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THE FARM BILL OF 2002, THE WTO, AND POOR AFRICAN FARMERS: CAN THEY CO-EXIST?

Vance E. Hendrix[†]

I. INTRODUCTION

One critic of globalization has said: “[i]deas, knowledge, art, hospitality, travel-these are the things which should of their nature be international. But let goods be homespun whenever it is reasonably and conveniently possible.”¹ In economic terms, globalization refers to internationalization, international economic integration, and interdependence.² More specifically, these terms refer to the flow of “goods, services, people, capital, ideas, and technology across national boundaries.”³ In increasing this flow, two significant contributions to globalization have been dismantling trade barriers and establishing trade laws in the post-World War II era.⁴ Trade laws operate on two distinct

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1. Michael Lind, *Free Trade Fallacy*, NEW AM. FOUND., Jan. 1, 2003, at <http://www.newamerica.net/index.cfm?pg=article&DocID=1080> (last visited Sept. 12, 2004) (quoting John Maynard Keynes).

2. STEPHEN D. COHEN ET AL., *FUNDAMENTALS OF U.S. FOREIGN TRADE POLICY: ECONOMICS, POLITICS, LAWS, AND ISSUES* 313 (2d ed. 2003).

3. *Id.* at 314.

4. *Id.*

levels, national and global.⁵ The national level encompasses those laws subject to the jurisdiction of the particular national government implementing the law,⁶ while the global level includes the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) regulations; it encompasses "rules and procedures [that] apply to sovereign governments that are voluntary signatories to bilateral, regional, or multilateral agreements."⁷ The global level of influence, in effect, promotes globalization that has resulted in world markets becoming increasingly integrated, with numerous countries relying on one another for market survival.⁸

Not surprisingly, the United States is one of the primary players in the world market, producing large portions of many of the world's commodities.⁹ United States farmers account for the production of twelve percent of the world's rice exports and over a quarter of the world's wheat exports (2.8 million and 24 million tons per year respectively).¹⁰ Additionally, United States exports of coarse grains dominate world markets, accounting for almost sixty percent of exports.¹¹ Finally, the United States is a significant producer of cotton, exporting twenty percent of the world's cotton every year.¹² The result of this substantial agricultural export activity in which the United States is engaged has proven detrimental to world market prices, which have become increasingly dependent upon the prices set by United States exports; consequently, small farmers, both internationally and domestically, that produce the impacted products have suffered many ill economic effects.¹³

The impact that the flood of commodities from the United States exporters has had on world markets, particularly price depression, tends to suggest in the most basic economic terms that production and output

5. *Id.* at 150.

6. *Id.*

7. *Id.*

8. *See generally* MELAKU GEBOYE DESTA, *THE LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS: FROM GATT 1947 TO THE WTO AGREEMENT ON AGRICULTURE* 1-11 (2002).

9. *See generally* Sabyasachi Mitra, *U.S. Farm Bill 2002: Its Implication for World Agriculture Markets*, INT'L DEV. ECON. ASSOCIATES (IDEAs), May 17, 2002, at http://www.networkideas.org/themes/agriculture/may2002/ag17_US_Farm_Bill_2002.htm (last visited Sept. 12, 2004).

10. *Id.*

11. *Id.*

12. *Id.*

13. *See generally id.*

should be slowed to meet the lower demands of the market.¹⁴ However, in contrast to this apparent need, the Bush Administration passed an aggressive Farm Bill in 2002¹⁵ that in many ways contradicted not only the United States' commitments to the World Trade Organization (WTO), but may undermine the impact of the commitments kept by other countries irreparably damaging the economies of many developing nations.¹⁶ Farm Security and Rural Investment Act of 2002 (U.S. Farm Bill) subsidizes many American farmers, giving them an artificial advantage in world markets.¹⁷ A subsidy is a relatively simple economic tool, currently employed by many of the world's larger nations; it is "a financial contribution given by a government or any public body within the territory of a WTO Member which confers a benefit to a specific industry."¹⁸ Some subsidies, such as those termed "Actionable" subsidies, were actually allowable under the GATT and the Agreement on Subsidies and Countervailing Measures (SCM).¹⁹ However, continuing after the creation of the WTO, "Actionable subsidies are [still] tolerated by WTO Members provided that they do not (a) cause injury to the domestic industry of another Member; (b) nullify or impair the benefits other Members are accruing under the SCM Agreement; or (c) cause serious prejudice to the interests of another Member."²⁰ It is unfortunate that any subsidies are allowed to distort the market, and it is tragic that so many nations have found ways to circumvent the prohibitions and regulations in this area.²¹ In like manner, the United States has avoided its commitments to the WTO by granting substantial assistance to primarily large-scale American farmers.²² These subsidies allow American farmers to produce more products at lower costs than their world market competitors, creating an unfair economic advantage in favor of the large corporate farmers in the United States and causing significant injury to both struggling farmers from developing countries as well as many of the small single-family American farmers.

14. *Id.*

15. The Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (codified as amended in scattered sections of 7 U.S.C.).

16. *See generally* Mitra, *supra* note 9.

17. *Id.*

18. Mark Clough, *Subsidies and the WTO Jurisprudence*, 8(4) INT'L TRADE LAW & REG. 109 (2002).

19. *Id.*

20. *Id.*

21. *See generally* Mitra, *supra* note 9.

22. *Id.*

This comment focuses on the interactions between the WTO agreements and the U.S. Farm Bill addressing specifically the conflicts between the commitments made by WTO countries (particularly the United States and the countries comprising the European Union), and the impact that the U.S. Farm Bill has and will continue to have on world markets. Part II lays the foundation by examining the creation and functions of the General Agreement on Tariffs and Trade and how its deficiencies led to the establishment of the World Trade Organization. Furthermore, it addresses the 2003 Cancun negotiation round and the potential impact and failures of its discussions. Part III addresses the passage of the U.S. Farm Bill and some of the central issues surrounding its implementation, particularly the adverse impact on world markets. Part IV addresses trade liberalization in general and the concerns of those world markets impacted by the U.S. Farm Bill and briefly discusses the European Union's role in trade liberalization.

II. FROM THE GENERAL AGREEMENT ON TARIFFS AND TRADE TO THE WORLD TRADE ORGANIZATION

A. *The General Agreement on Tariffs and Trade (GATT)*

From its inception in 1947, the GATT was an agreement created to provide principles and guidelines under which cooperating countries could gradually liberalize trade practices and policies.²³ Through eight rounds of trade negotiations, spanning nearly half a century, and concluding with the Uruguay Round (1986-1994), various commitments were made for a significant reduction of tariffs on industrial products as well as lowered trade barriers.²⁴ Prior to the Uruguay Round and the agreement to phase out export restraints, the United States regularly used "voluntary" export restraint agreements between numerous countries.²⁵ In the years following the Great Depression and World War II, some countries caused substantial economic injury by raising tariffs and imposing production quotas devaluing the imposing country's currency, causing further economic injury.²⁶ Sometimes these actions temporarily improved the trade balance and improved the country's employment rates, but these local improvements were made at the expense of other nations and the

23. COHEN ET AL., *supra* note 2, at 183.

24. *Id.*

25. *Id.* at 156.

26. *Id.* at 183-84.

world markets.²⁷ To combat these ill effects and to prevent future economic depressions, the leading nations of the world met at Bretton Woods, New Hampshire and developed the provisional rules for the International Trade Organization (ITO).²⁸ Shortly thereafter, during the 1947 Conference on Trade and Employment, the GATT was adopted.²⁹ Quickly the GATT's relevance surpassed ITO principles, and GATT membership expanded; under the constantly changing economic conditions, its provisions would continue to develop and adapt to the world and market demands for the next forty-seven years.³⁰

1. Foundational Principles of the GATT

Despite numerous problems with the organization's structure and means of enforcement and dispute resolution, the GATT did have its merits; particularly, the core principles that would later prove instrumental in the formation of the World Trade Organization.³¹ Foremost among these foundational principles were the most-favored-nation rule (MFN), "the reduction and binding of national tariffs, [and] the rule of national treatment," as well as the prohibition of non-tariff barriers.³²

First, the most-favored-nation rule was simply a principle of fairness, requiring that nations giving favored treatment to one GATT Member Nation must also extend the same treatment to the other GATT Member Nations.³³ "The MFN clause thus provides every contracting party the assurance that their goods will be treated on equal basis with the like

27. *See id.*

28. *Id.*

29. COHEN ET AL., *supra* note 2, at 184.

30. *Id.*

31. *See generally* THE WTO SECRETARIAT, GUIDE TO THE URUGUAY ROUND AGREEMENTS 38-39 (1999) [hereinafter WTO SECRETARIAT].

32. *Id.* at 39.

33. *Id.* at 39-40. "This MFN, or non-discrimination, obligation applies to customs duties and charges of any kind connected with importing and exporting, as well as to internal taxes and charges, and to all the rules by which such duties, taxes and charges are applied." *Id.* Addressed in the General Agreement, the "principle of non-discrimination stipulates that 'any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.'" DESTA, *supra* note 8, at 23 (quoting The General Agreement on Tariffs and Trade, Oct. 30, 1947, art. I, § 1, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194, available at

http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm (last visited Sept. 11, 2004) [hereinafter GATT]).

products of other contracting parties,"³⁴ thus creating "the obligation, on every contracting party, to treat all contracting parties in the same manner."³⁵ This equalization is in large part responsible for much of the GATT's success in the reduction, and in some instances, complete elimination of tariffs.³⁶ Even though this principle does not address the distinction between domestically produced and imported products,³⁷ this anti-protectionist principle has survived and is a core part of WTO principles.³⁸

Second, the reduction and binding of national tariffs requires countries to make a commitment to a stated maximum import duty "or restriction that they will apply to imports of specified types of goods."³⁹ However, most nations found ways to circumvent these commitments by using non-tariff devices, such as export subsidies, to continue domestic economic protection.⁴⁰ Unfortunately, at the negotiations establishing this principle, many developing countries did not participate in the negotiations to establish binding of national tariffs and consequently have no schedule for binding their tariffs.⁴¹ This is one of the primary issues that remains unresolved and continues to be a key element of negotiations, particularly where it concerns agriculture.⁴²

Third, the rule of national treatment compliments the most-favored-nation rule.⁴³ The principle provides that all of a country's products from their respective "trading partners [be placed] on equal terms with one another, the national treatment principle puts those products on equal terms also with the products of the importing country itself."⁴⁴ Like the most-favored-nation rule, this applies to internal taxes and other charges.⁴⁵ Found in Article III of the GATT, the national treatment rule deals primarily with "the use of internal, domestic, measures on imported products."⁴⁶ The thrust of this measure was to prevent countries from

34. DESTA, *supra* note 8, at 23.

35. *Id.*

36. *Id.*

37. *Id.*

38. WTO SECRETARIAT, *supra* note 31, at 39.

39. *Id.* at 40.

40. DESTA, *supra* note 8, at 24-25.

41. WTO SECRETARIAT, *supra* note 31, at 40.

42. *See generally* DESTA, *supra* note 8.

43. *See generally* WTO SECRETARIAT, *supra* note 31.

44. *Id.* at 40.

45. WTO SECRETARIAT, *supra* note 31, at 40.

46. DESTA, *supra* note 8, at 24. The pertinent provisions from the GATT, Article III follow:

avoiding mandates that sought to liberalize trade under tariff reduction by employing internal measures that would effectively distinguish between imported products and domestically produced products.⁴⁷ In essence, this mandated treatment calls for economic product equality, that is, once the imported product has entered the country, foreign and domestic products are treated the same for purposes of internal taxation.⁴⁸ The most significant implication of this principle is that it allows for protection of domestic suppliers only through action at the frontier or upon entrance into the country.⁴⁹

2. Structure of the GATT

The original intention of creating first the ITO, and subsequently the GATT, was to establish a body to handle international trade concerns and economic cooperation.⁵⁰ Initially, the agreement was a package of trade

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

....

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

GATT, *supra*, note 33, at art. III.

47. DESTA, *supra* note 8, at 24.

48. WTO SECRETARIAT, *supra* note 31, at 40.

49. *Id.* at 41.

50. *Understanding the WTO: Basics, The GATT years: from Havana to Marrakesh*, WORLD TRADE ORGANIZATION, available at

rules and tariff concessions.⁵¹ Numerous trade rounds followed in which countries sought to negotiate issues of concern such as tariff reduction, international trade liberalization, anti-dumping agreements, and the elimination of trade barriers.⁵² Additionally, there were some provisions that sought to address early concerns regarding subsidies and, no doubt, were a model for later WTO agricultural subsidy rules.⁵³ Despite the establishment of the GATT and its founders' good intentions, agricultural subsidies went largely unchecked.⁵⁴

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (last visited Sept. 14, 2004) [hereinafter *Understanding the WTO*].

51. *Id.*

52. *Id.*

53. See generally GATT, *supra* note 33. The pertinent provisions of the Act follow:

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

Section B - Additional Provisions on Export Subsidies

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy 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.

Id. at art. XVI.

54. Tashi Kaul, *The Elimination of Export Subsidies and the Future of Net-Food Importing Developing Countries in the WTO*, 24 *FORDHAM INT'L L.J.* 383, 407 (2000).

The 1947 GATT permitted many subsidies for agricultural products that were considered “primary,” but prohibited export subsidies on many of the industrial exported products.⁵⁵ Although GATT principles and negotiations were well intentioned, the GATT was not without its problems, many of which would be resolved in the Uruguay Round negotiations.⁵⁶ Among its problems, the GATT, rather than establishing an internal means of supporting itself, used financing and staffing resources provided by the Interim Commission for the International Trade Organization (ICITO).⁵⁷ Additionally, the GATT’s system of dispute resolution had proven cumbersome and inefficient over the years.⁵⁸ All of this would change with the establishment of the World Trade Organization.⁵⁹

3. The Uruguay Round of Negotiations

Although the commitments achieved through the GATT continue to have a lasting impact on current international trade policies, its structure and governing principles proved too inefficient and outdated to continue effectively.⁶⁰ Additionally, as the world economy became more globalized, it became clear that the GATT was in need of major modifications.⁶¹ Toward the end of the twentieth century, trade became increasingly more complex, and the outmoded GATT had numerous loopholes that were being heavily exploited, particularly in agricultural areas.⁶² The Uruguay Round was the eighth round of multilateral trade negotiations under the GATT since 1948.⁶³ Negotiations in this round were significant to agricultural trade, and these talks continued at regular intervals for eight

55. *Id.*

56. *See id.*

57. WTO SECRETARIAT, *supra* note 31, at 2.

58. *Id.*

59. *See generally id.*

60. *See generally* DESTA, *supra* note 8.

61. *Understanding the WTO*, *supra* note 50.

62. *Id.*

63. *The World Trade Organization and Agriculture*, U.S. DEP’T OF AGRIC., FOREIGN AGRIC. SERVICE, July 2002, at <http://www.fas.usda.gov/info/factsheets/wto.html> (last visited Nov. 24, 2004). Other key trade negotiation rounds include the Tokyo Round and the Kennedy Round. *See generally Pre-WTO Legal Texts*, WORLD TRADE ORGANIZATION, at http://www.wto.org/english/docs_e/legal_e/prewto_legal_e.htm (last visited Nov. 24, 2004) [hereinafter *Pre-WTO*].

years between 1986 and 1994.⁶⁴ By the start of the Uruguay Round the urgent need for reform was becoming apparent.⁶⁵

Government support and protection for agriculture had been increasing globally, and all countries felt the consequences in terms of rising budget expenditures, depressed markets, trade frictions, and the overall drain on economic growth. International agricultural markets were distorted by the use of high price supports and restrictive import barriers, which protected domestic producers while denying competitive producers the opportunity to sell their products in these markets. High price supports in some countries led to surplus production that was dumped on world markets with the aid of export subsidies.⁶⁶

During this round, countries reached an agreement that established some much needed long-term objectives.⁶⁷ Specifically, the round resulted in an Agreement on Agriculture with goals targeted at what has come to be known as the three pillars: Market Access, Export Subsidies, and Domestic Support.⁶⁸

The first pillar, Market Access, is a provision requiring that tariffs replace non-tariff barriers to market access.⁶⁹ This was to be accomplished by "tariffication" or the establishment of a tariff-only regime.⁷⁰ Tariffication refers to the implementation of tariff reduction commitments.⁷¹ It follows that market access would be furthered by reducing the established tariffs and binding the agricultural tariffs.⁷² This process sought to eliminate both existing and prospective tariffs.⁷³ This commitment had the interests of the exporter in mind, enabling him to understand and predict tariffs that had formerly been unpredictable trade barriers placed on his exports.⁷⁴

The second pillar, Export Subsidies, would prove to be pivotal in later negotiations, particularly the Cancun, Mexico negotiations.⁷⁵ The WTO

64. *The World Trade Organization and Agriculture*, *supra* note 63.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. WTO SECRETARIAT, *supra* note 31, at 52.

71. DESTA, *supra* note 8, at 73.

72. WTO SECRETARIAT, *supra* note 31, at 52.

73. DESTA, *supra* note 8, at 73.

74. *See The World Trade Organization and Agriculture*, *supra* note 63.

75. *See generally* WTO SECRETARIAT, *supra* note 31.

was the first organization to implement rules governing export subsidies.⁷⁶ Competitive world markets are easily distorted; their products are easily displaced by wealthier nations that provide subsidies to fund their economic interests.⁷⁷ Because subsidies allow producers to sell products for lower prices than what is needed to offset their costs, the market price is lowered as a result of the government assistance.⁷⁸ The United States and the European Union are two such entities that subsidize much of their agricultural exports.⁷⁹

The third pillar, Domestic Support policies, dictates how governments use a variety of measures to support their agricultural producers.⁸⁰ A country's individual policies "can impose costs on other countries and world markets by encouraging overproduction or inducing production of specific commodities."⁸¹ This principle was dealt with more efficiently once negotiations in agriculture and the world markets fell under the WTO umbrella.⁸²

After formation, the WTO developed a system by which Members could differentiate between serious trade distorting threats and those that impose only an insignificant risk of distortion.⁸³ The former threat was labeled the "amber" box while the latter was labeled the "green" box.⁸⁴ Clear from the color designations, which are akin to the colors common to traffic signals, the "green" box risks are acceptable, and no action is likely to be taken by the organization, while "amber" box risks are potentially problematic.⁸⁵ If a policy is labeled "amber," the country must be careful not to "exceed the level of support to which they have agreed as measured by their Aggregate Measurement of Support (AMS)," which totals "commodity by commodity, a country's support measures linked to

76. *Id.*

77. *Id.*

78. *Id.*

79. *Fact Sheet: USTR Describes Farm Bill in Context of Other WTO Members' Support Limits*, U.S. DEPARTMENT OF STATE, Sept. 9, 2003, at <http://usinfo.state.gov/topical/econ/wto/03091003.htm> (last visited Sept. 7, 2004) [hereinafter *USTR Describes Farm Bill*].

80. *The World Trade Organization and Agriculture*, *supra* note 63.

81. *Id.*

82. *See id.*

83. *Id.*

84. *Id.*

85. *See generally Pre-WTO*, *supra* note 63.

production or prices.”⁸⁶ For example, the United States ceiling for “amber” box distortions is \$19.1 billion; this is significantly lower than the ceilings for other large developed countries.⁸⁷ Another characterization of risks involves direct payments related to some production-limiting policies that distort trade, but are not subject to the reduction requirements because they fall under the “blue” box exemption.⁸⁸ A “blue” box designation is essentially the same as an “amber” box designation with conditions, which often prevent the organization from taking action.⁸⁹ Usually, subsidies are categorized in the “blue” box if the support requires farmers to limit production.⁹⁰ While this designation system, developed by the WTO, is useful in characterizing risks, the problems with subsidies and other trade distorting factors are responsible for the establishment of the World Trade Organization and subsequently the employment of the box system.⁹¹

B. *The World Trade Organization*

The creation of the WTO was a direct result of the Uruguay Round Multilateral Trade Negotiations;⁹² the primary purpose of its establishment in 1995 was to implement the agreements reached in the Uruguay Round.⁹³ However, another practical effect of the WTO was the replacement of the GATT, which set out many of the fundamental obligations regarding the trade of goods.⁹⁴ The GATT was successful in many arenas, specifically in

86. *The World Trade Organization and Agriculture*, *supra* note 63. A country’s support measures may include “price supports, marketing loans, payments based on acreage or number of livestock, and certain subsidized loan programs.” *Id.*

87. *Farm Bill 2002, Title III. Agricultural Trade and Aid*, U.S. DEPARTMENT OF AGRICULTURE, available at <http://www.fas.usda.gov/info/factsheets/fb2002/backgrounder.html> (last visited Sept. 18, 2004) [hereinafter *Farm Bill*].

88. *The World Trade Organization and Agriculture*, *supra* note 63.

89. *Agriculture Negotiations: Background Fact Sheet*, WORLD TRADE ORGANIZATION, at http://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm (last visited Sept. 17, 2004).

90. *Id.*

91. *See id.*

92. *See* WTO SECRETARIAT, *supra* note 31, at 1. The WTO was established by 16 articles found within the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994. *Id.*

93. U.S. TRADE REPRESENTATIVE, 2000 ANNUAL REPORT: II. WORLD TRADE ORGANIZATION, available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2001/2001_Trade_Policy_Agenda/asset_upload_file516_6491.pdf (last visited Oct. 15, 2004) [hereinafter 2000 ANNUAL REPORT].

94. *Id.*

lowering tariffs; however, by the 1970s and 1980s, many countries had devised other forms of economic protection to by-pass the tariff reduction.⁹⁵ Growing unemployment and factory closures led to a subsidies race among many developed nations trying to maintain their hold on the agriculture market.⁹⁶ Although the WTO is a negotiating body, functioning much as the GATT did before it, the GATT still exists and functions as the WTO's umbrella treaty, providing guidance in the area of trade in goods.⁹⁷

Currently, there are 147 Member Countries of the WTO, the majority of which are developing countries.⁹⁸ This organization serves as a platform for these countries to raise trade concerns regarding policies and trade partners in a variety of economic arenas.⁹⁹ All of the WTO agreements must be followed by all WTO Members and are thus considered "multilateral."¹⁰⁰

1. Primary WTO Issues

The WTO addresses and provides a means to resolve a number of important global issues.¹⁰¹ The preeminent issues include: protection of intellectual property rights, trade in agricultural services and goods, establishing and maintaining a means of settling trade disputes between Member Countries, and liberalization of trade.¹⁰² Among its numerous objectives, one long-term goal is the substantial reduction of agricultural trade protection, including the elimination of export subsidies.¹⁰³ Additionally, the WTO, like the GATT, seeks to expand trade and encourage the effective use of the world's resources along with improving the standard of living and achieving full employment.¹⁰⁴ Because there were numerous problems with interpretation and enforcement of GATT

95. *Understanding the WTO*, *supra* note 50.

96. *Id.*

97. *Understanding the WTO: Basics, The Uruguay Round, What Happened to GATT?*, WORLD TRADE ORGANIZATION, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm (last visited Sept. 18, 2004).

98. *Understanding the WTO: Developing Countries, Overview*, WORLD TRADE ORGANIZATION, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm (last visited Sept. 18, 2004).

99. *Id.*

100. 2000 ANNUAL REPORT, *supra* note 93.

101. *See id.*

102. *Id.*

103. Kevin C. Kennedy, *International Trade in Agriculture: Where We've Been, Where We Are, and Where We're Headed*, 10 MICH. ST. U.-DCL J. INT'L LAW, 1, 3 (Spring 2001).

104. WTO SECRETARIAT, *supra* note 31, at 3.

provisions, the “rules of the WTO [were implemented and] exist primarily to create a predictable and liberal economic . . . environment for international trade,” clearly apparent from its structure.¹⁰⁵

2. Structure of the WTO Agreement

The structure of the WTO agreement is quite simple.¹⁰⁶ The agreement is comprised of six parts, some of which include: the agreement to establish the WTO, agreements for the broad areas of trade, which are goods, services, and intellectual property, as well as provisions for dispute settlement, and review of government trade policies.¹⁰⁷ The organization conducts formal meetings every two years,¹⁰⁸ with at least one representative from each Member Country attending these meetings. Oftentimes, there are general meetings held at the WTO headquarters in Geneva several times a year.¹⁰⁹ The WTO is comprised of numerous committees and subsidiary councils that are responsible to the WTO.¹¹⁰ Article VI of the WTO agreement grants the WTO a permanent staff, consisting of a Secretariat and a staff appointed by the Secretariat.¹¹¹

105. *Id.* at 30.

106. World Trade Organization, *Understanding the WTO: The Agreements*, Overview: A Navigational Guide, at http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm (last visited Sept. 18, 2004).

107. *Id.*

108. Office of the U.S. Trade Representative, *What is the World Trade Organization (WTO)?*, Apr. 12, 2002, at www.ustr.gov/wto/wtifact3.html (on file with the Tulsa Journal of Comparative & International Law).

109. *Id.*

110. WTO SECRETARIAT, *supra* note 31, at 6-9. Article IV lists numerous WTO bodies, but the list is not exclusive. Many of the councils and committees can form sub-committees where necessary. *Id.*

111. *Id.* at 10. The pertinent portions of Article VI follow:

1. There shall be a Secretariat of the WTO (hereinafter referred to as “the Secretariat”) headed by a Director-General.
2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.
3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.
4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The

Interestingly, the Secretariat and staff are independent international civil servants and do not answer to or work for any specific nation, thus encouraging the development and enforcement of international objectives independent of regional or national influence.¹¹² Article VII of the WTO Agreement sets out the governing principles regarding budget and finance regulations.¹¹³ The Regulations detail that the WTO is financed by contributions from Member Nations based on their total exports of goods and services, a major change in structure from its predecessor, the GATT, which only considered the total exports of goods.¹¹⁴ “The basic principle is that contributions are proportionate to the share of each country’s exports and imports in the total trade among members.”¹¹⁵ Additionally, the agreement provides that all Member Nations, including developing countries, provide a minimum of a 0.03% contribution with less than that amount of the WTO’s total trade.¹¹⁶

C. *The Agreement on Agriculture*

Agriculture was one of the most problematic issues negotiated in the Uruguay Round and resulted in not only the creation of the WTO, but also the Agreement on Agriculture.¹¹⁷ Although the GATT made attempts to address agricultural issues, trade in agriculture has been continually plagued by restrictions and distortions.¹¹⁸

The GATT rules, as well as accession conditions and waivers, permitted GATT Members to maintain greater protection against agricultural imports; also it provides wider-ranging subsidies for agricultural exports than was allowed for industrial goods. Few market opening commitments were made, so that the degree of binding achieved

Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

WTO Analytical Index: Marrakesh Agreement, WORLD TRADE ORGANIZATION, available at http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_03_e.htm#articleVI (last visited Sept. 18, 2004).

112. See generally WTO SECRETARIAT, *supra* note 31, at 10.

113. *Id.*

114. *Id.* at 10-11.

115. *Id.* at 11. Unlike under the GATT, the share is calculated based on the percentage of goods and services not just the percentage of goods. *Id.*

116. *Id.*

117. *Agriculture Summary*, CTR. FOR INT’L DEVELOPMENT AT HARVARD UNIVERSITY (last updated Jan. 2004), at <http://www.cid.harvard.edu/cidtrade/issues/agriculture.html> (last visited Oct. 15, 2004).

118. WTO SECRETARIAT, *supra* note 31, at 51.

was far less than for industrial products, and quantitative restrictions were widely applied.¹¹⁹

During the Uruguay Round, negotiators sought to overcome obstacles imposed by non-tariff international trade barriers in agriculture.¹²⁰ The commitments made by WTO Members were aimed at “making agricultural trade fairer and more market-oriented.”¹²¹ The negotiations resulted in a conversion of the non-tariff barriers to tariffs and the binding of those tariffs.¹²² The WTO Agreement on Agriculture primarily focused on reform in “market access, domestic support, export competition,¹²³ and sanitary/phytosanitary issues.”¹²⁴

In the past, GATT rules permitted subsidies for agriculture producers;¹²⁵ however, the Agreement on Agriculture distinguished itself from the GATT and the trends following its implementation and enforcement by allowing subsidies only if they met certain exceptions.¹²⁶ The market access provisions of the agreement called for a thirty-six percent reduction in tariffs for developed countries and a twenty-four percent reduction for developing countries over six and ten year periods respectively.¹²⁷

The tariffication package also provides for the maintenance of current access opportunities and the establishment of minimum access tariff quotas (at reduced-tariff rates) where current access is less than three percent of domestic consumption. These minimum access tariff quotas are to be expanded to five percent over the implementation period.¹²⁸

The commitments made in the Agreement on Agriculture arguably had an adverse impact on many developed and wealthy countries.¹²⁹ Under this agreement, Members promised to reduce import tariffs, export subsidies, and “total aggregate support to agricultural producers,” thus not

119. *Id.*

120. DESTA, *supra* note 8, at 62.

121. WTO SECRETARIAT, *supra* note 31, at 52.

122. DESTA, *supra* note 8, at 62.

123. *Agriculture Summary*, *supra* note 117; *see also* GATT, *supra* note 53, at art. XVI.

124. *Id.* Sanitary and phytosanitary issues are not agricultural issues per se, but include environmental protection, public health and safety concerns as well as food security. *Id.*

125. WTO SECRETARIAT, *supra* note 31, at 59.

126. *Id.*

127. *Legal texts: The WTO Agreements, Agreement on Agriculture*, WORLD TRADE ORGANIZATION, available at www.wto.org/english/docs_e/legal_e/ursum_e.htm (last visited Sept. 16, 2004).

128. *Id.*

129. *See generally id.*

providing the expected support to their farmers.¹³⁰ In contrast, developing and least developed countries stood to benefit the most if the commitments were kept.¹³¹ The developing countries still had to reduce tariffs, subsidies, and agricultural assistance, but these changes were to be implemented much more gradually.¹³² In spite of the well intentioned and seemingly aggressive Uruguay Round initiatives and subsequent WTO negotiations, agriculture remains the area of international trade most distorted by export subsidies.¹³³

D. Cancun, Mexico – The Midpoint of the Doha Negotiations

The most recent trade round, termed the Doha Development Round, began in Doha, Qatar in 2001.¹³⁴ Continuing with the 2003 midpoint meetings in Cancun, Mexico, all nations hoped for progress.¹³⁵ Viewed as a moderate success, the Doha mandate was one result of the round calling for specified methods to be implemented by each Member Nation in reaching trade liberalization goals.¹³⁶ The Doha mandate required timetables and targets to reduce tariff barriers and improve market access.¹³⁷ Unfortunately, the mandate deadlines were not met, and many of the Member Countries scrambled to be ready for the meetings in Cancun.¹³⁸ In particular, European countries were unable to decide on the most appropriate reform measures to be taken concerning the Common Agriculture Policy (CAP).¹³⁹ In contrast to the Doha negotiations, the Cancun meetings failed because little was accomplished with regard to the Agricultural issues facing much of the developing world.¹⁴⁰

130. *Agriculture Summary*, *supra* note 117.

131. *See generally* DESTA, *supra* note 8.

132. *Agriculture Summary*, *supra* note 117.

133. Kaul, *supra* note 54, at 407-08.

134. U.S. TRADE REPRESENTATIVE, 2004 TRADE POLICY AGENDA AND 2003 ANNUAL REPORT: II. WORLD TRADE ORGANIZATION 1, *available at*

http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_Trade_Policy_Agenda/asset_upload_file665_4752.pdf (last visited Oct. 15, 2004) [hereinafter 2003 ANNUAL REPORT].

135. Steven Pearlstein, *Trade and Trade-Offs*, WASH. POST, Sept. 10, 2003, at E01.

136. *Agriculture Summary*, *supra* note 117.

137. *Id.*

138. *Id.*

139. *Id.*

140. *See generally* Robert B. Zoellick, *America Will Not Wait for the Won't-do Countries*, FIN. TIMES (London), Sept. 22, 2003, at 23.

One key topic for negotiation involved excessive subsidies given by the United States and European Union to their respective farmers.¹⁴¹ Some allege that the “subsidies result[ed] in huge excesses of artificially low-priced fruits, vegetables and grains being dumped on world markets, making it impossible for farmers in poorer nations to compete.”¹⁴² Despite the possibility of lowering prices and the opportunity to remedy the problems through negotiations, the Cancun negotiations accomplished relatively little.¹⁴³

1. Problems in the Cancun Meetings

Unfortunately, the recent WTO negotiations in Cancun, Mexico did not go as smoothly as hoped, nor were the anticipated objectives achieved.¹⁴⁴ Developing countries demanded an end to high tariffs and agricultural subsidies that adversely impact them, but were unwilling to make concessions to developed countries.¹⁴⁵ When the results of the negotiations seemed to take a turn away from the objectives many poorer nations sought, a group of African, Caribbean, Asian, and Latin American countries walked out of the negotiations.¹⁴⁶

To make matters more complex, a small group of African nations were seeking a substantial compensation package totaling more than \$300 million, as well as a significant reduction of American and European Union subsidies to their respective cotton farmers.¹⁴⁷ Thought to be unreasonable by a number of the larger, developed countries, the proposal was questioned and ultimately denied.¹⁴⁸ Some critics have noted that cotton may have been singled out in the negotiations because Europe does

141. See generally Kevin Sullivan, *Agriculture on the Table at Trade Talks in Mexico; U.S. and European Farm Subsidies Come Under Attack*, WASH. POST, Sept. 10, 2003, at A12.

142. *Id.* Dumping occurs when overproduction of a product in one country is then exported to another country (particularly a developing country) and marketed at a cost far below what the country's domestic producers of the product can sell for the competing product. One of the effects of this practice is that the below cost imports may drive farmers out of their markets. Another effect is that farmers may “find their world market share undermined by the lower-cost competition.” INST. FOR AGRICULTURE AND TRADE POL'Y, U.S. DUMPING ON WORLD AGRICULTURAL MARKETS 13 (2003), available at http://www.tradeobservatory.org/library.cfm?filename=United_States_Dumping_on_World_Agricultural_Ma.pdf. (last visited Sept. 18, 2004) [hereinafter U.S. DUMPING].

143. Zoellick, *supra* note 140.

144. See generally, Elizabeth Becker, *Poorer Countries Pull Out of Talks Over World Trade*, N.Y. TIMES, Sept. 15, 2003, at A1; see also Zoellick, *supra* note 140.

145. *The Cancún Failure*, N.Y. TIMES, Sept. 16, 2003, at A24.

146. Becker, *supra* note 144; see also Zoellick, *supra* note 140.

147. Becker, *supra* note 144.

148. Zoellick, *supra* note 140.

not produce or export significant amounts of cotton.¹⁴⁹ It follows that the United States is the only large, developed country that would be affected by this proposal.¹⁵⁰ However, the fact that the United States subsidizes its farmers in amounts approaching \$3 billion was probably a more significant reason for the attention.¹⁵¹ According to United States Trade Representative, Robert Zoellick, the United States does not subsidize cotton and is pushing to eliminate subsidies entirely.¹⁵² Furthermore, the United States does not want to make cotton a symbol of world development, but wants to reach farmers of all commodities with subsidy reform.¹⁵³ Undoubtedly, this breakdown in the negotiation process will set back the timetable of the WTO, making it difficult to reach their self-imposed 2005 deadline.¹⁵⁴ Perhaps a more flexible stance taken by the United States would have resulted in more progress.

2. Americans Take a Cautious Stance

Not surprisingly, at the 2002 WTO meeting in Cancun, the United States leadership took a guarded stance concerning many of the objectives on the table at the Cancun negotiations; no doubt, anticipating the potential impact of an ambitious stance on subsidies.¹⁵⁵ As expected, there is a split among the American farm lobby between those who see greater access to the world market as a chance for profit and those who are content with the safety found in their subsidies.¹⁵⁶ Undoubtedly, many farmers are concerned that an overly aggressive stance could result in the repeal of the U.S. Farm Bill forcing farmers to respond to market demands instead of producing at capacity, thus maximizing governmental aid.¹⁵⁷

3. The Cairns Group

The Cairns Group, another faction opposed to the United States' stance, has heavy interests in the negotiations; it is comprised of fourteen agricultural exporting countries headed by Australia and including Uruguay, Thailand, the Philippines, New Zealand, Malaysia, Indonesia,

149. *Cancún Targets Cotton*, N.Y. TIMES, Sept. 13, 2003, at A12.

150. *See generally id.*

151. *Id.*

152. Zoellick, *supra* note 140.

153. *Id.*

154. Becker, *supra* note 144.

155. *Id.*

156. *The Cancún Failure*, *supra* note 145.

157. Elizabeth Becker, *Coming U.S. Vote Figures in Walkout at Trade Talks*, N.Y. TIMES, Sept. 16, 2003, at A6.

Hungary, Fiji, Colombia, Chile, Canada, Brazil, and Argentina.¹⁵⁸ This group has been at the forefront of the negotiations, supporting the liberalization of agricultural trade.¹⁵⁹ Like many others in the international community, these countries believe that subsidies divert resources, preventing the most efficient and valued use of resources.¹⁶⁰

4. European and United States Farmers Prosper at the Expense of African Farmers

African farmers are among the hardest hit by the United States' and European Union's subsidies.¹⁶¹ Through legislation such as the U.S. Farm Bill and CAP, wealthy nations encourage trade distortion.¹⁶² According to one source, American farmers received in excess of \$3 billion in 2002, which equals roughly \$200 per farmed acre.¹⁶³ Similarly, the European Union subsidizes its farmers heavily.¹⁶⁴ "The average European cow now gets a subsidy of more than \$2 a day, more than what a quarter of the world's people live on" per day.¹⁶⁵ Additionally, in the past Europe has subsidized its farmers, primarily farmers in Greece and Spain, with nearly \$1 billion per year.¹⁶⁶ What is the result of these seemingly excessive subsidies? Critics argue that excessive subsidies lead to overproduction, depression of world prices, and the reduction of many developing nations' farmers to poverty.¹⁶⁷ In many of these developing nations, "[c]ommunities are built around discrete industries; lives are devoted to learning the skills necessary to operate in the field at hand; and ties are formed to particular geographic places, with few job opportunities other than those in the dominant industry."¹⁶⁸

158. Kennedy, *supra* note 103, at 2 n.1.

159. *Id.*

160. Marc Kleiner, *Bananas, Airplanes and the WTO: Prohibited Export Subsidies*, 10 U. MIAMI INT'L & COMP. L. REV. 129 (2002).

161. See generally Elizabeth Becker, *African Nations Press for an End to Cotton Subsidies in the West*, N. Y. TIMES, Sept. 12, 2003, at A5.

162. See generally DESTA, *supra* note 8.

163. Becker, *supra* note 161.

164. Pearlstein, *supra* note 135.

165. *Id.*

166. Becker, *supra* note 161.

167. Pearlstein, *supra* note 135.

168. Ari Afilalo, *Not in My Back Yard: Power and Protectionism in U.S. Trade Policy*, 34 N.Y.U. J. INT'L L. & POL. 749, 766 (2002).

Significantly, the United States stands to gain from expanded market access.¹⁶⁹ Since the majority of the world's consumers do not live in the United States, and the United States is the largest exporter in the world, it follows that expanded market access will have a tremendous benefit to American exporters.¹⁷⁰ Exports of United States agricultural products also generate additional economic activity that ripples through the domestic economy. According to USDA's Economic Research Service, every dollar of export creates another \$1.47 in supporting activities to process, package, ship, and finance agricultural products.¹⁷¹

Accordingly, the United States has made aggressive proposals for reform in agricultural trade; however, these reforms do not seem to fit with the objectives targeted in the U.S. Farm Bill.¹⁷² There are two primary phases to the United States' proposals.¹⁷³ The first phase calls for the elimination of export subsidies over a five year period, thus reducing worldwide tariffs and trade-distorting support.¹⁷⁴ The second phase calls for the complete elimination of all tariffs and forms of trade distorting domestic support.¹⁷⁵

Although discouraged by the GATT and counter to the goals of the WTO, the United States and many countries employ non-tariff protective measures.¹⁷⁶ Some have argued that since the trend for the last fifty years has been toward outlawing protectionism in the world markets, the United States should follow in like manner.¹⁷⁷ "There is no reason, other than the need to protect a domestic industry, to exclude a category of goods such as agricultural goods from GATT disciplines."¹⁷⁸ It is argued by Ari Afilalo that the answer is not:

in the erection of barriers to trade that are the functional equivalent of a tariff, but rather, in the multilateral negotiation of labor standards that

169. See generally *Trade is Important to U.S. Agriculture*, U.S. FOREIGN AGRICULTURAL SERVICE, available at <http://www.fas.usda.gov/itp/wto/tradeimportant.htm> (last visited Sept. 18, 2004).

170. *Id.*

171. *Id.*

172. *The U.S. WTO Agriculture Proposal*, U.S. FOREIGN AGRICULTURAL SERVICE, available at <http://www.fas.usda.gov/itp/wto/proposal.htm> (last visited Sept. 12, 2004).

173. *Id.*

174. *Id.*

175. *Id.*

176. See generally, DESTA, *supra* note 8, at 24-25. Under the current WTO regulations, the U.S. can provide up to \$19.1 billion per year in trade-distorting support. *USTR Describes Farm Bill*, *supra* note 79.

177. Afilalo, *supra* note 168, at 753.

178. *Id.* at 762.

may even the playing field and, principally, in the restructuring of the domestic economies either to improve the competitiveness of declining industries or to shift production capacity to more competitive sectors.¹⁷⁹

III. THE UNITED STATES FARM BILL OF 2002

The Farm Security and Rural Investment Act of 2002 (U.S. Farm Bill) has drawn a great deal of criticism from numerous Members of the WTO.¹⁸⁰ Signed into law on May 13, 2002 by President George W. Bush,¹⁸¹ the bill effectively benefits the country's large grain and cotton farmers.¹⁸² Due to the discretion granted to the United States Secretary of Agriculture in the bill, the likely result will be economic conditions favorable to the United States but detrimental to the world markets, particularly those in which developing countries seek to compete.¹⁸³ Some organizations hold that "American agricultural policy distorts food prices, frustrates innovation, limits product diversity and subsidises [sic] a select group of farmers at enormous public cost."¹⁸⁴ However, proponents of the bill are quick to point out that while the United States enjoys a \$19.1 billion ceiling on subsidies, other countries enjoy far more liberal subsidizing standards; therefore, even if the United States takes full advantage of allowable subsidies, it still falls short of the European and Japanese expenditures.¹⁸⁵ The European Union's ceiling is \$60 billion and Japan's policies reflect trade distortion of approximately \$30 billion.¹⁸⁶ Some reports estimate that average spending by the United States in the years between 1999 and 2001 was approximately \$24.5 billion, whereas spending under the new U.S. Farm Bill promises to be twenty percent less, around \$20 billion.¹⁸⁷ Furthermore, most of the support detailed in the bill is purportedly "non-trade distorting" support.¹⁸⁸

179. *Id.* at 772.

180. *Id.* at 780.

181. The Farm Security and Rural Investment Act of 2002, *supra* note 15.

182. Mitra, *supra* note 9.

183. Afilalo, *supra* note 168, at 786.

184. Mitra, *supra* note 9.

185. *Farm Bill*, *supra* note 87.

186. *Id.*

187. *U.S. Farm Bill and the WTO Negotiations*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, Sept. 9, 2003, available at <http://www.ustrade-wto.gov/fsfbill0910.html> (last visited Sept. 16, 2004).

188. *Id.*

A. *Origins of the U.S. Farm Bill*

The bill is a direct result of what appeared to be a farming crisis in the United States during a period encompassing the late 1990s through 2000.¹⁸⁹ Market prices in 2000 were lower than they had been in decades for crops such as soy beans, wheat, corn, rice, and cotton.¹⁹⁰ Some critics even commented that the farm recession was among the worst in American history, ranking it with the Great Depression and the recessions following the two World Wars.¹⁹¹ Some argue that the bill is political in nature rather than benevolent, since many of the states producing the products that will benefit the most from the bill (Midwestern states such as Iowa, Kansas, Illinois, Indiana, and Minnesota) are also states that helped secure Bush the presidency in 2000.¹⁹²

B. *Opposition to the U.S. Farm Bill*

Ari Afilalo, an opponent of the Farm Bill, argues that Congress could have tackled the farm recession problem with methods other than the Farm Bill that would have been less detrimental to developing countries.¹⁹³ He states:

[d]irect aid unrelated to price would not have triggered any international trade concerns. Direct aid could have taken the form of cash grants to the states or to individuals. Cash grants to the states could have entailed a directive to establish training programs for those displaced by the decreased profitability of the farming sector. Congress could have given incentives to businesses operating in particularly affected areas. Generous unemployment benefits or government assistance could be temporarily put in place to alleviate the human suffering attendant to the current conditions.¹⁹⁴

However, the Farm Bill affects prices, by giving to qualified producers direct payments based on formulas laid out in the bill that take into account acreage farmed; also, a variety of other considerations are based on different agricultural staples produced.¹⁹⁵ The Farm Bill protects American farmers from foreign competition, forcing foreign farmers

189. See Afilalo, *supra* note 168, at 784.

190. *Id.*

191. *Id.*

192. See generally *Importance of Trade for Agriculture*, U.S. FOREIGN AGRICULTURAL SERVICE, June 2002, available at <http://www.fas.usda.gov/info/factsheets/TPA/economy.html> (last visited Sept. 18, 2004).

193. Afilalo, *supra* note 168, at 784.

194. *Id.* at 784-85.

195. *Id.* at 785.

(particularly farmers in developing countries) to bear the consequences of the suppressed market.¹⁹⁶

C. *Provisions of the Farm Bill of 2002*

The passage of the U.S. Farm Bill may result in many developing countries viewing the United States in a worse light than they view the subsidy rich European Union.¹⁹⁷ One reason for this is that the U.S. Farm Bill provides for an increase in subsidies to large cotton and grain farmers, an area in which developing countries in particular are striving to compete.¹⁹⁸ Accordingly, to insure that the wealthy producers benefit the most, the bill imposes a limit of \$360,000 per farmer, which is subject to numerous exceptions.¹⁹⁹ The bill also has provisions for conservation, food stamps, and food labeling.²⁰⁰ Contrary to the 1996 Freedom to Farm Law, passed under the Clinton Administration, which sought to eliminate subsidies allowing the market to dictate prices and production, the U.S. Farm Bill appears to push in the opposite direction, discouraging production based on market demands.²⁰¹ It is estimated that over the next six years the bill will cost \$100 billion and nearly \$200 billion over the next ten years.²⁰² While some of this outlay will undoubtedly go to conservation and other efforts provided for in the bill, the majority of the funds are likely to go to large and inefficient agribusiness.²⁰³

D. *Adverse Impact*

Perhaps the most detrimental result of subsidizing the farm sector is that it encourages farmers to produce irrespective of the market demands.²⁰⁴ When market prices are low, instead of American farmers producing less to conform to the demands of the market, the U.S. Farm Bill encourages farmers to continue production, thus flooding the market with an excess of agricultural products, further lowering prices.²⁰⁵ This surplus has had other negative effects on the world markets such as

196. *Id.*

197. *See* Mitra, *supra* note 9.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. Mitra, *supra* note 9.

204. Afilalo, *supra* note 168, at 785.

205. *See generally id.*

dumping surpluses on already saturated markets, and consequently, lowering the price of the products for importing countries.²⁰⁶

Additionally, some have argued that the U.S. Farm Bill actually impairs American farmers' production.²⁰⁷ However, this assessment is made with the caveat that it is not the conglomerate agricultural producers that are negatively impacted, but the small operation farmers.²⁰⁸ "[T]he new bill fails the nation's family farmers, consumers, taxpayers, and environment[,] . . . further destabilize[ing] family farmers and rural communities around the world."²⁰⁹

In the early twentieth century, one quarter of the United States population lived on American farms.²¹⁰ Today, only two percent of the population occupy and work rural farmland.²¹¹ This dramatic change in the composition of rural America inversely parallels the exponential growth of commercial farming enterprises.²¹² Approximately eight percent of the total number of American farms account for, in excess of, seventy percent of agricultural sales.²¹³ The bill does little to help the independent owners of small and medium sized farms in rural America; in fact, the bill seems to turn its back on these farmers.²¹⁴ Some have termed the U.S. Farm Bill "agribusiness welfare" since it gives primarily to the large producers.²¹⁵ The same commentator aptly titled his article "Giving Away the Farm" because in effect the Farm Bill robs from the poor independent farmer and gives to the rich agribusiness conglomerates.²¹⁶ In contrast, proponents hold that although the new spending levels seem high, that when all of the ad hoc programs and additional expenditures of past years are taken into account, the new U.S. Farm Bill does not expend more domestic resources than the government did before the bill.²¹⁷ Even so, how does this justify the certain destruction of family farms and those that are connected with small farming?

206. See generally U.S. DUMPING, *supra* note 142.

207. Anuradha Mittal, *Giving Away the Farm: The 2002 Farm Bill*, 8 FOOD FIRST: INST. FOR FOOD & DEV. POL'Y, BACKGROUNDERS 1 (Summer 2002), available at <http://www.foodfirst.org/pubs/backgrdrs/2002/s02v8n3.pdf> (last visited Oct. 15, 2004).

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. Mittal, *supra* note 207.

214. Mitra, *supra* note 8.

215. Mittal, *supra* note 207.

216. See generally *id.*

217. See *Farm Bill*, *supra* note 87.

Furthermore, the new bill only enhances and exaggerates the existing inequities between the one family farmer and the large operation corporate farmers.²¹⁸ "The top 10 percent of farm-subsidy recipients collect two-thirds of the money, and the bottom 80 percent get just one-sixth. Forty-seven percent of commodity payments will go to large farms with average household incomes of \$135,000. Moreover, most crops are not eligible for subsidy payments."²¹⁹ Most of the money doled out by the Farm Bill goes to producers of cotton, wheat, rice, and barley.²²⁰ Because most of the federal funding will go to large agricultural producers, the average American farmer will receive surprisingly little of the benefit this bill seeks to provide, while that same farmer will help bear the cost of the bill.²²¹

Some argue that these measures are nothing more than an uncertain administration buying votes from the farm belt and the big business slant to the legislation has precisely that flavor.²²² That aside, even some conservative lawmakers believe that the likely result may be that the large farms, equipped with generous subsidies will buy out the small farms that the bill purports to save.²²³ The damage caused by the U.S. Farm Bill could mean the end of small independent farming upon which American agriculture was built.²²⁴

IV. TRADE LIBERALIZATION

Proponents of trade liberalization maintain that implementation of tariff reductions and the elimination of subsidies will have an aggregate effect of stimulating world trade and investment as well as a more efficient use of resources.²²⁵ The WTO Secretariat has estimated that of the many benefits of the implementation of these regulations, world merchandise trade is expected to increase between nine percent and twenty-four percent by 2005.²²⁶

218. Mittal, *supra* note 207.

219. *Id.*

220. *Id.*

221. *See generally* Mitra, *supra* note 9.

222. *See generally* Mittal, *supra* note 207.

223. *Id.*

224. *Id.*

225. WTO SECRETARIAT, *supra* note 31, at 144.

226. *Id.* at 148-49. The projected rates of increase were predicted using a variety of models. *See generally id.* at 149-51.

A. *The European Union*

1. Common Agriculture Policy

Like the United States, and indeed the rest of the world, Europe faced an uncertain market for all goods in the post-World War II era.²²⁷ To battle these uncertainties and develop food security, in 1962 Europe introduced the Common Agricultural Policy (CAP).²²⁸ Its implementation led to deliberate increases in agricultural production and reduced reliance on imports.²²⁹ As expected and as evidenced by the United States continued use of subsidies, production increased beyond the demands of the market, resulting in surpluses, leading to increasingly heavy government expenditures.²³⁰

Of course this was not the intention of the CAP, which was actually intended to stabilize markets, assure that necessary supplies were readily available, ensure reasonable prices for consumers, and to increase agriculture production.²³¹ To alleviate some of the inequities caused by the CAP, Europe offered to reform some of its policies in the Agenda 2000 Agreement.²³² The resulting changes included shifts from price supports to direct payments,²³³ reductions in economic distortions, and the formulation of a European Union rural development policy.²³⁴ The Council of European Union Agriculture Ministers met in 2003 to again negotiate changes to the CAP because it is still an “extremely expensive policy and is insufficient to meet the challenges posed by the World Trade Organization.”²³⁵

2. The European Union Imports and Exports

The fifteen countries comprising the European Union import approximately \$60 billion in agricultural goods per year.²³⁶ Unlike the

227. See generally *Common Agricultural Policy (CAP): From Creation to the Present Day*, UK DEPARTMENT FOR ENVIRONMENT FOOD AND RURAL AFFAIRS, at <http://www.defra.gov.uk/farm/capreform/index.htm> (on file with author).

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. See Afilalo, *supra* note 168, at 784.

234. *Common Agriculture Policy (CAP): From Creation to the Present Day*, *supra* note 227.

235. *Id.*

236. Press Release, European Union, Facts and Figures on EU Trade in Agricultural Products: Open to Trade, Open to Developing Countries (Dec. 12, 2002), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/02/296&format=HT>

United States and many other wealthy nations, the European Union is the "largest importer of farm products from developing" nations.²³⁷ Europe is responsible for importing over two thirds of Africa's agricultural exports and nearly half of the agricultural products exported from Latin America.²³⁸ In the mid 1980s Europe's stocks of several commodities, such as beef, butter, and wheat, far exceeded their domestic need, so they promoted exports through the use of subsidies.²³⁹ Similar to the effects of the U.S. Farm Bill, this type of export promotion set Europe's domestic prices above the world market prices that would have existed in its absence.²⁴⁰ Consequently, in part to effectuate economic self-preservation through negotiations, at the recent Cancun, Mexico negotiations, the European Union sought to retain a portion of its export subsidies, saying that the proposals on the table for negotiations were unbalanced.²⁴¹ The European Union provides extensive support to its farmers, primarily through "trade-distorting" support accounting for more than half of the support provided.²⁴² Additionally, the European Union relies on the \$2 billion per year it spends on export subsidies to eliminate surplus production, thus driving down world market prices.²⁴³

Without doubt, the inequitable subsidies provided under the protective guise of the European Union's CAP have a significant adverse affect on world markets.²⁴⁴ In fact,

[a] withdrawal of agricultural support in industrialized countries would reduce the surplus in output and, thereby, raise world prices of agricultural commodities. The removal of subsidies [sic] under CAP, for instance, would induce two key changes. First, domestic EC agricultural prices would fall from artificially raised levels. Second, the resultant decline in EC agricultural output would exert an upward pressure on the free trade world prices. That this rise in world prices would benefit

ML&aged=0&language=EN&guiLanguage=en (last visited Sept. 19, 2004) [hereinafter EU Trade in Agricultural Products].

237. *Id.*

238. *Id.*

239. Kaul, *supra* note 54, at 396-97.

240. *Id.*

241. Naomi Koppel, *WTO Document Proposes Ending Farm Export Subsidies*, A. P. NEWSWIRES, Feb. 12, 2003, available at <http://www.tradeobservatory.org/headlines.cfm?RefID=18025>.

242. *USTR Describes Farm Bill*, *supra* note 79. The European Union has a domestic support ceiling of \$60 billion per year, and Japan has a ceiling approaching \$30 billion compared to the U.S. ceiling of \$19.1 billion per year. *Farm Bill*, *supra* note 87.

243. *USTR Describes Farm Bill*, *supra* note 79.

244. *Common Agriculture Policy (CAP): From Creation to the Present Day*, *supra* note 227.

developing countries that are net-exporters of agricultural commodities via terms of trade improvement is an established fact.²⁴⁵

Although, not clear from the recent Cancun negotiations, this is the reason that the European Union is taking steps to reform with the primary goal of “reduce[ing] the overall burden of the CAP . . . and making world trade fairer.”²⁴⁶

B. World Markets

In the wake of the passage of the U.S. Farm Bill, the balance of world trade is likely to shift in the United States favor.²⁴⁷ Many economists fear that the generous United States subsidies will drive down essential commodity prices.²⁴⁸ Unfortunately, the U.S. Farm Bill was passed while United States policies imposing tariffs on steel imports were still under scrutiny and criticism.²⁴⁹ At the signing of the bill, President George W. Bush commented: “[t]his bill is generous and will provide a safety net for farmers, and it will do so without encouraging overproduction and depressing prices. It will allow farmers and ranchers to plan and operate based on market realities, not Government dictates.”²⁵⁰ In contrast, many critics still maintain that subsidies at high levels, such as those set by the U.S. Farm Bill, lead to overproduction.²⁵¹ American farmers produce far more crops than the domestic or even the export markets demand; this flood of excess commodities lowers prices.²⁵² Currently, the United States federal government is the source of more than forty percent of all net farm income.²⁵³ This crutch encourages producers to seek the highest possible amount of federal aid, thus encouraging them to plant high yield crops, whether or not the market demands those crops to satisfy its needs.²⁵⁴

245. Kaul, *supra* note 54, at 397.

246. *Common Agriculture Policy (CAP): From Creation to the Present Day*, *supra* note 227.

247. Farah Khan, *US Farm Bill Will Drive Down Prices in Africa*, AFROL NEWS, May 15, 2002, at http://www.afrol.com/News2002/afr012_us_farmbill.htm (last visited Sept. 18, 2004).

248. *Id.*

249. *New U.S. Farm Bill Upsets WTO Partners, Could Hurt Developing Countries*, BRIDGES WKLY. TRADE NEWS DIG., May 15, 2002, available at <http://www.ictsd.org/weekly/02-05-15/story2.htm> (last visited Sept. 11, 2004) [hereinafter *New U.S. Farm Bill Upsets WTO Partners*].

250. President George W. Bush, Statement upon signing the Farm Security and Rural Investment Act (May 13, 2002) (transcript available at 38 WKLY. COMPILATION OF PRES. DOC. 808).

251. Mittal, *supra* note 208.

252. *Id.*

253. *Id.*

254. *Id.*

Additionally, commentators have noted that "US subsidies are being granted on exactly the commodities where the [African] continent could be competitive," such as cotton as evidenced by the demands of many African countries in the Cancun negotiations.²⁵⁵

World markets can only bear so much of the unbalanced United States' subsidizing tactics before countries like South Africa, who have consistently obeyed the liberalizing edicts of both the International Monetary Fund (IMF) and the World Bank, are forced out of the market.²⁵⁶ Additionally, the Mercosur, the large trading bloc of agricultural countries in Latin America, will also suffer from the Farm Bill.²⁵⁷ Forecasts predict that Argentina and Brazil will suffer losses of approximately \$39 billion due to the drop in commodity prices resulting from the bill.²⁵⁸ While the United States is the largest producer of soy, controlling thirty percent of the market, Argentina, Brazil, and Paraguay follow with a substantial portion of the market and stand to suffer injury from the market distortion caused by the U.S. Farm Bill.²⁵⁹ Of course, countries like those in the Mercosur group or the Cairns group can challenge the U.S. Farm Bill at WTO meetings, but an effort to challenge such legislation may further hinder, or even breakdown the already volatile negotiations, as well as proving fruitless as evidenced by some of the demands made by African nations during the Cancun trade round.²⁶⁰

C. *Specific Proposals*

The United States has made numerous proposals regarding agriculture and the elimination of subsidies and reduction of tariffs throughout the Doha Negotiation Rounds.²⁶¹ Most recently, the United States proposed the complete elimination of export subsidies over a five year period.²⁶² Additionally, the United States has dealt with the problem of excessive tariffs in the non-agricultural arena.²⁶³ The approach to the problem may be summarized by stating that the United States intends to

255. Khan, *supra* note 247.

256. *Id.*

257. *New U.S. Farm Bill Upsets WTO Partners*, *supra* note 249.

258. *Id.*

259. *Id.*

260. *See generally id.*

261. *See generally* WTO SECRETARIAT, *supra* note 31.

262. *The U.S. WTO Agriculture Proposal*, *supra* note 172.

263. WORLD TRADE ORGANIZATION, MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS, COMMUNICATION FROM THE UNITED STATES, available at http://www.aeanet.org/GovernmentAffairs/gaam0191_WTOmarketaccessfornonagproductsFeb031of2.asp (last visited Sept. 18, 2004).

ensure market access opportunities for all WTO Members and encourage participation by all Members in the liberalization process.²⁶⁴ The parameters of the approach are (1) a comprehensive approach, with no exclusions for some products, (2) an initial phase of tariff reduction and elimination, (3) a second phase that would eliminate all remaining tariffs, (4) participation by all WTO Members, and (5) the non-tariff barriers on a parallel track.²⁶⁵ Many maintain that “world-wide elimination of tariffs will significantly benefit developing country Members, particularly for non-agricultural products, which account for 89 percent of exports from developing countries.”²⁶⁶ By most estimates, the World Bank believes that a large majority of the benefit of tariff elimination would go to low-income, developing countries.²⁶⁷ It seems reasonable to draw a parallel between tariffs and subsidies, both of which are artificial measures to promote domestic market stability at the expense of other world markets. It follows that the elimination of subsidies would effectively unburden many of the developing countries that suffer from the unbalanced market conditions generated by subsidies, just as the elimination of tariffs will.

D. Deficiencies and Conflicts with the 2002 U.S. Farm Bill

Some commentators argue that although elimination of tariffs and subsidies may be a respectable endeavor, it is ultimately not the answer.²⁶⁸ Many believe that leaving “farmers at the mercy of the free market [will] only hasten their demise.”²⁶⁹ An agricultural bubble economy is created. Inevitably, it crashes as subsidies fail to keep pace with falling crop prices. Farms go bankrupt. Free trade in agriculture starves our farmers.²⁷⁰

Again looking to tariffs, a United States proposal seeks to eliminate tariffs in two phases over a ten year span.²⁷¹ The first phase will begin in 2005 and end in 2010, during which the United States proposes an elimination of all tariffs of five percent or less, elimination of tariffs on highly traded goods which account for sixty percent of the United States

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. See generally, Mittal, *supra* note 207, at 5.

269. *Id.*

270. *Id.*

271. OFFICE OF THE U.S. TRADE REPRESENTATIVE, TRADE FACTS: UNITED STATES PROPOSES A TARIFF-FREE WORLD 1 (2003), available at

http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2002/asset_upload_file286_5653.pdf (last visited on Sept. 19, 2004) [hereinafter TRADE FACTS].

exports, and cut remaining tariffs to less than eight percent.²⁷² The second phase spanning the years between 2010 and 2015 will seek to reduce the remaining tariffs to zero.²⁷³

The United States and world markets stand to benefit from the eventual elimination of tariffs.²⁷⁴ Some studies suggest that the elimination of tariffs on consumer and industrial products will boost the United States economy by \$95 billion.²⁷⁵ Additionally, the study suggests that exports of these goods would also spur increases in the amount of \$83 billion.²⁷⁶ Increases of this magnitude will undoubtedly have a ripple effect, creating more jobs and possibly increasing wages for many workers.²⁷⁷ The world's poor will also benefit from the elimination of tariffs, lifting an estimated 300 million people out of poverty.²⁷⁸ As stated previously, developing countries stand to benefit the most from a trade-free world market.²⁷⁹ Developing countries could realize an aggregate gain of \$500 billion.²⁸⁰ However, these benefits would come primarily from liberalization of tariffs among these developing countries,²⁸¹ because many developing countries have tariffs on their products, and they primarily export from other developing countries; thus, they stand to gain most from tariff elimination.²⁸² Taken together, this could mean an increase in per capita income of more than 2.5 percent.²⁸³ Additionally, these measures would serve to level the playing field in the global economy.²⁸⁴

E. United States Perspective

In contrast to the world perspective, the United States local, and contra-globalization view holds that financial gains aside, support to American farmers will be beneficial.²⁸⁵ How is the U.S. Farm Bill advantageous? Beyond the obvious, the U.S. Farm Bill, like much economic legislation, will have a substantial ripple effect, felt throughout

272. *Id.*

273. *Id.*

274. *See generally id.*

275. *Id.* at 2.

276. *Id.*

277. TRADE FACTS *supra* note 271, at 3.

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. TRADE FACTS, *supra* note 271, at 3.

284. *See id.*

285. *See generally* COHEN ET AL., *supra* note 2.

the market.²⁸⁶ Increased exports will result in more American jobs (as well as import related jobs in foreign countries) with the potential for higher than average wages, impacting numerous professions and communities beyond the rural community.²⁸⁷ Since the United States agriculture economy is twice as dependent on exports as the general economy, it follows that any measure to encourage and support exports will be beneficial.²⁸⁸ One study indicated that “[n]early half of our wheat and rice crops are exported; about one-third of soybean, tobacco and cotton production is shipped overseas; and 20 percent of the corn crop is exported.”²⁸⁹ The study further indicates that other areas of agriculture are becoming more and more dependent on foreign markets.²⁹⁰ However, the benefits seem to end at the American frontier, and developing countries and other WTO Member Nations do not reap the same benefits, instead they suffer increased economic damage.²⁹¹

Similarly, the United States supports the elimination of tariffs because the

[e]limination of tariffs would turn world ports into a giant duty-free shop, with nearly \$6 trillion in world trade becoming duty free. The World Bank [further] estimates that removing all [trade] barriers to goods trade would expand the global economy by \$830 billion by 2015. This represents a 2.5% annual increase in world per capita income, about \$136 dollars for every person in the world.²⁹²

Some have argued that more damage is done to developing countries by other developing countries that enforce tariffs.²⁹³ According to the World Bank, approximately seventy percent of tariffs paid are paid to developing countries, by developing countries.²⁹⁴ But still, most critics attack the tariffs and subsidies of the European Union and the United States. “[T]he WTO recently reported, high tariffs impart an anti-export bias, hampering a country’s ability to grow through exports.”²⁹⁵

286. See generally *Importance of Trade for Agriculture*, *supra* note 192.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. See generally *id.*

292. Michael W. Michalak, Address at Reitaku University (Jan. 21, 2003), available at <http://japan.usembassy.gov/e/p/tp-20030121cl.html> (last visited Sept. 17, 2004).

293. *Id.*

294. *Id.*

295. *Id.*

F. *European Union Perspective*

Like the United States, the European Union is reluctant to open its agricultural markets.²⁹⁶ However, recently the European Union has been proposing CAP reform and subsidy cuts of up to sixty percent.²⁹⁷ The European Union has recognized that the non-tariff measures often affect up to forty percent of trade in agriculture.²⁹⁸ However, while acknowledging that these measures adversely affect many developing countries, the European Union denies that it is the primary user of such measures.²⁹⁹ In fact, it, like the United States, places the blame on other nations, such as Japan and Latin American countries that have escalated protective measures.³⁰⁰

The European Union has issued a number of proposals that may eventually alleviate the already economically debilitating effects of the protective measures.³⁰¹ The European Union wants WTO Members to commit to "provide[ing] duty-free and quota-free access to their markets for all imports from the Least Developed Countries."³⁰² European leaders had hoped that this measure would be agreed upon and implemented after the Cancun negotiations,³⁰³ but nothing regarding agriculture was implemented.³⁰⁴ The Union also proposed commitments such as, clarified precautionary measures, reduced tariff escalation for products of interest to developing countries (e.g. cotton and grain in some African countries), and a reduction in the average tariff by thirty-six percent.³⁰⁵

As for subsidies, the European Union's position is clear.³⁰⁶ They maintain that the budgetary expenditures for export subsidies have fallen in the last decade from twenty-five percent in 1992 to slightly over five percent in 2001.³⁰⁷ They further contend that since the Uruguay Round, they have faithfully upheld their commitments to reducing the levels of all

296. *USTR Zoellick Seeking Agriculture Trade Compromise with EU*, U.S. DEPARTMENT OF STATE, July 30, 2003, at <http://usinfo.state.gov/topical/econ/wto/03073001.htm> (last visited Sept. 17, 2004) [hereinafter *Zoellick Seeking Agriculture Trade*].

297. *Id.*

298. EU Trade in Agricultural Products, *supra* note 236.

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *See The Cancún Failure*, *supra* note 145.

305. EU Trade in Agricultural Products, *supra* note 236.

306. *Id.*

307. *Id.*

protective measures.³⁰⁸ However, they are also careful to note that while “the EU exports at world prices to global markets. . . . [T]he EU does not set these prices. These are set by global market conditions, which, for food security crops, are dominated by a few big exporting developed countries, like the US.”³⁰⁹ The European Union continued to defend their market participation, even if subsidized, saying that at times when they have withdrawn from the market due to apparent injustices, another competitive nation filled their space, and essentially no change took place.³¹⁰

V. CONCLUSION

The question that begs to be asked is whether the United States and its flawed U.S. Farm Bill, and the apparent contradiction to its stated WTO commitments, is at fault for the detriment suffered by so many developing nations; or is it the European Union’s lackadaisical approach to reform that should be faulted. Obviously, both of the major world market players defer their responsibility to the other, while claiming to take the moral high ground if only in degrees relative to the path taken by the other. One commentator has said that,

[a]griculture and food are fundamental to the well-being of all people, both in terms of access to safe and nutritious food and as foundations of healthy communities, cultures, and environment. . . . Instead of ensuring the right to food for all, these institutions have created a system that prioritizes exportoriented [sic] production and has increased global hunger and poverty while alienating millions from productive assets and resources such as land, water, and seeds.³¹¹

It is time that both the United States and the European Union start to implement and honor the commitments made to developing countries at the WTO negotiations, the only forum in which they have a legitimate voice to effectuate change.

The United States proposals suggest two primary phases, the first phase calls for the elimination of export subsidies over a five year period, thus reducing worldwide tariffs and trade-distorting support, and the second phase calls for a complete elimination of all tariffs and forms of trade distorting domestic support.³¹² The World Bank believes that a large

308. *Id.*

309. *Id.*

310. *Id.*

311. Mittal, *supra* note 207.

312. *The U.S. WTO Agriculture Proposal, supra* note 172.

majority of the benefits of tariff and subsidies elimination would go to low-income, developing countries.³¹³ Ensuring that these developing countries are the ones that benefit is taking the moral high ground. During the first eighteen months of his Administration, President George W. Bush's policies undercut all hopes of economic relief to be garnered from the WTO's goals of trade liberalization.³¹⁴ The U.S. Farm Bill ensures that the United States prices for many exported products will continue to remain artificially low.³¹⁵ Additionally, the expenditures given to American farmers, allowing them to compete effectively on the world markets will be offset by the proposed foreign aid to be given to Africa, one of the countries primarily damaged by the depressed market.³¹⁶ One of the primary areas in which African farmers are trying to compete and would be able to compete if given the opportunity is cotton production.³¹⁷ Some have even said that African farmers would actually "have a competitive advantage in the absence of America's unfair trade practices."³¹⁸ The current United States Administration supports a continuing program that is costing American taxpayers billions annually and is being used to subsidize only a few already wealthy and politically powerful corporate farmers.³¹⁹ All of this seems to contradict President Bush's purported desire to route out poverty, and his interests in the nations that struggle with poverty because of their inability to compete in the world markets.³²⁰ In fact, "[t]he surplus created by this . . . form of rural workfare is then dumped on world markets, at a grievous cost to 10 million West African cotton farmers."³²¹

One of the most important things that must be remembered is that all 146 Members of the WTO need to work toward liberalization.³²² According to Trade Representative Zoellick, "[w]e all have to figure out how we [can] open markets and liberalize together recognizing that for developing countries . . . it is appropriate to do this in a way that recognizes their special situation."³²³

313. *Market Access for Non-Agricultural Products*, *supra* note 263.

314. Laura Altieri, Comment, *NAFTA and the FTAA: Regional Alternatives to Multilateralism*, 21 BERKLEY J. INT'L L. 847, 862 (2003).

315. *Id.*

316. *Id.*

317. *Cancún Targets Cotton*, *supra* note 149.

318. *Id.*

319. *Id.*

320. *Cancún Targets Cotton*, *supra* note 149.

321. *Id.*

322. *Zoellick Seeking Agriculture Trade*, *supra* note 296.

323. *Id.*