

Table 4.3: US Food Imports and Detention of Shipments by the US FDA: Import Share, Detentions and Number of detentions per \$million of Imports by Source Country May 1999-April 2000.⁷

	Import value (%)	Detentions Number	%	Number of detentions per \$m imports
High income countries (21)	31.6	1934	19.5	0.6
Mean	1.6	97.0	1.0	0.5
Range	0.37 - 16.0	32-399	0.3-4.0	0.1-2.7
Upper middle income countries (9)	27.9	2143	21.6	0.7
Mean	3.1	238	2.4	1.2
Range	0.2-3.5	311-539	0.3-15.5	0.2-1.7
Low middle income countries (12)	25.8	3378	34.0	1.2
Mean	2.15	282	2.8	2.6
Range	0.2-11.1	11-765	0.2-7.7	0.8-11.0
Low income countries (10)	10.2	1874	18.9	1.7
Mean	1.0	197	1.9	2.3
Range	0.1 - 4.3	14 - 860	0.1 - 8.7	0.6 - 8.0
Unclassified	4.4	599	6.0	1.3
Total (52)	100	9875	100	0.9
Mean	1.8	179	1.8	1.7
Range	1.0-16.0	11-860	0.1-15.5	0.1-11.0

There seems to be a negative relationship between the incidence of detention and *per capita* income of exporting countries. This would suggest that richer exporting countries tend to have a greater capacity to meet SPS standards.

III. AGRICULTURAL TRADE LIBERALISATION UNDER THE URUGUAY ROUND

A. Reform Agenda

The Uruguay Round reform commitments in the area of agriculture are embodied in two related agreements, the Uruguay Round AoA and the Sanitary and Phytosanitary (SPS) Agreement.⁸ The AoA contain the new rules and commitments in three key areas: market access, domestic support and export subsidies. The SPS Agreement establishes general guide-

⁷ Compiled using data from the following sources. US Food and Drugs Administration, OASIS Website (<http://www.fda.gov/oasis>) (detention data) and UN *Comtrade* trade tapes held at the International Economic Database of the Australian National University (imports). The table covers only imports of fishery products, vegetables and fruits only. Food imports from developing countries are predominantly concentrated in these categories. Country grouping is based on the World Bank country classification by income levels. Total number of detention is net of shipments originating within the USA.

⁸ For a general discussion, see Hathaway, D.E. and Ingco, M.D., "Agricultural Liberalization and the Uruguay Round" in ed. Martin, W. and Winters, L.A., *The Uruguay Round and Developing Countries*, (1996, Cambridge, Cambridge University Press).

lines for human, animal and plant health regulations as they relate to international trade in agricultural products.

1. Market Access

Market access provisions of the AoA are applicable to all WTO member countries, including the least-developed countries. All members are required to convert all NTBs affecting agricultural imports into bound tariffs that in the base period (1986-88) provide the same level of protection.⁹ Tariffs resulting from this tariffication process are to be reduced over a period of six years by an average of 36 per cent by developed countries and over a period of ten years by an average of 24 per cent by developing countries. For those countries whose tariffs had not been previously bound under the GATT, there is no limit on the level of these bindings and no obligation to reduce them during the 10-year phase-in period. The least-developed countries are required only to bind their tariffs and remove NTBs; they are exempted from tariff reduction commitments. All developing countries are afforded special and differential treatment that exempt them from the commitment to liberalise trade in any agricultural products which is a predominant staple in their traditional diet.

It is important to note that the definition of NTB adopted in the Agreement does not cover state trading. The right of WTO members to retain state trading monopolies in export and import trade is recognised in Article XVII GATT. The only related provisions are that members should ensure that such enterprises act in line with general commercial principles in a non-discriminatory manner and provide information on their trading mark-ups to trading partners on request. Thus there is room for a member country to subvert the market access commitment by authorising a state trading enterprise to be the sole importer for goods previously controlled by NTBs.

2. Domestic Support

Under domestic support provisions, the agreement attempts to make a distinction between what constitutes a trade-distorting support of agriculture from the more general support of agriculture and rural development (the 'Green Box' measures). Two criteria are used in identifying non-trade

⁹ Bound tariff rates are expected to reflect the actual difference between the internal (domestic market) price and the external (border) price in the base period. See generally, Ingco, M.D., "Tariffication in the Uruguay Round: How Much Liberalisation?" (1995) 19(4) *World Economy* 425.

distorting or Green Box support: it must be paid out of the government budget and not levied from consumers and it must not have the effects of providing a price support for the producer. Consequently, the Green Box lists activities such as agricultural research, extension services, pest and disease control and so on as items that do not count as domestic support. Capital expenditures on irrigation and other production and market infrastructure are also included in Green Box, but not recurrent expenditures or preferential user charges on irrigation facilities. However, developing countries may continue with the latter production support measures, provided the beneficiaries are 'low income or resource-poor producers'.

3. Export Subsidies

Like market access provisions, export subsidy provisions are applicable to all WTO member countries, including the least-developed countries. Export subsidies are defined to include all payments from the national budget that are contingent on export performance. Export credit and export guarantees are not included in the definition. The agreement requires developed countries to reduce the share of exports receiving subsidies by 21 per cent and the expenditures on subsidies by 36 per cent from the base-period (1988-89) levels over 6-year period. The required reductions in subsidy levels and subsidy coverage for developing countries from 21 per cent and 14 per cent respectively and these reductions are to be undertaken over a 10-year period. The least-developed countries have no obligation to reduce export subsidies, but they are required to freeze them at the base level.

4. SPS Agreement

The SPS Agreement was prompted by the legitimate concern about the possibility that the removal of trade restrictions on imports of agricultural products has the potential to tempt countries to use sanitary and phytosanitary standards as a 'new form of protection'.¹⁰ The Agreement aims to keep to a minimum the trade effects of government action to ensure safety of food and the protection of human, animal and plant health. Under the Agreement importing countries are required to demonstrate that their SPS measures are based on scientific grounds and are applied equally to domestic and foreign producers. It thus puts the WTO on the side of

¹⁰ This agreement improves on the original Article XX GATT, which allowed measures against trade that are 'necessary to protect human, animal or plant life or health'.

those exporters who do comply with the importing country's SPS measures. The exporters now have clear grounds for challenging an import restriction provided they adhere to SPS standards as stipulated in the SPS Agreement.

However, in practice, with regard to SPS compliance, the Agreement effectively places a heavier burden on developing than on industrial countries, the standards already in place in industrial countries are more or less established as standards to which the developing countries must comply.¹¹ For a developing country to effectively use the WTO agreement to defend its export rights (or to justify its import restrictions) it will have to upgrade its SPS system to international standards. For the developing countries effective use of the WTO agreement depends on extensive investment, it is not a matter of applying existing system of standards to international trade, it is a much broader matter of installing world-class systems. For the advanced countries, whose standards are compatible with international standards (or *vice versa*) the WTO brings no more than an obligation to apply their domestic regulations fairly at the border.

The SPS agreement reaffirmed the right of countries to set their own safety and health standards, but with the proviso that such standards be based on "sound scientific evidence" and that international standards are adhered to the extent necessary. The SPS Agreement, unlike the AoA, does not regulate and set specific policies: rather it establishes general guidelines for government behaviour in the area concerned. There is scope for alternative interpretation in each case. The effectiveness of the SPS Agreement in achieving its objectives will therefore depend on how quickly, and effectively disputes arising from different interpretations are settled. An institutional mechanism was also set up at the WTO under a new WTO Committee on SPS Measures for speedy settlement of disputes that arise in the implementation of the Agreement.

B. Implementation

The AoA was concluded at a time when the Asian developing countries had already embarked on significant unilateral trade liberalisation reforms. Though substantial differences existed across the four countries (Bangladesh, India, Pakistan and Sri Lanka) broadly speaking all developing countries in Asia had already embarked on unilateral trade liberalisation

¹¹ See generally, Finger, M.J. and Schuknecht, L., "Market Access Advances and Retreats: The Uruguay Round and Beyond", Paper presented in the WTO/World Bank Conference on Developing Countries in the Millennium Round, Geneva, Sept. 1999.

reforms by the time the Uruguay Round was concluded.¹² Dismantling of trade barriers erected during the early post-war decades, first started in the early 1970s in East and Southeast Asian countries. Starting in Sri Lanka in the late 1970s, by the mid-1980s all countries in the region countries had embarked on a gradual process of economic liberalisation, which accelerated in the 1990s. But in all countries' reforms in agriculture trade generally lagged behind those in manufacturing. In this context, it is pertinent to examine how multilateral liberalisation attempts can help ameliorate domestic resistance to agricultural reforms.

1. Market Access

Practically none of the countries in the region had bound tariff rates before signing the AoA. Thus under the rules for Special and Differential Treatment as laid down in the 'Modalities', they could offer ceiling bindings, rather than engaging in the tariffication of existing NTBs. As required, these countries have submitted ceiling tariff bindings for all the tariff lines relating to agricultural products covered by the agreement. In the process of converting existing barriers into tariffs and binding their levels, before applying the agreed-upon reductions, many countries, including some developing countries, have set their initial bound levels of tariffs very high, even higher than the levels of actual applied tariffs in recent years. Bound rates for India, Pakistan and Bangladesh are the highest among Asian countries and also among most developing countries, as Table 4.4 illustrates.

¹² See Greenaway, D., "Current Issues in Trade Policy and the Pacific Rim" in ed. Piggott, J., and Woodland, A., *International Trade Policy and the Pacific Rim*, (1999, London, Macmillan) 3-29, Dean, J.M., Desai, S. and Riedel, J., *Trade Policy Reform in Developing Countries since 1985: A Review of the Evidence*, World Bank Discussion Paper 267 (1994, Washington, World Bank) and Pursell, G., "Some Aspects of the Liberalization of South Asian Agricultural Policies: How Can the WTO Help?" in ed., Benoit, B., Pursell, G. and Valdes, A., *Implications of the Uruguay Round Agreement for South Asia: The Case of Agriculture*, (1999, Washington, World Bank) 29-46.