentage by which government policies have raised or lowered gross returns to farmers from what they would have been without the interventions. The concept is broader than that of the OECD and includes policies, such as taxes on inputs, that can lead to effectively negative support. Product-specific input subsidies are included in the NRA.

Anderson (2009) finds that support was high in Europe, the US, and Japan and then declined during the 2000s. In Africa farm producers were effectively taxed for production. High import tariffs on inputs such as tractors and fertilizers are examples

Table 2.2: Support to agriculture in 2010, OECD estimates

	Total support estimate (TSE)	Producer support estimate (PSE)
	US\$ billion	% of value of production
OECD	366.5	18.3
EU	87.8	19.8
US	133.5	7.0
Japan	59.6	50.0
Brazil	10.1	4.5
China	177.2	17.4
South Africa	0.8	2.2

Source: OECD (2012)

Table 2.3: Nominal Rate of Assistance for farm producers, 1990–2007

Region	1990–94 %	1995–99 %	2000–04 %	2005–07 %
Africa	–9	–6	–7	N/A
Asia	–2	8	12	N/A
Latin America	4	6	5	N/A
Western Europe	64	44	37	18
US and Canada	16	11	17	11
Japan	116	120	120	81

Note: The Nominal Rate of Assistance is the percentage by which government policies have raised or lowered gross returns to farmers from what they would have been without the interventions.

Source: Anderson (2009), table 1.4.

of contributors to such effectively negative assistance. In Asia assistance is positive and rising but still relatively small compared with that of the developed regions.

2.1.4 Export competition

The third of the three pillars of agriculture is export competition.

Countries that had subsidized exports during the UR base period were subject to reduction commitments in terms of budgetary outlays as well as volume. Those product-specific reduction commitments are now part of members' schedules and form maximum allowed levels. Only 25 WTO members have scheduled export subsidy reduction commitments. New export subsidies cannot be introduced.

Export subsidies proliferated in the years leading up to the Uruguay Round and remained relatively high until 2000 or so. The global export subsidy expenditure between 1995 and 2000 averaged US\$6.2 billion per year, of which the EU accounted for about 90 per cent (Peters, 2006). This is less than expenditures on domestic support but is considered the most trade-distorting subsidy measure.

Other forms of export support are likely to exist. Loopholes allow countries to circumvent their export subsidy commitments. These situations are discussed specifically in connection with export credits and export credit guarantees, international food aid transactions, and the operations of exporting state trading enterprises. For example, US export credit programmes are accused of having an export subsidy component since the applied interest rates did not reflect prevailing market benchmarks. Since 2000 export subsidies have decreased significantly and have become less important in times of high commodity prices.

2.1.5 Non-tariff measures

Evidence shows that non-tariff measures (NTMs) are more important in agriculture than in other sectors (UNCTAD, 2012b). Sanitary and phytosanitary measures remain the most important NTMs affecting agricultural trade. The AoA refers to the

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Agreement on the Application of Sanitary and Phytosanitary Measures. This agreement allows members to take country-specific measures to protect human, animal, or plant life and health, provided these are scientifically based. At the same time, the Agreement tries to ensure that regulations do not create unnecessary obstacles to trade. It determines procedural disciplines rather than the standards themselves. Key principles encourage the use of international standards (e.g. Codex) and risk assessments if higher standards are used.

Similarly, the Agreement on Technical Barriers to Trade allows national autonomy in technical regulations while trying to ensure that regulations do not create unnecessary obstacles to trade.

Recent food crises have highlighted the role of export restrictions on food and agricultural products by exporting countries to mitigate domestic food shortages, while, for their part, importing countries sought to secure stable access to food. Export restrictions are conventionally used for various policy purposes, such as enhancing food security, promoting domestic downstream processing, and raising government revenue. Specifically, export taxes have been used as an industrial policy instrument in developing countries and as a countermeasure to tariff escalation in some markets (UNCTAD, 2011). They are predominantly applied to commodities, both agricultural and non-agricultural. For instance, Indonesia imposed an export tax on cocoa beans to support its cocoa processing industry. Evidence suggests that, where quantitative export restrictions are present, their declared purpose is conserving exhaustible natural resources (WTO, 2010).

Net-food importers addressing food security concerns point out that there are few disciplines under WTO rules on the use of export taxes and restrictions. GATT Article XI prohibits quantitative restrictions on exports, but its paragraph 2(a) permits temporary restrictions to prevent critical shortages of food. WTO rules provide no specific disciplines on export taxes.

2.2 THE DOHA ROUND

The Doha Ministerial Declaration of 2001 launched new negotiations on a range of subjects, including agriculture, on which negotiations had begun earlier under the “built-in agenda” of the Uruguay Round. The UR Agreement on Agriculture included a mandate in Article 20 to continue the reform process to achieve “the long-term objective of substantial progressive reductions in support and protection”. At the fourth WTO Ministerial Conference in Doha, this mandate was reaffirmed and enforced within the Single Undertaking, in which virtually all linked negotiations were supposed to end by January 2005. The negotiations, especially agriculture and later also non-agriculture market access, turned out to be very controversial. So far, negotiations have not concluded, and the future of the Round is uncertain.

The Doha Declaration offers an ambitious mandate for continuing the reform process in agricultural trade (see box 2.3). It aims at the reduction, with a view to the phasing out, of all forms of export subsidies as well as disciplining further trade-

Box 2.3: Doha Mandate on Agriculture

- Substantial improvements in market access
- Reductions of, with a view to phasing out, all forms of export subsidies
- Substantial reductions in trade-distorting domestic support
- Special and differential treatment provisions as an integral part of all elements of the negotiations

distorting domestic subsidies and market access barriers. In addition, it provides for improvements in the current special and differential treatment provisions and/or the inclusion of new ones in all negotiating areas. Thus, the ongoing negotiations offer an opportunity to shape the multilateral rules governing agricultural products to meet the particular needs of developing countries.

Although negotiations were long, with many ups and downs, substantial progress was made on agriculture through December 2008, leaving a few unresolved and controversial issues. Since then, however, no progress has been made.⁴ Both the negotiations and the Revised Draft Modalities Text for Agriculture (WTO, 2008) basically follow the outline of the AoA:

- As to market access, WTO members had signalled agreement on a tariff reduction formula that classifies tariffs into four bands according to magnitude and applies larger cuts for higher tariffs. Developing countries would undertake cuts amounting to two-thirds those of the developed countries in the same band. Also, thresholds for developing countries' tariff bands are more favourable from a defensive perspective. Cuts on the highest tariffs in developed countries would be 70 per cent. A minimum average cut for developed countries of 54 per cent, and a maximum average cut for developing countries of 36 per cent, have been proposed. It would be possible to exclude sensitive products from full reduction commitments in both developed and developing countries.⁵ Developing countries would also be allowed to designate Special Products that are important for food security, livelihood security, and rural development, for which there would be less or no tariff reduction. For the 48 small and vulnerable economies, the required average cut in bound rates is 24 per cent, with no minimum cut per tariff line. Least developed countries would be exempt from reduction commitments in all three pillars.⁶ A special agricultural safeguard mechanism (SSM) for developing countries would allow them to increase tariffs temporarily in response to an import surge or sudden fall in import prices. A key question is whether application of the SSM should be allowed when it would lead to duties in excess of pre-Doha bound rates.

⁴ See UNCTAD, 2010 and 2011 and earlier versions of the annual report to the Trade and Development Board of UNCTAD on the Evolution of the International Trading System.

⁵ In compensation, tariff rate quotas would have to be expanded. See Vanzetti and Peters (2011).

⁶ Other issues are not discussed here. These include provisions for preference erosion, liberalization of trade in tropical products, tariff escalation, etc.

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- As to trade-distorting domestic support, cuts in the newly conceptualized Overall Trade Distorting Support (OTDS) are proposed at 80 per cent for the EU, 70 per cent for the United States and Japan, and 55 per cent for other developed countries. Cuts for developing countries are proposed at 37 per cent. Each component of the OTDS (basically, AMS, de minimis, and blue box support) would have its own reduction commitment or, in the case of developing countries, exemptions from reduction. Net-food-importing developing countries and developing countries with no AMS allowance would not have to reduce their OTDS. As to green box support, the text provides for clearer dissociation of direct payments from production by fixing the historical base period, so as to avoid creating an incentive for producers to expand production.
- As to export subsidies, ministers agreed at the WTO Hong Kong Ministerial Meeting (WTO, 2005) to the parallel elimination of all forms of export subsidies and disciplines on all export measures with effects equivalent to a subsidy by the end of 2013. This agreement, in 2005, was a major success in the negotiations. Due to the uncertainty of the whole round, it is now unlikely that it will take place in 2013.
- Four West African countries launched a cotton initiative, in which they proposed the eventual elimination of all trade-distorting cotton subsidies and financial compensation until these subsidies are completely removed. These and other cotton producing countries depend significantly on cotton exports. World prices and trade are distorted due to heavy subsidies in a few countries. Progress on the trade issues of the initiative have been linked to progress on the agriculture negotiations. The development aspect of cotton received much attention and has been dealt with in WTO and UNCTAD meetings, among others.⁷ The major issue is the treatment of domestic support for cotton. The continually volatile and relatively low price of cotton indicates the ongoing importance of cotton issues.

Several other issues remain unresolved. The number of sensitive and special products is controversial. Agricultural exporters want to see low numbers, while countries with defensive interests prefer high numbers. The draft modalities propose 4 per cent of tariff lines for sensitive products (5.3 per cent for developing countries) and 12 per cent for Special Products.

The specific modalities for the SSM are among the most controversial areas in agriculture. Developing countries with defensive interests – the so-called G-33 group – want a flexible instrument with a relatively high possible remedy. Agricultural exporters, particularly the United States but also other exporters including some developing countries, are concerned that a too-flexible instrument could counteract liberalization, including that achieved during the UR and in accession negotiations.

⁷ See WTO Cotton – Special High-Level Session, in March 2007 and subsequent meetings; UNCTAD Secretary-General's Multi-Stakeholders Meeting on Cotton, in December 2008; UNCTAD Pan-African Cotton Meeting, 2011.

From a development perspective, many observers and negotiators have emphasized the importance of elimination of export subsidies and the substantial reduction of domestic support and tariffs in developed countries. Furthermore, several special and differential treatment provisions have been proposed, such as the exemption of least developed countries (LDCs), lower reduction commitments for small and vulnerable economies (SVEs), and acknowledgement of the existence of sensitive (or, more precisely, “special”) products important for food security, livelihood security, and rural development in developing countries.

A more critical view is that the base for reductions of domestic support is set at a relatively high level (e.g. reductions are from bound levels that are much higher than current actual spending), that exemptions for sensitive products in developed countries limit improvements in effective market access (e.g. highly protected products such as dairy and sugar would continue to have high tariffs), and that special and differential treatment is provided not only to developing countries but also to various developed countries in several exceptions to the general provisions (e.g. a special limit for US product-specific domestic support in Article 42 of the draft modalities text(WTO, 2008) to avoid an overly restrictive commitment). However, agriculture interests do not follow a North–South division, but rather the interests of exporters are on one side, and the predominantly defensive interests of less competitive countries are on the other side. Employment considerations, along with other aspects such as food security, play an important role in determining the interests of the negotiators.

2.3 PREFERENTIAL TRADE AGREEMENTS

2.3.1 *General considerations*

Preferential trade agreements (PTAs)⁸ have proliferated rapidly and now number 319.⁹ PTAs can be bilateral, regional, or plurilateral. The main feature of PTAs is that they constitute an exception to the most-favoured nation (MFN) provision, whereby all WTO members impose on each other the same, non-discriminatory tariff (WTO, 2011). Non-reciprocal PTAs mainly belong to the General System of Preferences (GSP), developed in UNCTAD, that allows countries to provide developing countries with preferential access to their markets on a non-reciprocal basis as long as they are generalized and non-discriminatory. The EU, for example, provides duty- and quota-free market access to all LDCs for all products except arms, including for agricultural products. Reciprocal trade agreements account for the bulk of trade under PTAs. About half of world trade is under PTAs (United Nations, 2011).

⁸ The expressions “regional trade agreements (RTAs)” and “free trade agreements” are also used frequently. “Regional trade agreements”, however, suggests that members are in the same region, whereas “free trade agreements” suggests that tariffs are eliminated. Often, however, members of PTAs are not in one region and only reduce tariffs or exclude sensitive products.

⁹ As of 15 January 2012, 319 RTAs notified to the WTO were in force. Source: WTO RTA database.

The liberalization goal is more ambitious in PTAs than in the multilateral system. This refers to WTO-X issues, i.e. those areas that are not covered by the WTO, such as competition or labour issues. It also applies to WTO-plus issues, i.e. where commitments go beyond WTO commitments, such as the opening up of services sectors that are not bound in corresponding WTO schedules. One reason for the greater ambition is a requirement by the GATT rules (Article XXIV) that tariffs in PTAs are to be “eliminated” on “substantially all the trade” between participants within a reasonable length of time. Although there is no rule or agreed understanding of what “substantially all the trade” means, commonly suggested percentages are 90, 85, and 80. The Understanding to GATT Article XXIV clarifies that the reasonable length of time is 10 years and that no major sector would be excluded from liberalization. The “Enabling Clause” provides an exemption from the MFN obligation for regional or global arrangements amongst less-developed contracting parties. Thus, PTAs amongst developing countries do not necessarily have to eliminate tariffs on substantially all trade.

Theoretically, the relative relevance of PTAs for agriculture is greater, since MFN tariffs in agriculture are in general higher than tariffs on non-agriculture goods. WTO (2011, p. 78) shows that the preference margins on traded items are considerably higher for agricultural products than for non-agricultural products. However, agriculture products are more often excluded from PTAs as sensitive, or they involve longer transition periods.

The Free Trade Agreement between the EU and South Africa is a typical example. This Agreement provides South African exporters with progressive tariff reductions phased in over a ten-year period on a range of agriculture products. However, in addition to a safeguard clause to protect against import surges, the Agreement also exempts certain sensitive product areas and imposes quotas on duty-free access to other products (Matthews, 2003).

Notwithstanding the fact that agricultural products are more often excluded from full liberalization than are other products or involve longer implementation periods, PTAs can have a significant impact on agricultural trade. Furthermore, in several major PTAs agriculture is comprehensively covered. An example is NAFTA (see chapter 10).

2.3.2 Development issues

From a development perspective, some features of North–South PTAs have been critical. For example, tariffs are often removed progressively, but subsidies, often provided to farmers in developed countries, are not. Export subsidies are frequently eliminated in RTAs. The requirement in GATT Article XXIV to liberalize substantially all trade limits the scope for special and differential treatment (S&D) in PTAs. ACP-EU Economic Partnership Agreement negotiations, for example, comprise about 80 per cent of trade on Asia, Caribbean, and Pacific countries’ side and 100 per cent on the EU’s side, based on the EU’s interpretation of “substantially all the trade”. Thus, WTO rules could constrain the ability of developing countries to design and

negotiate liberalization schedules under PTAs. In the WTO rules negotiations, developing countries engaged in North–South PTA negotiations have proposed incorporating S&D into GATT Article XXIV.

The logic of the “substantially all the trade” requirement was to prevent the undermining of the most-favoured nation principle. However, there may be an economic rationale for leaving agricultural trade out of PTAs. Where agricultural sectors are uncompetitive, their exclusion from a PTA may help to prevent trade diversion. Simulation results reported by Matthews (2003) indicate that the exclusion of agriculture from a Japan–Republic of Korea FTA unambiguously improves the welfare outcome for both countries and also for their other trading partners.

PTAs between developing countries are not required to liberalize “substantially all the trade” if notified under the Enabling Clause. The Enabling Clause permits preferential arrangements, with less than full reduction of tariffs, among developing countries in goods trade on a limited number of products. The Global System of Trade Preferences (GSTP) is an example. In 2010, 11 of the 22 developing countries participating in the Sao Paulo Round signed an agreement to reduce tariffs from MFN levels by 20 per cent on 70 per cent of their tariff lines.

Most developed countries and several developing countries provide non-reciprocal preferential market access to developing countries and especially LDCs. There is no requirement that substantially all trade has to be covered. The coverage rate varies significantly but is high in the preferential schemes of the Quad countries (Canada, EU, Japan, and US) for LDCs, as shown in table 2.4.

General System of Preferences (GSP) schemes for developing countries do not necessarily provide duty-free access for products that are covered but often grant tariff reductions on the MFN rates. Preferential access needs to be non-discriminatory but can be linked to certain conditions. The EU “GSP+” preferences, for example, are granted to countries that have ratified and effectively implemented core international conventions on labour rights. The preference providers can unilaterally decide on the schemes, and some revise their scheme annually, which can undermine predictability for investment decisions.

Table 2.4: Duty-free access of LDCs to Quad country markets in 2010, share of all tariff lines in per cent

	All products %	Agriculture %
Canada	98.9	92.6
EU	99.8	100.0
Japan	96.0	94.9
US GSP LDC	82.7	84.7
US AGOA textile	89.8	86.1

GSP = General System of Preferences; AGOA = African Growth and Opportunity Act
Source: UNCTAD (2012a).

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Table 2.5: EPA liberalization schedules (value) in per cent of total import value

	2008	2010	2012	2013	2017	2018	2022	2023	2033	Total
Botswana, Lesotho, Namibia, Swaziland	86									86 +47 tariff lines
Cameroon						50		80		80
Caribbean	52.8		56			61.1		82.7	86.9	86.9
Comoros				21.5			80.6			80.6
Cote d'Ivoire						69.8		80.8		80.8
Eastern African Community		64						80	82	82
Fiji	24			37		78		81.5		81.5
Ghana						62.24		80.48		80.48
Madagascar				37			80.7			80.7
Mauritius	24.5				53.6		95.6			95.6
Mozambique	Mostly liberalised at entry into force								80.5	
Papua-New Guinea	88.1									88.1
Seychelles				62	77		97.5			97.5
Zimbabwe			45				80			80

Note: Cumulative value of imports from the EU, to be liberalised by the specified year

Source: ECDPM (2007).

The EU and ACP countries are replacing the earlier non-reciprocal treaty (Cotonou Agreement) with WTO-conforming reciprocal Economic Partnership Agreements (EPAs). Meyn and Kennan (2010) show in a detailed analysis of (interim) EPAs that agricultural import liberalization in ACP countries varies markedly among the agreements, as shown in table 2.5. Some appear to be front-loaded, i.e. they liberalize major agricultural sectors during the first years of implementation, and to include agriculture items that compete with domestic production. Others exclude most agricultural products that appear to be sensitive.

The following overview of provisions in PTAs focuses on reciprocal agreements.

2.3.3 Market access in PTAs

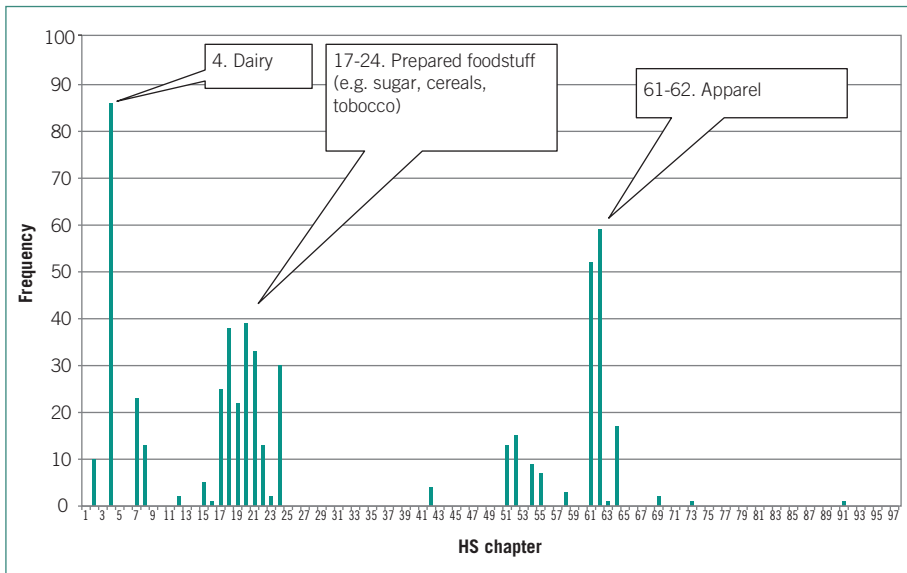
Tariff liberalization

As for treatment of agricultural tariffs in PTAs, there is a mixed picture. Most PTAs include agriculture (WTO, 2011) or at least some agricultural products, such as

processed food, but often agricultural products are disproportionately excluded and/or tariff reductions are subject to longer implementation periods. Damuri (2009) finds, in an analysis of 15 bilateral agreements between Canada, the European Union, Japan, and the United States and their major trading partners, that about 7 per cent of tariff lines are classified as temporarily or permanently excluded products. These sensitive products are mainly agricultural products. Of all agriculture and food products in the sample, about 27 per cent are excluded from tariff concessions, while only about 1 per cent of manufacturing products are excluded. Estevadeordal et al. (2009) confirm this finding in an analysis of 50 PTAs. After a 10-year implementation period, the overall average number of duty-free tariff lines is slightly above 90 per cent, but for agriculture it is less than 80 per cent. These figures increase further up to a 20-year implementation period, but agriculture remains below 90 per cent. To illustrate this point, figures 2.2 and 2.3 show the frequency of sensitive products, by Harmonized System (HS) chapters, for selected US and EU agreements. The frequency is higher in the first 24 chapters, those that contain mostly agricultural products, and, in the case of the US, in the chapters for textile products.

Although agricultural products are more often temporarily or permanently excluded from PTAs than are other products, the impact of PTAs on agriculture can be stronger than on industrial sectors. A main reason is the higher preference margin. Table 2.6 shows that the preference margin is significantly higher for agricultural products than for non-agricultural products except for textile products, where the margin is also relatively high. Since countries are usually members of many PTAs,

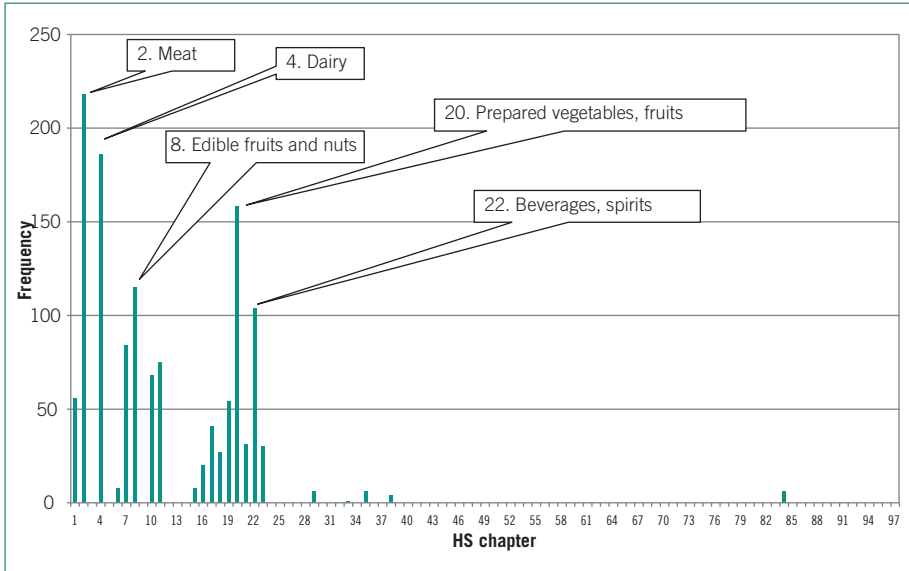
Figure 2.2: United States: Frequency of “sensitive” products by HS chapter, 2008



Source: Authors’ calculation from US RTAs (Bahrain, Jordan, Morocco, Oman); products covered by only one or no RTA are classified as sensitive.

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Figure 2.3: European Union: Frequency of “sensitive” products by HS chapter, 2008



Source: EU RTAs (Algeria, Egypt, Jordan, Morocco, Tunisia, Turkey); products covered by only one or no RTA are classified as sensitive.

Low et al. (2006) argue that, because imports compete with trade from other preference receivers, actual preference margins are lower than the ones calculated relative to the MFN rate. This argument, together with the fact that agricultural tariffs are more often excluded from PTAs than industrial tariffs, supports the conclusion that the preference margin in agriculture is higher than in industrial sectors.

Table 2.6: Trade-weighted preference margin of PTA compared with MFN rates

Product section	Preference margin (%)
Animal products	4.9
Vegetable products	4.4
Fats and oils	2.4
Prepared foods, beverages, tobacco	3.6
Average, all non-agriculture	0.8
Chemical products	0.7
Textiles	3.1
Machinery	0.5

Source: WTO (2011), table B.10; selected PTAs.

The high preference margin in PTAs makes agricultural products important in discussions about preference erosion. For instance, ACP countries proposed in the Doha Round that MFN tariff reductions would be lower for products in developed countries where ACP countries benefit from long-standing preferences, so that preference erosion would be limited. Interestingly, the EU–CARIFORUM EPA includes a provision mandating members to work toward maintaining high preference margins for traditional agricultural products by avoiding reductions of MFN rates in multi-lateral negotiations (see annex A.4).

Another reason for the substantial impact of PTAs on agricultural trade is that several PTAs cover agriculture comprehensively. NAFTA and Mercosur, for example, have removed nearly all agricultural trade barriers to their members. NAFTA had a longer implementation period for corn, sugar, dairy, poultry, and eggs, but by 2008 all tariffs were removed.

In terms of concessions in relation to initial tariffs, South–South agreements make the biggest move, from initially 28 per cent duty-free tariff lines to 92 per cent after the implementation period (Fulponi et al., 2011). By comparison, North–South agreements increase their share of duty-free lines from 68 per cent to 87 per cent. Estevadeordal et al. (2009) confirm that, for total trade, South–South and North–North PTAs reach a higher share of duty free tariff lines than North–South agreements.

Tariff-rate quotas

A mechanism often used to seek a balance between the interests of agricultural exporters and other PTA members' interests in protecting sensitive sectors are tariff-rate quotas (TRQs). Both developed and developing countries are frequent users of quotas in their PTAs. An example is the EU–South Africa agreement, where both parties have TRQs. Sectors where TRQs can frequently be found include sugar, dairy, and meat (Fulponi et al., 2011). TRQs in PTAs are usually in addition to TRQ entitlements under the AoA. The implementation of TRQs varies considerably across agreements, and so the simple number of TRQs is of little help assessing the economic value. For example, some TRQs expire after an implementation period, while some increase over time; some provide preferences for out-of-quota trade, while others provide only MFN rates for such trade, and so on.

Some PTAs provide for compensation for revenue lost as a result of limited liberalization of sensitive products. The US, for instance, agreed in their PTA with Peru to compensate Peru financially for the opportunity costs of lower exports of sugar, as limited liberalization in the US resulted in lower exports from Peru than they could have been under full liberalization.

Trade remedy provisions

PTAs can allow or rule out trade defence instruments such as antidumping, countervailing duties, and safeguards provisions. For example, on intra-EU trade, antidumping actions were excluded in the integrated market (WTO, 1997). Under NAFTA, however, Canada, Mexico, and the United States retain the right to apply their antidumping and countervailing duty laws to goods imported from another NAFTA country. The

Agreement establishes a mechanism for independent bi-national panels, consisting of administrative authorities in each country, to review final antidumping and countervailing duty determinations (US CBP, 1998).

Baccini et al. (2011) finds, from coding of 404 PTAs, that trade defence instruments are frequently included in such agreements. About 80 per cent of PTAs include antidumping, countervailing duties, and safeguards provisions and either allow or out-rule their use. In a sample of 50 PTAs, Teh et al. (2009) find that one-sixth have dispensed with at least one type of trade remedy. These agreements appear to share a greater degree of integration.

Thus, most PTAs appear to allow trade remedies, perhaps to cope with the removal of intra-regional tariffs. Some include agriculture-specific measures. For example, the US has included automatic agricultural safeguards in several FTAs for selected products, with the trigger level of 130 per cent to 150 per cent of TRQs. In the US–Morocco FTA, Morocco has recourse to quantity-based safeguard mechanisms, while the US retains the right to use price-based safeguards; the remedy is limited to raising tariffs up to MFN rates. Annex A.1 provides some examples of safeguard measures in PTAs.

Those safeguards are often reserved for specified products and expire after an implementation period. Products frequently appearing in safeguard lists are beef, pork, poultry, dairy, vegetables, and fruits (OECD, 2011). The average duration of an agricultural safeguard is often shorter than those applied to other sectors.

Not all PTAs include special agriculture safeguards, however, even if the sensitivity of the sector is recognized. For example, the EU–CARIFORUM agreement recognizes food security concerns but has no specific safeguard for agriculture. It appears that in this case the long phase-in period for tariff concessions for CARIFORUM of up to 25 years has been the means chosen to address the sensitivity of the sector. Some RTAs prohibit the application of WTO-compatible agricultural safeguards, and possibly future SSM, to intra-RTA trade. The extent to which special agriculture safeguards are agreed in addition to general safeguards reflects the sensitivity of this sector between members of PTAs. However, to the extent that the special safeguards are more limited than those in the AoA, they signal a move towards greater trade liberalization for agriculture.

2.3.5 *Subsidies*

Domestic support provided to agricultural producers is by its nature difficult to address in PTAs. Any production-distorting support provided to a specific product has an impact on the trade opportunities of PTA members if they produce the same or a substitutable product, whether the product is exported or not. Thus, to address domestic support effectively, PTAs would have to cover whole sectors. It could be agreed, for instance, to eliminate domestic support in sectors where PTA members have a strong export interest. It could also be agreed to link tariff concessions in importing countries to reduction commitments on domestic support in exporting countries. To the best knowledge of the authors, such provisions are not found in current PTAs.

Fulponi et al. (2011) confirm that “almost no [regional trade] agreements propose to reduce support to the agricultural sector”. The imbalance of eliminating tariffs while not addressing agricultural subsidies has been a key issue underlying the asymmetry in North–South RTAs. Thus, a key problem in the AoA also is not addressed in PTAs.

However, the situation is different when it comes to export subsidies. Fulponi et al. (2011) find that, in 60 per cent of the more than 50 PTAs analysed, export subsidies are prohibited. For instance, several PTAs with the US and the EU contain commitments for the elimination of export subsidies for products destined for other parties. In the EU’s EPA with CARIFORUM, elimination of export subsidies is conditioned on tariff elimination by the CARRIFORUM (zero-for-zero). Annex A.3 provides examples in which export subsidies have been ruled out on agricultural goods exported to PTA members.

2.3.6 *Non-tariff measures in PTAs*

Sanitary and phytosanitary measures remain the most important NTMs affecting agricultural trade. Addressing such NTMs in PTAs could be an opportunity to achieve a meaningful increase in market access. However, few of the SPS chapters in PTAs go beyond the core principles of the WTOSPS agreement.

An analysis of provisions for TBT and SPS measures in PTAs shows that about 60 percent include TBT measures and 67 percent include SPS measures (Baccini et al., 2011). Comparing North–North, North–South, and South–South agreements, it is evident that both TBT and SPS provisions are most likely to be found in North–South agreements. More recent PTAs more often include provisions for TBT and SPS than earlier agreements. However, Baccini et al. (2011) find that such provisions are rather shallow. Mostly, they refer only to corresponding WTO agreements. It appears that differences in national regulation and capacity make it difficult to go beyond multilateral agreements.

Other NTM provisions in PTAs that are particularly important for agriculture are export restrictions or export taxes. US PTAs, for example, usually prohibit export restrictions (see Annex A.2). Export taxes are prohibited unless such taxes apply to domestically sold products as well. Similarly, EU EPAs generally prohibit export duties and provide for scheduled elimination of those that exist.

Rules of Origin (RoO) are the criteria used to define where a product was made. They are important in PTAs because they determine whether or not products are eligible for preferential treatment. Two concepts are used if the product is not wholly originating from the exporting country. First, non-originating materials must undergo such a substantial transformation in the exporting country that the tariff classification is changed, e.g. the exported product falls into a different HS 2-digit chapter or 4-digit heading than the inputs imported from a third country. Second, the substantial transformation is measured by a minimum value addition required to be done in the exporting country.

Since agricultural exports are dominated by trade in raw materials, RoO are less important in this sector. However, trade of processed food is increasing faster than

other agricultural trade, high value horticulture products are increasingly produced in global value chains, and it has been argued that processed food and horticulture products provide an opportunity for developing countries to add more value and to create productive employment (UNCTAD, 2011). Thus, compliance costs related to RoO are increasingly important in agriculture. RoOs relating to agricultural products are rigorous. Estevadeordal and Suominen (2005) find that in 60 analysed PTAs RoO are most restrictive for the agricultural and textile sectors. Fulponi (2011) finds that wholly originating or entire production in the exporting country is often required in PTAs for products in HS chapters 01 to 08 and 10 and 12, in which raw materials and minimal processing predominate.¹⁰ For the other chapters, for which generally a higher degree of processing is required, requirements for a change of HS 2-digit chapter predominate, often combined with a minimal value-added requirement.¹¹

Many PTAs today include provisions that are only partly or indirectly linked to agriculture; these are not discussed in detail here. They include services, investment, intellectual property (e.g. the United States recognizes “Pisco Perú” as a distinctive product of Peru), competition rules, environment, as well as development and agricultural cooperation (see e.g. annex A.5). Coverage of these issues, as well as the previously discussed WTO+ commitments, indicates that PTAs are both broader and deeper in terms of liberalization than multilateral agreements, including in agriculture.

The limitations of the analysis of PTAs should be kept in mind. The analysis and the cited literature are always based on a sample of existing PTAs. Due to the large number of PTAs, no study so far has analysed all agreements. Thus, generalizations are to be made with care. However, due to a careful selection and a broad coverage in much of the cited literature as well as the importance of the selected agreements in terms of trade volume, it can be expected that the analysis above provides a fairly representative picture.

2.4 CONCLUSION

Agricultural trade is important for many countries’ economies, especially for employment and food security. Including agriculture fully in international trade rules is controversial. On one hand, it is argued, agricultural exports are important for development and employment in developing countries, and imports are equally important for consumers’ food security in net food-importing countries. The efficiency arguments apply as well. On the other hand, it has been argued that agriculture is different from other goods, and each country should not be constrained to design its own agricultural policy and should have the right to produce its own food and to protect small and vulnerable farmers.

¹⁰ De minimis criteria in 70 per cent of PTAs allow a specified small percentage of non-originating materials. In several PTAs, however, the criterion is suspended for agricultural products.

¹¹ However, although RoO model clusters such as the Pan-Euro or the NAFTA model emerge, details vary significantly from agreement to agreement and from product to product.

So far, the international trading system has followed an approach that tries to balance both views by including agriculture in multilateral and preferential trade agreements but with lower reduction commitments and a higher degree of flexibility than for other products.

The WTO Agreement on Agriculture covers three pillars – market access, domestic support, and export subsidies. Trade barriers other than tariffs are not permitted under normal circumstances, and maximum tariffs are determined for each product in each country. Exceptions and safeguards are allowed in emergency situations, such as to protect health or, to a certain extent, to protect domestic producers. Domestic support to farmers is possible, but such measures need to follow criteria so as to limit the effect on trade and production. The AoA emphasizes the importance of agriculture for food security and to protect the environment, but it does not directly refer to employment or labour standards. Only with regard to domestic support is reference made to rural development and, in one instance, to benefits for the rural community. Governments are, however, indirectly enabled to endeavour to maintain employment in the agricultural sector through permitted domestic support instruments such as decoupled income support.

Liberalization in PTAs goes beyond the level agreed in multilateral agreements. Almost 90 per cent of agricultural tariff lines, on average, are eliminated in PTAs. However, the degree of liberalization is significantly less than for industrial goods. Sensitive agricultural products are frequently excluded from liberalization, involve a longer implementation period, or are subject to safeguards. Typically, those sensitive products are domestically produced goods whose producers are less competitive, such as dairy farmers in Switzerland, maize farmers in Mexico, beef producers in Indonesia, and sugar producers in the EU. Domestic support, which is high mainly in developed countries, is distorting agricultural trade, but it is not addressed in PTAs.

In view of high distortions in agricultural trade, it has been argued that the AoA did little to liberalize the sector. Although the UR AoA was a big step toward integrating agriculture into the multilateral trading system, the importance of further liberalization and correction of certain imbalances is widely recognized and, indeed, has already been agreed in the UR AoA as a built-in agenda. However, amending the rules for agricultural trade in the WTO has proved to be very difficult due to the sensitivity of the sector in almost every country and to the opposing views, mainly of agricultural exporters, on one hand, and of less competitive importers, on the other.

In the negotiations employment issues have frequently been used to emphasize the importance of the sector for countries. How to deal with the “multifunctionality” of agriculture, i.e. its importance not only to produce agricultural products but also, for example, for rural development, employment creation, poverty reduction, and the protection of the environment, is a very controversial question. The issue is related to green-box support, since this type of support comprises measures intended to achieve objectives not directly related to agricultural production, such as providing benefits to rural communities, establishing social safety nets, and improving environmental conditions. However, for many countries this is not sufficient. Some

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countries have advocated the right to keep high tariffs on sensitive agricultural products and to use specific agricultural safeguard measures to protect local producers. Furthermore, the high amount of domestic support demonstrates the willingness of governments to pay for the multifunctionality of agriculture.

Employment considerations, however, do not always have the highest priority. Often, larger and less labour-intensive producers benefit more from support measures than more labour-intensive, smaller producers. Furthermore, trade distortions can have a detrimental effect on other countries' employment interests, e.g. those of developing countries. To address important employment challenges, policy-makers need to prioritize employment considerations in international trade negotiations and complementary national policies.

ANNEXES

A.2.1 Examples of safeguard measures in PTAs

EU–CARIFORUM EPA

Chapter 5, Article 4

Food security

1. The Parties acknowledge that the removal of barriers to trade between the Parties, as envisaged in this Agreement, may pose significant challenges to CARIFORUM producers in the agricultural, food and fisheries sectors and to consumers and agree to consult with each other on these issues.

2. Where compliance with the provisions of this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a CARIFORUM State and where this situation gives rise or is likely to give rise to major difficulties for such a CARIFORUM State, that Signatory CARIFORUM State may take appropriate measures in accordance with the procedures laid down in paragraphs 7 (b) to (d), 8 and 9 of article 3 of chapter 2.

US–Peru

Article 2.18: Agricultural Safeguard Measures

1. Notwithstanding Article 2.3, a Party may apply a measure in the form of an additional import duty on an originating agricultural good listed in that Party's Schedule to Annex 2.18, provided that the conditions in paragraphs 2 through 8 are met. The sum of any such additional import duty and any other customs duty on such good shall not exceed the least of:

- (a) the base tariff rate provided in the Schedule to Annex 2.3;
- (b) the most-favored-nation (MFN) applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement;
- (c) the prevailing MFN applied rate of duty; or
- (d) the level of duty described in subparagraph 2(c) of Appendix I to Peru's Schedule to Annex 2.3, if applicable.

(to be triggered by 130–150% of TRQ)

Bilateral safeguards only during the transition period and global standards apply (no double jeopardy).

A.2.2 Examples of provisions on export restrictions in PTAs

US–Peru

Article 2.8: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretive notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

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US–Peru

Article 2.11: Export Taxes

Except as otherwise provided in this Agreement, no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

EU–CARIFORUM EPA

Chapter 3, Article 1

Prohibition of quantitative restrictions

No import or export prohibitions or restrictions on originating imports or exports, other than customs duties and taxes, and fees and other charges provided for under Article 5 of chapter 1, whether made effective through quotas, import or export licenses or other measures, shall be maintained as of the entry into force of this Agreement. No new such measures shall be introduced. The provisions of this Article shall be without prejudice to the provisions of Article 1 and 2 of chapter 2.

A.2.3 Examples of export subsidy provisions in PTAs

US–Peru

Article 2.16: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. Except as provided in paragraph 3, no Party may adopt or maintain any export subsidy on any agricultural good destined for the territory of another Party.

EU–CARIFORUM EPA

Chapter 3, Article 3, Agricultural Export Subsidies

1. No Party or Signatory CARIFORUM State may introduce any new subsidy programme which is contingent upon export or increase any existing subsidy of this nature on agricultural products destined for the territory of the other Party.

2. With regard to any product as defined in paragraph 3 for which the CARIFORUM States have committed to the elimination of customs duties the EC Party undertakes to phase out all existing subsidies granted upon the exportation of that product to the territory of the CARIFORUM States. The modalities of such phasing out shall be decided by the CARIFORUM-EC Trade and Development Committee.

A.2.4 Example of provision to maintain preference margin

EU–CARIFORUM EPA

Chapter 5, Article 6

Traditional agricultural products

The Parties commit to undertake prior consultations on trade policy developments

that may impact on the competitive positions of traditional agricultural products, including bananas, rum, rice and sugar, in the market of the EC Party.

The EC Party shall endeavour to maintain significant preferential access within the multilateral trading system for these products originating in the CARIFORUM States for as long as is feasible and to ensure that any unavoidable reduction in preference is phased in over as long a period as possible.

A.2.5 Example of development and agricultural cooperation in PTAs

EU-CARIFORUM EPA

Chapter 5, Article 7, Cooperation

1. The Parties acknowledge the importance of the agricultural, food and fisheries sectors to the economies of CARIFORUM States and of cooperating to promote the transformation of these sectors, with the aim of increasing their competitiveness, developing their capacity to access high quality markets and in view of their potential contribution to the sustainable development of the CARIFORUM States. They recognize the need to facilitate the adjustment of the agricultural, food and fisheries sectors and the rural economy, to the progressive changes brought about by this Agreement, while paying particular attention to small scale operations.

2. Subject to the provisions of Article 7 of Part I of this Agreement the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) Improvement in the competitiveness of potentially viable production, including downstream processing, through innovation, training, promotion of linkages and other support activities, in agricultural and fisheries products, including both traditional and non traditional export sectors;

(b) Development of export marketing capabilities, including market research, both for trade between CARIFORUM States and between the Parties, as well as the identification of options for the improvement of marketing infrastructure and transportation, and the identification of financing and cooperation options for producers and traders;

(c) Compliance with and adoption of quality standards relating to food production and marketing, including standards relating to environmentally and socially sound agricultural practices and organic and non-genetically modified foods;

(d) Promotion of private investment and public-private partnerships in potentially viable production;

(e) Improvement in the ability of CARIFORUM operators to comply with national, regional and international technical, health and quality standards for fish and fish products;

(f) Building or strengthening the scientific and technical human and institutional capability at regional level for sustainable trade in fisheries products, including aquaculture; and

(g) The process of dialogue referred to in Article 5.

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