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U.S. Sugar Policy: Domestic and International Repercussions of Sour Law

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Member of the Class of 1992

I. INTRODUCTION

"Rarely has one small program been so bad on so many different levels."

Representative Thomas J. Downey, July 1990.1

The United States sugar program is one of the Government's least known and most highly criticized policies. The primary instruments of the program, sugar import restrictions imposed by the President and domestic sugar price supports established by Congress, have long been attacked as contrary to both domestic and international interests. Yet despite the highest level of both domestic and international criticism in the history of the present policy,2 President Bush and the U.S. Congress each recently gave new life to the embattled program. By changing the U.S. method of restricting foreign sugar imports from a system of absolute quotas to a two-tiered tariff system in September 1990, President Bush narrowly circumvented a previously broken rule of the General Agreement on Tariffs and Trade (GATT),3 leaving the total level of im-

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The ideas expressed herein as well as any factual inaccuracies are those of the author, do not represent and may in fact conflict with the opinions and beliefs of those who assisted with early drafts of this Note.

1. Quoted in Christopher Madison, Raising Hell on Cane, NATIONAL JOURNAL, July 14, 1990, at 1717.

2. The present policy is defined as the post-1981/82 U.S. sugar program. The heightened level of criticism since the 1985 farm bill may be due to worsening economic conditions and tightening sugar import quotas. Previous U.S. sugar policies have also been subject to criticism, notably those in place during 1890, 1941-45 and 1974.

3. A June 1989 GATT panel ruling found the former U.S. system in violation of its rules. United States Restrictions on Imports of Sugar, GATT Doc. L/6514 (Basic Instruments and
ports virtually unchanged. Then, in November 1990, Congress passed the 1990 Farm Bill, which extended the price support component of the sugar program another five years. The new legislation maintains the record high 1986-90 support level for sugarcane and effectively increases the support level for beet sugar. The only significant change in the sugar program under the 1990 legislation was the addition of a “standby” marketing allotment program. But the program will go into effect only at some future date if and when the total allocation for foreign imports falls below 1.25 million short tons. As the Uruguay Round of multilateral trade negotiations under the GATT winds to a close, it is time to take a hard look at the United States sugar program, the criticism it has received, and why, despite that criticism, it has been revitalized year after year.

The current United States sugar program has evoked strong domestic and international opposition since its inception. Critics argue against the program on several fronts. They claim the protectionist policy gouges consumers and exports U.S. jobs in the sugar-containing

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6. The Senate report on its version of the Farm Bill stated that the price support provision of the new sugar title was “basically an extension of the existing program for sugar for the marketing years 1991 through 1995.” S. REP. No. 357, 101st Cong., 2d Sess. 136 (1990); 1990 U.S.C.C.A.N. 4656, 4792. The Senate version was adopted by the Conference Committee.

7. See infra note 39.

8. See infra note 38.


10. Without some new mechanism to limit the domestically produced sugar supply, even a zero import level would not have sufficiently restricted the sugar supply on the U.S. market to maintain sugar prices at the support level required by law under Section 902(a) of Title IX of the Food Security Act of 1985, 99 Stat. 1443. See infra notes 41-49 and accompanying text.

11. The Uruguay Round is the eighth round of multilateral trade talks sponsored by the GATT. For a general discussion of the GATT, see infra notes 181-212 and accompanying text.


goods industries by artificially sustaining a U.S. domestic sugar price that is, at times, double or triple the world market price;14 blatantly contradicts the primary U.S. foreign trade goal of global market liberalization and; undermines foreign assistance programs designed to economically aid Third World sugar producers by curtailing their U.S.-bound exports. But proponents argue that without the support of the sugar program, U.S. sugarcane and beet producers could not survive in the face of heavily subsidized sugar exports from the European Community.15 Thus, the sugar policy debate continues.

This Note will address many unanswered questions regarding a little known program that has drastic repercussions in the U.S. and abroad. First, it will describe the United States sugar program itself and explain the adverse effects of the policy on U.S. consumers. Next, it will explain how the program undermines U.S. trade and foreign policy goals. Finally, it will explain the roadblocks that must be overcome to bring U.S. sugar policy more in line with U.S. domestic and international policy objectives.

A. History of the Sugar Program

U.S. sugar policies date back to July 4, 1789, when the first sugar tariff was implemented as a revenue raising measure.16 Since that time, the U.S. sugar market has been free from import duties during only a few brief periods17 between 1890 and 1894.18 In the two centuries since the

14. Because the world market is a residual market which accounts for less than 20% of world sugar production, it does not reflect a true free market world sugar price. However, analysts agree that the present U.S. domestic sugar price is clearly above what a free world price would be. See Review of General Accounting Office Report “Sugar Program: Issues Related to Imports of Sugar-Containing Products”; and Impact on the U.S. Sugar Program: Hearing Before the Subcomm. on Cotton, Rice, and Sugar of the House Comm. on Agriculture, 100th Cong., 2d Sess. 72 n.2 (1988) (statement of Brian P. Crowley, Senior Associate Director, Resources, Community and Economic Development Division, U.S. General Accounting Office) [hereinafter Hearings (June 1988)].

15. Since 1978, the elaborate mechanisms of the U.S. sugar program have included a 10.45 cents/lb. countervailing duty on E.C. sugar, which presently expels most E.C. sugar from the U.S. market.

16. Tariff Act of 1789, ch. 2, 1 Stat. 24. Import duties and domestic excise taxes were the major sources of government revenue at the time. Sugar revenues accounted for 20% of all import duties. STAFF OF HOUSE COMM. ON AGRICULTURE, 91ST CONG., 2D SESS., THE UNITED STATES SUGAR PROGRAM 30 (Comm. Print 1970) [hereinafter HOUSE COMM. ON AGRICULTURE].

17. U.S. sugar trade was also virtually free in the 1974, 1975, and 1976 crop years and between October 1979 and September 1981 when, because of relatively high world prices, import restrictions beyond a low tariff were deemed unnecessary. R. STURGISS ET AL., 1990 AND U.S. SUGAR POLICY REFORM 7-8 (1990) [hereinafter STURGISS].
first sugar tariff, the rationale for the U.S. policy has changed from revenue raising to protectionism. The U.S. sugar program is no longer a significant source of revenue. It appears that the limited objective of present U.S. sugar policy is to guarantee an enhanced income for domestic producers and processors.

B. Present Sugar Policy

The U.S. sugar program is not administered under one comprehensive statute. Instead, it is orchestrated through many acts of Congress and numerous Presidential Proclamations, drafted over several years, and subject to an unending string of modifications and amendments. These laws are implemented by the President under the auspices of several executive agencies, most notably the U.S. Department of Agriculture (USDA). Five provisions of U.S. law form the basis of the present sugar program: 1) Section 206 of the Agricultural Act of 1949 (the 1949 Act) as amended by the 1990 Farm Bill (section 206); 2) Section 902 of the Food Security Act of 1985, as amended by the 1990 Farm Bill; 3) additional notes 2 and 3 to chapter 17 of the Harmonized Tariff Schedule 18.

18. In 1890 the revenue duty was repealed and replaced until 1894, by a domestic "bounty." HOUSE COMM. ON AGRICULTURE, supra note 16, at 30.


21. Duties on sugar imported within a country's allocated quota are nominal and very little sugar will come in under the higher second tier duty. See infra notes 97-98. Furthermore, any import duty revenues do not compare to the cost of the program paid by those who buy artificially high-priced U.S. sugar and sugar-containing products.

22. The U.S. Congress has noted "the policy of the U.S. Government—for defense and strategic reasons—to preserve within the United States the ability to produce a substantial portion of our sugar requirements" because "sugar is an essential and vital food product needed by American consumers ... ." The argument is strikingly similar to that scoffed at by American negotiators in the GATT rounds when introduced in support of Japan's protection of its rice farmers. HOUSE COMM. ON AGRICULTURE, supra note 16, at 28.

23. By maintaining stable prices and protecting U.S. producers from foreign competition, the program acts as an insurance policy, guaranteeing that growers and processors can produce sugar at no risk. No other farm group is afforded such absolute security, at the expense of so many.


(HTS), known as the "Headnote Authority;" Section 22 of the Agricultural Adjustment Act of 1933; and Part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938, as added by the 1990 Farm Bill.

Section 206 requires the USDA to support the price of domestically grown sugarcane and sugar beets through nonrecourse loans. Under the current loan program introduced in 1981, the Commodity Credit Corporation provides nonrecourse loans to sugar processors at a set loan rate. To qualify for a loan, processors must pledge sugar as collateral and agree to pay producers a minimum support price. The Secretary of Agriculture is required by law to support the price of sugarcane


30. The Commodity Credit Corporation (CCC) is a U.S. government agency within the USDA. It was established to stabilize, support, and protect farm income and prices, assist in the maintenance of balanced and adequate supplies of agricultural commodities and facilitate the orderly distribution of agricultural commodities. See Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070, (codified at 15 U.S.C. § 714).

31. U.S. federal farm assistance programs generally provide "nonrecourse" loans, secured by the farmer's crop. The nonrecourse aspect bars the lender (the CCC) from any action against the farmer if the value of the security (his crop) falls below the amount required to repay the loan.

32. Unlike other commodity programs, sugar loans are made to processors rather than directly to producers. This is because, unlike other commodities, sugarcane and sugar beets must be processed before they can be stored. LANDELL MILLS COMMODITIES STUDIES, THE U.S. SUGAR PROGRAM BEYOND 1990: THE IMPACT OF ALTERNATIVE POLICY SCENARIOS 1-3 (1990) [hereinafter LANDELL MILLS (1990)].

33. The USDA establishes loan rates region by region depending on freight costs to the major consuming areas. Id.


35. Support prices depend on the respective loan rates which vary region to region, but farmers generally receive about 60% of the proceeds of the sugar loan or sale while processors receive the remainder. LANDELL MILLS (1990), supra note 32, at 1-3.
at a level not less than eighteen cents per pound raw value and the price of beet sugar at a higher level calculated yearly. Thus, contracts between producers and processors necessarily reflect this statutory minimum support level. In November 1990, Congress approved a farm bill that would maintain the 1986-90 eighteen cent per pound price support level for raw cane sugar for the next five years and effectively increase the support level for sugar beets.

Section 902 of the 1985 Food Security Act requires the President to use all available authorities to enable the Secretary of Agriculture to operate the sugar program at "no cost" to the Government. In order to comply with the "no cost" requirement, the USDA ensures that the domestic sugar price is maintained at a level high enough to guarantee sugar processors an adequate incentive to repay their federal loans. This goal is achieved by limiting the supply of imported sugar in the domestic market. This, in turn, drives up domestic sugar prices to a level at which processors can afford to pay back their federal loans and the Government is not obliged to acquire forfeited sugar.

Prior to 1990, the USDA set an annual target minimum domestic market price level for raw sugar below which there was a risk that sugar would be forfeited to the CCC. This indicator price was known as the

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36. 1990 Farm Bill, supra note 5, sec. 901, § 206(b), (c).
37. Beet and cane sugar go through very distinct refining processes. Beet sugar is more costly at the support price stage because it is closer to a refined form.
38. The 1991-92 beet rate was set at 22.85 cents per pound. 7 C.F.R. § 1435.4(b)(1991). This is up from the 20.34 cent beet rate (113% of the 18 cent sugarcane rate) under the 1986-90 program. See 1990 Farm Bill, supra note 5, sec. 901, § 206(c). ("[T]he Secretary shall support the price of each of the 1991 through 1995 crops of domestically grown sugar beets through nonrecourse loans at such level for each crop as the Secretary determines reflects (1) an amount that bears the same relation to the support level for the crop of sugarcane . . . as the weighted average of producer returns for sugar cane . . ., for the most recent 5-year period for which data are available; plus (2) an amount that covers sugar beet processor fixed marketing expenses.")
42. The Joint Explanatory Statement of the Committee of Conference stated the purpose of Section 902(a): "that the quota be adjusted to the level necessary to ensure that there are no forfeitures and thus no cost to the government." H.R. CONF. REP. NO. 447, 99th Cong., 1st Sess. 325, 390, reprinted in 1985 U.S.C.C.A.N. 2251, 2316.
43. The domestic sugar supply is limited by means of import restrictions imposed under the Headnote Authority explained infra notes 50-56, and accompanying text.
"Market Stabilization Price" (MSP). The MSP was calculated by adding together the loan rate or price support level, interest costs on the loan, transportation costs, and an additional incentive to induce processors to market rather than forfeit the sugar. A U.S. domestic sugar price at or above the MSP level would guarantee U.S. processors market returns sufficient to cover their costs and repay their government loans. The system of limiting imports such that the domestic sugar supply is low enough to drive domestic sugar prices up to a level never less than the MSP has assured compliance with the no cost provision of the 1985 Act, effectively precluding forfeiture on sugar loans since 1985. Theoretically, the sugar program is thereby maintained at no cost to the Government.

The Headnote Authority authorizes the President to limit the amount of foreign-produced raw and refined sugar entering the U.S. by imposing duties, limited by a quota, on imported sugars, syrups and molasses. The U.S. system of limiting imports of foreign sugar has been administered under the Headnote Authority since 1974. However, the

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45. The MSP was originally established to determine bond requirements and maximum liabilities in connection with the Section 22 re-export program, see 7 C.F.R. § 6.300 (1990), but became a de facto target price level for the sugar program. Telephone interview with Ron Lord, Agricultural Economist, Economic Research Service, USDA (Jan. 30, 1991). As of 1991, a MSP benchmark figure has not been used as a de facto target price. Instead, separate loan forfeiture price levels are calculated for each of the various beet and cane regions to use as guidelines in establishing the import quota levels. Telephone interview with Cleveland Marsh, Team Leader, Import Quota Programs, Foreign Agricultural Service (FAS), USDA (Sept. 13, 1991).

46. Set annually on October 1, the MSP was defined in 7 C.F.R. §§ 6.300-6.302 (1990).

47. The 1989-90 MSP was 21.95 cents per pound. LANDELL MILLS (1990), supra note 32, at 1-7.

48. Although the USDA has attempted to set import quotas so as to keep the domestic price (New York Number 14 contract) close to the MSP, such use of quotas has not been wholly successful. Id. This may be one factor that prompted the abandonment of the MSP benchmark.

49. But consumers pay the price of the sugar program. As a result of the price support system, the U.S. domestic price of sugar is well above the world price. In the first half of 1991, the average world price for raw sugar was 8.7 cents per pound while U.S. refiners paid just over 21 cents. USDA, ECONOMIC RESEARCH SERVICE (ERS), SUGAR AND SWEETENER: SITUATION AND OUTLOOK REPORT 8, 12 (Sept. 1991) [hereinafter SUGAR AND SWEETENER (1991)].

50. See supra note 26.

51. Id. Headnote 2 provides that the President shall modify the duties and quotas applicable to sugar imports whenever such modifications are necessary to "give due consideration to the interests in the United States sugar market of domestic producers and materially affected parties to the General Agreement on Tariffs and Trade."

52. Upon expiration of the Sugar Act of 1948 in 1974, Headnote 2 required the President to proclaim a rate of duty and a quota if he found that such duty and quota would give due consideration to the interests in the U.S. sugar market of domestic producers and materially
quota amount was not reduced to a restrictive level until 1982 when declining world sugar prices threatened to cause massive loan forfeitures by U.S. processors. In response to what was perceived as an emergency situation, President Reagan introduced an "Emergency Quota Program," which amended Headnote 3 to severely limit sugar imports and set country-by-country import quotas.

The Emergency Quota Program, established by Presidential Proclamation 4914, was immediately challenged in court by the U.S. Cane Refiners' Association. In U.S. Cane Sugar Refiners' Association v. Block, plaintiffs argued, inter alia, that because the President may impose fees or quotas, but not both fees and quotas under the Agricultural Adjustment Act of 1933, the new quota could not be lawfully imposed while import fees on sugar were in effect under section 22 of the 1933 Act. Section 22, they claimed, was the only statute authorizing the President to restrict imports for the purpose of protecting price support programs. In granting the Government's motion for summary judgment, the court held that the President's authority to impose quotas on sugar imports under the Trade Expansion Act of 1962 was complementary to, and not in conflict with, his authority to impose quotas pursuant to the Agricultural Adjustment Act of 1933. Therefore, section 201 of the Trade Expansion Act, in conformity with Headnote 2, provided the Pres-
ident with authority for imposing quotas independent of his authority under section 22. The court cited the Senate Finance Committee's recognition of the dual system of sugar import control under both section 22 and Headnote 2. The court also found 4941 quotas consistent with the GATT and the International Sugar Agreement. On appeal, the U.S. Court of Customs and Patent Appeals affirmed the lower court's findings, stating that "[t]he President's action being authorized by [section 201 of the Trade Expansion Act of 1962], his motives, his reasoning, his findings of facts requiring the action, and his judgment, are immune from judicial scrutiny."

While the authority of section 22 of the Agricultural Adjustment Act of 1933 is not presently used to restrict imports of raw sugar, it is used to limit entry of sugar in other forms. Under section 22 the President may, upon the recommendation of the Secretary of Agriculture, impose fees or quantitative limitations on any imported article that "materially interfere[s]" with "any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction." Section 22 fees may not exceed fifty percent ad valorem. They are applied in addition to the ordinary customs duties provided for in the HTS, and are applicable even to products imported duty-free.

Section 22 became a major instrument of U.S. sugar policy when U.S. sugar interests became concerned that foreign imports of sugar-containing goods began to shrink the domestic market for sugar. They declared that foreign sugar producers were circumventing U.S. import quotas by exporting their sugar to the U.S. in the form of sugar-containing goods. In 1983 President Reagan determined that present import limits on raw and refined sugar were insufficient to maintain the mini-

64. Id.
68. Id. at 404 (citing U.S. v. George S. Bush and Co., Inc., 310 U.S. 371 (1939)).
69. 7 U.S.C. § 624.
70. Measures taken under Section 22 include quotas on products containing a high percentage of sugar and a one cent per pound import fee on refined sugar and certain articles containing soluble non-sugar solids.
71. 7 U.S.C. § 624(b).
72. Id.
73. Section 22(c) of the Agricultural Adjustment Act of 1933 provides that "such fees shall be treated for administrative purposes . . . as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential treatment under any international obligation of the United States." 7 U.S.C. § 624(c).
mum domestic price necessary to avoid loan forfeiture; imports of sugar-containing products would also have to be limited.\textsuperscript{74} Thus, to complement the headnote quota on raw and refined sugar, a quota of zero quantity\textsuperscript{75} was declared on certain sugar mixtures and blends.\textsuperscript{76} This new quota was established under the authority of section 22. Approximately two years later annual import quotas were imposed on items containing more than ten percent cane or beet sugar by dry weight, including sweetened cocoa, iced-tea mixes, and pancake mixes.\textsuperscript{77}

By limiting the sugar supply available on the U.S. market, section 22 fees and quotas and the headnote tariff-rate quota provide the massive protection necessary to maintain the domestic market price equal to or above the wholesale level at which sugar processors would fail to repay their federal loans and forfeit the sugar held as collateral. The forces of protectionism have gained momentum with each new policy measure. The basic policy of strictly limiting imports as a price support mechanism has remained an integral part of the sugar program since 1982.\textsuperscript{78}

As a result of increasingly restrictive quota allocations, annual imports declined from slightly less than the average of 4.2 million tons in 1979-81 to about 1 million tons in 1988.\textsuperscript{79} Although the straight quota became a tariff-rate quota in September 1990,\textsuperscript{80} the strategy of restricting imports to shrink domestic supply and increase prices has remained unchanged.

On September 27, 1991, the 1991-92 sugar tariff-rate import quota amount\textsuperscript{81} for October 1, 1991 through September 30, 1992 was set at


\textsuperscript{75} This was, in effect, an embargo.

\textsuperscript{76} Proclamation No. 5071, supra note 74.


\textsuperscript{78} Although the U.S. has maintained sugar import quotas continuously since 1934, they were first used as a mechanism to maintain artificially high domestic prices by restricting the supply of sugar on the domestic market in 1982. A report by the USDA's Economic Research Service stated the policy behind the provisions of the additional note 3(a) to chapter 17 of the HTS as follows: "[s]ince May 1982, an annual import quota on sugar for domestic consumption has been established on the basis of the balance between overall supply and demand, to achieve U.S. price support objectives, and with 'due consideration' to materially affected contracting parties to the [GATT]." ERS, USDA, U.S. SUGAR STATISTICAL COMPRENDIUM 8 (1991)(citing the language of the Headnote Authority).

\textsuperscript{79} Id.


\textsuperscript{81} The tariff-rate import quota is the quantity of imported sugar permitted to enter the U.S. at the lower, first-tier rate of duty.
1,385,000 metric tons (1,526,701 short tons), down 34 percent from the 1.9 million short ton quota of the year before.

Increasing domestic sugar production has taken a drastic toll on total foreign import allocations. A total 1981 import quota amount of 5,025,283 tons declined to 2,764,826 by 1990. The domestic production increase is largely due to high sugar support prices that have induced farmers to replace other crops with sugarcane or sugar beet. As a result, the percentage of the U.S. market left open to foreign imports had declined from forty-seven percent of consumption in calendar 1970 to thirty-two percent in 1990.

The form, but not the substance, of U.S. import protection was altered by the Presidential Proclamation of September 13, 1990. On that day, President Bush announced that the absolute import quota would be replaced by a two-tiered tariff-rate quota system. The move was the somewhat delayed response to a June 22, 1989 ruling by the Council of the GATT that the U.S. sugar quota system violated GATT rules. The new GATT-legal two-tiered tariff rate quota system allows quota countries to export their allocated quota amounts at a “first tier” duty.

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82. Sugar and Sweetener (1991) supra note 49, at 12. The total 1991-92 tariff rate quota was among 40 countries including South Africa and Nicaragua.

83. Id.


85. USDA, ERS, Sugar and Sweetener: Situation and Outlook Yearbook 69-70 (1991) [hereinafter Yearbook].

86. The sugar program gave U.S. producers a strong incentive to expand output by providing guaranteed returns generally higher than other crops. Hearings (Feb. 1990), supra note 12, at 97 (statement of the Sugar Users Association).

87. Hearings (June 1988), supra note 14, at 72 (U.S. General Accounting Office Report entitled “Sugar Program: Issues Related to Imports of Sugar-Containing Products”). U.S. per capita sugar consumption has decreased as sugar’s share of the U.S. sweetener market declined due to increasing consumption of less expensive alternative sweeteners, principally high fructose corn syrup (HFCS).


91. See infra notes 213-35 and accompanying text for a discussion of the U.S. violation and the GATT ruling.

92. Tariffs, but not quotas, are permitted under Article XI:1 of the GATT which forbids all import or export “prohibitions or restrictions other than duties, taxes or other charges.” GATT Panel Report (1989), supra note 3.
rate of approximately 0.625 cents per pound raw value. Beneficiaries of either the Generalized System of Preferences or the Caribbean Basin Initiative pay no duty on their allocated quota amounts of sugar. But any sugar entering the U.S. in excess of a country's allocated quota, or from a country not allocated a share of the quota, is assessed the prohibitively high duty of 16 cents per pound raw value. Because few raw or ordinarily refined sugar exporters will pay the prohibitively high second tier import duty, the tariff-rate quota has an effect identical to that of the absolute quota system it replaced; limiting U.S. sugar imports to set country-by-country quotas and thereby limiting the supply of sugar on the domestic market.

The 1990 Farm Bill amended the Agricultural Act of 1938 to provide for another mechanism to control domestic supply. The amendment requires the establishment of a system of marketing controls on domestic beet and cane sugar and crystalline fructose during any fiscal year in which the Secretary estimates that imports of sugar for consumption in the United States will be less than 1.25 million short tons, raw value. The marketing allotments would be imposed at a level that

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93. Sugar and Sweetener (1990), supra note 84 at 14.

94. Id. The first tier duty is equal to the general duty rate under the pre-1991 absolute quota system. These import duties vary according to the polarity (sucrose content) of the imported sugar. The 0.625 cents per pound duty rate applies to imported sugar testing 96% polarity.

95. Exceptions have been made for countries with which the U.S. has free trade agreements. Thus, there is no U.S. import quota on Canadian sugar which can enter duty free. Mexican sugar may soon be granted similar status if the North American Free Trade Agreement (NAFTA) is successfully negotiated and ratified.


97. At the current U.S. domestic price of approximately 22 cents per pound (based on the September 1991 New York Number 14 contract price), a 16 cent import fee would leave foreign exporters 6 cents per pound, 3 cents less per pound that the current world price of approximately 9 cents per pound (based on the September 1991 New York Number 11 contract price).

98. Only the second tier sugar that has entered the U.S. since the two tiered tariff-rate quota system took effect has been “specialty sugar” with such high market values that the 16 cent price differential was not a sufficient deterrent. Specialty sugars include the brown slab sugar used in Chinese foods and specialty “rock candies.”

99. 1990 Farm Bill, supra note 5, sec. 902.

100. Under the provision, the Secretary is required to make quarterly estimates of projected fiscal year imports by subtracting the quantity of domestically produced sugar and existing sugar stocks available for consumption in the U.S. from the estimated quantity to be consumed in that year. 1990 Farm Bill, supra note 5, sec. 902, § 359b(a) (codified at 7 U.S.C. § 1359bb(a) (Supp. II 1990)).

101. Section 359j(c) of the 1938 Act as amended by the 1990 Farm Bill defines the United States as “the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.” 7 U.S.C. § 1359jj(c) (Supp. II 1990).
equals the fiscal year's U.S. consumption of sugar minus the combined total of carry-in stocks and 1.25 million short tons, raw value. The provision would, in effect, set aside an approximately 1.25 million short ton portion of the U.S. market for foreign sugar producers.

C. Recent Legislation

The debate over the 1990 Farm Bill produced several proposals for changes in U.S. sugar policy. In early 1989, Congress considered a bill to establish the Sugar Stabilization Act, which would have provided for a gradual reduction of the support price from eighteen to twelve cents per pound over four years, and a more than 100 percent increase in the import quota. But the bill was unsuccessful.

In 1990, a similar proposal introduced the Sugar Equity and Reform Act. The 1990 proposal called for: a five percent reduction of the previous year's support price over the crop years 1991-1995, effectively reducing the eighteen cent support price to approximately fourteen cents per pound; a 1995-96 MSP equal to the eighteen cents per pound 1990 support price; and a minimum quota of one million metric tons for 1991, to increase by 250,000 per year until 1995. The Sugar Equity and Reform Act gained more support than the 1989 bill, but was similarly rejected. On July 24, 1990, an amendment to lower the eighteen cents per pound price support level to sixteen cents per pound was defeated by a vote of 150-271 in the House. And in October 1990, the House and Senate approved the 1990 Farm Bill, extending the eighteen cent price support level over the next five years, and leaving intact a rigid system of foreign import allocations.

104. Id.
106. Id.
108. Id. The proposal also included a provision for a tariff-rate quota system similar to that implemented by President Bush in 1990. See supra notes 89-98 and accompanying text.
110. The bill passed the House October 23, 1990 and the Senate October 25, 1990. It was signed into law November 28, 1990.
II. DOMESTIC REPERCUSSIONS

A. A Sweet Policy for Whom? U.S. Sugar Policy and U.S. Sugar Producers

Proponents of present sugar policy111 argue that U.S. producers must be protected from the "wild swings of the international market"112 in order to maintain sugar supply security and price stability. Because sugar is the only farm commodity of which the U.S. is a net importer, they claim the U.S. is particularly vulnerable to foreign manipulation of the sugar supply. They argue that U.S. sugar producers could not survive without support programs, especially in light of the policies of other countries to subsidize their sugar producers and dump sugar on the world market at artificially low prices.113

Although the number of U.S. cane and beet sugar producers is relatively small, they are spread throughout several U.S. states and Puerto Rico. Cane farming is concentrated in four states: Florida, Louisiana, Hawaii, and Texas.114 Beets are grown in eight growing regions covering fourteen states, with the bulk of production in Minnesota, California, North Dakota, and Idaho.115 A 1988 study by the U.S. Department of Commerce found that the 12,600 U.S. sugar beet and sugarcane farms116 make up 0.6 percent of all U.S. farms and employ approximately 35,000 workers,117 while the sugar processing industry employs another 8,000.118

California accounts for about sixteen percent of U.S. sugar beet pro-

111. For a discussion of groups which support the present sugar program see infra notes 316-33 and accompanying text.
113. Id. The EC, for example, administers a three-tiered subsidy program for sugar producers, each tier representing a different sugar production category and receiving a different level of support. The highest tier receives a 30 cents per pound subsidy. EC sugar subsidies totaled about $2 billion in 1989. Subsidies have encouraged EC farmers to produce more and more sugar. Since subsidies began, the EC has gone from a net sugar importer to a significant sugar exporter. Gugliotta, supra note 44, at A-4.
118. Id. Another study found that the U.S. sweetener industry, presumably including not only sugar but the widely used corn and noncaloric sweeteners, generates annual revenues of
duction. The sugar beet industry contributed 318.8 million dollars to the California economy in 1987 and provided 6,000 full-time jobs in growing and harvesting in 1989. But in 1989, sugar ranked twenty-seventh among all California commodities. In fact, according to the USDA's Economic Research Service, even at the current price support level, California sugar beets are only marginally competitive with several alternative crops. Put in such perspective, the economic contributions of sugar producers are relatively unimpressive.

In addition, the United States is an inefficient and high cost sugar producer when compared to many Third World sugar exporting countries. U.S. growers claim their industry is one of the most efficient in the world because of its high yields per acre. But statistics show that the U.S. falls near the middle in international cost comparison rankings. The high U.S. output is apparently outweighed by the high cost of sugar production. The fact that U.S. producers rank ahead of some other countries in efficiency of production seems to merely reflect the even greater inefficiencies produced by the sugar subsidy programs of those countries, most notably those of the European Community.

Members of Congress from sugar states argue that any decrease in the support price would gravely affect farmers and entire communities in sugar producing regions. Luther Markwart, President of the Ameri-
can Sugarbeet Grower's Association, claims a two cent reduction in the support price would cost beet growers 100 dollars per acre.\textsuperscript{130} Florida cane growers would lose sixty million dollars with a two cent reduction in the support price, according to Dalton Yancy, President of the Florida Sugar Cane League and Rio Grande Valley Sugar Grower's Inc.\textsuperscript{131} But such calculations are made under the assumption that if the U.S. were to reduce its level of support, other countries would still maintain their protective sugar policies. In light of recent trade negotiations calling for multilateral reductions in agricultural support and protection, it is unlikely that any U.S. move will be unilateral.\textsuperscript{132} A recent study concluded that U.S. sugar producers would be able to maintain their present output levels if all countries created a true world market by eliminating their sugar price supports and import barriers.\textsuperscript{133} Thus, if GATT negotiations are successful in reducing sugar subsidies multilaterally, the continued viability of U.S. producers should not be at risk.

Opponents of sugar import restrictions and price supports argue that such protectionism actually takes jobs away from U.S. workers.\textsuperscript{134} Because artificially high sugar prices result in elevated production costs for U.S. manufacturers of sugar-containing products, opponents claim that bulk sugar buyers\textsuperscript{135} are moving their factories abroad to take advantage of world-priced sugar.\textsuperscript{136} Along with the factories go domestic jobs in sugar-using industries. The limited U.S. sugar re-export program,\textsuperscript{137} which allows entry by license of certain quota-exempt sugar provided that sugar is re-exported,\textsuperscript{138} has apparently been an insufficient

\textsuperscript{130} Cited in Gugliotta, \textit{supra} note 44, at A4.
\textsuperscript{131} Id.
\textsuperscript{132} The most recent U.S. proposal in the Uruguay Round called for reductions of U.S. and EC sugar support by equal percentages. \textit{Int'l Trade Rep. (BNA)} 1202 (Aug. 14, 1991). For a discussion of the U.S. sugar program as a bargaining chip in the Uruguay Round of GATT multilateral trade negotiations, see also \textit{infra} notes 236-60 and accompanying text.
\textsuperscript{133} \textit{LANDELL MILLS (1990), supra} note 32, at 5-42, 5-43. The study noted that the big losers would be the "very high cost producers," i.e., Japan, the U.S.S.R., and China. \textit{Id.}
\textsuperscript{135} Candy manufacturers are among the biggest volume industrial sugar users.
\textsuperscript{136} In Congressional testimony, E.J. Brach & Sons, Inc., a confectionery manufacturer, stated that U.S. sugar policy is harming the company's competitiveness in the global confectionery market to such an extent that it may be forced to move its 3,500 employee plant out of the U.S. in order to gain access to world-priced sugar. \textit{Hearings (Feb. 1990), supra} note 12, at 186.
\textsuperscript{137} The re-export program was introduced in 1982, shortly after restrictive quotas were established in response to the adverse consequences of the quotas on domestic refiners and end users of sugar. \textit{Proclamation No. 5002, 47 Fed. Reg. 54,269 (1982).}
\textsuperscript{138} The sugar is re-exported in refined form, sugar-containing products or for production of non-food polyhydric alcohols. The refined sugar re-export program is governed by 7 C.F.R.
solution. High production costs place foreign competitors at a distinct advantage in the domestic marketplace. In addition, many U.S. refineries have closed in the period since the program began to limit imports of raw sugar to be refined. Opponents of the sugar program also point to the fact that an elimination of restrictions on raw sugar imports would create jobs in sugar ports of entry and in sugar-user industries, as a result of increased sales due to lower prices.

Not even all farmers support current sugar policy. Many non-sugar farmers oppose the inequities of the sugar program and have urged Congress to bring sugar back in line with other farm programs. In 1987 the individual sugarcane and sugar beet producer received an average subsidy of between 40,000 dollars and 60,000 dollars, while the average wheat farmer received a subsidy of only 5,600 dollars. Some claim sugar beet and sugarcane producer profits are as high as ten times those for corn, soybeans, and wheat, creating an elite among farmers. Higher relative profits have induced more farmers to grow more sugarcane and beets. In some states, the financial advantage the program provides sugar beet farmers has allowed them to take land resources away from farmers of other commodities. The Chicago Tribune recently reported that midwest wheat farmers are finding it difficult to resist buy-out efforts by sugar farmers. Still, sugar beet and sugarcane producers insist that without a level of support significantly higher than those of non-sugar farmers, they would be unable to compete with subsidized sugar from other countries.


139. Hearings (Feb. 1990), supra note 12, at 150 (statement of Gerald G. Garbacz, Executive Vice President, W.R. Grace & Co.).
140. STURGISS, supra note 17, at 40.
141. Hearings (Feb. 1990), supra note 12, at 143 (statement of Michael Becker, Director of Research, Citizens for a Sound Economy).
142. A group of wheat, soybean and corn farmers calling themselves “Fair Farm Policy” have vocally opposed what they consider unfair favoritism granted sugar farmers. See Hearings (Feb. 1990), supra note 12, at 101 (statement by Owen Gustafson, Member, Steering Committee, Fair Farm Policy).
143. STURGISS, supra note 17, at 41.
144. Hearings (Feb. 1990), supra note 12, at 101 (statement by Owen Gustafson, Member Steering Committee Fair Farm Policy).
145. For example, over the period between 1985 and 1989 beet acreage in Minnesota increased 23% from 278,000 to 342,000 acres. Id.
146. Congress Votes to Keep Sugar Program As Is, CHICAGO TRIB., July 25, 1990, at C3.
147. Id. Sugar beet farmers, particularly in the upper midwest region, are organized into cooperatives, which precludes other farmers from gaining access to their lands.
148. Id.
Although sugar producers receive short-term windfall gains from high sugar subsidies, they may be supporting the instrument of their own demise as the high price policy erodes sugar's share of the U.S. sweetener market. High fructose corn syrup (HFCS), a corn derivative, has already significantly displaced sugar as a sweetener in many industries, most notably the beverage industry. The corn farmers, corn syrup manufacturers, and companies that produce high intensity noncaloric sweeteners such as aspartame and saccharin are also among the beneficiaries of the sugar program. Producers of such alternative sweeteners can increase the prices of their products according to the market price for sugar, resulting in unusually high profit margins. Thus these unintended beneficiaries, not even within the class of those whom the sugar program was intended to benefit, have become active supporters of the sugar program.

Proponents of sugar policy reform argue that an elimination or reduction of sugar price supports would not significantly harm corn farmers for several reasons. First, only a very small percentage of U.S. annual corn production goes into HFCS. Thus, HFCS usage has little effect on corn market prices, which are set largely by the international feed market where the great bulk of corn production is sold. Second, because the U.S. boasts the lowest cost HFCS production in the world, HFCS prices would remain competitive with sugar prices even if the U.S. sugar price were reduced by six cents per pound. Finally, although a decrease in sweetener price levels may result in a lower profit per unit of

149. STURGISS, supra note 17, at 40.
150. See U.S. DEPARTMENT OF COMMERCE, supra note 20, at 11, noting that since the mid-1970s HFCS has captured markets traditionally held by sugar. In 1985, corn sweetener consumption (including HFCS, glucose and dextrose) was greater than sugar consumption.
151. Id.
152. Id. at 16 (noting that the dramatic increase in low calorie sweetener use is not necessarily a result of the high sugar support price but may be a reflection of increasingly calorie conscious consumers).
153. STURGISS, supra note 17, at 5.
154. See U.S. DEPARTMENT OF COMMERCE, supra note 20, at 12 (noting that corn refiners can price HFCS according to the price of sugar). See also STURGISS, supra note 17, at 64.
155. See U.S. DEPARTMENT OF COMMERCE, supra note 20, at 12-13 (noting that the U.S. sugar program guarantees HFCS producers a minimum price).
156. The corn industry lobbies heavily in support of the sugar program.
157. U.S. DEPARTMENT OF COMMERCE, supra note 20, at 11. The corn refining industry accounts for less than 5% of total U.S. corn production. Id. at 12.
158. Hearings (Feb. 1990), supra note 12, at 148 (statement of Michael Becker, Director of Research, Citizens for a Sound Economy) (citing Study by the Alexandria, Va., consulting firm of Abel, Daft & Early).
159. Id. at 17 (statement of Rep. Daniel K. Alaka).
HFCS sold, lower prices may actually increase HFCS consumption and result in higher overall profits for HFCS manufacturers. Thus, HFCS does not appear in danger of losing its market.

Furthermore, corn sweetener consumption would increase substantially if, by opening its sugar market, the U.S. could lead other countries to do the same, resulting in a truly open world market. The Chairman of the Archer Daniels Midland Company postulates that in a completely free world market HFCS sales would double. Thus, although corn farmers generally oppose any change in U.S. sugar policy, their interests would not be significantly harmed by a reduction in the sugar support price.

B. The Costs of the "No Cost" Policy: Consumers Pay the Price

Although the program has no budgetary cost, the price paid by American consumers is high. In September 1991, the world price for sugar was approximately nine cents per pound while the U.S. consumer paid about twenty two cents. A 1988 Commerce Department calculation indicated that during 1982-85, sugar cost U.S. consumers an average of 3.7 billion dollars per year more than it would have cost at the world market price. Because the present world market is a residual market, world prices are lower than they would be in a completely open market. But according to Commerce Department estimates, even at a world sugar price determined by a true world sugar market, the difference between that world price and the domestic U.S. price would cost U.S. consumers approximately 1.9 billion dollars annually. A one cent per pound sugar price reduction could save U.S. consumers 300 million

160. Id. at 148 (statement of Michael Becker, Director of Research, Citizens for a Sound Economy).
161. Id.
162. This is assuming low production costs would allow HFCS prices to remain lower than sugar prices.
163. LANDELL MILLS (1990), supra note 32, at 5-42. See also Hearings (Feb. 1990), supra note 12, at 104 (statement of Owen Gustafson).
164. According to a 1990 study, "[t]he world sweetener sector is possibly the most distorted of the agricultural markets affected by government intervention." LANDELL MILLS (1990), supra note 32, at 5-42.
166. Sugar prices based on September 1991 New York No. 11 and 14 contracts. Note that the world price is the result of a residual market, see supra note 14, thus we can assume that in a true world market the price would be slightly higher.
168. See supra note 14 for explanation of the residual world market for sugar.
dollars per year, according to one estimate.\textsuperscript{170}

High sugar prices have a disproportionate effect on low income households. Because so many food items contain sugar, the sugar program is similar to a regressive sales tax, taking a higher percent of smaller incomes.\textsuperscript{171} One consumer advocate concluded that the sugar program results in the equivalent of a 50 dollar annual tax on a family of four.\textsuperscript{172} Redistribution of wealth from lower income families to farmers is another indirect effect of the sugar program.

In addition, the sugar program results in losses to the U.S. economy as a whole, due to misallocation of resources.\textsuperscript{173} Overvalued sugar consumes a distorted percentage of the budgets of both American consumers and industrial sugar-users. U.S. sugar producers themselves employ higher cost resources (i.e. labor and land costs) than do more efficient world producers.\textsuperscript{174} Between 1982 and 1988, the net loss to the U.S. economy resulting from the sugar program was estimated to be 780 million dollars per year.\textsuperscript{175} For every dollar transferred to U.S. sugar producers, U.S. consumers pay 2.56 to 2.62 dollars.\textsuperscript{176} The fact indicates that the present policy is a highly inefficient means of achieving its stated goal of domestic producer support.

Those in favor of the present program argue it is a source of government revenue from import duties and loan repayments.\textsuperscript{177} Without the program, they claim, the government would have to make more deficiency payments to farmers.\textsuperscript{178} They maintain that even in the event of a reduction of sugar price supports, sugar users would not pass their increased savings on to the consumers.\textsuperscript{179} But a 1988 Commerce Department report notes that considerable research has failed to substantiate this "ratchet effect."\textsuperscript{180} Competitive forces in the market should necessarily drive prices down for sugar containing goods following a decrease in

\begin{enumerate}
\item \textsuperscript{170} \textit{Hearings (Feb. 1990), supra} note 12, at 146 (testimony of Michael Becker).
\item \textsuperscript{171} \textit{U.S. Department of Commerce, supra} note 20, at 5.
\item \textsuperscript{172} \textit{Hearings (Feb. 1990), supra} note 12, at 146 (statement of Michael Becker).
\item \textsuperscript{173} \textit{Sturgiss, supra} note 17, at 33.
\item \textsuperscript{174} \textit{Id.}
\item \textsuperscript{175} \textit{Id.} at 33.
\item \textsuperscript{176} \textit{Id.} at 37-38. Note that this is partly because consumers are paying higher prices for all sweeteners due to the high sugar price.
\item \textsuperscript{177} Madison, \textit{supra} note 1, at 1717.
\item \textsuperscript{178} \textit{Id.}
\item \textsuperscript{179} \textit{Id.} They argue that when input prices increase, manufacturers are quick to increase the price of their products, but when input prices decline, manufacturers are loath to lower product prices. This has been dubbed the "ratchet effect."
\item \textsuperscript{180} \textit{U.S. Department of Commerce, supra} note 20, at 6.
\end{enumerate}
the price of sugar. Any nominal "revenues" generated by the sugar program should be outweighed by the resulting consumer savings.

III. INTERNATIONAL REPERCUSSIONS

A. Sugar Policy as Trade Policy

1. The GATT

Because the United States is a contracting party\(^{181}\) to the General Agreement on Tariffs and Trade (GATT),\(^ {182}\) its trade policies are governed by GATT rules.\(^ {183}\) Until recently there were few successful efforts\(^ {184}\) in applying GATT rules to agriculture.\(^ {185}\) In fact, the agricultural sector was partially exempted from some GATT rules.\(^ {186}\) In 1986, however, the GATT members resolved to negotiate new rules to reduce support and protection of agriculture within the Uruguay Round of multilateral trade negotiations.\(^ {187}\)

An understanding of the general framework of the GATT and its role in multilateral trade negotiations is important in assessing the impact of the U.S. sugar program within the context of U.S. trade relations. The GATT was adopted in 1947 as a temporary measure to liberalize

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181. Because the law at the time did not authorize the President to enter into an agreement for an organization without congressional approval, but only allowed Presidential agreements to reduce tariffs and other restrictions on trade, U.S. negotiators created the general GATT clauses to avoid the suggestion of an organization and multilateral decisions under the GATT are taken by the "CONTRACTING PARTIES" acting jointly and not by an organization. John H. Jackson, Restructuring the GATT System 12 (1990); General Agreement on Tariffs and Trade, Oct. 30, 1947, art. XXV, 61 Stat. A3, A7, 55 U.N.T.S. 187, 194 [hereinafter GATT]; 4 BISD (1969); (contracting parties are expressed in capital letters when acting jointly).

182. The United States became one of the 23 original Contracting Parties to the General Agreement on Tariffs and Trade on October 30, 1947. The GATT is binding on the United States as a matter of international law; however, as an executive agreement it was never ratified by Congress and therefore does not have the status of domestic law. See John H. Jackson, The General Agreement on Tariffs and Trade in U.S. Domestic Law, 66 Mich. L. Rev. 249 (1967).

183. Complete text in force as of March 1, 1959 is reprinted in General Agreement on Tariffs and Trade, 4 BISD 1-76 (1969).

184. See, e.g., United States Import Restrictions on Dairy Products, BISD (1st Supp.) 31-33 (1954) [hereinafter Netherlands Case].

185. This was because during the 1970s and early 1980s many countries, especially the U.S. and members of the EC attempted to protect their farmers from the effects of falling world prices using import duties and quotas. LANDELL MILLS (1990), supra note 32, at 3-1. As a result, their votes led GATT panels to eviscerate the few rules applicable to agriculture.

186. For example, Article XI:2 partially exempts agriculture from the general ban on quantitative prohibitions and restrictions, and Article XVI:3 provides less stringent rules for export subsidies on "primary products" than on other products. See GATT arts. XI:2, XVI:3.

world trade pending the creation of the International Trade Organization (ITO), which would oversee and harmonize post-war international trade relations.\(^{188}\) When Congress failed to ratify the ITO charter,\(^{189}\) the GATT was renewed every three years until it was made a permanent organization in 1955.\(^{190}\) With 101 contracting parties,\(^{191}\) accounting for eighty percent of world trade,\(^{192}\) the GATT is a major forum for world trade policymaking.

As an organization, the GATT monitors trade flows and policies, sponsors multilateral trade negotiation, and hosts dispute resolution proceedings.\(^{193}\) The GATT organization is administered by a Secretariat which acts on behalf of members and the Council of Representatives. Although several clauses of the GATT agreement call for "joint action" of the Contracting Parties, in practice GATT business is carried out through committees, working parties, panels and other bodies.\(^{194}\)

The GATT agreement itself, which includes the original text as amended, protocols, and the tariff schedules of each member country, is a legal document intended to regulate trade policy.\(^{195}\) The GATT goal, as stated in the agreement's preamble, is to "raise living standards through reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce."\(^{196}\)

Although GATT rules generally prohibit both import quotas and export subsidies,\(^{197}\) agricultural products come within the many exceptions and waivers\(^{198}\) which cloud the free trade goals proclaimed in the

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\(^{188}\) The GATT and the ITO were originally intended to reduce the possibility of international trade wars like those provoked by the Tariff Act of 1930, (popularly known as the Smoot-Hawley Tariff). See generally John H. Jackson, World Trade and the Law of GATT (1969) [hereinafter World Trade and the Law of the GATT].

\(^{189}\) The President submitted the ITO draft charter to Congress in 1948 but the organization never came into being because Congress failed to approve it, and in 1951 the President announced he would no longer seek approval. Jackson, Restructuring the GATT System, supra note 181, at 12.

\(^{190}\) Id. at 16.

\(^{191}\) As of January 1991, in addition to the 101 signatory countries, 29 were conforming to GATT rules on a de facto basis.


\(^{193}\) Id.


\(^{195}\) Id. Four key principles are stated in the agreement: 1) reduction of trade barriers and elimination of quotas; 2) non-discriminatory international trade policy; 3) permanent tariff concessions and; 4) peaceful settlement of trade conflict through consultation.

\(^{196}\) See GATT, arts. XI, XVI.

\(^{197}\) There have been over 200 waivers granted since 1947.
GATT agreement. Article XI:1 of the GATT specifically prohibits member countries from placing quantitative restrictions on imports from or exports to other contracting parties. But Article XI:2 provides exceptions for agricultural products, notably Article XI:2(c)(i)’s exception for import restrictions that are necessary to enforce restrictions on the quantities of the like domestic product permitted to be produced or marketed. Article XVI generally prohibits export subsidies on most industrial products if the subsidy results in the sale of the product for export at a price lower than the comparable domestic price of the product. Article XXV:5 permits the Contracting Parties, by a two-thirds majority vote, to waive GATT obligations. Under this authority, in 1955 the U.S. was granted a “waiver” for actions under Section 22, including import quotas or fees, necessary to sustain domestic farm supports. No other trade category is granted such special treatment under the GATT.

Because the GATT agreement provides no enforcement mechanism other than authorized retaliation, compliance depends largely on comity and fear of unilateral retaliation from other member states. Otherwise, members are encouraged to, and commonly do, use the GATT rules to guide dispute resolution among themselves. Member complaints that are not resolved through consultations are submitted to a panel of third party representatives for a ruling. Such a ruling is not legally binding until approved unanimously by the GATT Council.

199. The general waiver for U.S. agriculture products was implemented under GATT article XXV to protect domestic farmers as explained supra note 184. See also Chuck Freadhoft, Farm Trade: Ancient, Arcane and Agonizing, INVESTOR’S DAILY, Nov. 30, 1990, at 1.

200. GATT art. XI:1.

201. Id.

202. Thus, article XVI generally prohibits dumping.

203. GATT (March 5, 1955 decision of contracting parties), BISD (3d Supp.) 32-38 (1956) [hereinafter Waiver]. The decision waived U.S. obligations under articles II and XI of the GATT to the extent necessary to allow the U.S. to take action under Section 22. The U.S. requested the waiver in order to avoid any conflict between its GATT obligations and Section 22 which provides that “no trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the Section.”

204. 7 U.S.C. § 624.

205. In the 1950s and 60s the EC and Japan also devised ways to impose import restrictions by circumventing GATT rules. CONGRESSIONAL BUDGET OFFICE, supra note 192, at 79.

206. See GATT, supra note 181, at Art. XXIII:2. The only instance of GATT authorized retaliation was the Netherlands case against U.S. dairy quotas. See supra note 184.


208. JACKSON, supra note 181, at 23.

Thus, even the losing party in a dispute can block a ruling against it.\textsuperscript{210} Although even unanimously adopted rulings are not enforceable by the organization itself, the threat of unilateral retaliation by an injured party is sometimes enough to dissuade another country from taking a particular action.\textsuperscript{211} As one International Trade Commission study concluded, "When good faith compliance to GATT rules fails, it is the threat of retaliation, not the GATT dispute settlement process, that looms as the main restraint to abuse."\textsuperscript{212}

2. Australia Challenges U.S. Sugar Policy in the GATT

In 1988 Australia moved to establish a panel to examine the consistency of U.S. sugar import policy with the provisions of the GATT.\textsuperscript{213} According to Australian Minister for Trade Negotiations Newl Blewett, the case was brought as a result of three major Australian concerns: 1) shrinking U.S. import quotas\textsuperscript{214} and their direct effect on world sugar exporters; 2) decreasing world sugar prices resulting from the glut of world sugar production banned from U.S. markets; and 3) the possibility that the U.S. may become a sugar exporter.\textsuperscript{215} In its case before the GATT,\textsuperscript{216} Australia argued that the U.S. headnote quota was a restriction on imports prohibited by Article XI:1 and not fitting within the specific exceptions provided in Articles XI:2, II:1(b) and 7, XII, XIX, XX or XXV. The U.S. argued that the headnote quota was authorized under a note attached to tariff concessions made by the U.S. during GATT rounds in Annecy (1949) and Torquay (1951) and was further contained in GATT schedule XX (U.S.) as a valid "term, condition, or qualification," as permitted under Article II:1(b). The panel concluded that U.S. import quotas violated Article XI:1 of the GATT agreement which prohibits quantitative restrictions on trade.\textsuperscript{217} The panel report, adopted

\textsuperscript{210} Id.
\textsuperscript{211} CONGRESSIONAL RESEARCH SERVICE, SENATE COMM. ON AGRICULTURE, NUTRITION \& FORESTRY, 99TH Cong. 2d Sess., AGRICULTURE IN THE GATT: TOWARD THE NEXT ROUND OF MULTILATERAL TRADE NEGOTIATIONS 5 (1986).
\textsuperscript{213} STURGIS, supra note 17, at 47.
\textsuperscript{214} Australian exports to the U.S. have fallen from 811,000 tons in 1981 to 137,700 tons in 1990-91. Australia Criticizes U.S., 7 Int'l Trade Rep. (BNA) 1518 (Oct. 3, 1990) [hereinafter Australia Criticizes].
\textsuperscript{215} Id. Neal Blewett estimated the annual cost of U.S. policy to Australia is between A$123 million and A$313 million.
unanimously by the GATT Council on June 22, 1989, requested that the U.S. terminate or modify its sugar import quotas.

The GATT ruling did not find that the entire U.S. domestic sugar price support system violated the agreement. Only the administration of absolute import quota under the tariff headnote authority was found objectionable. The panel determined that the U.S. should not be permitted to impose an otherwise GATT-illegal quota as part of a tariff concession conditioned on, qualified by, or granted under the headnote authority.

In response, on September 13, 1990, President Bush announced a new two-tier tariff-rate quota system which he claimed would bring U.S. sugar policy into conformity with GATT law. Implemented October 1, 1990, the new proportionally GATT-consistent system leaves the domestic price support and "no-cost" elements of the U.S. sugar program intact. The amount of sugar entering the U.S. will not increase unless the gap between domestic and foreign sugar prices exceeds sixteen cents per pound. The U.S. Trade Representative continues to allocate the "first tier" or low-duty import quota amount on a country-by-country basis. Australian officials have

218. Hearings (Feb. 1990), supra note 12, at 89 (statement of Thomas A. Hammers, President of Sweetener Users Ass'n).
220. Id.
222. Tariffs are preferred over quotas because they are more transparent and allow some price signals from the world market. The impact of quotas cannot be directly determined, and this difficulty in measuring their protective impact precludes comparisons between countries and sectors. Furthermore, the protective effect of quotas can vary greatly with changing market conditions. CONGRESSIONAL BUDGET OFFICE, supra note 192, at 24.
225. See supra text accompanying notes 89-98 for a brief description of the new tariff quota system. A tariff quota system does not violate article XI:1, which applies only to "prohibitions or restrictions other than duties, taxes and other charges."
226. A separate provision in the 1990 Farm Bill does provide that there shall be marketing allotments if estimated consumption minus carry-in stocks and production is less than 1.25 million short tons. 1990 Farm Bill, supra note 5, sec. 901, § 206. See also supra text accompanying notes 29-40 for an explanation of the provision.
228. See supra text accompanying notes 89-98 for an explanation of the new two-tier system.
justifiably complained that the new U.S. system simply replaces one form of protection with another.\textsuperscript{229} Indeed, the new system is basically a structural modification of the old and has almost exactly the same practical effect.\textsuperscript{230}

3. The EC Challenges U.S. Sugar Policy in the GATT

In September 1988, the EC requested a GATT panel to examine the validity of U.S. restrictions on sugar and sugar-containing products under the 1955 waiver\textsuperscript{231} and under the Headnote Authority.\textsuperscript{232} The parties agreed to narrow the inquiry to the validity of U.S. import quotas on sugar-containing products and fees on refined sugar, in order not to re-address issues covered in the Australian case.\textsuperscript{233} In February 1990, the panel found U.S. Section 22 import quotas and fees on refined sugar permissible pursuant to the 1955 waiver for Section 22 actions.\textsuperscript{234} After five straight vetoes by the European Community,\textsuperscript{235} the GATT Council finally adopted the report in November 1990.

4. Sugar in the Uruguay Round

Agricultural trade policies have presented a major roadblock in the process of negotiations during the eighth round of GATT-sponsored multilateral trade negotiation, known as the Uruguay Round.\textsuperscript{236} The December 1990 breakdown of talks could seriously impede progress toward global trade liberalization, where GATT rules and procedures have been the driving force.\textsuperscript{237} Because the GATT provides one of the few

\begin{itemize}
  \item \textsuperscript{229} Australia Criticizes, supra note 214, at 1518 (statement of Neal Blewett, Australian Minister for Trade Negotiations).
  \item \textsuperscript{230} The major difference is that duties on sugar originating in Canada are bound. All duties on Canadian goods will be entirely eliminated pursuant to the U.S.-Canada Free Trade Agreement. Canada has been removed from the U.S. table of sugar quota allocations.
  \item \textsuperscript{231} See Waiver, supra note 203.
  \item \textsuperscript{232} United States: Restrictions on the importation of sugar and sugar-containing products applied under the 1955 waiver and under the Headnote to the Schedule of Tariff Concessions, GATT Doc. L/6631, BISD (37th Supp.) 228 (1990) [hereinafter Restrictions on the Importation of Sugar]. The panel was convened in response to a complaint by the European Community (EC). See also EC Talking with U.S. on GATT Panel Sugar Ruling, REUTERS, July 11, 1990, available in LEXIS, Nexis Library, Wires File [hereinafter REUTERS].
  \item \textsuperscript{233} Restrictions on the Importation of Sugar, supra note 232, at 255.
  \item \textsuperscript{234} Id. at 262. See also William Dullforce, GATT to Draw up Tighter Rules for Waivers in the Future, FIN. TIMES, July 26, 1990, § 1, at 3.
  \item \textsuperscript{235} REUTERS, supra note 232, at *2. The incident is just one example of a parochial interest getting caught in the cogs of the GATT system.
  \item \textsuperscript{236} The Uruguay Round was launched September 1986 at Punta del Este. See generally JACKSON, RESTRUCTURING THE GATT SYSTEM, supra note 181, at 36-41. Negotiations were officially scheduled to end in December 1990 but have been extended until June 1992.
  \item \textsuperscript{237} See CONGRESSIONAL BUDGET OFFICE, supra note 192, at ix.
\end{itemize}
policy forums in which long-term international goals guide the resolution of disputes over short-term national policy,\textsuperscript{238} the success of GATT agreements is a key mechanism in avoiding costly and debilitating global trade wars.\textsuperscript{239}

Present sugar policy is an aberration from the strong free trade stance of the U.S. in GATT negotiations. For years the U.S. has promoted an increasingly liberal trading system in both agriculture and industry.\textsuperscript{240} The U.S. proposal at the Uruguay Talks was consistent with this free trade stance. It called for "tarification," a shift from quotas and other non-tariff barriers to tariffs,\textsuperscript{241} followed by a ten year phasing out or reduction of tariffs and the elimination of subsidies over a five year period.\textsuperscript{242} Yet the sixteen cent per pound second tier tariff of the new quota system did not conform to the Uruguay Round proposal, which called for a maximum duty not to exceed the average price gap of 10.5 cents during the 1986-88 base period. Thus, despite rhetoric that it is preferable to try to bring trading partners up to higher standards rather than lower those standards,\textsuperscript{243} the U.S. has maintained a protectionist sugar policy.\textsuperscript{244} Furthermore, U.S. officials have shown no indication of any plan to unilaterally phase out tariffs or eliminate subsidies.

The sugar program has been defended as a bargaining chip,\textsuperscript{245} for use to induce other countries to eliminate their own protective agricultural policies.\textsuperscript{246} In the 1990 Farm Bill debate, the U.S. Trade Representative claimed that an elimination of sugar price supports, without

\textsuperscript{238} Id. at xx.
\textsuperscript{239} Id. at xx. See also Stuck in the Gooey Politics of Sugar, CHI. TRIB., Apr. 26, 1990, at C26, which points out the contradiction between U.S. trade policy and the U.S. sugar program and cites the possibility that higher sugar price supports could cause a trade war.
\textsuperscript{240} See Hearings (Feb. 1990), supra note 12, at 44 (testimony of Ambassador Julius L. Katz, Deputy U.S. Trade Representative).
\textsuperscript{241} This provision of the proposal was implemented by President Bush on October 1, 1990. See supra notes 89-98 and accompanying text.
\textsuperscript{242} Hearings (Feb. 1990), supra note 12, at 39 (statement of Ambassador Katz).
\textsuperscript{244} See Hearings (Feb. 1990), supra note 12, at 100. The Sweetener Users Association calls for immediate reform of the U.S. sugar program as a "poor example to set" in light of the U.S. free trade stance in GATT negotiations.
\textsuperscript{245} See CONGRESSIONAL BUDGET OFFICE, supra note 192, at 6, which states "governments will be most likely to reduce trade barriers when a tangible concession by one country can be roughly offset by a reciprocal concession from a trading partner."
\textsuperscript{246} As a result of the EC's significant sugar subsidies, since 1976 the EC has shifted status from major sugar importer to exporter, accounting for 13% of the sugar sold on the world market. See STURGISS, supra note 17, at 14. Two GATT panels have studied complaints by Australia, Cuba, India, Peru, and Brazil regarding EC export refunds for sugar. \textit{European Communities - Refunds on Exports of Sugar}, GATT Doc. L/4833, BISD (26th Supp.) 290
reciprocal concessions from other countries, would be equivalent to "unilateral disarmament" in GATT negotiations. However, it appears that there will be no unilateral disarmament, as neither the U.S. nor the EC will abandon their sugar programs without equivalent concessions from other countries regarding their own trade distorting policies.

Even if the multilateral talks produce a workable agreement on agriculture, any agreement will require congressional approval. Under rules adopted in conjunction with the Uruguay Round, Congress has authorized "fast track negotiating authority" for the GATT proposal. Under the fast track authority, the President is required to submit an agreement to Congress for ratification by a specified date. The President's original March 1, 1991 deadline was extended two years after the December 1990 deadlock in GATT negotiations. Once received, Congress must accept or reject the agreement without amendments within 90 days. The deadline can be extended only with the consent of the President and both Houses. Without the fast track authority, any GATT accord would be open to amendments from all interest groups and subject to termination by indefinite delay in committee, making it all but impossible for the U.S. to conform with the agreement of the other GATT members. Since December's GATT deadlock, the fast track authority of Congress was extended until June 1992.


252. The deadline was extended until June 1, 1993. Id.


256. The San Francisco Chronicle reported that if the fast track authority were not extended, "every lobby will have the right to seek amendments [to any GATT accord on agriculture] making U.S. conformity with the international community all but impossible." Johnathan Marshall, Trade Talks Key to Global Economy, SAN FRANCISCO CHRON., Dec. 5, 1990, at C-1.

257. Id.

Although the GATT talks may continue this year, the recent stand-off on agricultural issues makes prospects for multilateral concessions look increasingly dim. As long as the U.S. aversion to unilateral reform outweighs the interests of domestic consumers and Third World sugar producers, the world sugar market will remain one of the most distorted of all commodity markets.

B. Sugar Policy as Foreign Policy

The U.S. sugar import policy has long been an instrument of foreign policy. "[S]tarv[ing] Castro out of Cuba" is just one example of a foreign policy rationale behind a sugar import restriction. After the Spanish-American War, Cuban sugar was given a preferred status in the U.S. market. The Sugar Act of 1948 subsequently assigned a disproportionately large percentage of the U.S. import quota to Cuba. As a result of this preferential treatment, Cuba greatly increased its sugar production. Following the Cuban Revolution in 1959, the Cuban import quota was dramatically revoked. Subsequent amendments to the Sugar Act provided that the import quota of any country with which the U.S. did not have diplomatic relations should be filled by imports from other net sugar exporting countries "until such time as that country's quota might be restored following its return to the free world." Current law prohibits the allocation of a sugar import quota to any country that has not verified that it does not import any sugar produced in Cuba for re-export to the U.S.

263. The Sugar Act of 1948 assigned fixed allocations for domestic producers and the Philippines and variable quotas for Cuba and other foreign countries. Cuba was granted 98.6% of the foreign quota, giving the benefit of any increased consumption to Cuba almost exclusively. In addition, because the Philippines would not fill its quota for years in the aftermath of the devastation from the war, Cuba was assigned 95% of its unfilled quota. Id. at 37.
264. Id. at 31.
265. After mid-July, 1960, Cuba's share of the U.S. market was transferred to other countries. Id. at 38.
267. Id. at 39-40.
269. 7 U.S.C. § 1446 note. The 1990 Farm Bill, supra note 5, amended section 902(c) of the Food Security Act of 1985 to require the President to report to Congress: 1) the identity of
The U.S. has explicitly used sugar as a foreign policy sanction against Nicaragua. In the 1983/84 crop year, as the anti-U.S. Sandinista Government consolidated its control over Nicaragua, President Reagan reallocated all but 6,000 short tons of Nicaragua’s U.S. sugar import quota to El Salvador, Honduras, and Costa Rica. Nicaragua then brought a complaint before a GATT panel arguing, *inter alia,* that the U.S. explanation of the measure in terms of foreign policy considerations violated the fundamental principle, stated in paragraph 7(iii) of the Ministerial Declaration of November 1982, that no contracting party should use trade measures to exert pressure for the purpose of solving non-economic problems. The U.S. refused to address the Nicaraguan complaint, stating that because the action was not taken for trade policy reasons, an attempt to discuss the issue in purely trade terms within the GATT would be “disingenuous.” The panel subsequently found that “the U.S. had failed to carry out its obligations under the General Agreement,” and suggested “that the contracting parties recommend that the U.S. promptly allocate to Nicaragua a sugar import quota consistent with the criteria set out in Article XIII:2.” The U.S. ignored the GATT panel ruling until 1990 when democratic elections were held in Nicaragua and a pro-U.S. government replaced the Sandinista Regime. At that time Nicaragua’s full quota share was finally restored.

On November 20, 1965, Southern Rhodesia’s sugar import quota was suspended following a Presidential finding that it would be contrary to the national interest to continue the quota after that country’s unilat-

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U.S. quota recipient countries that are net sugar importers; 2) the identity of those net importers that have verified they do not import for re-export to the U.S. any sugar produced in Cuba; and 3) what measures have been taken against such countries that have re-imported Cuban sugar to the U.S. See 1990 Farm Bill § 902, 104 Stat. 3359, 3488.


271. *Id.*

272. Nicaragua also argued that the U.S. had violated various provisions of articles XI, II, XIII and Part IV of the GATT. *Id.* at 70-72.

273. *Id.* at 72.

274. *Id.*

275. The panel concluded that the U.S. measures against Nicaragua were inconsistent with the provisions of Article XIII:2, according to which “in applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions, . . .” *Id.* at 73-74.

276. *Id.* at 74.

eral declaration of independence. 278

While trade embargoes as a form of punishment may be justifiable, 279 they should not be used "against" our allies. 280 Sugar policy has become a type of foreign aid which apportions our "good will" among allies in the form of quota allocations. But the use of sugar policy as a form of economic assistance is inefficient and often counterproductive.

U.S. sugar policy actually undermines the U.S. foreign policy goal of assisting Third World economic development. 281 By restricting U.S. consumer and sugar user purchases of world market sugar, 282 the U.S. sugar program has reduced demand and diverted supply on the world sugar market, thus contributing substantially to depressed world market sugar prices. 283 Third World sugar producers and others who sell the bulk of their sugar on the world market have been devastated by low world prices. 284

Yearly decreases in U.S. quota amounts 285 have contributed to the collapse of the sugar industry in some of the poorest countries in the world. 286 The share of the U.S. sugar market granted to importers decreased from 45 percent in 1970 to 13 percent in 1990. 287 The shrinking U.S. sugar import market deprives these countries of much needed hard

279. E.g., article XXI of the GATT exempts actions a Contracting Party considers necessary to protect certain security interests. But compare Imports of Sugar from Nicaragua, supra note 270, at 72, in which the U.S. embargo in response to its perceived security interest was ruled in violation of the GATT.
280. Articles XIII:1 and I:1 prohibit discriminatory quotas and embargoes and article XIII:2(d) requires that allocated quotas be allocated according to the shares supplied during a representative period. Article XIII:5 makes these rules applicable to tariff quotas.
282. See supra Section I B of this Note for an explanation of the closed U.S. sugar market.
283. CONGRESSIONAL BUDGET OFFICE, supra note 192, at 83.
284. U.S. sugar quota recipients expressed their concern about the effects of U.S. sugar policy in a July 9, 1987 letter to Vice President Bush, which stated, "Our national economies are suffering damage from diminished access to the U.S. sugar market and from the effects of U.S. policy on the world market." It was signed by the Ambassadors of 20 sugar exporting countries: Argentina, Australia, Bolivia, Brazil, Colombia, India, Ecuador, Fiji, Ivory Coast, Malawi, Mauritius, Papua New Guinea, Paraguay, Peru, the Philippines, Madagascar, Swaziland, Thailand, Uruguay, Zimbabwe. (letter reprinted in Hearings (Feb. 1990), supra note 12, at 206-08).
285. See STURGISS, supra note 17, at 12-13 for country by country quota allotments from 1983 to 1990.
286. See e.g., Hearings (Feb. 1990), supra note 12, at 202-03 (comment of Mauritius Sugar Syndicate).
287. LANDELL MILLS (1990), supra note 32, at 1-40.
currency.\textsuperscript{288} Many of the developing countries harmed by the U.S. policy are recipients of U.S. foreign assistance monies (USAID) and targets of U.S. Development Assistance Programs.\textsuperscript{289} The contradiction between the U.S. sugar program and the Caribbean Basin Economic Recovery Act (CBERA),\textsuperscript{290} successor to the Caribbean Basin Initiative (CBI),\textsuperscript{291} is a stark example of one U.S. policy undermining another.\textsuperscript{292}

Originally, duty-free access for Caribbean Basin countries to the high priced U.S. sugar market\textsuperscript{293} was included in the Caribbean Basin Initiative as a form of economic assistance to those countries. Section 213(d) of CBERA, provides that all CBI beneficiary countries\textsuperscript{294} shall be afforded duty-free treatment for all imports of sugar, sirups, and molasses in the same manner as provided pursuant to the Generalized System of Preferences (GSP) program.\textsuperscript{295} Net income transfers from the U.S. to the CBI countries as a result of quota allocations and duty-free treatment under CBERA were as high as 250-280 million dollars in 1983.\textsuperscript{296}

Section 213(d)(3), however, authorizes the President to “suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered. . . if such action is necessary to

\textsuperscript{288} Big sugar exporters are often also big debtors, particularly among the CBI countries. See Hearings (Feb. 1990), supra note 12, at 202 (comments of the Mauritius Sugar Syndicate stating that most of the 39 countries which export sugar to the U.S. under quotas are “poor, developing countries that depend heavily upon sugar exports to the United States as a source of revenues to finance their current economic stability and their future economic development). See also id. at 206-08.

\textsuperscript{289} USAID sources indicate that the majority of the 39 countries which export sugar to the United States are recipients of some form of development assistance from the U.S.


\textsuperscript{291} The Caribbean Basin Initiative (CBI) was established by the U.S. in 1983 as an economic assistance program for developing Caribbean countries. For the current status of the program, see generally Caribbean Basin Initiative: Hearing Before the Subcomm. on International Trade of the Senate Comm. on Finance, 101st Cong., 2d Sess. (1990).

\textsuperscript{292} See Fox, supra note 281.

\textsuperscript{293} CBI countries are granted roughly 33\% of U.S. sugar quota allotments each year. The largest share, approximately 17\% in 1990/91, goes to the Dominican Republic. SUGAR AND SWEETENER (1991) supra note 49, at 10.

\textsuperscript{294} Sugar imported from Dominican Republic, Panama and Guatemala is treated separately. Such sugar is allowed duty-free entry, subject to absolute quotas. CBERA, § 213(d)(2).

\textsuperscript{295} Established in 1970, the Generalized System of Preferences (GSP) was designed to assist lesser developed countries by granting their exports of manufactured and semi-manufactured goods special tariff-free status. See DAVID H. BLAKE & ROBERT WALTERS, THE POLITICS OF GLOBAL ECONOMIC RELATIONS 37 (2d ed. 1983) for a brief summary of the GSP.

\textsuperscript{296} STURGISS, supra note 17, at 35.
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protect the price-support program for sugar beets and sugarcane.\textsuperscript{297} Even without such suspension, by 1987 Caribbean countries were losing in net terms as a result of reduced U.S. quota allotments.\textsuperscript{298}

As a major U.S. sugar quota recipient, the Dominican Republic understands best the ill-effects of diminishing U.S. import levels.\textsuperscript{299} With seven million people and an average per capita income of 730 dollars, the Dominican Republic lost approximately 400,000 jobs in the sugar industry between 1982 and 1988, when the U.S. began its quota policy.\textsuperscript{300} According to Georgetown University Economist Gary Hufbauer, "losses in sugar have totally canceled the benefits of the Caribbean Basin Initiative."\textsuperscript{301}

A bill introduced in the House of Representatives in March 1989\textsuperscript{302} would have provided a minimum floor on CBI country import quotas. The proposed law would have required that, when total U.S. import quota levels were reduced, CBI quotas would remain fixed at the expense of non-CBI holders of U.S. quotas.\textsuperscript{303} When the U.S. Administration declared the bill's preferential nature inconsistent with U.S. trade philosophy and the GATT,\textsuperscript{304} the bill lost momentum and ultimately failed.

In its deliberations over the 1990 Farm Bill, the U.S. Senate recognized the debilitating effect of the U.S. sugar program on Third World countries. Citing the importance of the U.S. sugar market for the countries of Latin America, especially in the Caribbean, Central America, and the Andean regions, the original Senate version of the farm bill included a provision addressing the issue explicitly. It required the General Accounting Office to report to Congress its recommendations for policies the U.S. might adopt to improve and enhance developing countries' access to world markets and reduce other distortions to world sugar

\textsuperscript{297} According to the legislative history, section 213(d) was intended to enable the President to protect the sugar price support program. H.R. REP. NO. 266, 98th Cong., 1st Sess. 17 (1987).

\textsuperscript{298} A July 24, 1990 Christian Science Publishing Society Report stated that sugar exports from the Caribbean Basin dropped 82\% from $544 million in 1981 to $97 million in 1988. In 1988, the cost of U.S. sugar policy to CBI countries was estimated to be $450 million. STURGISS, supra note 17, at 35.

\textsuperscript{299} See id.

\textsuperscript{300} Id.

\textsuperscript{301} Quoted in Peter Passell, \textit{Adding up the World Trade Talks: Fail Now, Pay Later}, N.Y. TIMES, Dec. 16, 1990, § 4, at 3.

\textsuperscript{302} H.R. 1233, 100th Cong., 2d Sess. (introduced to the House March 2, 1989 by Sam Gibbons).

\textsuperscript{303} Id.

\textsuperscript{304} STURGISS, supra note 17, at 46.
However, the Conference Committee deleted the Senate provision.\(^{306}\)

In desperation, many sugar-producing countries have turned to drug crops as a source of much needed export revenue.\(^{307}\) Although there are no definite statistics on the extent of drug production in sugar exporting countries, it is inevitable that such crop substitution will become more pervasive as the U.S. sugar import market shrinks faster than the U.S. drug market. Thus, while U.S. citizens are victims of drug-related crime and U.S. taxpayers finance drug interdiction efforts, the U.S. sugar program is in effect encouraging drug production.\(^{308}\)

U.S. sugar policy also harms relations with First World allies such as Australia, whose access to the U.S. sugar market is more limited each year.\(^{309}\) Sugar policy does not exist in a vacuum. Animosities developed as a result of sugar policies adversely affect the U.S. in all areas of negotiations with its allies. Such restrictive practices, for example, afford our allies justification for restriction of U.S. access to their markets.\(^{310}\) As markets become globalized, the U.S. should not be alienating its trading partners and allies.

The sugar policy has become an indirect and unintended form of economic assistance to world sugar importers because of its depressing effect on world sugar prices.\(^{311}\) The People's Republic of China and the former USSR are major beneficiaries of low world sugar prices.\(^{312}\) Japan, a relatively small sugar importer, added an average of 80-170 million dollars annually to its balance of payments surplus between 1982 and 1988 as a result of the U.S. sugar policy's impact on world prices.\(^{313}\) Libya, among the highest per capita sugar consumers on the African continent, buys 100 percent of its sugar on the artificially low-priced world market.\(^{314}\) Iraq likewise buys more than 95 percent of its sugar at bar-
gain world prices.\textsuperscript{315} Such countries may be considered among the least desirable beneficiaries of the U.S. sugar program.

\textbf{IV. STICKY SWEET POLITICS: WHAT KEEPS THE PROGRAM GOING}

Why did Congress vote\textsuperscript{316} to continue a policy that benefits a small group of about 12,600 farmers at the expense of so many? The answer lies, at least in part, in the U.S. political system and the relative power of interest groups.\textsuperscript{317}

Several incidents of sugar policymaking illustrate the way political considerations may outweigh policy goals. In 1977 President Carter authorized a program of direct payments to producers on the basis that the alternative, a price support system, would be: 1) inconsistent with the U.S. position in international trade negotiations,\textsuperscript{318} and 2) inflationary and directly contrary to the Administration's stated goals of easing inflation and deregulation in the interest of enhanced competition.\textsuperscript{319} Nonetheless, shortly thereafter an agreement between the Administration and Congress allowed for the establishment of a sugar price support program under the Agricultural Act of 1949.\textsuperscript{320} During the debate on the 1981 Farm Bill, the Reagan Administration also strongly opposed proposals for a sugar program, but found it necessary to bargain with Congress in order to achieve objectives that it considered more important.\textsuperscript{321}

The sugar alliance is a group with phenomenal political power. Its membership includes processors, refiners, beet and cane farmers, corn farmers and wet millers, and a well-organized network of political action committees (PACs).\textsuperscript{322} A recent study by the Center for Public Integrity concluded that sugar PAC contributed 2.6 million dollars to congres-

\textsuperscript{315} Id.
\textsuperscript{316} See supra notes 5-6. (Congressional vote to extend sugar price supports).
\textsuperscript{317} STURGISS, supra note 17, at 41.
\textsuperscript{318} At the time, the Administration was involved in negotiations regarding the International Sugar Agreement. See also J.B. PENN, The Federal Policy Process in Developing the Food and Agriculture Act of 1977, AGRICULTURAL FOOD POLICY REVIEW 29 (U.S.D.A. ed., 1980).
\textsuperscript{319} Vincent A. Mahler, Controlling International Commodity Prices and Supplies: The Evolution of U.S. Sugar Policy in Food, the State and International Political Economy: Dilemmas of Developing Countries 169 (F. Tullis & W. Hollist eds., 1986).
\textsuperscript{320} STURGISS, supra note 17, at 42. Although a sugar program was not included in the draft 1977 farm bills, Congressman de la Garza proposed a successful amendment to support the price of sugar on the final day of House debate.
\textsuperscript{321} Id.
\textsuperscript{322} Madison, supra note 1, at 1717.
sional campaign committees between 1985 and 1990. These PAC are continuously lobbying legislators and the Executive Branch to influence sugar policymaking. The power of congressional subcommittees in the U.S. political system allows sugar interests to influence policymaking by developing relationships with only a few key legislators.

Skillful vote trading has been key to the past successes of the sugar lobby. In addition, sugar interests have joined the agricultural coalition in lobbying Congress to maintain support for all U.S. farm products. Since 1977, the sugar program has been part of the omnibus farm bill which includes provisions supported by an increasingly wide coalition of different interest groups. When asked what happened to his sugar reform amendment to the 1990 Farm Bill, Rep. Thomas J. Downey responded: "The sugar group did a lot better job of trading for votes."

Consumer groups and others who oppose the sugar program tend to lack the effectiveness of the farm coalition, due in part to the lack of transparency of the program. Consumers are essentially unaware of the sugar program because its costs are very diffuse, affecting a large number of people to a small degree. The National Bureau of Economic Research concluded in 1988 that, had the sugar program been transparent and readily comprehensible to an informed citizenry, it could not have persisted in anything like the form it did.

V. RECOMMENDATION

The correct approach to the U.S. sugar problem is a policy of integrated domestic and multilateral reform. The U.S. must formulate a do-

324. STURGISS, supra note 17, at 40.
326. The Subcommittee on Cotton, Rice and Sugar of the House Committee on Agriculture is the key policymaking body because the Senate Committee on Agriculture, Nutrition and Forestry has no members from any of the major sugar-producing states.
327. STURGISS, supra note 17 at 44.
328. See Greene, supra note 134.
329. Sugar is Title IX of the 1985 and 1990 farm bills.
330. In addition to support programs for such other commodities as dairy, cotton, rice, wheat, soybeans, oats, barley, tobacco, peanuts and corn, the Farm Bill includes export subsidies, environmental programs and food assistance programs.
331. Greene, supra note 134, at *2.
332. STURGISS, supra note 17, at 43-44.
mestic sugar policy that is both fair to U.S. consumers and industrial sugar users, and compatible with U.S. foreign policy and trade goals. Implementation of the U.S. proposal in current GATT negotiations, calling for "tarification" and subsequent reduction of all import protection and export subsidies, is the first step toward such a policy.

Several barriers must be overcome in order to bring U.S. domestic sugar policy into line with U.S. international trade policy. The fact that farm bill legislation and multilateral trade agreements are debated and concluded in separate forums poses one such barrier. The vastly divergent interests controlling policy decisions in the separate forums pose a still greater barrier. Even the farm bill coalition, cohesive on the domestic front, is split within the GATT negotiations between those groups who expect to gain from foreign market access (e.g., wheat and feed grains), and those who fear losing U.S. import protection (e.g., sugar, cotton, dairy, peanuts). One consistent and comprehensive policy for both forums is absolutely essential.

Congress must put its undivided support behind the U.S. position in the multilateral arena and express a willingness to modify its sugar program to comply with multilateral agreements reached between GATT member countries. In order to put the U.S. proposal in motion, Congress must set a timetable for increasing the total allocation of foreign sugar imports.

In addition, a gradual reduction in the domestic sugar loan rate is necessary to bring U.S. sugar prices more in line with world prices. As inefficient producers drop out of the market, some lost market share will be recaptured by countries which have been hurt by the U.S. quota system, and the average cost of domestic production will decline. Even at significantly lower prices, many U.S. sugar growers and processors will continue to be profitable.

The United States must provide the impetus for multilateral reduction of agricultural protectionism. With the huge U.S. market on the bargaining table, the U.S. is in a unique position to take a lead that other

334. See Section III A 4 of this Note.
335. The issue is addressed in an April 1990 LANDELL MILLS COMMODITY STUDIES REPORT which states "[r]eaching an international accord may assuage the United States' international partners, but it is not good politics at home." LANDELL MILLS (1990), supra note 32, at 1-43.
336. Some U.S. producers would be removed from the market as a result of a reduced loan rate according to a statement of the Sweetener User's Association in Hearings (Feb. 1990), supra note 12, at 98.
337. Id. at 105 (statement of Owen Gustafson, Fair Farm Policy).
338. Id. at 98 (statement of the Sweetener User's Ass'n).
countries likely will follow rather than risk U.S. retaliation. The U.S. Congress must stand behind the U.S. international trade delegation in reforming U.S. sugar policy.