Going Against the Grain: The Regulation of the International Wheat Trade from 1933 to the 1980 Soviet Grain Embargo

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Going Against The Grain: The Regulation of the International Wheat Trade from 1933 to the 1980 Soviet Grain Embargo.

I. Introduction

The world wheat trade is presently characterized by competing and conflicting goals and policies.[1] The sharpest conflicts appear between the goals and policies sought by the international community and those pursued domestically by individual countries,[2] but conflicts also exist within the international[3] and domestic spheres themselves.[4] While there is general agreement that a supply of wheat adequate to feed the world's people as well as to provide security against crop failures or reduced production due to adverse weather conditions is necessary,[5]

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1. Malmgren & Schlechty, *Rationalizing World Agricultural Trade,* 4 J. World Trade L. 515, 536-37 (1970) [hereinafter cited as Malmgren & Schlecty].

2. Organization for Economic Co-operation and Development, The Instability of Agricultural Commodity Markets 3 (1980) [hereinafter cited as OECD].

> Policy action aimed at coping with market instability has been taken mainly at the domestic level and to a much lesser extent at the international level. . . A basic problem which needs to be considered in the context of these efforts is the extent to which stabilization measures taken at a national level contribute to or impair the stabilization of the world market.

Id.

3. A U.S. official attending the first meeting of the World Food Council gave this description of the meeting:

> The worst meeting of an international organization ever . . . everyone we talked to agreed that the meeting was chaotic and a fiasco. A State Department official said that the official report of the meeting was an imaginative piece of fiction because it made it appear that business was conducted and action taken. In reality, the meeting was totally disrupted by squabbling between developing and developed countries, between developing countries and Council staff, and among many developing countries.

U.S. General Accounting Office, Study by the Staff of the U.S. General Accounting Office, U.S. Participation in International Food Organizations: Problems and Issues 15 (1976) [hereinafter cited as U.S. Participation].

4. U.S. General Accounting Office, Report to the Congress by the Comptroller General of the United States, Grain Reserves: A Potential U.S. Food Policy Tool 8 (1976) [hereinafter cited as Grain Reserves].

> Traditionally, U.S. agricultural policy has had three general objectives: (1) Maintaining the productive base by attempting to stabilize agricultural prices and increase farmers' incomes. (2) Protecting the domestic consumers of agricultural products by attempting to provide adequate supplies at reasonable prices. (3) Exporting agricultural surpluses for commercial, humanitarian, and political purposes. In the past, conflicts among these objectives did not receive much attention because the farm sector tended to produce surpluses. There was sufficient production to satisfy perceived commercial as well as humanitarian needs. With the recent transition from surpluses to relative scarcity, goal conflicts have become obvious and a new goal, supply stability, is emerging in response to our uncertainty that production can satisfy needs.

Id.

5. Foreign Affairs and Environment Policy Divisions Congressional Research Service, 93d

considerably less agreement exists on how this goal can be balanced with other goals which must be met in a successful international wheat trade. These goals include: maintenance of farmer income,[6] stabilization of prices,[7] control of production,[8] liberalization of world trade,[9] growth of agriculture self-sufficiency of developing countries,[10] and provision for the hungry of the world through the development of a world food reserve.[11] While each of these goals is pursued at the domestic level,[12] and less directly, at the international level,[13] domestic policies are primarily concerned with the maintenance of farmer income, the stabilization of prices, and derivatively, with the control of production and the liberalization of world trade.[14] The author will focus on the complexity which arises in the international wheat trade through the interaction of basic domestic wheat policies and the international regulatory schemes and policies which exist.

This Comment will examine the operation and regulation of the international wheat trade with emphasis on the degree to which such regulation has achieved its goals. Both past and present international wheat agreements will be examined with a focus on the lessons they may contain and the direction they may point out for the future of international wheat trade regulation.

CONG., 2D SESS., INTERNATIONAL FOOD RESERVES: BACKGROUND AND CURRENT PROPOSALS 30 (Comm. Print 1974) [hereinafter cited as INTERNATIONAL FOOD RESERVES].

6. Schram, *International Repercussions of National Farm Policies: A Look at American Wheat Programs*, 3 LAW & POL'Y INT'L BUS. 239, 245 (1970) [hereinafter cited as Schram].

7. *Cf.* U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS BY THE COMPTROLLER GENERAL OF THE UNITED STATES, II ISSUES SURROUNDING THE MANAGEMENT OF AGRICULTURAL EXPORTS, 5-6 (1977) (ramifications of price fluctuations).

8. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS BY THE COMPTROLLER GENERAL OF THE UNITED STATES, AGRICULTURE'S IMPLEMENTATION OF GAO'S WHEAT EXPORT SUBSIDY RECOMMENDATIONS AND RELATED MATTERS 7-8 (1976) [hereinafter cited as AGRICULTURE'S IMPLEMENTATION].

9. Schram, *supra* note 6, at 271-92.

10. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS BY THE COMPTROLLER GENERAL OF THE UNITED STATES, DISINCENTIVES TO AGRICULTURAL PRODUCTION IN DEVELOPING COUNTRIES 32 (1975) [hereinafter cited as DISINCENTIVES].

11. OECD, *supra* note 2, at 13.

12. *See* Josling, *Domestic Agricultural Price Policies and Their Interaction Through Trade*, in IMPERFECT MARKETS IN AGRICULTURAL TRADE 49-50 (A. McCalla & T. Josling eds. 1981). *See also* OECD, *supra* note 2, at 48.

13. OECD, *supra* note 2, at 3. The OECD report notes that with respect to this issue:

> Policy action aimed at coping with market instability has been taken mainly at the domestic level and to a much lesser extent at the international level. Governments' efforts have been only partly successful, largely because either they have been piecemeal in approach or not taken account of fundamental market forces, or because they did not achieve a sufficiently widespread acceptance to ensure enduring success. A basic problem which needs to be considered in the context of these efforts is the extent to which stabilization measures taken at a national level contribute to or impair the stabilization of the world market.

Id.

14. *See, e.g.*, Special Address by Hubert H. Humphrey, The Farmer's Stake in World Trade, *reprinted in* THE NATIONAL FARM INSTITUTE, FARM PROSPERITY — IMPORTS AND EXPORTS 24-30 (1965).

II. SUPPLY AND DEMAND

The fundamental purpose of government intervention in the wheat trade is to protect the income of wheat producers.[15] Therefore, the price received per bushel of wheat produced is critically important. Price fluctuates in response to changes in the supply and demand of a product,[16] and generally, for primary commodities[17] such as wheat, the major cause of price instability is the tendency for production to exceed demand.[18] For primary commodities, price fluctuations with respect to supply and demand also tend to be cyclical.[19] When demand for a commodity increases, prices rise until a sufficient supply is produced to meet the demand.[20] However, because of such factors as weather,[21] insects, disease and the lag time between planting, harvesting and utilization of wheat,[22] the equilib-

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15. Wheeler, *Governmental Intervention in World Trade in Wheat*, 1 J. WORLD TRADE L. 379, 383 (1967) [hereinafter cited as Wheeler].

16. P. BARKLEY & D. SECKLER, ECONOMIC GROWTH AND ENVIRONMENTAL DECAY 76 (1972). When supply is equal to demand at a price acceptable to both producer and consumer, the price received is referred to as the equilibrium price. When either or both supply and demand shift, market forces compel producer and consumer readjustments in the market so that a new equilibrium price is reached. *Id.*

17. Primary commodity is defined as "any product of farm, forest, or fishery or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade." U.N. Conference on Trade and Employment, HAVANA CHARTER FOR AN INTERNATIONAL ORGANIZATION art. 56, U.N. Doc. No. E/Conf. 2/78 (1948) [hereinafter cited as HAVANA CHARTER]. *See also* notes 95-108 and accompanying text *infra*.

18. Note, *International Commodity Agreements: Purpose, Policy, and Procedure*, 31 GEO. WASH. L. REV. 784 (1963) [hereinafter cited as *International Commodity Agreements*].

19. *Id.*

20. *Id.*

21. OECD, *supra* note 2, at 78-80.

> The importance of the weather in determining the size of the harvest is such that all OECD governments have measures (distinct or combined with other measures) to cope with weather induced risks. . . . But a more immediate and practical consequence for the international market of government involvement is that the weather alone is not so much an important factor as governments' response to the weather. Or, more accurately, it is the weather combined with government action that is an important factor for instability in the international market.

Id. See also W. HEID, JR., U.S. WHEAT INDUSTRY 17 (U.S. Dep't of Agric., Econ., Stat. and Coop. Serv., Agric. Econ. Rep. No. 432, 1979) [hereinafter cited as HEID].

> The U.S. overproduction problem was quickly, but temporarily, solved when weather conditions reduced wheat crops in many countries in 1972. U.S. wheat acreage was sharply increased beginning in 1973. Production topped 2 billion bushels (54.4 million metric tons) in 1975 for the first time, and again in 1976 and 1977. When world weather conditions improved, the United States found itself once again with large carryovers and low prices — repeating a pattern common since 1950 of low supplies followed by large surplus.

Id.

22. HEID, *supra* note 21, at 43. One way for producers to minimize the time lag risk is by "hedging" in futures contracts where some of the uncertainty about ownership of a commodity is transferred to the purchaser of the commodity under a futures contract. Under the futures contract, the producer agrees to furnish a specific quantity of the commodity at a specific price on a certain future date. Although futures contracts are used extensively in the grain trade, farmers are not responsible for very much of the hedging. *Id.*

rium point between supply and demand is difficult to ascertain.[23] Because of this difficulty, too many producers, enticed by the higher selling prices, are lured into production, and, as a consequence, overproduction results and prices drop.[24] As prices drop, less efficient producers are forced from the market, thereby diminishing production. The ensuing decrease in supply causes prices to rise again.[25] As prices increase, new producers again enter into the market and the cycle resumes.[26]

To complicate matters, however, agricultural products tend to deviate from this basic supply and demand pattern. Farmers often increase their production when the market is depressed in order to maintain the income necessary to meet their fixed expenses. This increased production, in turn, drives prices down even further.[27] Additionally, overproduction today results both from new producers who enter the market when prices are up and from increased yields due to advances in technology.[28] In the case of wheat, the supply and demand pattern is further complicated by the fact that the demand for wheat as food with respect to the price of wheat is relatively inelastic,[29] such that an increase or decrease in the price of wheat is not matched by a corresponding increase or decrease in the demand for wheat. This means, for example, that a 20% increase in the price of wheat will result in less than a 20% decrease in the consumption of wheat.[30] This low demand elasticity for wheat is significant on both the international and domestic levels because in order to maintain an adequate price, the supply variable must be manipulated.[31]

Price support policies[32] have been adopted by many governments[33] in order to bolster farmers' income. However, since these policies further complicate the supply and demand pattern by artificially raising the price farmers receive, these policies stimulate production and increase the likelihood of surplus.[34] Far from

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23. *International Commodity Agreements*, *supra* note 18, at 784.

24. *Id.*

25. *Id.* at 785.

26. *Id.*

27. HEID, *supra* note 21, at 14 n. 9.

28. *See* Wheeler, *supra* note 15, at 386; SENATE COMM. ON AGRICULTURE AND FORESTRY, 93D CONG., 1ST SESS., AGRICULTURAL TRADE AND THE PROPOSED ROUND OF MULTILATERAL NEGOTIATIONS [FLANIGAN REPORT] 85 (Comm. Print 1973) [hereinafter cited as FLANIGAN REPORT].

29. HEID, *supra* note 21, at 43.

30. *Id.*

31. *See The International Wheat Agreement: Hearing Before the Senate Comm. on Foreign Relations*, 96th Cong., 1st Sess. 21 (1979) [hereinafter cited as *International Wheat Agreement: Hearing*] (statement of Mr. Dale Hathaway, Under-Secretary of Agriculture).

32. "Price supports" are "[g]overnment regulations, usually involving some form of public subsidy or financial aid to producers; designed to keep market prices from falling below a certain minimum level." HEID, *supra* note 21, at 114.

33. For a review of the price programs in Australia, Canada, and the European Community, *see* FLANIGAN REPORT, *supra* note 28, at 89-95. For a review of American price support policy, *see* Schram, *supra* note 6, at 247-51.

34. *See* Schram, *supra* note 6, at 247-49.

helping to alleviate the basic price problem, price support policies aggravate the overproduction trend[35] by putting additional downward pressure on the market price. The cost of these price support policies is also expensive for both governments and taxpayers.[36] Price support policies encourage the proliferation of import and tariff barriers,[37] since the presence of cheaper foreign wheat in the domestic market erodes domestic price, provides a diminished return to the farmer, and ultimately, requires compensation in the form of a hike in price supports.[38] The government must then institute export subsidies because higher price supports result in higher profits from domestic sales of wheat as compared to export sales.[39] Without the export subsidy, therefore, farmers would provide surplus quantities of wheat to the domestic market, and thereby increase the downward pressure on the price of wheat.[40]

III. SUPPLY MANAGEMENT

Though modification of supply is critical to the maintenance of an adequate wheat price,[41] consistent and workable production controls have been lacking in the modern history of the grain trade.[42] The United States has utilized several different forms of production controls since the end of World War I. In recent times, these controls have included the establishment of a 55 million acre na-

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35. *See* D. HADWIGER, FEDERAL WHEAT COMMODITY PROGRAMS 175 (1970) [hereinafter cited as HADWIGER].

> High price supports were regarded as the main source of farm trouble. It was assumed that wheat production had been increased by high wartime prices. Continuation of these price levels into peacetime by virtue of price supports had caused surpluses, both by discouraging adjustments to smaller markets and by pricing some products too high to be competitive in all potential markets. For wheat, price was not regarded as a barrier to food markets so long as the federal government subsidized exports, but it was assumed by the Benson administration that less wheat would have been produced if prices had been lower.

Id.

36. *See* FLANIGAN REPORT, *supra* note 28, at 4. Dr. D. Gale Johnson of the University of Chicago estimates that the annual world cost of import barriers and domestic price supports and subsidies may approximate $40 billion, $13 billion in the European Community and almost $10 billion in the United States. *Id.*

37. *See* C. JABARA & A. BRIGIDA, VARIABLE LEVIES: BARRIERS TO GRAIN IMPORTS IN FRANCE, THE NETHERLANDS, FEDERAL REPUBLIC OF GERMANY, AND UNITED KINGDOM 1 (U.S. Dep't of Agric., Econ., Stat. and Coop. Serv., Foreign Agric. Econ. Rep. No. 156, 1980) [hereinafter cited as VARIABLE LEVIES].

38. Schram, *supra* note 6, at 270.

39. *Id.*

40. *Id.*

41. *See* notes 13-15 and accompanying text *supra*.

42. Malmgren & Schlechty, *supra* note 1, at 2. "In most of the countries where surpluses are accumulating, there are no conscious policies of production restraint and no capacity for storage." *Id.* *But see* CONGRESSIONAL BUDGET OFFICE, U.S. FOOD AND AGRICULTURAL POLICY IN THE WORLD ECONOMY 14 (1976) [hereinafter cited as CONGRESSIONAL BUDGET OFFICE], which notes the removal of incentives to withhold land from production after the severity of the 1972-1974 food shortage became apparent. After decades of dealing with surplus situations, the 1972-1974 shortage experience emphasized that there are also high costs in "underproduction" during times of crop failure, flood or drought. *Id.*

tional allotment in 1938,[43] the 1956 Soil Bank Act, under which farmers voluntarily placed about 29 million cropland acres in reserve at an average annual rental rate of $11.85 per acre,[44] and the Agricultural Act of 1964.[45] Congress designed these programs to control production with a minimum of burden to the farmer.[46] However, these production controls were not successful, overall. Often, these "production controls" were in actuality "acreage controls" as opposed to true production controls,[47] and increased yields offset the effects of these "production controls" and, thus, led to surplus production.[48]

The United States has had to bear much of the burden of production control for the world,[49] especially in the 1950's and 1960's.[50] For example, while the United States reduced wheat acreage in 1965 in response to the actual world market surplus of wheat, world wheat acreage increased rapidly as the other major exporters increased production in anticipation of increased exports to the

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43. Agricultural Adjustment Act of 1938, ch. 30, § 333, 52 Stat. 53 (1938) (current version at 7 U.S.C. § 1281 (1973)). For the national wheat acreage allotments from 1955-1964, *see* 1 CONG. Q. 679 (1945-1964).

44. Soil Bank Act of 1956, 7 U.S.C. § 1801 (1973), *repealed by* Act of Nov. 3, 1965, Pub. L. No. 89-321, § 601, 79 Stat. 1206 (1965). *See also* HADWIGER, *supra* note 35, at 210-31. There were actually two soil bank programs. Under the "acreage reserve," farmers could retire land previously planted with wheat (or other basic commodities) and receive payments from the government. Participation was voluntary. Under the "conservation reserve," contracts were signed from 1956-1960 for retirement of any type of productive land and its conversion to specified conservation practices for periods of 3-15 years from the date of contract. Participant farmers were paid for retiring the land and for up to eighty percent of the cost of the conservation practices.

45. The Agriculture Act of 1964, 7 U.S.C. § 1339 (1964) *amended by* Pub. L. No. 95-113, § 404, 91 Stat. 927 (1977) (amendment makes § 1339 inapplicable to the 1978-1981 wheat crops) [hereinafter cited as Agriculture Act of 1964]. *See also* HEID, *supra* note 21, at 65. Farmers who complied with wheat allotments based on a national wheat allotment of 49.5 million acres would be eligible for 1964 supports of about $2.00 a bushel on wheat grown for domestic use, $1.55 a bushel on wheat grown for export, and $1.30 a bushel on the remainder of the crop to be used for seed and animal feed. Non-compliers received no support payments and had to be content with the market price for wheat, approximately $1.30 a bushel. Agriculture Act of 1964, *supra*, § 203.

46. HADWIGER, *supra* note 35, at 215-16, 257.

47. *See* HEID, *supra* note 21, at 16. The production and carryover statistics for the United States from 1950-1978 reflect a slight overall decrease in acreage harvested. *Id.*

48. *Id.* at 14. *See also* GRAIN RESERVES, *supra* note 4, at 20.

> Production management by acreage controls has traditionally been difficult to monitor. If the farmer does participate in the program, he tends to set aside marginally productive land which has limited impact on total production. If the farmer perceives that crop prices are adequate for him, he may not even participate in the program.

Id. This study also points out the positive aspects of "intensity controls" as opposed to acreage controls. Intensity controls would influence "input" in a crop, such as pesticides, fertilizers, energy and machinery. This form of control might also, in the long run, encourage conservation of energy and soil fertility. *Id.*

49. *Multilateral Trade Negotiations Briefing: Hearing Before the Senate Comm. on Agriculture, Nutrition and Forestry*, 96th Cong., 1st Sess. 35 (1979) (statement of Mr. Thomas Saylor, Associate Administrator, Foreign Agricultural Service, U.S. Department of Agriculture) [hereinafter cited as *Multilateral Trade Negotiations Briefing*].

50. HADWIGER, *supra* note 35, at 78-79.

new communist markets.[51] The "world surplus" was effectively hidden or isolated from the international commercial market because of U.S. storage and surplus disposal programs.[52] Other countries often adopted price support policies with no production controls.[53] Aside from the sporadic efforts at production control by other exporters, most notably efforts by Canada and Australia in the late 1960's in response to the drastic domestic surplus situation,[54] little of any real substance or effect has been done to curb world production in a consistent manner. This situation has not only been inequitable to the United States, it has also been grossly ineffective.[55]

Along with production controls, wheat producers frequently propose and adopt a reserve or "buffer stock" scheme to deal with the short-term fluctuations of price which result from surplus wheat.[56] Proponents of the reserve system note that it could be used effectively on both the domestic and international levels, provided that domestic reserve policies are coordinated with any international system of nationally held reserves.[57] Governments consider a system of domestically held, internationally controlled reserves to be more appealing than an "international" reserve because many countries perceive, not inaccurately, that under an internationally controlled system, they might lose much of the control over their own agricultural programs and decisions.[58] Though there are different operating schemata for reserve systems,[59] the basic functioning of an effective reserve involves the purchase of stocks from the market when either a supply increase or a demand decrease causes farm prices to fall below a specified level.[60] Conversely, when prices rise to a certain specified level — a sign that demand is strong and supplies are tight — producers release stocks into the market.[61] Thus, one desirable aspect of a buffer scheme is that it does not

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51. *Id. Multilateral Trade Negotiations Briefing*, *supra* note 49, at 32.
52. *Id.*
53. FLANIGAN REPORT, *supra* note 28, at 3.
54. *See* note 246 and accompanying text *infra*.
55. *Multilateral Trade Negotiations Briefing*, *supra* note 49, at 32. The United States was hoping to alter this state of affairs. "I think a starting point in terms of cooperation would be what additional [sic] could we expect from the standpoint of adjustment that our trading partners would undertake. We are interested in cooperating, but we view cooperation as necessarily a two-way street." *Id.*
56. *See* Katz, *International Commodity Policy*, DEP'T ST. BULL. Mar. 1978 at 1,2 [hereinafter cited as Katz]. In addition to remedying short term price fluctuations, one author suggests such a reserve could provide substantial insurance against major famine emergency in the poorest countries. P. TREZISE, REBUILDING GRAIN RESERVES 59 (1976) [hereinafter cited as TREZISE]. This aspect of the reserve would be an "integral part of the larger stabilization reserve, with some form of ear marking to assure its availability in a famine situation. It would be financed largely or entirely by the high-income participants, and its use would depend upon an internationally approved set of criteria." *Id.*
57. *See* CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 63.
58. *Id.* at 63-64.
59. For a review of reserve policy models, *see* GRAIN RESERVES, *supra* note 4, at 56-86.
60. CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 63.
61. *Id.*

replace market forces in the attempt to stabilize prices, but instead uses the market's own forces toward that end.[62]

Central to any reserve scheme are the specified prices which trigger intervention in the form of either the buying or selling of stocks in the market. Because of the importance of trigger prices, many of the disputes which arise during debates over the adoption of reserve schemes, especially at the international level, revolve around setting such prices.[63] Also important to a successful reserve scheme is that intervention prices and the size of the stocks in the reserve should be flexibly structured so that the marketplace dictates "adjustments."[64]

The mere existence of reserves, however, has a price-depressing effect on the market. The U.S. government-controlled domestic reserves, which have historically "sat" on the grain market and depressed prices, demonstrate this effect.[65] Because of this price-depressing effect, farmers groups, along with other exporting countries, including Canada, Australia, Argentina, and, most notably, the USSR,[66] have expressed much more satisfaction with farmer-controlled reserves than government-controlled reserves.[67] United States Department of Agriculture (USDA) Undersecretary of International Affairs and Commodity Programs, Dale E. Hathaway, testified at a 1979 Senate hearing that a farmer-controlled reserve had a "substantial and significant positive price supporting effect during the period of [the] reserve accumulation, at a time when world supply was relatively large compared to demand."[68] One concern that arises under a farmer reserve program, however, is that it dampens the incentives for importing countries, especially developing countries, to intensively seek self-

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62. Katz, *supra* note 56, at 2.

63. *See, e.g., International Wheat Agreement: Hearing, supra* note 31, at 16-17, which notes that one of the causes of the February 1979 breakdown in negotiations on a new International Wheat Agreement was the insistence by importing countries on price levels for reserve stock accumulation that would not have guaranteed an adequate producer return and upon trigger prices that would have precipitated early stock release at upper levels, thus failing to provide any real protection from extreme market rises.

64. TREZISE, *supra* note 56, at 42. *See also* Gerhard, *Commodity Trade Stabilization Through International Agreements*, 28 LAW & CONTEMP. PROBS. 276, 284 [hereinafter cited as Gerhard].

> In general, the narrower the range between the agreed-upon intervention prices, the greater will be the stabilizing effect of the scheme. . . . The more frequently the price range is revised and the greater the weight given to the more recent market prices, the longer will be the life expectancy of a buffer stock scheme, but the smaller will be its importance as price stabilizer.

Id.

65. GRAIN RESERVES, *supra* note 4, at 26-27.

66. *International Grain Agreements Oversight: Hearing Before the Subcomm. on Foreign Agricultural Policy, Comm. on Agriculture, Nutrition and Forestry*, 96th Cong., 1st Sess. 8-9 (1979) [hereinafter cited as *International Grain Agreements Oversight*]. The Soviet Union's opinion reflects their realization that while the farmer's reserve results in their paying higher prices during years of excess supply, it also has the desirable effect of making substantially larger supplies available in world markets during shortage periods when the Soviets might need them. Overall, therefore, the Soviets felt this tradeoff worked to their benefit as well as to the benefit of producers. *Id.*

67. *Id.*

68. *Id.*

sufficiency in production, a necessary goal in light of the ever possible return to a severe shortage situation such as existed in 1972.[69] An importing country's knowledge that a significant supply of wheat is available within a reasonable price range weakens the incentive for domestic production and substitution of other products, efforts which many importing countries would be forced to undertake if severe shortages and a need for export controls were to develop in the market place.[70]

IV. BACKGROUND ON THE PARTICIPANTS IN THE INTERNATIONAL WHEAT TRADE

Four countries have accounted for approximately 80%of the world's wheat exports since 1950.[71] The United States has accounted for the largest share of this market.[72] However, these same exporters have produced only slightly more than one-fifth of the world's wheat.[73] Although these exporters may share similar domestic goals,[74] significant differences exist not only in the domestic policies[75] each country adopts in pursuit of its goals,[76] but also in the very structure of the various grain marketing systems.[77]

Philosophically, the free market approach is, and has been, the approach most acceptable to U.S. wheat farmers.[78] Thus, the United States allows its farmers to determine when, where and to whom they desire to sell their grain.[79] The free market affords greater flexibility to the farmer and the opportunity to make a fair return.[80] These factors are more desirable to U.S. farmers than a guarantee

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69. *Id.*

70. *Id.* at 9.

71. *International Wheat Agreement: Hearing, supra* note 31, at 17. The four countries are the United States, Australia, Argentina and Canada.

72. HEID, *supra* note 21, at 81. In 1973 and 1975 the U.S. share of the market was 43 percent. *Id.*

73. *International Wheat Agreement: Hearing, supra* note 31, at 17.

74. The goals include maintenance of farmer income, stabilization of prices, control of production and the liberalization of world trade. *See* § I *supra.*

75. *See, e.g.*, Schram, *supra* note 6, at 245.

76. For a survey of the countries' policies, *see International Grains Agreements Oversight, supra* note 66, at 61.

77. *See* U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS BY THE COMPTROLLER GENERAL OF THE UNITED STATES, GRAIN MARKETING SYSTEMS IN ARGENTINA, AUSTRALIA, CANADA, AND THE EUROPEAN COMMUNITY; SOYBEAN MARKETING SYSTEM IN BRAZIL (1976) [hereinafter cited as GRAIN MARKETING SYSTEMS].

78. *International Grain Agreements Oversight, supra* note 66, at 57 (statement of Jerry Rees, Executive Vice President, National Association of Wheat Growers). "Wheat producers want market freedom, not restraints and they oppose the establishment of a government grain selling agency that would replace the present cooperative and private enterprise system." *Id.*

79. *Id.* at 5-6.

80. *See International Wheat Agreement: Hearing, supra* note 31, at 89 (statement of Joseph Halow, Executive Director, North American Export Grain Association, Inc.).

> The nation has really two alternatives in determining what should be its agricultural policy. It can choose to restrict markets, artificially raise prices and obligate the taxpayer to compensate

of income through government control of the market.[81] The other three leading exporters, and several importers, such as Japan and the Soviet Union, have government-controlled wheat or grain boards intended to insure adequate producer returns.[82] However, these wheat boards do not appear to have been any more successful than the United States in achieving their goals.[83]

In spite of the rhetoric of a free market, however, five giant international grain companies dominate the U.S. grain market and, consequently, in a very real sense, the world's grain trade.[84] Secrecy, an overwhelmingly vast network of shipping and storage facilities, and extensive information systems characterize these companies.[85] Though they are not the direct, or even the indirect, focus of the attempts to regulate the world wheat trade, a study of the trade must recognize these grain companies as a powerful force in the operation of the grain trade.

> the farmer for his loss of markets. Or it can choose to liberalize trade, take advantage of the rapidly expanding world demand for grains, thereby permitting the farmer to make more efficient use of his land and equipment. He could thus improve his income through a healthy, naturally derived higher price for his grain and greater unit sales, without requiring recourse to public funds.

Id.

81. *International Grain Agreements Oversight, supra* note 66, at 57.

82. *See* GRAIN MARKETING SYSTEMS, *supra* note 77.

83. *See International Grain Agreements Oversight, supra* note 66, at 22, 28. Indeed, in the view of the North American Export Grain Association, wheat producers have fared much worse under grain board marketing systems. Neither the North American Export Grain Association nor the Great Plains Wheat Association would endorse the adoption of a U.S. grain board. *Id.*

84. D. MORGAN, MERCHANTS OF GRAIN 31 (1979) [hereinafter cited as MORGAN]. The five international grain companies referred to are Cargill, Inc. of Minneapolis, Minn., Continental Grain Company of New York City, Louis-Dreyfuss Company of Paris, Andre of Lausanne, Switzerland, and the Bunge Corporation of Brazil and New York. Though not the focus of this Comment, the grain companies are a prime, if not *the* prime, force in the world grain market, particularly wheat. According to Mr. Morgan there are two essential reasons for this predominance: the companies' possession of global information which others do not have, and the companies' integration of efficient transportation and storage facilities. The beneficial aspects of the companies are:

> They *are* efficient, and they *do* provide international services and take risks that nobody else does. They are progressive in their transcending of nationalism, their view of the planet as a single entity, and they even bridge the world's adversarial ideological blocs. The companies, say their admirers, are the most efficient organizations ever devised for transferring resources and wealth among countries. When the state takes over, a whole new set of problems comes to mind — inefficiency, bureaucracy, and managers who are subservient to political pressures.

Id. at 324 (emphasis in original). The companies' dominance of the wheat market is exemplified by the fact that, although Canadian wheat sales are normally handled entirely through the state operated Canadian Wheat Board, the private companies have sometimes sold as much as thirty percent of Canada's wheat crop when harvests are large. *Id.* at 330. Furthermore, because of the companies' lack of political ideology, "they can go anywhere and do everything." This dominance was never so apparent as in the 1972 Russian grain sales where the companies provided a buffer between the Soviet and American governments and politics. *Id.* at 318. It should be remembered that the very reasons that make the companies so indispensable are those that make the companies ungovernable and impossible to regulate. For example, in July 1976, Cargill, Continental, and Bunge agreed to return $1.6 million of U.S. export subsidies on which they had profiteered in the summer of 1972 following the Russian grain sales of that year. *Id.*

85. *See* note 84 and accompanying text *supra.*

V. INTERNATIONAL COMMODITY AGREEMENTS

Governments have entered into international commodity agreements in an effort to alleviate chronic commodity market instability.[86] The overriding technical objectives of such agreements are to stabilize prices and insure equitable returns to producers.[87] The ideal achievement of these objectives would result in stabilization of "the market price of the commodity around its long-term trend, as determined by the forces of supply and demand," and would avoid excessive interference in the market.[88] Generally, national commodity agreements employ three types of control measures in order to achieve the desired goals: (1) export quotas,[89] (2) buffer stocks,[90] and (3) multilateral sales contracts,[91] the device most often utilized by the international wheat agreements.[92]

Motivation to adopt a wheat commodity agreement also arises from the existence of export-hindering trade barriers.[93] Ideally, a commodity agreement should liberalize world trade by reducing the need for protective devices such as tariffs, subsidies or levies, since the agreement would itself provide access to markets and an adequate return to producers.[94] Historically, the realization of

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86. Katz, *Department Testifies on International Commodity Agreements*, DEP'T ST. BULL. Jul. 1977, at 19 [hereinafter cited as *Department Testifies*].

87. Note, *Commodity Agreements*, 6 GA. INT'L & COMP. L. 275, 282 (1976) [hereinafter cited as *Commodity Agreements*]. Many of the commodity agreements, other than the wheat agreements, are vitally concerned with securing markets and adequate foreign exchange for developing, primary-commodity producing countries. Much of UNCTAD's concern with commodity agreements centers on this objective. However, wheat, unlike many of the other commodities, is primarily exported by industrialized countries, and, thus, this concern is of little importance. *Id.*

88. Katz, *supra* note 56, at 2.

89. Export quotas, as the name indicates, involve the assignment of export quotas to each producer country. Such quotas represent the producer's share of the free market. Since export quotas prevent surpluses from reaching the world market, stabilization should result. The International Sugar Agreement of 1958, 10 U.S.T. 2189, T.I.A.S. No. 4389, utilizes this device. *See* Gariepy, *International Commodity Agreements*, 25 INT'L & COMP. L. Q. 677, 680 (1976) [hereinafter cited as Gariepy].

90. Buffer stocks operate in the same theoretical manner as a reserve. Stocks are purchased from the market when either a supply increase or a demand decrease causes farm prices to fall below a specified level. Conversely, when prices rise to a certain specified level, a sign that demand is strong and supplies are tight, stocks are released into the market. *See* CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 63. *See also* notes 56-66 and accompanying text *supra*. Buffer stocks have been utilized in both the Tin and Cocoa Agreements.

91. The multilateral contract device is an agreement under which an importing country agrees to buy a certain percentage of its total imports from participating exporting countries, and exporting countries agree to make available to the importing country a sufficient quantity to satisfy its needs. Stabilization results from the fact that a price range is set in the agreement. If prices rise above the maximum of the the specified range, the exporter is, nevertheless, required to sell the specified quantity for no more than the maximum price. Conversely, when prices fall below the minimum set forth in the agreement, importers are still required to purchase the specified quantity for the minimum price. *See* Gariepy, *supra* note 89, at 680-81.

92. *Id.*

93. Fawcett, *The Function of Law in International Commodity Agreements*, 44 BRIT. Y.B. INT'L L. 157, 159 (1970).

94. Conversely, the success of a commodity agreement often hinges on its successful avoidance of

the goal of liberalized world trade through international commodity agreements has been, and continues to be, heavily influenced by the General Agreement on Tariffs and Trade (GATT).[95] GATT was originally a limited agreement on tariffs and certain other trade barriers, rather than an all-inclusive commercial policy treaty.[96] GATT's drafters designed it to stimulate international trade through the removal of barriers that interfere with the otherwise normal flow of exports and imports.[97] Thus, given its original limited conception, GATT, at the outset, did not address commodity problems. Rather, Chapter VI of the final draft of the International Trade Organization (ITO or "Havana" Charter)[98] contains an "exception clause" for commodity agreements.[99] This "exception clause" provides an exception for measures "undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the contracting parties and not disapproved by them or which is itself so submitted and not so disapproved."[100] An Interpretive Note[101] to this clause, added to the GATT in 1955, provides that the exception extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution 30 (IV) of 28 March 1947.[102] The resolution referred to by this Interpretive Note called for the establishment of an Interim Co-ordinating Committee for International Commodity Arrangements (ICCICA), which would be charged with the duty of facilitating intergovernmental consultation and action regarding commodity problems.[103] The resolution also urged that

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restricting the market. *See* Gerhard, *supra* note 64, at 290. "In general, the case for control agreements will be the stronger the less it relies on protective agreements as such, or the more it relies on a maximization of the economic gains from trade." *Id.*

95. GATT, Oct. 30, 1947, 61 Stat. A3 & A1365, T.I.A.S. No. 1700, 55 U.N.T.S. 194 [hereinafter cited as GATT]. This treaty is applied through a "Protocol of Provisional Application" (PPA), which became effective on January 1, 1948. Protocol of Provisional Application to the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3 & A1365, T.I.A.S. No. 1700, 55 U.N.T.S. 308. GATT, itself, is not applied because parliamentary action would be required in order for several countries to accept many general clauses of GATT. *Id.*

96. J. JACKSON, WORLD TRADE AND THE LAW OF GATT 722 (1969) [hereinafter cited as JACKSON].

97. Walker, *The International Law of Commodity Agreements*, 28 LAW & CONTEMP. PROBS. 392, 393 (1963) [hereinafter cited as Walker].

98. HAVANA CHARTER, *supra* note 17, arts. 55-70.

99. The "exception clause" is now embodied in GATT, *supra* note 95, art. XX, para. (h).

100. *Id.*

101. *Id.* annex I, ad. art. XX.

102. E.S.C. Res. 30, 4 U.N. ESCOR Supp. (No. 1) at 3, U.N. Doc. E/437 (1947). In light of this language, commodity agreements can qualify for the GATT exception in three ways: (1) if they conform to the principles of the March 1947 Economic and Social Council Resolution; (2) if the criteria for the commodity agreement were agreed upon and submitted to the contracting parties and the agreement conformed to those criteria; and (3) if an agreement is submitted (which conceivably could be as informal as forwarding copies of the agreement to GATT contracting parties) and the agreement is not disapproved. *See* JACKSON, *supra* note 96, at 731-32.

103. JACKSON, *supra* note 96, at 731-32.

> members of the United Nations adopt as a general guide in intergovernmental consultation or action with respect to commodity problems the principles laid down in . . . the chapter on intergovernmental commodity arrangements of the draft charter appended to the report of the first session of the Preparatory Committee of the United Nations Conference on Trade and Employment.[104]

The Interpretative Note ties interpretation of the GATT exception clause to the principles of the United Nations Economic and Social Council resolution and, thus, the ITO Charter, by reference.[105]

Presently, the GATT formally influences commodity agreements in three ways: (1) through a review and consultation procedure involving GATT's own committees and ICCICA, the UN commodity committee under the aegis of UNESCO;[106] (2) through a framework for negotiating and conferring on trade matters concerning the commodity trade;[107] and (3) through Article XX, subparagraph (h) of the Agreement itself (the "Exception Clause"). This clause excepts from general GATT obligations those actions undertaken in commodity agreements which are in accordance with the principles embodied in the drafts of the ITO Charter.[108]

The concern expressed in the GATT provisions for international commodity agreements arguably allows specific commodities to be singled out for "special handling under special rules and arrangements going beyond and departing from those governing the generality of goods under GATT,"[109] and, thus, is

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104. *Id. See* HAVANA CHARTER, *supra* note 17, arts. 55-70. The United States supplied much of the initiative for the special meetings and reports devoted to commodity problems. The U.S. initial proposals for an ITO charter contained a chapter focusing on this issue, and in addition, called for a study of commodity problems and for the convening of a series of intergovernmental conferences to frame agreements on the issue. *See* JACKSON, *supra* note 96, at 721.

105. *See* JACKSON, *supra* note 96, at 723.

106. ICCICA was established by the Economic and Social Council of the United Nations in its resolution of March 28, 1947. E.S.C. Res. 30, 4 U.N. ESCOR Supp. (No. 1) at 3, U.N. Doc. E/437 (1947). In 1964, the U.N. General Assembly adopted a resolution providing that the United Nations Conference on Trade and Development (UNCTAD) Board establish a commodities committee that would assume the functions of the Commission on International Commodity Trade (CICT) and the ICCICA, while maintaining ICCICA as an advisory body of the new committee. G.A. Res. 1995, 19 U.N. GAOR Supp. (No. 15) at 1-5, U.N. Doc. A/5815 (1964). For a more complete history of ICCICA, *see* JACKSON, *supra* note 96, at 724-26.

107. HADWIGER, *supra* note 35, at 70. In 1957, the contracting parties to GATT adopted a resolution providing, in brief, that they shall: (1) review at every session the trends and developments in international commodity trade; (2) take account of problems relating to international commodity trade which may be contributing to the disequilibrium of the balance of payments and compelling certain contracting parties to maintain import restrictions; (3) consult on the problems arising out of the trade in the primary commodities; and (4) arrange an intergovernmental meeting in conjunction with the United Nations and other intergovernmental organizations concerned. This meeting could usefully contribute to the solution of commodity trade problems. GATT, 5th Supp. BISD 87 (1957).

108. *See* notes 98-103 and accompanying text *supra*.

109. Walker, *supra* note 97, at 394.

contradictory to the free trade goals sought under the GATT.[110] An international commodity agreement employing quantitative limits on imports and/or exports, specific market shares or other restrictions upon the freedom of importers and exporters, is incompatible with GATT free trade principles.[111] GATT was part of a post-World War II effort by world trade partners to restructure international trade in order to prevent a recurrence of the "autarkic policies that had plagued the 1930's."[112] Commodity agreements are arguably *not* "free trade" oriented, but instead they merely substitute the agreements' rigid standards for a country's autarkic policies. On balance, however, any trade restricting effects of International Commodity Agreements, with respect to GATT objectives, should be outweighed by the benefits resulting from successful operation of a commodity agreement which stabilized the market and provided adequate producer returns.[113] Yet, a review of the past International Wheat Agreements reveals that, in reality, the negative trade restricting effects have outweighed any success that the agreements have fostered.[114]

VI. THE INTERNATIONAL WHEAT AGREEMENTS

A. *The International Wheat Agreements of 1933*

Fluctuations in wheat prices to below pre-World War I levels led to the first discussions of international wheat market regulation at conferences in 1927, 1930 and 1931.[115] Representatives of Argentina, Australia, Canada, the United States, and eighteen European countries concluded the first International Wheat Agreement at a London conference in August 1933.[116] The International Wheat

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110. *Id.*

111. *Id.*

112. Hudec, *GATT or GABB? The Future Design of the General Agreement on Tariffs and Trade*, 80 YALE L.J. 1299, 1302 (1971). "Autarky" is defined as "a policy of establishing a national economy that is completely self-sufficient and independent of imports from other countries." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 146 (1976).

113. Walker, *supra* note 97, at 394.

114. *See* Metzger, *Cartels, Combines, Commodity Agreements and International Law*, 11 TEX. INT'L L. J. 527, 535 (1976).

> The difference in the ITO Charter treatment of raw material cartels as compared with those for industrial products resulted from the view of the majority of countries that the difficulties of a "free market" for primary commodities outweighed its virtues. . . . The Havana Charter reflected . . . tolerance [in this area] while simultaneously seeking to mitigate the degree of divergence from free trade principles that it connoted.

Id.

115. HADWIGER, *supra* note 35, at 71.

116. International Wheat Agreement, Aug. 25, 1933, 141 L.N.T.S. 71, 6 Hudson 437 [hereinafter cited as International Wheat Agreement]. Much of the impetus for the agreement was provided by U.S. Secretary of Agriculture, Henry Wallace. In addition to the International Wheat Agreement, Wallace's idea for an "ever normal granary," similar to the biblical account of Joseph storing grain against the famine, or the Confucians storing grain in ancient China, or the Mormons storing food, was the first,

Agreement of 1933 established export quotas for each signatory country for the harvests of 1933 and 1934,[117] and also mandated a fifteen percent worldwide reduction of wheat acreages to take effect in 1934.[118] Further, the agreement contained commitments by thirteen importing countries not to encourage further expansion of wheat production within their own territories.[119] Additionally, those importers agreed to reduce their own customs tariffs on wheat when the world price of wheat reached the equivalent of 63 cents gold per bushel and had remained at that level for sixteen weeks.[120] The agreement was short-lived, however, as a result of the difficulty of enforcing such an agreement,[121] coupled with disastrously low world wheat prices.[122] By 1935, the first International Wheat Agreement was defunct.[123]

B. *The International Wheat Agreement of 1949*

1. Background

Following World War II, much of the responsibility for supplying a war-ravaged Europe with wheat and other food fell to the United States and Canada.[124] The United States supplied almost one-half of the world's wheat needs from 1945 to 1949.[125] By 1948, however, a large surplus of grain had built up in the midwestern United States.[126] The tenuous nature of many foreign economies, coupled with the resumption of domestic production in the wheat-growing countries prevented expansion of commercial markets as a means of using that surplus.[127] The all too familiar cycle of "overproduction — falling pricings — falling income" had begun again, fostering renewed international interest in attempts to liberalize the global wheat trade.[128]

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and perhaps the most famous of the modern proposals for establishing an international grain reserve. HADWIGER, *supra* note 35, at 28. *See generally* H. WALLACE, NEW FRONTIERS (1934).

117. International Wheat Agreement, *supra* note 116, art. 1.

118. *Id.*, art. 2.

119. *Id.*, art. 6(1).

120. *Id.*, art. 6(III), app. A(3).

121. MORGAN, *supra* note 84, at 121. For example, in the initial year of the agreement, Argentina, lacking adequate storage facilities, exceeded its export quota by one million tons of wheat. Efforts to enforce the acreage restrictions also met with failure since cooperation was really the only method of enforcement. *Id.*

122. Wheeler, *supra* note 15, at 390.

123. *Id.*

124. MORGAN, *supra* note 84, at 136. Food was shipped under the auspices of the United Nations Relief and Rehabilitation Agency (UNRRA) and the Marshall Plan. *Id.*

125. According to the U.S. Department of Agriculture, the average percentage of total world exports from the United States and Canada combined, for the period 1945-1949, was 76%. The individual percentages were 47.3% and 28.7%, respectively. ECONOMIC RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE, PUB. NO. A93.11, WHEAT SITUATION (1963).

126. MORGAN, *supra* note 84, at 137.

127. *Id.*

128. HADWIGER, *supra* note 35, at 81.

2. The Agreement of 1949

The International Wheat Agreement of 1949[129] was a contract between specific importers and exporters fixing both the quantities to be purchased and the range of prices.[130] Each exporter or importer was to furnish or purchase a specific quantity of wheat, reflecting the trade patterns which already existed between them.[131] Essentially, the Agreement provided that when prices in the international market reached or exceeded the equivalent of $1.80 for No. 1 Manitoba Northern wheat,[132] the exporting countries would supply to each of the importers their respective allocated quantity at the $1.80 price.[133] When prices reached the minimum figure of $1.50 in the first year; $1.20 in the last year,[134] the importing countries would purchase the total guaranteed quantity at that specified minimum price.[135] The International Wheat Agreement covered slightly less than one-half of the total world wheat exports of 1948-49.[136] The total guaranteed sales of the United States under the International Wheat Agreement amounted to 37% of the world's total sales.[137]

Two of the most important characteristics of the 1949 International Wheat Agreement were the lack of production controls and the flexible price range provided under the agreement.[138] The maximum price of $1.80 a bushel and

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129. International Wheat Agreement of 1949, 63 Stat. 2173, T.I.A.S. No. 1957, 203 U.N.T.S. 179 [hereinafter cited as International Wheat Agreement 1949].

130. HEID, *supra* note 21, at 89. Except for Argentina and the Communist countries, all major exporters and 37 of the significant importing countries signed the International Wheat Agreement. *See* HADWIGER, *supra* note 35, at 72.

131. International Wheat Agreement 1949, *supra* note 129.

132. Under the price schedule set forth in the International Wheat Agreement 1949, a price was determined for one type of wheat, the Canadian Manitoba No. 1 (the top quality wheat in the world) at the Lakehead parts. *Id.* art. VI. All other types of wheat were priced with reference to this one pegged wheat. *Id.* The Price Equivalence Committee of the International Wheat Council of London met periodically to determine the relationship between the pegged wheat and the others. *Id. See International Wheat Agreement, 1971: Hearings Before the Ad Hoc Subcomm. on International Wheat Agreement of the Senate Comm. on Foreign Relations,* 92d Cong., 1st Sess. 13-15 (1971).

133. International Wheat Agreement 1949, *supra* note 129, art. III(3)(b).

134. *Id.* art. VI (this article sets forth minimum and maximum prices).

135. *Id.* art. III(3)(a). The International Wheat Agreement went into effect on August 1, 1949 for a period of four years.

136. HEID, *supra* note 21, at 89.

137. *Id.*

138. *Id.* Johnson, *Agricultural Price Policy and International Trade,* in ESSAYS IN INTERNATIONAL FINANCE 7 (Jun. 1954). The lack of production controls in the International Wheat Agreement of 1949 is somewhat surprising since harvested acres in the United States reached an all-time high in 1949 of almost 76 million acres (84 million acres planted) and carryover stocks were mounting. *Id.*

> A general over-all view of the price support and related activities from 1933 to the present would note the following points. During the last twenty-one years, attempts to regulate production (if one excludes tobacco) were made in only eight years. Most agricultural economists would agree that the methods used to limit output have been relatively ineffective, having been accompanied by positive incentives to increase production. Not only were price supports maintained at relatively profitable levels and direct payments made to producers, but many of

the provision for a descending price minimum, beginning at $1.50, reflected the importers' expectations that prices would drop to the pre-World War II levels.[139] In the long run, the 1949 Agreement was a boon to the importing countries, since world market prices outside the Agreement remained substantially higher than the maximum Agreement price, and exporters were bound by the agreement to supply the fixed quantities to importers at the $1.80 maximum price.[140]

3. Extensions to the Agreement of 1949

The parties to the International Wheat Agreement of 1949 revised and renewed the Agreement in 1953,[141] 1956,[142] 1959,[143] and in 1962.[144] In 1965 and 1966, the parties extended the Agreement for one-year periods by protocol agreements[145] in order that renegotiation of the Wheat Agreement could reflect the understandings arrived at during the sixth round of multilateral trade negotiations conducted under the auspices of the GATT.[146] The parties to the Agreement allowed the substantive provisions of the International Wheat Agreement to expire on July 31, 1967. The parties extended the administrative provisions until July 31, 1968[147] so that the Agreement reached on a new wheat price schedule during the Kennedy Round could be incorporated into the International Grains Arrangement[148] negotiated during the fall of 1967.[149]

Aside from the slight increases and reductions made to the maximum price, the most significant change under the 1949 International Wheat Agreement, or its extensions, occurred in the International Wheat Agreement of 1959,[150] which

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> the activities associated with the farm programs have been effective means of increasing output by inducing or aiding farmers to adopt improved production techniques.

Id.

139. HADWIGER, *supra* note 35, at 72.

140. Wheeler, *supra* note 15, at 372.

141. The International Wheat Agreement of 1953, 4 U.S.T. 944, T.I.A.S. No. 2799, 203 U.N.T.S. 179.

142. The International Wheat Agreement of 1956, 7 U.S.T. 3275, T.I.A.S. No. 3709, 270 U.N.T.S. 103.

143. The International Wheat Agreement of 1959, 10 U.S.T. 1477, T.I.A.S. No. 4302, 349 U.N.T.S. 167 [hereinafter cited as International Wheat Agreement 1959].

144. The International Wheat Agreement 1962, 13 U.S.T. 1571, T.I.A.S. No. 5115, 444 U.N.T.S. 3 [hereinafter cited as International Wheat Agreement 1962].

145. Multilateral Extension of International Wheat Agreement, 1962, 16 U.S.T. 1010, T.I.A.S. No. 5844, 544 U.N.T.S. 350; Multilateral Further Extension of International Wheat Agreement, 1962, 17 U.S.T. 948, T.I.A.S. No. 657, 723 U.N.T.S. 346.

146. JACKSON, *supra* note 96, at 729. Conducted from 1962-1967, these negotiations are referred to commonly as the "Kennedy Round."

147. Multilateral Further Extension of International Wheat Agreement, 1962, 18 U.S.T. 1699, T.I.A.S. No. 6315, 723 U.N.T.S. 372.

148. International Grains Arrangement, June 30, 1967, 19 U.S.T. 5499, T.I.A.S. No. 6537, 727 U.N.T.S. 3.

149. JACKSON, *supra* note 96, at 729.

150. International Wheat Agreement 1959, *supra* note 143.

expressed each importing country's quota for wheat as a percentage of the country's total wheat imports rather than in absolute terms, as had previously been done.[151] This change reduced the effectiveness of the International Wheat Agreement, since exporters were no longer guaranteed specific quantities of wheat sales, nor a percentage of the total sales under the International Wheat Agreement.[152] The lack of definite quotas or percentages allowed importers to use substitutes for imported wheat, or to increase their self-sufficiency in production.[153] Reduced certainty in both production and price resulted as loopholes in the pricing developed.[154] Thus, the International Wheat Agreement price range more closely represented the pricing policies of Canada, the price leader, and the United States, rather than a price standard.[155] In the 1962 International Wheat Agreement, a new provision stated that nothing in the Agreement should "prejudice the complete liberty of action of any exporting or importing country in the determination and administration of its internal agricultural and price policies."[156] Expressing the problems with such a provision, Leslie Wheeler, a negotiator of the International Wheat Agreement stated: "[I]f this clause cannot be dropped and something substituted to the effect that national agricultural [wheat] policies will be operated in such a way as to contribute to the implemen-

151. *Id.* art. 4(1)-(2). The exporters agreed to supply the average "commercial" purchases of the individual importing countries within the price range of $1.50 to $1.90 a bushel during a specified period, *see id.* art. 14, while the importers agreed to purchase, within the price range, specified percentages of their commercial wheat import requirements. *Id.*

152. HEID, *supra* note 21, at 91.

153. Malmgren & Schlechty, *supra* note 1, at 536.

154. *Id.*

155. *Id.* at 91. *See also* HADWIGER, *supra* note 35, at 73-74.

> Indeed, the IWA had proven the point of those who had long ago argued that no international commodity agreement could determine prices. For a long time some pessimists had stressed the technical difficulty of establishing price relationships between differing qualities of wheat. Under the IWA an effort had been made to relate major wheat prices to the stated price for a particular kind and location of wheat. . . . Kinds and locations of wheat could be related on a scale, but quality differences had provided a major loophole for evading the IWA price range.
>
> While the IWA could not adequately regulate prices, neither could it prevent exporters from managing prices in their own behalf. One of Britain's reasons for quitting IWA in the 1950s was that agreement could not insure free movement of prices within the established range, nor could it prevent price collaboration between the United States and Canada or take steps to prevent a very effective duopoly of world prices.

Id. But see Farnsworth, *International Wheat Agreements and Problems, 1949-56*, 70 Q.J. ECON. 217, 233 (1956). This author states:

> One of the disadvantages of an international commodity agreement molded in the form of a multilateral contract is the difficulty of accurately forseeing future price trends and ensuring that the negotiated price range is realistic. This has been a persistent problem in the case of wheat. The first International Wheat Agreement effective from 1949-1953 operated solely to the benefit of importing countries, for world prices were consistently above the stipulated maximum.

Id.

156. International Wheat Agreement 1962, *supra* note 144, art. 23(3).

tation of the International Wheat Agreement, there is serious doubt as to the value of such an agreement."[157]

4. Dispute Resolution

Notwithstanding the shortcomings of the various International Wheat Agreements or their extensions, the willingness of France and Australia to submit their 1958 wheat trade dispute to a GATT panel for resolution evidenced confidence that the world wheat trade could still be equitably governed.[158] Australia complained that France was responsible for the illegal undercutting of Australia's traditional Asian wheat markets through French use of export subsidies, which is prohibited under Article XVI of GATT.[159] Article XVI allows the use of subsidies for the limited purpose of, or to the extent necessary to maintain, an "equitable share" of the market.[160] The Panel found, on the basis of the statistics submitted, that the French subsidies did violate Article XVI, since it was clear that French supplies had in fact displaced Australian supplies to a large extent in the three Southeast Asian markets.[161] The Panel recommended that France revise its practices in the financing of wheat exports to Southeast Asia so as not to adversely effect Australian markets.[162] It further recommended that the two countries consult before the French exporters entered into new contracts.[163] Aside from this successful example, however, such an orderly resolution of wheat trade disputes proved to be the exception rather than the rule.[164] Countries could adopt export subsidies or other devices in order to protect their "equitable share" of the market, and countries viewed such unilateral actions as more easily undertaken than going through the dispute procedure.[165]

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157. Wheeler, *supra* note 15, at 396.

158. GATT Dispute Resolution Panel, Report on the Australia-France Wheat Trade Dispute, GATT, 7th Supp. BISD 46 (GATT Doc. L/924 (1958)) [hereinafter cited as GATT Report]. The claim is also discussed in R. HUDEC, THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY 89 (1975) [hereinafter cited as HUDEC]. Parts of the claim are also *reprinted in* J. JACKSON, INTERNATIONAL ECONOMIC RELATIONS 757-62 (1977).

159. GATT Report, *supra* note 158, at 46.

160. GATT, *supra* note 95, art. XVI. The issue as framed by the GATT panel was "[w]hether and to what extent the operation of subsidies granted by France on the export of wheat and wheat flour had caused injury to Australia's normal commercial interests, and whether such an injury represented an impairment of benefits accruing to Australia under the General Agreement." *Id.*

161. GATT Report, *supra* note 158.

162. *Id.*

163. *Id.* France and Australia were eventually able to agree upon an export price arrangement that was acceptable. *See* HUDEC, *supra* note 158, at 89.

164. Schram, *supra* note 6, at 281. Australia, however, did file a similar charge against Italy involving a subsidy violation. This dispute was also referred to the dispute panel and was resolved on the basis of revision of the subsidy program. *See* HUDEC, *supra* note 158, at 89.

165. *See* Graham, *Reforming the International Trading System: The Tokyo Round Trade Negotiations in the Final Stage*, 12 CORNELL INT'L L. J. 1, 34-35 (1979) [hereinafter cited as Graham]. Graham points out that

VII. THE INTERNATIONAL GRAINS AGREEMENT

A. *Background*

The general post-war political optimism in the ability of GATT and the International Wheat Agreement to solve world agricultural problems was diminished, if not altogether dissipated, by the events of the 1960's.[166] Problems not envisioned in 1949, such as the establishment of the trade restrictive Common Agricultural Policy (CAP) of the European Economic Community (EEC);[167] the impact of diverse domestic farm support and production policies;[168] the widening gap in trade growth rates between the developing and the developed countries;[169] and the growing need for wheat in the developing countries[170] put enormous additional pressures on the two strained agreements.

Central to the breakdown in wheat regulation was the change in the relationship of the two largest wheat exporters, Canada and the United States, from

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not only is the obligation not to subsidize agricultural exports precatory as opposed to mandatory, but the "equitable share" concept is so imprecise as to amount to "little more than an exhortation." *Id.*

166. *See* HUDEC, *supra* note 158, at 200.

167. The European Economic Community (EEC) was established by The Treaty Establishing the European Economic Communities, 295 U.N.T.S. 2 (German). The official English version is *reprinted in* [1973] GR. BRIT. T.S. No. 1 (CMD. 2, No. 5179) [hereinafter cited as EEC Treaty]. The Common Agricultural Policy itself is to be found in the regulations, directives and decisions published in the *Official Journal of the Community.* The EEC (consisting of Germany, France, Italy, Belgium, the Netherlands, Luxembourg, Denmark, Ireland and the United Kingdom) established the Common Agricultural Policy (CAP) in 1962 in order to insure fair price levels to farmers within the EEC while at the same time assuring consumers adequate supplies at reasonable prices. The heart of the EEC's grain regulation is the "variable import levy," which automatically separates domestic prices from foreign prices. A domestic target price is determined, and the tariff is defined to be whatever variable amount is necessary to achieve the domestic target. The change in the tariff compensates for any change in the import price and the import demand for grain is thereby rendered inelastic. Through this system, the price of grains within the EEC are maintained at levels approximately twice as high as world market prices, with a corresponding adverse effect on producer returns in the major exporting countries. *See* T. GRENNES, P. JOHNSON & M. THURSBY, THE ECONOMICS OF WORLD GRAIN TRADE (1978) [hereinafter cited as GRENNES, JOHNSON & THURSBY]; GRAIN MARKETING SYSTEMS, *supra* note 77, at 50; FLANIGAN REPORT, *supra* note 28. For a good review of CAP policy generally, *see* Riesenfeld, *Common Market for Agricultural Products and Common Agricultural Policy in the European Economic Community,* 1965 U. ILL. L. F. 658· Dam, *The European Common Market in Agriculture,* 67 COLUM. L. REV. 209 (1967).

168. *See, e.g.,* GRAIN MARKETING SYSTEMS, *supra* note 77, for a detailed description of the different domestic policies embraced by the major exporters.

> The implementation of government policies can both augment and attenuate instability in national and international markets . . . . [A]ction to provide a greater degree of market stability can run counter to other policy goals and, like other policy action, can add to instability rather than reduce it. Moreover, . . . various measures taken for strictly domestic or interior motives, can result in an international situation that is less stable.

OECD, *supra* note 2, at 48.

169. Note, *U.S. Commodities Policy: A Suggested Modification of the Proposal for an International Resources Bank,* 17 VA. J. INT'L L. 279, 287 (1977). "From 1950 to 1960 the growth rate for developed nations was 2.8%, compared to 2.4% for developing nations. During the 1960s the annual average growth rates for developed and developing countries were 4.1% and 2.6% respectively." *Id.*

170. DISINCENTIVES, *supra* note 10, at 30.

cooperation to competitiveness.[171] In 1964, U.S. cash exports had declined to their lowest post-war level,[172] but other exporters, especially Canada, had increased their export sales with the opening of giant new export markets in the Communist countries.[173] Because of the Cold War, these markets were not open to the United States. Therefore, in the face of growing American wheat surpluses, the United States adopted an aggressive price-cutting policy in order to regain a "traditional" market, Japan.[174] The Japanese market, originally developed by the U.S. Department of Agriculture's Foreign Agricultural Service (FAS),[175] was partially lost when Japan turned to Canada for higher quality wheat.[176] The undercutting policy was successful, and by 1965, America had recaptured the Japanese wheat market.[177]

The United States also felt that it had assumed a disproportionately large share of the responsibility for both world supply controls[178] and food aid requirements in developing countries.[179] Lower world prices, encouraged by the

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171. HADWIGER, *supra* note 35, at 77.

172. *Id.* The U.S. fair share of cash exports had been estimated to be 250 million bushels, but it had dropped to 161 million bushels in 1964. *Id.*

173. FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRIC., ECONOMIC REPORT NO. 75, WORLD DEMAND PROSPECTS FOR GRAIN IN 1980 5 (1971). Canada supplied 57% of USSR imports in 1964-1966, 20% of Eastern Europe's imports in 1964-1966, and together with Australia and Argentina supplied Communist China (chiefly Mainland China) with 5.8 million tons of wheat. *Id.*

174. *See* HADWIGER, *supra* note 35, at 77.

175. The Foreign Agricultural Service (FAS) was created by Executive Order of President Eisenhower in 1954. Exec. Order No. 10,560, 19 Fed. Reg. 5927 (1954). FAS is the export promotion and service agency for the USDA. It was created to stimulate overseas markets for U.S. agricultural products. *Id.*

176. HADWIGER, *supra* note 35, at 5. The United States accounted for 52% of the Japanese imports, 36% of the Canadians', and 12% of the Australians'. *Id.*

177. *Id.* at 77.

178. *Id.* at 82. The United States was the only major exporting country to have a production control program in effect, albeit a voluntary program. Under the Agriculture Act of 1964 (*see* note 45 *supra*), farmers had only to comply with assigned allotments to be eligible for price supports, and farmers who diverted a specified acreage to conservation uses were eligible for income supplements as well as "marketing certificates" — certificates of compliance with the wheat diversion program which could be redeemed for a certain amount of money. *Id.* The value of the certificates was 70 to 75 cents a bushel, and by 1970, the cost of the program amounted to $100 million. The program was highly successful, however, and by 1966, U.S. stocks were reduced to 535 million bushels from 1,195 million bushels in 1963-1964. *See* GRAIN RESERVES, *supra* note 4, at 2.

In addition, starting in 1955, the United States restricted the amount of acreage that could be planted to wheat. *See* National Wheat Acreage Allotment Program, 7 U.S.C. § 1333 (1955 & Supp. V 1970). From 1955 through 1963, the national acreage allotment was 55 million acres. This figure fell to 47.8 million acres in 1966, rose to 68.2 million acres in 1967, and then fell steadily to 45.5 million acres in 1970.

179. *See* CONGRESSIONAL BUDGET OFFICE, U.S. FOOD AND AGRICULTURAL POLICY IN THE WORLD ECONOMY 29 (1976) [hereinafter cited as U.S. FOOD AND AGRICULTURAL POLICY] (quoting ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRIC., THE WORLD FOOD SITUATION AND PROSPECTS TO 1985 54 (1974)). According to this publication, "[b]etween 1965 and 1973, nearly $11 billion worth of food aid was provided worldwide, with the U.S. accounting for 80 percent of the total." *Id.* A footnote to this statement further provides: "This figure overstates the U.S. contribution to the extent most U.S. aid took the form of concessional sales while aid from most other countries was in the form of outright grants." *Id.* at 54 n.13.

U.S. price cutting action, led to a decline in world production of wheat.[180] The lower prices and lower production allowed the United States to substantially decrease its wheat surpluses.[181] Unfortunately, the reduction in surpluses had the negative effect of reducing the food aid to developing countries, a pattern that later repeated itself in the aftermath of the giant Russian grain sales in 1972.[182] This development highlighted the need for greater sharing of aid commitments among donor countries as well as a modification or restructuring of the food aid program so that donee countries would not have to assume the burden of market shifts through a reduction in their aid.[183]

B. *The International Grains Arrangement of 1968*

The International Grains Arrangement (IGA)[184] represented an attempt at joint regulation and control of the world wheat market that was extraordinarily ambitious in scope. The International Grains Arrangement was composed of two conventions: the Wheat Trade Convention (WTC),[185] covering the commercial wheat market transactions, and the Food Aid Convention (FAC),[186] containing agreements for minimum annual commitments of food aid to developing countries by donor countries.[187] The Wheat Trade Convention was essentially a multilateral contract between importing and exporting countries.[188] The importers agreed to purchase from member countries "the maximum possible share of its total commercial purchases of wheat in any crop year" and "not less than a percentage established by the [International Wheat] Council in agreement with the importing country concerned."[189] In return, the exporters agreed to supply wheat to importing countries "at prices consistent with the price range in quantities sufficient to satisfy on a regular and continuous basis the commercial

180. World wheat production amounted to 264 million metric tons in 1965, a decrease of 11 million metric tons from 1964. HEID, *supra* note 21, at 83.

181. *Id.* at 91. By 1966, U.S. stocks were reduced to 535 million bushels from 1,195 million in 1963-1964. *See* note 178 and accompanying text *supra*.

182. HEID, *supra* note 21, at 91. The same trend was observed in 1972 after the Russian wheat sales of that year. *See* GRAIN RESERVES, *supra* note 4, at 16.

183. TREZISE, *supra* note 56, at 21-26.

184. The International Grains Arrangement, June 30, 1967, 19 U.S.T. 5499, T.I.A.S. No. 6537, 727 U.N.T.S. 3 [hereinafter cited as International Grains Arrangement].

185. Wheat Trade Convention, June 30, 1967, 19 U.S.T. 5504, T.I.A.S. No. 6537, 727 U.N.T.S. 8 [hereinafter cited as Wheat Trade Convention].

186. Food Aid Convention, June 30, 1967, 19 U.S.T. 5772, T.I.A.S. No. 6537, 727 U.N.T.S. 198 [hereinafter cited as Food Aid Convention].

187. *Id.*

188. Schram, *supra* note 6, at 299.

189. International Grains Arrangement, *supra* note 184. Wheat Trade Convention, *supra* note 185, art. 4, para. 2. *See also* Wassermann, *International Wheat Agreement 1971*, 5 J. WORLD TRADE L. 360, 361 (1971) [hereinafter cited as *International Wheat Agreement 1971*].

requirements of those countries."[190] In contrast to the International Wheat Agreements, which set a minimum and maximum price range based on one reference wheat,[191] the International Grains Arrangement established price ranges on each of fourteen major wheats.[192] The Arrangement also established a Prices Review Committee,[193] composed of representatives of five exporting countries, five importing countries, the EEC and two additional members.[194] The Arrangement called for the Committee to be convened within two days of a determination by the Secretariat of the International Wheat Council "that a situation has arisen, or threatens imminently to arise, which appears to jeopardize the objectives of this Convention with regard to the minimum price provisions."[195] If the Committee could not agree on "action to be taken to restore market stability"[196] after three market days, the Arrangement required the Wheat Council to be convened within two days of the Committee's last meeting "to consider what further measures might be taken."[197] If, after three days of review by the Council, sales of wheat below the minimum price did not cease, the Arrangement called for the Council to decide "whether provisions of this Convention [should] be suspended, and if so, to what extent."[198] This procedural review was designed to provide stability and flexibility in the event of subminimum sales.[199]

The Food Aid Convention[200] established a sharing of responsibility for food aid, thus taking some of the burden off the United States.[201] Exporting countries

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190. International Grains Arrangement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 4, para. 3.

191. *See* note 138 and accompanying text *supra*.

192. International Grains Arrangement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 6.

193. *Id.* art. 31, para. 1.

194. *Id.*

195. *Id.* art. 8, para. 1.

196. *Id.* art. 8, para. 3.

197. *Id.*

198. *Id.*

199. *See International Grains Arrangement 1967*, 2 J. WORLD TRADE L. 233, 236 (1968) [hereinafter cited as *International Grains Arrangement 1967*]. Since the Prices Review Committee was endowed with the power to adjust the differentials as the market required and it also had the power to make rapid decisions (with the help of the Subcommittee on Prices, which was charged with the obligation of keeping in close touch with the Secretariat of the International Wheat Council and keeping market prices under continuous review), no market disturbances should have reached the point of threatening the overall stability of the market. *Id.*

200. International Grains Arrangement, *supra* note 184; Food Aid Convention, *supra* note 186.

201. M. WALLERSTEIN, FOOD FOR WAR — FOOD FOR PEACE 112-13 (1980) [hereinafter cited as WALLERSTEIN]. The United States actually demanded the sharing of this responsibility during the International Grains Arrangement negotiations at the Kennedy Round of talks. *See* note 206 and accompanying text *infra*. The United States took the position that its participation in any grains arrangement was conditioned on inclusion of food aid provisions in the agreement. WALLERSTEIN, *supra* note 201, at 112-13.

and industrialized importing countries agreed to provide 4.5 million metric tons of grain to developing countries for a three-year period.[202] The United States, Canada and the countries of the EEC accounted for 76% of the $4.5 million total food aid pledged.[203] The Convention established a Food Aid Committee comprised of the members of the Food Aid Convention.[204] This Committee had the responsibility of receiving regular reports and supervising the purchase of grains financed by cash contributions.[205]

Parties to the GATT Kennedy Round[206] considered the International Grains Arrangement, thus, a symbolic, if not actual, link to GATT principles.[207] The Arrangement's connection to GATT free trade principles,[208] its multilateral contract responsibilities,[209] its price review procedures,[210] and finally, its joint food aid obligations under the Food Aid Convention[211] represent an effort to cover all eventualities and establish a viable framework for cooperation among the countries involved.[212]

C. *The Breakdown of the International Grains Arrangement*

It is easier to give factual description of the events surrounding the failure of the International Grains Arrangement than it is to offer a clear and full explanation of the reasons for that failure. Essentially, almost immediately after the Agreement took effect, the minimum prices of the Agreement collapsed under intense pressure.[213] The International Grains Arrangement price range for wheat increased the price per bushel about twenty cents over the price range contained in the 1962 agreement.[214] However, the Arrangement failed to pro-

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202. International Grains Arrangement, *supra* note 184; Food Aid Convention, *supra* note 186, art. II. This donation could take the form of wheat, coarse grains suitable for human consumption, or cash for the purchase of grain. If cash was contributed, then not less than twenty-five percent of such contribution or such part as required to purchase 200,000 metric tons of grain, was required to be used to purchase grain in developing countries. *See id.* art. II(4)(b).

203. Food Aid Convention, *supra* note 186, art. II(2). The United States' share was 42%, the Canadian share was 11%, and the EC's share was 23%. *Id.*

204. International Grains Arrangement, *supra* note 184; Food Aid Convention, *supra* note 186.

205. Food Aid Convention, *supra* note 186, art. III. *See also International Grains Arrangement 1967*, *supra* note 199, at 238-39.

206. The "Kennedy Round" is the name given to the sixth round of Multilateral Trade Negotiations (MTN) conducted under the auspices of the General Agreement on Tariffs and Trade in Geneva from 1964-1967.

207. JACKSON, *supra* note 96, at 729.

208. *Id.*

209. Schram, *supra* note 6, at 299.

210. International Grains Arrangement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 31, para. 1.

211. International Grains Arrangement, *supra* note 184; Food Aid Convention, *supra* note 186, art. II.

212. International Grains Arrangement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 1.

213. Note, *International Commodity Agreements*, 6 GA. J. INT'L & COMP. L. 275, 297 (1976).

214. *See International Wheat Agreement 1971*, *supra* note 189, at 361.

vide increased access to markets, and thus the price increase caused a relative drop in the demand for wheat.[215] As a result, exporters were left with a surplus of unsold wheat in the face of the Arrangement's minimum price floor.[216] In addition to this unsold wheat, large national carryover surpluses, which existed at the time of the agreement, further contributed to the erosion of the price schedule.[217]

Despite the apparent thoroughness of the International Grains Arrangement,[218] the Arrangement lacked a very fundamental characteristic, which proved fatal to its success: the provision for production adjustments.[219] Until 1970, the United States was the only major exporting country with national legislation requiring production control.[220] The lack of such controls by other governments exacerbated the difficulties encountered under the International Grains Arrangement because the minimum price set under Arrangement was excessive in light of the market surplus.[221] Moreover, the language of the International Grains Arrangement led some major exporting countries, notably the United States, to believe that cutting prices below the specified minimum did not violate the Arrangement.[222] By the summer of 1969, barely a year after the International Grains Arrangement became effective, the minimum prices remained only technically in effect because the major exporting countries ignored their existence.[223] Though the U.S. Secretary of Agriculture, Orville Freeman, referred to the International Grains Arrangement difficulty in September of

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215. *Id.*

216. *Id.*

217. Schram, *supra* note 6, at 311. Schram reports that at the start of 1969, the main exporting countries had carryover stocks of 3.2 billion bushels — more than twice the amount of wheat exported in world trade in any single year. *Id.*

218. International Grains Arrangement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 1.

219. *See International Grains Arrangement of 1967: Hearings Before the Senate Comm. on Foreign Relations*, 90th Cong., 2d Sess. 143 (1968) [hereinafter cited as *International Grains Arrangement: Hearings*]. In a statement to the Committee, Dr. D. Gale Johnson said:

> The International Grains Arrangement makes no significant contribution to the fundamental problem facing wheat producers. The fundamental problem is that the capacity to produce wheat in the developed countries is greater than the capacity of commercial markets to absorb the wheat at prices that will provide acceptable incomes for the present number of farmers. . . . Governmental policies have been largely responsible for the length of time that the imbalance has persisted. Several governments have encouraged high cost production of wheat.

Id.

220. *See* note 45 and accompanying text *supra*.

221. Schram, *supra* note 6, at 312.

222. *Id.* at 304-305. "[T]he Convention does not preclude an exporting country from pricing below the schedule of minimum prices." *International Grains Arrangement: Hearings, supra* note 219, at 24. The United States adopted the view that the price schedule (Art. 8) was only a guideline which was not binding upon exporters. The precatory language of article 8 lends support, unintentionally, to this view. *Id.*

223. Malmgren & Schlechty, *supra* note 1, at 536. *See* Schram, *supra* note 6, at 306-11, for a detailed account of the actual price war which occurred.

1968 as "teething troubles,"[224] by April of 1969, wheat export officials agreed privately that all parties had violated the Wheat Trade Convention by selling wheat below the specified minimum prices.[225]

With this background, no expert was surprised that neither the International Grains Arrangement review procedures,[226] nor the symbolic connection to GATT,[227] managed to salvage the Arrangement. Although the review procedures in the Arrangement were comprehensive, they proved to be only as useful as the parties themselves made them. Aside from the one review, by the Prices Review Committee in October, 1968, of agreements worked out a month earlier between several of the exporters, the elaborate review procedures went unused and ignored.[228] Further, considering the United States' view that the Article 8 minimum prices were only guidelines,[229] the review procedures probably could not have had any significant impact in saving the Arrangement.[230]

More significant than the ineffectiveness of the price review procedures was the failure of the GATT — IGA link[231] to bolster and save the Arrangement. Although one of the stated objectives of the Arrangement, in keeping with GATT principles[232] was "to promote the expansion of the international trade in wheat and wheat flour and to secure the freest possible flow of this trade in the interest of both exporting and importing countries,"[233] several of the Arrangement's provisions contradicted, in spirit and fact, this stated objective.[234] For example, the Arrangement determined the amounts of wheat an exporter was required to make available and an importer was entitled to purchase on the basis of "datum quantities."[235] These quantities reflected the "average annual commercial purchases during the first four of the immediately preceding five crop

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224. N.Y. Times, Sept. 16, 1968, at 69, col. 1.

225. N.Y. Times, April 4, 1969, at 47, col. 6.

226. *See* notes 193-197 and accompanying text *supra.*

227. *See* note 207 and accompanying text *supra.*

228. Schram, *supra* note 6, at 307. Schram notes that:

> [o]nly ten days are allowed to reach an acceptable solution to the problems that have led to the crisis. It is unrealistic to expect that a new price range can be agreed upon in a short time when the price range embodied in the agreement has been hammered out in delicate negotiations over a long period.

Id. at 304.

229. *See* note 222 and accompanying text *supra.*

230. *See* note 228 and accompanying text *supra.* Given the national self-interest inherent in agricultural production and trade, in a major exporter's view, such as the United States', the pricing provisions are merely guidelines which rise to the level of neither international obligation nor sanction, and this certainly impairs, if not destroys, the effectiveness of such an agreement. *Id.*

231. *See* note 207 and accompanying text *supra.*

232. Walker, *supra* note 97, at 393.

233. International Grains Agreement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 1(b).

234. Schram, *supra* note 6, at 301.

235. International Grains Arrangement, *supra* note 184; Wheat Trade Convention, *supra* note 185, art. 2, para. 1.

years."[236] Rather than expanding trade, these provisions restricted trade to past levels.[237] Prior breakdowns of GATT's effectiveness in other agricultural trade areas, such as United States' waiver from GATT obligations in the dairy import quotas dispute[238] or the ongoing ideological battle between GATT free trade policies, and EC's[239] protectionist CAP also may have diminished GATT's usefulness with respect to the Arrangement.[240] Thus, in addition to the GATT connection's failure to preserve the Arrangement, confidence and reliance in the GATT, at least in the agricultural area, decreased during this time period.

The failure of the International Grains Arrangement may also have been the result of the selfishness of the parties involved.[241] Exporters viewed the burden of large surpluses coupled with the Arrangement's minimum price floor as a threat to their economic well-being.[242] Though wheat demand is relatively price inelastic,[243] exporters could not sell the surplus grain at the high minimum price.[244] If selfishness underlies this state of affairs, then the future success of international commodity agreements is also likely to be threatened unless parties to these agreements develop a broader perception of domestic self-interest in terms of agricultural trade.[245]

VIII. THE INTERNATIONAL WHEAT AGREEMENT OF 1971

A. *Background and Goals Underlying the Agreement of 1971*

Partly in response to the surplus situation existing in 1968-1969, and partly as a result of the lack of national or treaty production controls, Canada and Australia instituted production controls to reduce their stocks and raise the price

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236. Wheat Trade Convention, *supra* note 185, art. 15, para. 1.

237. Note, *The 1967 International Grains Arrangement*, 2 N.Y.U. INT'L L. & POL. 132 (1969) [hereinafter cited as Note]. *See* Schram, *supra* note 6, at 301. With respect to GATT, Schram also questions the wisdom of International Grains Arrangement, Wheat Trade Convention, art. 23, para. 4, which permits "the complete liberty of action of any member country in the determination and administration of its internal agricultural and price policies," and the authorization under the Wheat Trade Convention (art. 16, para. 6) for a customs union, such as the EEC, on intraunion sales, to support the price of wheat above the maximum outlined in the International Grains Arrangement. *Id.*

238. This 1955 dispute over dairy import quotas is discussed in HUDEC, *supra* note 111, at 200.

239. *Id.*

240. *Id.*

241. Note, *supra* note 237, at 157. "If the Wheat Agreement has failed, it is not the fault of the Agreement but the selfishness of the parties." *Id.*

242. Schram, *supra* note 6, at 317. *See also* notes 214-27 and accompanying text *supra*.

243. HEID, *supra* note 21, at 43. *See* notes 16-18 and accompanying text *supra*.

244. Schram, *supra* note 6, at 312.

245. G. GOODWIN & J. MAYALL, A NEW INTERNATIONAL COMMODITY REGIME 77, 83 (1980) [hereinafter cited as GOODWIN & MAYALL]. Varying national objectives and policies can result, in Gilmore's words, in a "go-it-alone" policy, much as that which existed in 1968 leading to the break-up of the International Grains Arrangement." *Id.* at 83.

of wheat.[246] Though the International Grains Arrangement remained in effect until 1971, the only operative provision remaining was the Food Aid Convention.[247] Although some provisions under the Food Aid Convention were less than desirable,[248] the parties to the Convention, for the most part, considered the Convention successful.[249]

The parties to the International Wheat Agreement of 1971[250] continued the IGA format of two conventions, and adopted the Food Aid Convention without any major changes; but the parties attempted to reconstitute the Wheat Trade Convention in the style of the original 1949 International Wheat Agreement.[251] The new Wheat Trade Convention, however, reflected the 1949 International Wheat Agreement in form, only.[252] In light of the failure of the rigid price schedule under the International Grains Arrangement, the United States[253] sought a more flexible agreement modeled on the earlier 1949 International

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246. HEID, *supra* note 21, at 67.

> Canada instituted two new programs in 1970: LIFT (Lower Inventory for Tomorrow), a special 1-year program, and the Wheat Inventory Reduction program. World carryover decreased from 1.01 billion bushels (27.5 million metric tons) at the end of 1969 to 365 million bushels (9.9 million metric tons) at the end of 1972. Australia implemented delivery quotas in 1969. Farmers were guaranteed a price only on the quantity sold. Australia's wheat carryover dropped from 265 million bushels (7.2 million metric tons) at the end of 1969 to 26 million bushels (708 thousand metric tons) at the end of 1972.

Id. Of course, it must be noted that 1972 was a year of extreme world shortfall of production, due primarily to the poor harvest in the USSR and the failure of the Peruvian anchovy catch (an ingredient of high protein feed grain). *Id.*

247. Food Aid Convention, *supra* note 186.

248. For example, Article II(5) of The Food Aid Convention provided that a country could specify the recipient of its contribution, thus allowing politics to enter into the distribution of food aid. Food Aid Convention, *supra* note 186, art. II(5). In addition, under Article II(4)(b), a country could satisfy its food aid obligation by cash grant as opposed to food, an unsatisfactory state of affairs since it is not certain that the money will be earmarked for food nor will the food reach the people most in need of it. *Id.* art. 4(b). Moreover, the Food Aid Convention has been criticized because a large part of its food aid does not represent any addition to existing contributions. *See* J. WILLETT, THE WORLD FOOD SITUATION 69 (1976).

249. WALLERSTEIN, *supra* note 201, at 112-115. One benefit of the Food Aid Convention noted by Wallerstein is:

> In view of the continuing reluctance of many of the largest donors to contribute a larger portion of their available food aid resources for outright multilateral distribution via the World Food Program, an internationally agreed upon volume commitment from each donor offers a viable alternative for reaching some — although certainly not all — of the same objectives.

Id. at 115.

250. International Wheat Agreement of 1971, 22 U.S.T. 820, 971, T.I.A.S. No. 7144, 800 U.N.T.S. 45 [hereinafter cited as International Wheat Agreement of 1971].

251. International Wheat Agreement 1949, *supra* note 129.

252. Without any substantive pricing mechanism, as existed in the International Wheat Agreement of 1949, the agreement was unenforceable. *See The International Wheat Agreement: Hearings, supra* note 31, at 24 (referring to the 1980 extension of the International Wheat Agreement of 1971 as a "toothless arrangement").

253. *International Wheat Agreement, 1971: Hearings on Executive F Before the Ad Hoc Subcomm. on International Wheat Agreement of the Senate Comm. on Foreign Relations,* 92d Cong., 1st Sess. 3 (1971) [hereinafter cited as *Hearings on Executive F*] (statement of Mr. Worthington).

Wheat Agreement. In the 1949 Agreement, the price of one grain of wheat, the Canadian Manitoba No. 1, [254] served as the reference wheat from which all other wheat prices were determined.[255] However, the negotiations to restore this pricing system failed. The major exporters remembered the agressive pricing competition which occurred under the International Grains Arrangement. Further, Canada was in the process of changing its grading system, and, therefore, did not favor designating its wheat as the reference wheat.[256] Likewise, the United States was unwilling to have its wheat designated because of the possible market disadvantage of being locked into a reference price which all other exporters would then know.[257] In the end, the countries involved were not able to agree on pricing provisions or commitments. The final pricing arrangement stated only that the parties would reconvene the conference to negotiate substantive pricing provisions when (1) the Canadian grading system was in place, (2) its workings in the market grasped, and (3) the international "climate" for agreement had improved.[258] The 1971 Wheat Trade Convention contained no purchase and supply obligations. Instead, nations looked for stability in the International Wheat Council's review of the market,[259] and in the restraint of the other participating countries.[260]

B. *The Russian Grain Deal of 1972*

In 1972, any substantive pricing provisions probably would have failed to stabilize the international market.[261] The Soviet Union's grain production fell critically and the Soviet Union shifted domestic policy by purchasing its deficit grain in the commercial market,[262] instead of cutting back livestock production after a poor harvest. This shift caused a tremendous turbulence in the market.[263]

On July 8, 1972, the United States agreed to furnish the Russians with a three-year, $750 million credit for the purchase of U.S. grains, including

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254. *See* note 132 and accompanying text *supra*.

255. *Hearings on Executive F, supra* note 253, at 3.

256. *Id.*

257. *Id.*

258. International Wheat Agreement of 1971, *supra* note 250, art. 21.

259. *Hearings on Executive F, supra* note 253, at 16. *See also International Wheat Agreement: Hearing, supra* note 31, at 24.

260. *Hearings on Executive F, supra* note 253, at 16 (testimony of Clarence Palmby, assistant Secretary of Agriculture). "[T]he existence of the International Wheat Council, and the countries convened there and keeping track of one another, has through the years caused restraints to come into being, and it has disciplined one nation as against the other . . . ." *Id.*

261. *Cf. International Grain Agreement Oversight, supra* note 66, at 16; *Department Testifies, supra* note 86, at 20.

262. U.S. GENERAL ACCOUNTING OFFICE REPORT TO THE CONGRESS BY THE COMPTROLLER GENERAL OF THE UNITED STATES, RUSSIAN WHEAT SALES AND WEAKNESSES IN AGRICULTURE'S MANAGEMENT OF WHEAT EXPORT SUBSIDY PROGRAM 14 (1973) [hereinafter cited as RUSSIAN WHEAT SALES].

263. *Id.*

wheat.[264] The impetus for this agreement came from the U.S. Department of Agriculture, which feared that wheat exports in 1972 might not reach the levels of the previous year.[265] However, in spite of indications that the 1972 Russian harvest had been poor, the Russian purchase of enormous quantities of grain in the commercial market surprised both the Agriculture Department and private exporters.[266] Russian purchase agreements with private exporters amounted to about 440 million bushels of U.S. wheat.[267]

This purchase drastically reduced world stocks,[268] and the increased demand caused world grain prices to increase significantly.[269] Farm prices in the United States on July 15, 1973 were almost double those of a year earlier.[270] The average farm price of wheat rose more than eighty percent in one month.[271] However, consumer prices also rose drastically, especially in the United States.[272]

In addition to higher food prices,[273] U.S. taxpayers paid for expensive subsidies on the exported wheat[274] because export subsidies on wheat grew larger as the world demand caused increased domestic prices. The U.S. taxpayer effectively subsidized the Russian grain purchases by as much as $150 million.[275] However, such increased subsidies were unnecessary to stimulate exports because the USSR needed the grain, and also had $750 million in credit from the U.S. government.[276] To compound the situation, the Department of Agriculture, after decades of wrestling with surpluses, was slow to accept the reality of a shortage situation and thus, delayed reduction of the subsidies.[277]

The problems which arose as a result of the 1972 sale of grain to the Soviets were due primarily to the open-ended option in the 1972 agreement. That option specified the price of the grain but did not specify either the quantity[278]

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264. Grains Agreement with the Union of Soviet Socialist Republics, July 8, 1972, United States-U.S.S.R., art. 1(1), 2 U.S.T. 1447, T.I.A.S. No. 7423 [hereinafter cited as Grains Agreement].

265. RUSSIAN WHEAT SALES, *supra* note 262, at 13.

266. *Id.* at 14.

267. *Id.* at 13-14. This figure was more than the total 1972 fiscal year commercial exports combined.

268. SUBCOMM. ON INTERNATIONAL ORGANIZATIONS AND MOVEMENTS OF THE COMM. ON FOREIGN AFFAIRS, 93D CONG., 2D. SESS., INTERNATIONAL FOOD RESERVES: BACKGROUND AND CURRENT PROPOSALS 121 (Comm. Print 1974).

269. *Id.* at 120.

270. *Id.*

271. *Id.* The price rose from $2.47 on July 15, 1973 to $4.45 on August 15, 1973. *Id.*

272. CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 62: "Food prices rose by over one-third between 1971 and 1974." Domestic wheat prices rose from about $1.68 a bushel in July 1972 to $3.00 a bushel in May 1973, *supra* note 262, at 25.

273. RUSSIAN WHEAT SALES, *supra* note 262, at 25.

274. *Id.* at 60.

275. *Id.* at 63. "We estimate that about half the $300 million in subsidy payments will go toward compensating exporters who had to cover their Russian sales with high domestic purchase prices." *Id.*

276. *Id.* at 60.

277. L. Thurow, THE ZERO SUM SOCIETY 20 (1980).

278. Note, *The Evolving U.S.-USSR Grain Trading Structure: A Comparison of the 1972 and 1975 Grain Agreements*, 4 SYRACUSE J. INT'L L. & COMP. 227 [hereinafter cited as *Evolving U.S.-USSR Grain Trading*

or the spacing between purchases and shipments over the three-year period.[279] Many commentators have observed that the Soviets historically have been an inconsistent force in the world wheat market.[280] Therefore, neither the 1972 crisis, nor its magnitude, should have surprised the United States.

> The USSR is a major component of the world market and a major source of instability . . . the USSR is the world's largest wheat producer, but the salient feature of Soviet production and imports is their instability. In 1972-73 the Soviet Union increased its wheat imports by 11 million tons and the next year they reduced imports by roughly the same amount. It has been estimated that Soviet wheat imports accounted for 80% of the variability of world wheat imports in recent years. Much of the variability of imports is attributable to changes in production, but Soviet import policy is an additional source of uncertainty. Because Soviet authorities have not permitted imports to respond systematically to crop shortfalls, a difficult forecasting problem has been made even more complicated.[281]

C. *The 1975 U.S.-USSR Grain Agreement*

The United States and the Soviet Union entered into another grain agreement in 1975.[282] This agreement was concluded despite the problems stemming from the 1972 U.S.-USSR grain arrangement, or perhaps, more accurately, as a result of those problems.[283] A further impetus to agreement was the U.S. recognition of the profound influence the Russians exert on the market whether buying or not.[284] This agreement required the USSR to purchase six million metric tons of wheat and corn, in approximately equal proportions, in each twelve-month period.[285] The Agreement also required the Soviets to space the purchases and shipments "as evenly as possible" over the twelve-month period.[286] The vague term "as evenly as possible" left ample space for differences of opinion. The U.S.

Structure]. This article states: "[N]o maximum amount of permissible purchases was stipulated. Thus, there was nothing in the contract to prevent the Soviet Union from quietly cornering one-quarter of the U.S. wheat crop in July and August of 1972." *Id.* at 238.

279. *Id.* "The only timing provision in the Grains Agreement required the Soviet Union to purchase at least $200 million of grain for delivery prior to August 1, 1973." *Id. See* Grains Agreement, *supra* note 264, art. 1, sec. 2.

280. GRENNES, JOHNSON & THURSBY, *supra* note 167, at 19.

281. *Id.*

282. Agreement with the Government of the Union of Soviet Socialist Republics on the Supply of Grain, Oct. 20, 1975, United States-U.S.S.R., 26 U.S.T. 2971, T.I.A.S. No. 8206 [hereinafter Agreement on Supply of Grain].

283. *Evolving U.S.-USSR Grain Trading Structure, supra* note 278, at 227-28.

284. GRENNES, JOHNSON & THURSBY, *supra* note 167, at 19.

285. Agreement on Supply of Grain, *supra* note 282, art. 1(i).

286. *Id.* art. III.

government had the reciprocal obligation to use its good offices to encourage these sales by private commercial sources.[287] The Agreement allowed the Soviets to purchase an additional two million metric tons of grain annually without additional consultation,[288] and also provided that consultation should be held as soon as possible should the Soviets desire to purchase or the United States desire to sell more grain.[289]

To avoid the problems of a shortfall, the agreement stipulated that should the total U.S. grain supply fall below 225 million metric tons, the U.S. government may reduce the supply of grain available for purchase by the USSR.[290] By requiring equal spacing between the purchases, and by specifying both the quantity of grain available for purchase, and a safety margin of supply prerequisite to any sale, the United States hoped to avoid the problems of overbuying encountered under the 1972 agreement.[291] However, the key to the 1975 agreement was the provision requiring intergovernmental consultation every six months on the progress of the agreement.[292] The parties designed this requirement to stabilize the grain trade, protect the interests of both governments, and balance the bargaining positions between the U.S. private market economy and the USSR's state-planned economy.[293]

D. *The 1980 Grain Embargo*

Notwithstanding this serious attempt to protect against the potential difficulties of grain trade with the Soviet Union, the agreement's success was contingent more upon the political relationship between the two countries than upon the draftsmanship of the agreement itself.[294] President Carter's suspension of all U.S. grain sales to the USSR, in excess of the eight million tons guaranteed under the terms of the agreement, proved this point dramatically.[295] This action

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287. *Id.* art. I(ii).
288. *Id.*
289. *Id.* art. IV.
290. *Id.* art. V.
291. *Evolving U.S.-USSR Grain Trading Structure, supra* note 278, at 245-46.
292. Agreement on Supply of Grain, *supra* note 282, art. VIII.
293. *Evolving U.S.-USSR Grain Trading Structure, supra* note 278, at 249.
294. *Id.* at 252.
295. Soviet Trade Restrictions, 16 WEEKLY COMP. PRES. DOC. 33 (Jan. 14, 1980). The Soviet Union had planned to import 35 million tons of grain in 1980, 25 million tons of it from the United States. To compensate U.S. farmers and exporters for the cancellation of these sales, the U.S. Department of Agriculture undertook several measures. *Id.* Firstly, the Commodity Credit Corporation (CCC) assumed the contractual obligations of exporters for the undelivered embargoed grain and eventually assumed ownership of 4.2 million tons of wheat and 9 million tons of corn at a cost of about $2 billion. Paarlberg, *Lessons of the Grain Embargo*, 59 FOREIGN AFF. 144, 147-48 [hereinafter cited as Paarlberg]. The government increased loan prices for wheat and corn in order to guarantee farmers higher prices for the grain they sold to the government. Finally, the government raised "release" prices in order to

was a U.S. attempt to use its grain as a weapon against the Soviets, theoretically punishing the Soviets for their invasion of Afghanistan by withholding needed supplies.[296] However, the embargo on grain proved to be more of a punishment to U.S. farmers and taxpayers since the action did not pressure the Soviets to leave Afghanistan.[297]

One commentator has stated that in order for any grain embargo to be effective, three conditions must be met:[298] (1) foreign policy officials in the country imposing the embargo must be able to control the volume and direction of their food exports; (2) other countries and transnational corporations must be precluded from "leaking" embargoed grain into the target country through trans-shipment or deceit; and (3) the loss of food imports must be sufficient to generate the desired effects within the political and economic system of the target country.[299] Although the United States was able to control exports, it was not able to control the latter two conditions.[300] The Soviet Union overcame the effects of the embargo through reliance on its reserves, discovery of new suppliers in the world market, and good weather and harvest conditions.[301]

President Reagan opposed the use of the embargo as a weapon[302] but waited until April 24, 1981, to fulfill his campaign promise to end the embargo.[303] President Reagan had wanted to lift the embargo immediately upon taking office, but decided that to do so would send the wrong signal to Moscow at a time of possible Soviet intervention in Poland.[304] The United States and Soviet officials held discussions in June 1981 on a possible grain deal.[305] American farmers had been anxious for a resumption of the sales to the Soviets,[306] and the

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force an increase in market prices. Surplus grain would then be released from the reserve at the higher market price. The U.S.D.A. enlarged the farmer-owner reserve program and compensation for grain stored on farms was increased. *Id.*

296. Paarlberg, *supra* note 295, at 144.

297. Soviet Grain Embargo, 17 WEEKLY COMP. PRES. DOC. 253 (Mar. 9, 1981); Newsweek, May 4, 1981, at 25, col. 1.

298. Paarlberg, *supra* note 295, at 145.

299. *Id.* "Like a three-linked chain, the President's 1980 grain embargo had to hold at each of these three points, if it was to hold overall. An embargo that fails at any one of the three will fail altogether." *Id.*

300. *Id.* Paarlberg speculates that even if the embargo had succeeded in Conditions One and Two, it, nevertheless, probably would have failed at Condition Three, within the Soviet Union. *Id.*

301. *Id.* at 155-59.

302. Soviet Grain Embargo, 17 WEEKLY COMP. PRES. DOC. 67-68 (Feb. 2, 1981). President Reagan felt that the embargo unfairly asked only one group of Americans, the farmers, to pay the price for the United States' stand against the Soviet Union's intervention in Afghanistan. Reagan believed that if this kind of weapon had to be used, then it should have been in an across-the-board fashion, in a "kind of quarantine." *Id.*

303. N.Y. Times, April 25, 1981, at 1, col. 6.

304. *Id.* The President stated that he felt his decision should be made only when it was clear that the Soviets and other nations would not mistakenly think it indicated a weakening of our position. *Id.*

305. Chicago Tribune, June 8, 1981, at 8, col. 1.

306. *Id.*

Reagan administration had said that it was ready to offer 4 to 6 million metric tons for shipment in 1981.[307]

Despite the failure of the embargo to pressure the Soviets out of Afghanistan, the United States may still have benefited from the embargo. If, in response to the embargo, the Soviets decrease U.S. grain imports or continue to diversify the origin of imports, the unpredictability and turbulent effect of U.S. grain sales to the USSR may no longer be a problem.[308] However, U.S. wheat exports must continue to grow in order for something useful to be salvaged from the embargo experience for the United States.[309]

IX. OTHER METHODS OF INTERNATIONAL REGULATION

A. *Bilateral Agreements*

As a result of past failures of the International Wheat Agreements, the United States and other wheat market countries[310] have increasingly used bilateral agreements to stabilize the wheat market.[311] The United States has entered into understandings concerning grain trade with Poland, Taiwan, East Germany, Japan, Israel and Norway.[312] These understandings established a communications framework between the United States and these countries as opposed to a formal contract to supply specific quantities of grain, such as the 1975 Agreement between the United States and the Soviet Union.[313]

However, to stabilize the market, bilateral agreements are less preferable than a multilateral treaty, such as the International Wheat Agreement, for several reasons.[314] First, bilateral agreements which are flexible enough to accommodate unforeseen circumstances, yet firm enough to provide a useful basis for long-range planning, are difficult to draft.[315] Bilateral agreements can also hinder competition in the free market by limiting the number of participants in the market.[316] For this reason, the agreements may be inconsistent with the spirit

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307. *Id.*

308. Paarlberg, *supra* note 295, at 162. The Soviets have begun formally to restructure some of their grain imports, for example, by concluding a comprehensive trade package with Brazil which includes large-scale Soviet purchases of Brazilian grain in return for sharply increased Soviet oil deliveries to Brazil. The Boston Globe, Aug. 8, 1981, at 1, col. 6.

309. Paarlberg, *supra* note 295, at 162.

310. GOODWIN & MAYALL, *supra* note 245, at 77.

311. *International Grains Agreements Oversight, supra* note 66, at 4.

312. *Id.*

313. *Id.*

314. *International Wheat Agreement: Hearing, supra* note 31, at 50-51; *International Grain Agreements Oversight, supra* note 66, at 93.

315. CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 71.

316. *Id.*

and intent of the GATT objective of free trade.[317] In addition, problems would arise in the implementation of a bilateral agreement in free market systems, such as the United States, since the government has only limited capability in a free market to guarantee price, supply or delivery terms.[318]

Most significantly the usefulness of bilateral agreements is limited in the international market. These agreements do not provide the internationally coordinated effort necessary to balance supply and demand.[319] Limiting the number of parties to an agreement potentially hampers competition in the free market. Further, nations not included in such agreements would essentially become claimants for whatever grain remained after the bilateral agreements had been fulfilled.[320] Therefore, to insure an adequate supply of wheat and an equitable price for wheat producers on an international level, cooperation of a wider scope than that envisioned under bilateral agreements is necessary.[321]

B. *Wheat Exporters' Cartel*

An alternative proposal to solving the wheat trade problems is the formation of a cartel among the major wheat exporting countries.[322] Political and farm leaders in both the United States and Canada have seriously considered this possibility.[323] Under such a plan, the producer countries would form a commodity cartel to control the supply and demand of wheat.[324] In the short run, a wheat cartel would probably increase export revenues of the exporting nations. How-

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317. *Id.* In a tight market situation, nations not fortunate enough to be a party to a bilateral agreement could have trouble satisfying their import needs. Moreover, the nations most vulnerable in this regard oftentimes are the developing nations which are least able to afford or compete for scarce supplies. *Id.*

318. *International Grains Agreement Oversight, supra* note 66, at 4.

319. *See* Katz, *supra* note 56, at 2, 4. *See also* GOODWIN & MAYALL, *supra* note 245, at 78. "While in the technical sense any bilateral agreement, particularly one which is not formalized in treaty form, would be superceded by an international treaty, such bilateral arrangements tend to reduce the incentive to move towards an internationally co-ordinated reserve or reserve/price stabilization scheme." *Id.*

320. CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 71.

321. *International Grain Agreements Oversight, supra* note 66, at 18.

> Basically our approach has been that the way to maintain some kind of reasonable price range is basically to affect [supply] and demand. Therefore, in periods of excess supply, it seems to us that it only makes sense that there ought to be stock accumulation, and since this costs money, that this ought to be born by both exporting and importing countries. In periods of extremely short supply, this ought to be available to world markets so that people can maintain their consumption levels.

Id.

322. Terpstra, *An Analysis of Possible Cartel and Barter Arrangements to Influence the Price and Availability of Wheat on the International Market, reprinted in International Grains Agreements Oversight, supra* note 66, at 58 [hereinafter cited as Terpstra].

323. Schmitz & McCalla, *Analysis of Imperfections in International Trade: The Case of Grain Export Cartels*, in IMPERFECT MARKETS IN AGRICULTURAL TRADE 70 (A. McCalla & T. Josling eds. 1981).

324. Terpstra, *supra* note 322, at 66.

ever, this result would depend on their political will to form and maintain a cartel arrangement.[325] In order for a commodity cartel to be successful, both supply and demand must be relatively price inelastic. Without such inelasticity, an increase in price could result in either a consumer boycott, consumer substitution of another product, or an increase in production by new or current producers.[326] A cartel's success is also more likely when[327]: (1) the market contains a small number of producers selling to a large number of buyers;[328] (2) the commodity is homogeneous so that different grades are not important to buyers;[329] (3) the commodity can be easily and inexpensively stored by the producer;[330] (4) unity of purpose and policy among the exporters entering into the cartel arrangement exists;[331] and (5) no special arrangements exist between individual cartel members and an importing country.[332]

In the case of wheat, a cartel of the exporting countries would find it difficult, if not impossible, to meet these requirements. In the long term, supply and demand inelasticity would break down because nations would lower their demand for wheat imports by increasing their domestic production and substituting other grains for wheat.[333] Moreover, although four countries[334] account for approximately 80% of the world export, they account for only one-fifth of the world's wheat production.[335] Thus, as much as four-fifths of the world's production capacity would be outside the control of the cartel.

Several other obstacles make formation of a wheat cartel difficult. Wheat is not a perfectly homogeneous commodity.[336] The degree of substitutability between differing grades and varieties of wheat and other coarse grains is increasing.[337] Any cartel arrangement would need to be broad, therefore, since it is more difficult to control wheat supply and price, the greater the degree of substitutability between wheat controlled by the cartel and wheat which falls beyond the cartel's control.[338] Storage of wheat is expensive and a cartel would require additional storage capacity.[339]

The capacity of the four leading exporters to agree on purpose and policy is

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325. *Multilateral Trade Negotiations Briefing*, *supra* note 49, at 33.

326. Terpstra, *supra* note 322, at 66. *See* § II *supra*.

327. Terpstra, *supra* note 322, at 66.

328. *Id.*

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.* at 58.

334. The four countries are Argentina, Australia, Canada and the United States. *International Wheat Agreement: Hearing*, *supra* note 31, at 17.

335. *Id.*

336. GOODWIN & MAYALL, *supra* note 245, at 77.

337. *Id.*

338. *Id.*

339. Terpstra, *supra* note 322, at 67.

doubtful, due to several factors.[340] First, the United States would have to modify the present American trading system before it could participate in a cartel arrangement. Unlike Australia, Canada, and Argentina, the United States has no national grain exporting body,[341] and therefore, the United States has limited capability under its present market to guarantee supply, price or delivery terms.[342] The impetus to form a cartel may also be weakened since individually, cartel members could be faced with significant repercussions in the form of retaliatory trade restrictions imposed by resentful importers.[343] Then, too, nations are reluctant to relinquish even a part of their control over domestic agricultural and export policies,[344] further diminishing the probability of a successful cartel being formed.[345]

Notwithstanding the factors which militate against formation of a cartel, an association of the wheat exporting countries to improve communication, rather than fix prices, could be valuable to both exporters and importers.[346] A producer's union, though not as beneficial as a successful International Wheat Agreement of both exporters and importers, might be able to agree on general guidelines to establish wheat reserves, to coordinate production and supply adjustment policies and to enhance the market stability.[347]

X. THE PRESENT

A. *The Challenge*

Both farmers and government officials have learned valuable, albeit painful, lessons from the events of the past fifteen years in the world grain trade. The

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340. *Id.*

341. *Id.*

342. *International Grains Agreement Oversight, supra* note 66, at 4.

> Another element to be considered is the fundamentally different nature of the U.S. wheat marketing system — which is conducted by the private sector — and those of our principle competitors ranging from Argentina's largely private trading, to Canada's mixed public/private sector, and Australia's public sector control of the wheat trade. Integrating these different marketing systems into a tightly coordinated mechanism would be difficult if not impossible.

International Wheat Agreement: Hearing, supra note 31, at 53.

343. Terpstra, *supra* note 322, at 67-68.

344. CONGRESSIONAL BUDGET OFFICE, *supra* note 42, at 63-64.

345. *International Wheat Agreement: Hearing, supra* note 31, at 53.

346. *Id.*

347. *Id. See International Grain Agreements Oversight, supra* note 66, at 10 (Mr. Dale Hathaway, Under-Secretary of Agriculture).

> We have, as the chairman suggested, initiated a series of consultations with the other exporters in terms of closer collaboration and discussion of marketing policies and related matters, including, potentially, reserve policies that might be followed under the different systems — and the systems do differ markedly and thus, one has to recognize that a complete parallelism will never exist.

Id. at 15-16. Increased cooperation and communication between exporters would also avert panic and dumping in a falling market situation through increasing awareness and understanding of world production and supply and demand conditions. *Id.*

intense price cutting, which occurred during the International Grains Arrangement,[348] demonstrated the dangers of narrow price bands and over-rigidity to an international agreement.[349] During the next five years, from 1972-1977, the world wheat situation changed from one of great scarcity, following the poor Soviet harvest and the large Soviet grain purchases in the world market in 1972, to one of market depressing excess supply.[350] Since 1977, the grain trade has been increasingly politicized[351] and there has been increasing discussion of the use of wheat as a weapon.[352] The U.S. grain embargo against the USSR is an example.[353] Because world wheat consumption will increase, and weather and other natural conditions always remain uncertain, experts foresee recurring variances in the world's supply of grain.[354] Thus, any new International Wheat Agreement faces enormous challenges.

B. *Attempts at A New International Wheat Agreement*

In January 1925, the International Wheat Council began preparations for discussions on a new International Wheat Agreement.[355] The discussions lacked

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348. *See* notes 213-17 and accompanying text *supra*.

349. *Department Testifies, supra* note 86, at 20.

350. *Id.*

351. GOODWIN & MAYALL, *supra* note 245, at 80-82. *See also* WALLERSTEIN, *supra* note 201, at 218-20 (discussion of the increasing use of food aid as a foreign policy instrument); *International Grain Agreements Oversight, supra* note 66, at 20 (statement of Joseph Halow, Executive Director, North American Export Grain Association, Inc.). One large U.S. wheat producers organization, the North American Export Grain Association, feels that the only real benefits to be derived from the International Wheat Agreements are political in nature. "We have for many years supported the concept of an International Wheat Agreement because we felt that this had, of course, some political benefit. We do not feel that there really is a great deal of economic benefit except, of course, as it is affected by politics." *Id.*

352. GOODWIN & MAYALL, *supra* note 245, at 80-82; Morgan, *The Politics of Grain*, THE ATLANTIC 29-34 (July 1980) [hereinafter cited as *The Politics of Grain*]. "[T]here was a recognition that grain is an element of national security in the broadest sense, and that it will remain so in the world being transformed by the politics of the 1980's." *Id.* at 29.

353. *See* 45 Fed. Reg. 1,883 (1980) (to be codified in 15 C.F.R. §§ 376, 386, 399). This Executive Order placed agricultural exports to the USSR on the Commodity Control List, a list which consists of goods and technology subject to control under the Export Administration Act of 1979, 50 U.S.C. app. §§ 2401-2413 (1980). Specifically, the 8 million metric tons of grain already under contract to the Soviets pursuant to the 1975 Agreement (*see* note 282 and accompanying text *supra*) was shipped, but the non-binding commitment under the 1976 agreement to export an additional 17 million was cancelled. *See* Paarlberg, *supra* note 295, at 144.

354. *Department Testifies, supra* note 86, at 20. OECD estimates that, with the expected increases in demand (2-3% each year, mostly from developing countries) the margin of security in the current level of world supply capacity may decline rather than increase. OECD, *supra* note 2, at 11. OECD points out that instability in the world market could increase because the risk absorbing capacity and the buffering capability of the United States, with respect to turbulence in the world market is shrinking and seems likely to continue to do so. *Id.* at 13. The size and the nature of the market is such that the United States can no longer stabilize the market alone, and, therefore, other exporters must shoulder some of the burden. *Id.* at 14.

355. *Multilateral Trade Negotiations Briefing, supra* note 49, at 29. Intensive negotiations were then

any real momentum until June 1977.[356] The parties pursued an agreement which would stabilize prices. However, rather than using a price-fixing structure, negotiators sought to stabilize prices through a system of nationally held reserves. According to this plan, nations would accumulate reserves when world prices were low and release them when prices were high.[357] Under the Agreement, nations also would have utilized production controls to stabilize the market in the event that the reserve action failed to do so.[358] Despite agreement upon this basic plan, negotiations stalled in February 1979 because of three unresolved issues:[359] (1) the size of the reserves or individual countries' shares of them;[360] (2) the price levels for reserve stock accumulation and release;[361] and (3) the special provisions for developing countries with respect to the accumulation and release of reserves, and the inclusion of foreign aid transfers to benefit developing countries.[362]

Some developing and importing countries insisted on unrealistically low release levels which would have resulted in inadequate producer returns at the bottom of the price range.[363] Producers complained that the 18 million ton stock size under consideration[364] and an early release at the upper level would leave producers powerless to mitigate extreme price increases because of quickly disappearing stocks.[365] The reserve scheme offered these countries supply security and a price ceiling in return for a guarantee of an adequate price floor to the producers. This disagreement demonstrated, therefore, the shortsightedness of some of the developing and importing countries.[366] However, the basic disagreement stems from a difference in market outlooks.[367] Many of the developing and importing countries were reluctant to make concessions because they

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conducted, first in London under the auspices of the International Wheat Council and then in Geneva under the aegis of UNCTAD. The negotiating conference is formally known as United Nations Conference to Negotiate an International Arrangement to Replace the International Wheat Agreement, 1971, as extended. *Id.* at 34.

356. *Id.* at 34.

357. Graham, *supra* note 165, at 35.

358. *Id.*

359. *International Wheat Agreement: Hearing, supra* note 31, at 15.

360. Graham, *supra* note 165, at 35. The United States and the other exporters, together with most of the developing countries, had supported a total reserve figure of approximately 30 million tons. *International Wheat Agreement: Hearing, supra* note 31, at 15-16. The exporters deemed this reserve figure necessary in order to maintain world price stability and also adequate food security. Prior to the breakdown in negotiations, countries had pledged only 18 million tons, 4 million tons of which were pledged by countries highly unlikely to release them to the market. *Id.*

361. *International Wheat Agreement: Hearing, supra* note 31, at 16.

362. *Id.* The special provisions presented an administrative nightmare, and the inclusion of aid commitments in a commercial wheat treaty was viewed as undesirable. *Id.*

363. *Id.*

364. *Id.*

365. *Id.*

366. *Multilateral Trade Negotiations Briefing, supra* note 49, at 29-30, 35.

367. *Id.* at 30.

expected the market to return to a condition of chronic oversupply.[368] The United States and other exporters, on the other hand, believed in the market's potential for greater variability. Therefore, they favored cooperation at both ends of the price range to alleviate stress at either end.[369] The Conference ended with the parties passing a resolution calling for a fifth extension of the 1971 IWA and continuing consultations between countries.[370]

A Special Committee of twelve nations, appointed by the International Wheat Council, met in the fall of 1979 and the spring of 1980 to explore alternative approaches to a new Wheat Trade Convention. The Committee used the areas of consensus developed during the International Wheat Agreement negotiations as a foundation.[371] Rather than recommending specific price levels for the accumulation and release of reserve stocks, the Special Committee favored a more flexible arrangement with the Wheat Council in a consultative role.[372] In this role, the Council would recommend reserve stock actions and other measures designed to influence the supply and demand of wheat in times of market stress.[373] Though the comprehensive agreement on reserves originally sought in the International Wheat Agreement negotiations proved to be too ambitious for governments to accept,[374] the nations of the Special Committee reached enough of a consensus to permit advancement of this alternative plan.

XI. THE MULTILATERAL TRADE NEGOTIATIONS

The Tokyo Round of Multilateral Trade Negotiations (MTN) was conducted under the aegis of GATT. At these negotiations, participants sought to strengthen the application of the GATT rules[375] concerning agricultural trade, and thereby improve the wheat trade.[376] The United States sought assurances

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368. *Id.* at 30-31.

369. *Id.* at 30.

370. *Id.* The parties to the Wheat Trade Convention of the International Wheat Agreement of 1971, *supra* note 250, extended the Agreement in its original form in 1974, 1975, 1976, 1978, and 1979. However, a new Food Aid Convention was negotiated in 1980 to replace the old Food Aid Convention. *See* note 407 *infra*. Both agreements expired on June 30, 1981. *Id.*

371. SENATE COMM. ON FOREIGN RELATIONS, 1971 INTERNATIONAL WHEAT AGREEMENT EXTENSION, S. REP. No. 44, 96th Cong., 2d Sess. 6 (1980).

372. *Id.*

373. *Id.*

374. *Id.* "Governments were simply not prepared to move far enough and fast enough for these negotiations to be successful." *Id.*

375. Among the most important GATT provisions to be discussed at the MTN were Article XI(2) which permits the imposition of quotas in certain circumstances, GATT, *supra* note 95, art. XI(2), and Article XVI(3) which prohibits the use of subsidies on the export of primary products. GATT, *supra* note 95, art. XVI(3).

376. Graham, *supra* note 165, at 32. Multilateral Trade Negotiations participants were to have reviewed the results of the UNCTAD wheat agreement negotiations to determine whether the negotiations achieved the "crucial agricultural balance," a balance between the sometimes conflicting goals of

that competition between itself and other exporting nations for third country wheat markets would be reasonably fair.[377] A crucial aspect of this assurance involved the GATT provisions on the use of export subsidies.[378] Prior to the MTN, the GATT rules concerning agricultural subsidies were vague. The rules merely stated that the contracting parties "should seek to avoid the use of subsidies on the export of primary products."[379] The GATT rules also required that subsidies "shall not be applied in a manner which results in the contracting party having more than an equitable share of world export trade in that product."[380]

At the MTN, countries of the European Community, and other countries employing subsidy measures were reluctant to negotiate on the subsidy issues.[381] However, U.S. concern over these subsidies was intense. That concern is best exemplified in Great Plains Wheat's[382] complaint.[383] filed with the Special Trade Representative pursuant to Section 301 (a) (3) of the Trade Act of 1974.[384] The

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assuring market access for exports, international price and supply stabilization, fair competitive conditions among exporters to third-country markets and the overall application of the international trading rules to agriculture. *See id.* at 34-35.

377. *Id.* at 32.

378. *Id.* at 34. For the main GATT provisions dealing with subsidies *see* GATT, *supra* note 95, arts. XVI, VI, XXIII. Much of the discussion at the Multilateral Trade Negotiations was concerned with the EEC's use of subsidies under the Common Agricultural Policy. *See* note 167 and accompanying text *supra.* Through the use of the variable import levy mechanism, the EEC protects domestic producers "by raising import prices of grains to equal domestic support prices, regardless of the world price." VARIABLE LEVIES, *supra* note 37, at 1. The revenue collected by the EEC on grain imports is then used to defray the expense of EEC subsidies on its grain exports. *See Multilateral Trade Negotiations Briefing, supra* note 49, at 644. During the week of April 17, 1979, the EEC variable import levy collected on third-country wheat imports reached a record high of $179.49 per metric ton or $4.88 per bushel. The landed price for U.S. wheat in Rotterdam, the major Western European grain port, was only $150.50 per metric ton or $4.10 per bushel. Thus, the EEC consumer paid an import levy greater (119% higher) than the landed commercial value of the U.S. wheat. *See id.* at 643.

379. GATT, *supra* note 95, art. XVI(3).

380. *Id.*

381. Graham, *supra* note 165, at 34.

> Nontariff trade barriers are not easily resolved through international negotiation since they are either official extensions of non-negotiable domestic policies or applied unofficially — even covertly from deep within government bureaucracies. They are also considered to be outside the basic purview of traditional multilateral and bilateral negotiating schemes.

Houck, *U.S. Agricultural Trade and the Tokyo Round,* 12 LAW & POL'Y INT'L BUS. 265, 270 (1980) [hereinafter cited as Houck].

382. Great Plains Wheat is a U.S. wheat export organization.

383. Great Plains Wheat Complaint with the Office of the United States Trade Representative, Docket No. 301-16 [hereinafter cited as Great Plains Wheat Complaint]. For the text of the Great Plains Wheat Complaint *see* 43 Fed. Reg. 59,935 (1978). The complaint was filed with the Chairman of the Section 301 (Unfair Trade Practices) Committee in November, 1978.

384. Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, is used generally to enforce U.S. rights under all of the agreements reached in the MTN. In the case of subsidies, the statute can also be used to seek relief from a subsidy granted by a country which does not adhere to subsidies agreements. *Id.* In addition, § 301 can also be used to respond to any foreign act, policy or practice which is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce." 1 U.S. DEP'T OF

complaint alleged that the European Community unjustifiably used export subsidies in contravention of Article XVI:3 of the GATT.[385] The complaint further alleged that the subsidized EC wheat exports had displaced U.S. wheat exports in third world markets.[386] United States and EC representatives held consultations in July 1979, to ensure that EC subsidy practice during the 1979/1980 marketing year would be consistent with Article XVI:3 of the GATT.[387] On January 1, 1980, while this complaint was pending, the General Agreement on Tariffs and Trade: Interpretation and Application of Articles VI, XVI. and XXIII of the General Agreement on Tariffs and Trade,[388] which was negotiated during the Tokyo Round of negotiations, became effective.[389]

The "Subsidies Code,"[390] set forth certain criteria that export subsidies on primary products must meet in order to be legal.[391] The Subsidies Code clarified the Article XVI prohibition of export subsidies which result in a country's gaining more than an "equitable share of world export trade" so as to forbid expressly one signatory country from granting subsidies that would displace the exports of another signatory.[392] Moreover, signatories agreed "not to grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the

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COMMERCE, SUBSIDIES AND COUNTERVAILING MEASURES 13 (1980) [hereinafter cited as SUBSIDIES AND COUNTERVAILING MEASURES]. Furthermore, § 301 of the Trade Act of 1974 (amended 1979), "gives a private party a right to file a *formal* (emphasis in original) petition with the USTR (U.S. Trade Representative) against any act, policy or obligations of the U.S. government under the Code. The statute . . . gives the USTR discretion in deciding whether to initiate a case under Section 301." SUBSIDIES AND COUNTERVAILING MEASURES, *supra*, at 13.

385. Great Plains Wheat Complaint, *supra* note 383.

386. *Id.* In the complaint, Great Plains Wheat estimates that the EEC's subsidy practices increased its commercial wheat exports by approximately 4.4 million metric tons, 75% of which would have been accounted for by the United States had the EEC not subsidized the wheat. Therefore, by this estimate, the United States lost 3.3 million metric tons in grain export volume. The total loss of export earnings is estimated at $885 million. U.S. markets allegedly displaced include: Brazil, Egypt, Finland, Morocco, People's Republic of China, Poland and Portugal. *See id.* at 59, 936-37.

387. Article XVI:3 of GATT, *see* note 95 *supra*, has been interpreted as providing, in pertinent part that:

> [the] signatories agree not to grant directly or indirectly any export subsidy on certain primary products in a manner which results in the signatory granting such subsidy having more than an equitable share of the world export trade in such product, account being taken of the share of the signatories in trade in the product concerned during a previous representative period, and any special factors which may have affected or may be affecting trade in such product.

Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, art. 10, Apr. 12, 1979, __ U.S.T. __, T.I.A.S. No. 9619, __ U.N.T.S. __ [hereinafter cited as Interpretation and Application]. *See* Great Plains Wheat, Inc.; Termination of Investigation, 45 Fed. Reg. 49,428 (1980).

388. Interpretation and Application, *supra* note 387.

389. *Id.* The treaty was entered into force January 1, 1980.

390. SUBSIDIES AND COUNTERVAILING MEASURES, *supra* note 384, at 2, uses "Subsidies Code" as the popular name for the formal agreement.

391. *Id.* at 3.

392. Interpretation and Application, *supra* note 387, art. 10(2)(a).

same market."[393] U.S. and EC officials met again on June 12, 1980, in Brussels, where they agreed to jointly monitor developments in world wheat trade, exchange information, and discuss any future world wheat trade problems which arose.[394] On the basis of these negotiations and the cooperation established between the EC and the United States for dealing with problems, the U.S. Trade Representative, pursuant to the advice of the Section 301 Committee, terminated the investigation of the Great Plains Wheat complaint.[395]

XII. ANALYSIS

The orderly resolution of the Great Plains Wheat complaint without retaliatory measures is an encouraging development for international cooperation in wheat trade.[396] However, at the Tokyo Round of negotiations, the United States discovered that an EC commitment to increase imports and improve U.S. access to the European market can only be secured within the context of the EC's Common Agricultural Policy.[397]

Despite the GATT's expressed liberal trade objective,[398] experts believe that because of CAP's protective nature any limitations upon the basic restrictive provisions of the Common Agricultural Policy are non-negotiable.[399] The highly protective variable import levy keeps American wheat uncompetitive in European markets. Yet, European negotiators are not anxious to negotiate this issue because the levy protects EC wheat producers.[400] Not only does the EC wheat export subsidy isolate European markets and displace other markets, but it also adversely effects the world price of wheat to the detriment of world producers.[401] Other producing nations must discount the export price of wheat, sometimes as much as $10.00 U.S. to $15.00 U.S. per ton[402] in order to compete with EC subsidized wheat exports. One major U.S. export group analogizes the EC wheat export subsidy to "dropping a price pebble in a placid pond."[403] The profound price effect of these subsidies caused producer organizations such as

393. *Id.* art. 10(3).

394. Great Plains Wheat, Inc.; Termination of Investigation, 45 Fed. Reg. 49,428 (1980).

395. *Id.*

396. Great Plains Wheat Complaint, *supra* note 383, at 59,937.

397. Graham, *supra* note 165, at 34. On the Common Agricultural Policy, *see* note 167 and accompanying text *supra*.

398. *See* note 96-97 and accompanying text *supra*.

399. *Id.*

400. Houck, *supra* note 381, at 279.

401. *Multilateral Trade Negotiations Briefing*, *supra* note 49, at 645 (statement of Michael L. Hall, President, Great Plains Wheat, Inc.).

402. *Id.* The EEC subsidy in effect during this period (January 1979) was a record high $131.20 per metric ton, and was approximately equal to the commercial value of the wheat at port shipping positions in Europe. *Id.*

403. *Id.*

Great Plains Wheat to seek an outright prohibition against subsidies in the Subsidies Code.[404] As a result of the lack of either an outright prohibition or any real restriction on subsidy use in the Subsidies Code, Great Plains Wheat advocated that the United States adopt a selective wheat export subsidy program to offset and counteract the subsidies imposed by competitors.[405]

In light of the turbulence of the last fifteen years in the wheat market, proponents of International Wheat Agreements can draw much hope from the continued willingness of nations to adopt such agreements and to negotiate toward better ones. A conference in early 1981 adopted new protocol agreements for the Extension of the Wheat Trade Convention, 1971[406] and the Food Aid Convention, 1980[407] (the two Coventions constituting the International Wheat Agreement of 1971).[408] The protocol agreements[409] further extended the International Wheat Agreement of 1971[410] from July 1, 1981 through June 30, 1983.[411] Like the previous extensions, this extension "maintains the framework for international cooperation in wheat matters."[412] Accordingly, the International Wheat Council will continue to collect, analyze, and distribute information concerning prices, demand, supplies and trade.[413] The Council will also continue to provide a forum for the discussion and resolution of world wheat trade problems.[414]

The extension of the Food Aid Convention of 1980 "maintains the parties' present commitments to provide minimum annual quantities of cereals [*sic*] food aid to needy developing countries."[415] The Convention's objective is to annually collect and distribute, through cooperative international effort, at least ten million tons of cereals aid to developing countries.[416] The adoption of the new GATT "Subsidies Code" also has generated optimism in the world wheat

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404. *Id.* Great Plains Wheat also points to the use of "qualitative criteria" in the language of the Subsidies Code, *see* Interpretation and Application, *supra* note 387, and the lack of precision or specificity as a demonstration of the unwillingness of some major exporters to participate in an agreement which would honestly curtail their use of export subsidies. *Id.*

405. *Id.*

406. International Wheat Agreement of 1971, *supra* note 250.

407. Food Aid Convention, 1980, Mar. 6, 1980, __ U.S.T. __, T.I.A.S. No. 10015, __ U.N.T.S. __.

408. *1981 Protocols for the Extension of the International Wheat Agreement, 1971, Message from the President of the United States,* 97th Cong., 1st Sess. xxx (1981) [hereinafter cited as *Message from the President*]. A conference meeting in London adopted the protocols on March 6, 1981, and opened them for signature in Washington from March 24, 1981 through May 15, 1981.

409. 1981 Protocols for the Extension of the International Wheat Agreement, 1971 *reprinted in Message from the President, supra* note 408, at 1 [hereinafter cited as 1981 Protocols].

410. International Wheat Agreement of 1971, *supra* note 250.

411. 1981 Protocols, *supra* note 409, art. I.

412. *Message from the President, supra* note 408, at xxx.

413. *Id.*

414. *Id.*

415. *Id.* at v.

416. *Id.*

trade.[417] The adoption of the Subsidies Code implies recognition by the world's trading nations of the harmful effects of subsidies on international trade.[418] The Code represents a positive step by the international trading community to limit or reduce the harmful effects which subsidies have on world trade.[419]

Yet, serious problems remain unsolved in the world wheat trade. Despite the desirability of using the multilateral International Wheat Agreement approach to wheat trade regulation, bilateral agreements have been used increasingly in recent years.[420] In addition, the idea of forming a wheat exporters' cartel has not vanished[421] nor has the idea of using grain as a weapon completely disappeared.[422] Indeed, contrary to GATT free trade principles,[423] the United States is considering a proposal[424] for use of a variable export levy,[425] similar to the EC's.[426] Theoretically, such a levy would insulate the American economy from "transitory surges in foreign demand for grain," by leaving the American grain market open to the world market only when prices were within a predetermined stabilization band.[427] Given the United States' dominant position in the world wheat market, use of such a system would destroy any impetus for adoption of a comprehensive, workable International Wheat Agreement.

Moreover, certain constant factors in the wheat trade that can never be solved by agreement may become more and more important in the future. Weather will always be a variable in wheat trade.[428] The United States also must be concerned with its soil resources.[429] Much U.S. farmland is in deteriorating condition as a result of overcropping and excessive use of chemicals.[430] Many non-renewable or not easily renewable resources such as oil, gas and water are necessary to produce grain.[431] The present U.S. farming system makes little provision for the finite nature of these resources.[432] Any attempt at regulating the international wheat market will have to consider these factors.

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417. Interpretation and Application, *supra* note 387.

418. SUBSIDIES AND COUNTERVAILING MEASURES, *supra* note 384, at 1.

419. *Id.*

420. *See* Boston Globe, Aug. 8, 1981, at 1, col. 6 (Soviet-Brazilian grain deal); Agreement on Grain Trade Between the Government of the United States of America and the Government of the People's Republic of China, Oct. 22, 1980, __ U.S.T. __, T.I.A.S. No. 9930.

421. *International Grains Agreement Oversight, supra* note 66, at 66-68.

422. *The Politics of Grain, supra* note 352, at 29.

423. JACKSON, *supra* note 96, at 729.

424. Chambers & Wolverton, *Wheat Cartelization and Domestic Markets,* AM. J. AGRIC. ECON. 629 (1980) [hereinafter cited as Chambers & Wolverton].

425. *See* note 167 and accompanying text *supra.*

426. *Id.*

427. Chambers & Wolverton, *supra* note 424, at 631.

428. INTERNATIONAL FOOD RESERVES, *supra* note 5, at 30.

429. Soth, *The Grain Export Boom,* FOREIGN AFF. 895, 898 (1981).

430. *Id.* at 904.

431. *The Politics of Grain, supra* note 352, at 31.

432. *Id.*

XIII. CONCLUSION

The failure of the International Wheat Agreement negotiations to reach an understanding upon the proposed comprehensive Wheat Trade Convention is a disappointment. However, with international cooperation, a truly effective internationally integrated system for monitoring production could be developed that would help assure the availability of an adequate supply of wheat and guarantee an adequate return to producers. This system would not unduly infringe upon the GATT free trade ideal, nor impede the growth of the agricultural self-sufficiency in developing countries. Most importantly, such a system would adequately provide for the hungry of the world through the development of a world food reserve. The International Wheat Agreements have pursued these goals, but so far have not achieved much success, primarily because the parties to the agreements have lacked a truly cooperative spirit. A country's reluctance to relinquish any part of its control over domestic agricultural policies is understandable. Nevertheless, without a broader perception of self-interest, and a recognition of the interdependence of domestic policies at the international level, a new International Wheat Agreement is not likely to be any more successful than those of the past.

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