The Importance of Disciplining the Choice of Policy Instrument to the Effectiveness of the GATT as International Law Disciplining Agricultural Trade Policies

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ABSTRACT

This work seeks an answer to the legal difficulties in applying the GATT to agriculture.

It concludes by providing the answer in the following thesis which applies not only to agriculture but to any sector of trade. The thesis is that:

(1) in order to make the GATT operate effectively as a regulator of economic relations between states, it is a necessary condition of success that the rules are constructed so that they can operate effectively as a regulator of the way governments regulate economic relations between entities within states; and

(2) in order to operate effectively as a regulator of the way governments regulate economic relations between entities within states, it is a necessary condition that the rules are constructed so as to properly embody the ranking of trade policy instruments that economic theory and public choice theory suggest, preferring price-based border instruments to quantity-based border instruments and preferring non-border instruments to border instruments.

Part 1 introduces the problems with applying the GATT1947 rules to agriculture and introduces the search for an explanation in the way that the rules regulate different policy instruments.

Part 2 uses certain economic and public choice theory to compare, in terms of likelihood and of cost, the choices that an individual state can make between policy instruments, so as to propose criteria for the optimal construction of GATT rules.

Part 3 analyzes the GATT1947 rules relating to import barriers, export subsidies and domestic support and comprehensively examines the legal problems in applying them to agricultural trade. It concludes that deficiencies in the way the rules embodied distinctions between different policy instruments did contribute to the difficulties in applying the rules to agriculture.

Part 4 examines whether these deficiencies were remedied during the Uruguay Round by examining the negotiation on agriculture and the relevant post-WTO legal instruments.

Part 5 concludes, specifically, that the thesis provides, in relation to agricultural trade, both an explanation for the past problems and solutions for the future and, more generally, that the analysis of the agricultural sector supports the application of the thesis to GATT rules generally, regardless of sector.