

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**TRAINING MODULE FOR
MULTILATERAL TRADE
NEGOTIATIONS ON
AGRICULTURE**



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ABBREVIATIONS

- AB** Appellate body
- ACP** African Caribbean Pacific countries
- AMS** Aggregate Measurement of Support
- AoA** (Uruguay Round) Agreement on Agriculture
- ATPSM** Agricultural Trade Policy Simulation Model
- AVE** Ad Valorem Equivalent tariff
- CAP** Common Agricultural Policy
- DC** Developing country
- DSB** Dispute Settlement Body
- DSU** Dispute Settlement Understanding
- ETI** Extraterritorial Income Exclusion Act
- FAO** Food and Agriculture Organization
- G10, G20, G33** Negotiation Groups, see Annex I
- GATT** General Agreement on Tariffs and Trade
- GDP** Gross Domestic Product
- GI** geographical indication
- GNP** Gross National Product
- HS** Harmonized System (of tariffs)
- IDB** Integrated database
- LDC** Least Developed Country
- MFN** Most-Favoured-Nation principle
- NAMA** Non-agricultural market access negotiations
- NTB** Non-tariff barrier
- NTM** Non-tariff measure
- OECD** Organisation for Economic Co-operation and Development
- S&D or SDT** Special and differential treatment
- SCM** Subsidies and Countervailing Measures (agreement)
- SP** Special products
- SPS** Sanitary and phytosanitary (agreement)
- SSG** Special agricultural safeguard mechanism
- SSM** Special agricultural safeguard mechanism for developing countries
- STE** State Trading Enterprise
- USDA** United States Department of Agriculture
- TBT** Technical barriers to trade
- TNCDB** Trade Negotiations and Commercial Diplomacy Branch

TRIPs Trade-related aspects of intellectual property rights

TRQs Tariff Rate Quotas

TSE Total Support Estimate

UNCTAD United Nations Conference for Trade and Development

UNDP United Nations Development Programme

UR Uruguay Round of Trade Negotiations

UV Unit values

WTO World Trade Organization

ACKNOWLEDGEMENTS

This module is for information and training purposes only and does not intend to state the official negotiation positions of WTO Member States. It aims to provide training materials and inputs for developing country trainers, lecturers and Government officials involved in training and research tasks.

This training module serves to inform trade experts and negotiators of developing countries of the major economic trends in agricultural trade and of the multilateral rules which govern trade in agricultural products. In so doing, it also serves to put the current WTO trade negotiations in agriculture in context.

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INTRODUCTION

A new agreement on agriculture is now being negotiated in the WTO. Agriculture is a key element for a successful completion of all of the linked negotiations on a range of subjects. Agricultural trade liberalization is of great importance to developing countries in particular. Significant trade distortions remain, even after the implementation of the Uruguay Round Agreement on Agriculture. As well as an ambitious round that improves market access for their exports, developing countries are also looking for flexibility to protect specific industries that they consider important for food security, livelihood security and rural development. Achieving the appropriate balance between ambition and flexibility is proving to be difficult.

Agriculture is a sensitive sector in both developed and developing countries. It is a politically sensitive sector and in some developing countries an economically sensitive sector as well, as a high share of the population in these countries depends on the agricultural sector. Some people say agriculture "is different" and cannot just be traded as any other good since it is the basis for survival. Furthermore, it is argued that agriculture is multifunctional, i.e. it is not just about producing food but is linked to other issues such as livelihood security, rural development and landscape, to the point of tourism. Others maintain, however, that liberalizing agricultural trade offers great potential for efficiency gains as well as distribution benefits for the poorest members of our societies. Hence, negotiations are complex and have been very difficult in the past.

It has often been said that agriculture is the key to the successful completion of the Doha Round negotiations. Indeed, other negotiation groups, such as the non-agricultural market access negotiations (NAMA), often wait for results in the agriculture negotiations, for example to determine the level of ambition. Furthermore, negotiations were suspended in July 2006 because WTO Members could not agree on how to address the most controversial issues in agriculture. Negotiations were resumed despite a lack of deadlock breaking progress in February 2007.

The issues in the negotiations on agriculture are numerous and complex. This module provides an overview of the current Agreement on Agriculture that was the outcome of the Uruguay Round negotiations, implementation of commitments and ongoing negotiations. All three so-called pillars of agriculture, namely market access, domestic support and export competition, are discussed with an emphasis on the importance and impact of potential policy changes on development. Also covered are cross-cutting issues, such as special and differential treatment for developing and least developed countries and the cotton initiative.

Recently, disputes concerning the Agreement on Agriculture have been dealt with by the WTO Dispute Settlement Body. Three cases are discussed in chapter IV. The impact of trade policy changes on developing countries and different groups within these countries can be analysed using the UNCTAD / FAO Agricultural Trade Policy Simulation Model which is introduced in chapter V. Chapter VI highlights the important issues regarding agriculture for acceding countries.

CHAPTER I:

THE IMPORTANCE OF AGRICULTURE TO DEVELOPING COUNTRIES

I.1. Importance of agriculture in developing countries

Agriculture plays an important role in low-income economies, accounting for more than 70 per cent of employment and more than 30 per cent of gross domestic product (GDP). In middle-income countries, employment at 40 per cent is still high (Table 1). More than 95 per cent of all farmers are living in developing countries. According to the World Bank, 74 per cent of the population of least developed countries (LDCs) and 54 per cent of middle-income countries live in rural areas¹. Furthermore, more than two-thirds of the world's poor live in rural areas in developing countries.

In some countries, such as Ethiopia and Malawi, the percentage of household income in rural areas derived from agriculture is around 76 per cent. Some 72 per cent of agricultural income is income from subsistence farming and 28 per cent is agricultural cash income.

Women provide a large proportion of the labour that goes into agriculture, including as self-employed food producers or as family workers, which is often not reflected in official data². According to FAO, two-thirds of the female labour force in developing countries is engaged in agricultural activities. Since trade liberalization usually favours agricultural exports over the production of food crops, women who are primarily engaged in the latter may be disadvantaged in taking up new export opportunities as they tend to be smallholders and often face difficulties with regard to property rights to land and accessibility to credit and other resources. Thus, agriculture has an important gender dimension too.

Additionally, agricultural goods are important not only for the income side but also for the expenditure side. In general, the poorer a country or a household, the higher its share of expenditure on food. This makes food prices relatively more important for poor households than for richer ones. In certain regions, a large share of the population is undernourished. Worldwide, the latest estimates from FAO³ indicate that 840 million people are undernourished. Six million children under the age of five die each year as a result of hunger.

¹ This is based on a country sample for which data were available. See World Bank (2004), "Global Economic Prospects", World Bank, Washington DC.

² For this paragraph, see FAO, "Agriculture Trade and Gender" and UNCTAD, "Multilateral Negotiations on Agriculture and possible effects on women in developing countries", both in UNCTAD (2004), "Trade and Gender, Opportunities and Challenges for Developing Countries".

³ FAO (2002), "The State of Food Insecurity in the World", Rome

Table 1: The importance of agriculture to developing countries

Countries	Value added in agriculture (per cent of GDP)	Employment in agriculture (per cent of total)
High income	2	4
Middle income	9	40
Least developed	32	72
World	4	37

Latest available year; Source: World Development Indicators 2005, World Bank

Although many countries argue that food security will only be achieved through self-sufficiency, others claim that it can also be achieved through an appropriate combination of domestic production and imports. Economic access to food is as important as physical access. Certain constraints, such as a lack of foreign currency and the wish to limit dependency, militate in favour of policies that stimulate domestic production in developing countries. The agricultural sector could be an engine of economic growth, especially in poor developing countries.

In the course of development, agricultural productivity has increased and the share of employment and output in agriculture has decreased. In high-income countries, employment in agriculture accounts for only four per cent and the contribution to GDP is only two per cent. Globally, agricultural production contributes some four per cent of the gross national product (GNP), a share that has been declining over the past few decades (e.g. in 1970 it was more than 10 per cent).

Because of the importance of agriculture in developing countries, the comparative advantage that many of them have in the production of agricultural goods, and the challenges of globalization and the Millennium Development Goals, it is important to focus on this sector's international trading regime.

I.2. Agricultural trade

Agricultural trade remains important for many countries throughout the world, and in particular for developing and transitional economies. Agricultural trade accounts for some 10 per cent of total merchandise trade today, compared with 30 per cent 40 years ago. The volume growth in agricultural trade between 1990 and 2002 was around four per cent, but since trade in manufactures is more dynamic the share of agricultural trade is declining.

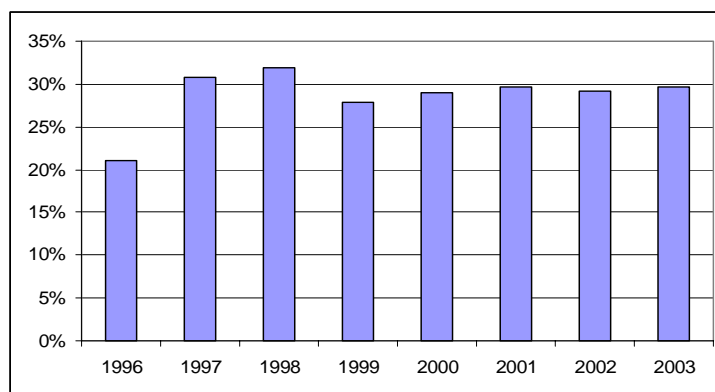
Most of the growth in agricultural trade comes from an increase in trade in processed agricultural products, where growth rates are higher than for unprocessed goods. A shift towards more processed agricultural products can be observed in developed and developing countries. This means there is greater specialization in the value-adding process. However, countries with a very low share of processed products in their agricultural exports tend to be low-income countries⁴.

Agricultural trade and developing countries

As a group, developing countries account for 30 per cent of global agricultural trade, a share that has remained steady in recent years (figure 1). Intra-developing country (South–South) trade is even larger: 43 per cent of developing country agricultural exports go to developing countries and 48 per cent of their agricultural imports originate from other developing countries.

Figure 1:

Share of developing country agricultural exports in world exports



Source: UNCTAD calculation based on UN Comtrade

In Africa, the share of agricultural exports to total merchandise exports is relatively stable at around 15 per cent, but this reflects the absence of growth in manufacturing exports. In Latin America, excluding Mexico, the share of agricultural exports is as high as some 30 per cent, while in another 32 countries the share exceeds 50 per cent⁵.

In LDCs, exports of agricultural products account for about 21 per cent of total merchandise exports. This works out to some US\$ 6.3 billion for all 50 LDCs, which are currently on the corresponding United Nations list. In some sub-Saharan African and several other low-income countries, agricultural products account for almost half of goods exports. As a share

⁴ WTO World Trade Report 2004

⁵ Data from WTO World Trade Report 2004

of merchandise imports, agriculture again makes up about 21%. However, since merchandise imports are higher, LDCs import more agricultural goods in absolute value than they export. Imports stand at some US\$ 9.2 billion. Many LDCs are in fact net food-importing countries, which is an important factor when the economic effects from trade liberalization are analysed. LDCs import some 40 per cent of their agricultural goods from OECD countries and half of their exports go to OECD countries.⁶ The rest is "South–South trade".

One concern is the concentration of exports on a narrow range of products, mostly primary commodities. This is very high for LDCs, where the weighted average of the share of the leading three export products in total merchandise exports amounts to 76 per cent⁷. The lack of diversification is a concern because it leaves countries exposed to the risk of commodity price fluctuations.

In short

To sum up so far, developing countries have a higher degree of dependency on agricultural production and exports than developed countries. They rely on a narrower export base than developed countries and this export base is often to a large extent dependent on agricultural products. While a number of Asian countries and very few developing countries in America have been able to diversify their export base, the specialization of African countries has persistently intensified over time⁸.

In terms of impediments to trade, some developing countries face barriers in both developed and other developing countries while others have preferential access. There remains much about which to negotiate. The mandate for further negotiations is the subject of the next section.

⁶ Figures in this paragraph come from UN Comtrade and the World Development Indicators, World Bank.

⁷ UNCTAD, LDC Report 2002, page 108.

⁸ Laird, S., Turini and Cernat, Back to Basics: Market Access in the Doha Agenda, Geneva, UNCTAD, UNCTAD/DITC/TAB/Misc.9, 2003.

CHAPTER II:

MANDATE FOR MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE

The Doha Ministerial Declaration of 2001 launched new negotiations on a range of subjects, including agriculture, on which negotiations had begun earlier under the "built-in agenda" of the Uruguay Round. The Agreement on Agriculture incorporated in Article 20 the mandate to continue the reform process to achieve "the long-term objective of substantial progressive reductions in support and protection". At the fourth WTO Ministerial Conference in Doha, this mandate was reaffirmed and enforced within the Single Undertaking in which virtually all linked negotiations were supposed to end by January 2005. Because several deadlines were missed, negotiations will end later.

Article 20 (AoA)

Continuation of the reform process

In the area of agriculture, the Doha Ministerial Declaration addressed the following issues (Articles 13 and 14):

- The work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture;
- The long-term objective agreed at the Uruguay Round to establish a fair and market-oriented trading system, to strengthen the rules that govern the international trade in agricultural products, and to correct the distortions in world agricultural markets;
- The commitment to carry out comprehensive negotiations aimed at substantial improvements in market access, reductions of, with the view to phasing out, all forms of export subsidies and substantial reductions in trade-distorting domestic support;
- The understanding that the special and differential treatment of developing countries shall be an integral part of all elements of the negotiations and that the specific concerns of developing countries shall be effectively addressed;
- The commitment to take into account non-trade concerns; and
- The need to establish modalities upon which Members will submit their comprehensive draft schedules for the further commitments.

Doha Mandate

Single Undertaking:

- ◆ Substantial improvements in market access;
- ◆ Reductions of, with a view to phasing out, all forms of export subsidies;
- ◆ Substantial reductions in trade-distorting domestic support;
- ◆ Special and differential treatment provisions as an integral part of all elements of the negotiations.

The Doha Declaration offers an ambitious mandate for continuing the reform process in agricultural trade. It aims at the phasing-out of export subsidies, which have a detrimental effect on developing country producers' ability to compete in world markets, as well as disciplining further trade-distorting domestic subsidies and market barriers. In addition, it provides for improvements in the current special and differential treatment provisions and/or the inclusion of new ones in all negotiating areas. The ongoing negotiations, therefore, offer an opportunity for shaping the multilateral rules governing agricultural products to the particular needs of developing countries in order to allow them to develop their own agricultural sectors, thereby improving food security and rural development.

After the Doha Ministerial meeting, the negotiations went into the phase for establishing the "modalities", that is to say the establishment of mechanisms that determine the new concessions and commitments - including numerical targets and formulae - for further agricultural liberalization. The negotiations on modalities were supposed to end by March 2003. This deadline was, however, missed and WTO members were also unable to agree on a "framework" for modalities at the Fifth Ministerial Meeting in Cancun.

Modalities: Mechanisms for further commitments.

These modalities will serve as the basis for Members to produce and submit their comprehensive draft commitments – the schedule offer.

Agriculture is a politically sensitive sector in developed and developing countries alike. Furthermore, both developed and developing countries have widely divergent views on the optimal speed and/or the extent of agricultural liberalization. This makes the negotiations very difficult and complex. The split is along importer–exporter lines rather than North–South as in other areas of the negotiations.

Framework: Roadmap for establishing negotiating modalities in agriculture.

The framework will serve as a basis for further negotiations on modalities.

In July–August 2004, the WTO General Council agreed on a "Framework for Establishing Modalities in Agriculture" that provides a basis for the further negotiations of full modalities in the next phase. The text is not legally binding and may not be used in any dispute settlement proceeding under the dispute settlement understanding (DSU).

At the Hong Kong Ministerial meeting in December 2005 further details to the framework were added.⁹

The Framework Agreement of July 2004 brought the negotiations back on track and set out roadmaps and key benchmarks for the conduct of agricultural negotiations; however, details of formulas, targets and criteria were not specified and therefore the "modalities" were still left for further negotiations. At Hong Kong in December 2005, WTO Ministers agreed on some additional issues but, again, there was no agreement on the most controversial aspects. The Framework Agreement and the Hong Kong Ministerial Declaration are presented and discussed in chapter 3.

⁹ WTO (2004), Doha Work Programme, Decision Adopted by the General Council on 1 August 2004, (WT/L/579); WTO (2005), Doha Work Programme, Ministerial Declaration, WT/MIN(05)/DEC.

Chapter 3 of this module also illustrates the various elements involved in the production of such modalities.

Doha Round negotiations were expected to conclude with a single undertaking in December 2006 among 149 WTO Members. In July 2006, however, negotiations were suspended mainly as a result of differences in agriculture of major trading partners. The Doha-Round negotiations were resumed in all negotiating groups in January/February 2007. Multilateral talks have been resumed despite the fact that there has been little or no evidence that the impasse has been settled.¹⁰

¹⁰ For an analysis of the suspension see United Nations "International trade and development: Report of the Secretary-General" A/61/272, 18 August 2006.

CHAPTER III:

TRADE NEGOTIATIONS IN AGRICULTURE:

This section looks at the main negotiating issues, i.e. market access, domestic support, export subsidies and other related issues. In each case, there is a summary of the current multilateral trade rules, followed by an account of implementation of Uruguay Round commitments and finally, a brief outline of the relevant modalities. Section 1 provides an overview of the Agreement on Agriculture and related agreements.

III.1. Overview of the Agreement on Agriculture

III.1.1. Objectives and outline

In 1994, at the end of the Uruguay Round, the Agreement on Agriculture was signed in Marrakech, and subsequently came into force on 1 January 1995. The Agreement on Agriculture is a supplementary agreement on trade in goods. The whole package is called the "Multilateral Agreement on Trade in Goods" and is an annex of the "Marrakech Agreement establishing the WTO".

The implementation period is six years for developed countries and 10 years for developing countries starting from 1995. Implementation of the commitments is reviewed by the Committee on Agriculture, which usually meets four times per year.

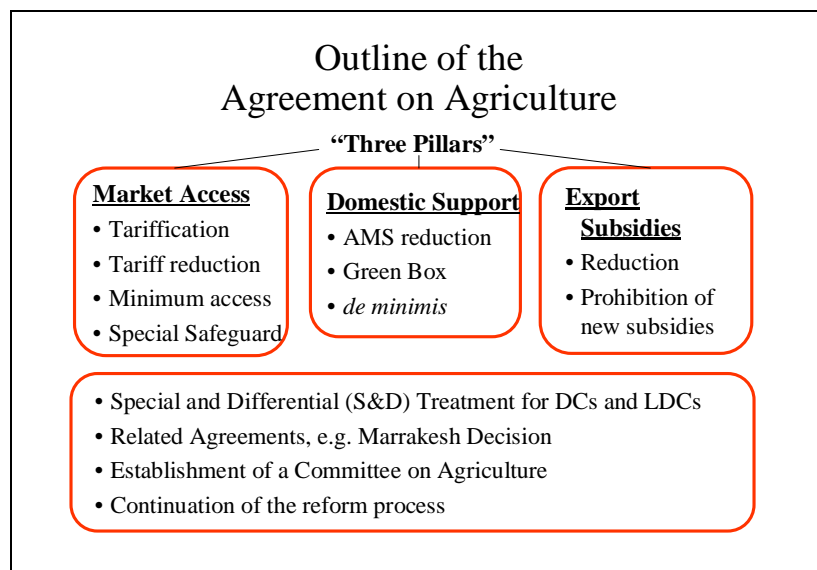
The long-term objective, as agreed during the Uruguay Round and repeated in the Preamble of the Agreement on Agriculture, is "to establish a fair and market-oriented agricultural trading system". Market orientation of policies shall be increased and predictability and security for importing and exporting countries improved.

Objectives of the Agreement on Agriculture

- **Objectives** of the Agreement on Agriculture:
 - "Make policies more market oriented"
 - "Improve predictability and security for importing and exporting countries"
- **Procedures** to step towards a transparent, fair and market-oriented trading system:
 - Tarify trade barriers
 - Reduce protection and subsidies
 - Take non-trade concerns such as food security into account
 - Ensure special and differential treatment for developing countries

During the Uruguay Round, countries agreed to move towards a more transparent and market-oriented trading system through the tariffication of trade barriers, which is the translation of non-trade barriers into tariffs, the reduction of protection and subsidies, the consideration of so-called non-trade concerns like food security and environmental issues, and special and differential treatment for developing countries, which means that developing countries had longer implementation periods and lower reduction commitments.

These procedures will be considered in greater detail later, but first we shall look at an outline of the contents of the Agreement on Agriculture



In the Agreement on Agriculture there are provisions for the so-called “three pillars of agriculture”: market access, domestic support and export subsidies. As regards market access, the agreement determines the tariffication process, the tariff reduction commitments, minimum access to all agricultural markets, and a special safeguard provision that protects tariffed markets from import surges.

Three pillars of agriculture: market access, domestic support and export subsidies

As far as domestic support is concerned, support measures are categorized and reduction commitments specified. Restricting domestic policies was an important change in the tradition of GATT, an organization that had focused exclusively on tariffs. For export subsidies, the agreement also specifies the disciplines and the reduction commitments.

In addition to the three pillars, the special and differential treatment for least developed and developing countries and relations to other agreements, such as the Marrakesh Decision, were determined in the Agreement on Agriculture. A Committee on Agriculture was established and Ministers agreed to continue the reform process.

The products that are covered by the AoA are not only basic products such as wheat, milk and live animals, but also processed products such as bread, butter, chocolate and sausages. Coverage also includes wines, spirits, tobacco products and such fibres as

Product coverage: basic products and processed products

cotton, wool and silk.

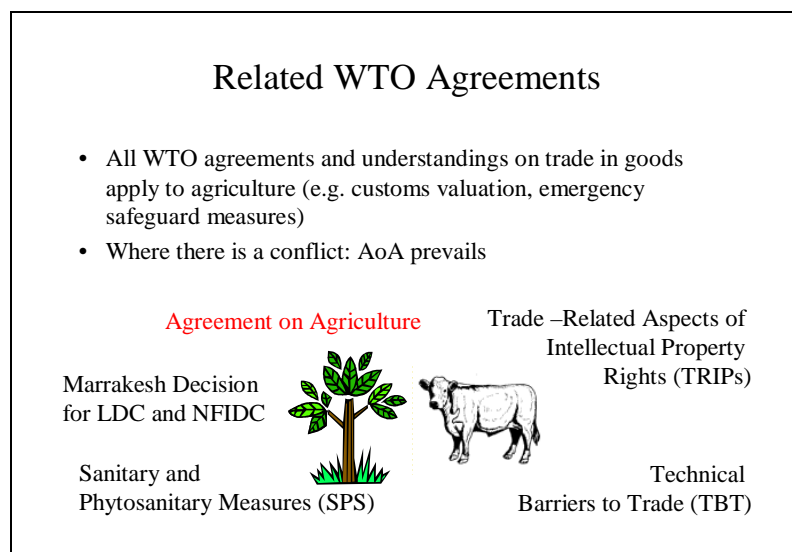
However, fish and fish products or forestry products such as timber and rubber are not covered.

The Agreement on Agriculture does not contain specific targets. Specific numbers like 24 per cent, which is the reduction commitments for tariffs for developing countries, are specified in the modalities, not the Agreement. Country-specific commitments may be found in the country schedules, which are an integral part of the GATT.

Before we look at the first of the three pillars of agriculture, namely market access, we shall briefly discuss related agreements, which are mentioned in the Agreement on Agriculture.

III.1.2. Related agreements

It is not only the AoA that determines the rules for trade in agricultural goods. In principle, all WTO agreements and understandings on trade in goods apply to agriculture, for example the GATT 1994 and WTO agreements on matters such as customs valuation, import licensing procedures or pre-shipment inspections. Whenever there is a conflict, however, the provisions of the AoA prevail.



There are four other agreements, which specifically impact on trade in agricultural goods.

The **Marrakech Decision for least developed countries and net food-importing developing countries** recognizes that these countries may experience difficulties in obtaining food from external sources on reasonable terms and conditions during the reform programme. The mechanisms designed to ensure that the Uruguay Round Agreement does not adversely affect these countries focus on the availability of food aid, export credits in favour of LDCs and NFIDCs, and resources from international financial institutions to avoid short-term difficulties.

The agreements on **Sanitary and Phytosanitary (SPS) measures** and on **Technical Barriers to Trade (TBT)** deal with the problem of ensuring country-specific technical regulations, product standards and safe food while at the same time limiting the scope for these measures to be used as an excuse for protecting domestic producers. An example is the US–EU dispute over genetically modified organisms in food imports. Possible measures comprise standards for additives in food and drink, labels on contaminants in food and drinks, certification for applied food safety, animal or plant health, requiring processing methods with implications for food safety, and plant and animal quarantine.

Although the SPS agreement provides for the right of WTO members to choose their appropriate level of protection this choice is limited, as SPS measures may be applied only to the extent necessary to protect human, animal or plant life or health if they are based on scientific principles and on sufficient scientific evidence. This obligation is not valid for provisional measures or in case of emergency if they do not discriminate between imports from different countries (MFN principle) or between domestic products and imports (national treatment).

SPS measures are deemed to be necessary if they are based on international standards such as the Codex Alimentarius Commission (food safety¹¹) or if they are based on scientific risk assessment. The choice of measures should be consistent in the sense that WTO members must avoid unjustifiable differences in the level of health protection related to different situations and should be not more trade restrictive than necessary. More information is available from the UNCTAD SPS training module.¹²

The two agreements are especially important for developing countries as it is becoming increasingly important not only to produce a sufficient quantity but also to produce the appropriate quality. In 1997, for example, a number of developed countries imposed restrictions on fish imports from some African countries because they were considered to have inadequate hygiene standards.

The agreement on **trade-related aspects of intellectual property rights (TRIPs)** protects new ideas, trade secrets and trademarks. For example, new plant varieties can be patented. All of these agreements impact on trade in agricultural goods.

¹¹Animal health: International Office for Epizootics; plant health: Secretariat of International Plant Protection (IPPC).

¹²Training Module on the WTO Agreement on Sanitary and Phytosanitary Measures, UNCTAD.

III.2. Market access

III.2.1. Provisions of the Agreement on Agriculture

Tariffication

On the market access side, the Uruguay Round resulted in a systematic change. Many different non-tariff measures were transformed into tariffs. All non-tariff barriers such as quantitative import restrictions and variable import levies were converted into tariffs at an equivalent level of protection. Non-tariff border measures were, with some exceptions, prohibited. The exceptions include, for example, safeguards or sanitary and phytosanitary measures. In addition, 1300-odd tariff rate quotas (TRQs) were introduced, whereby high tariffs would be applied once imports exceeded a specified level.

The key objective of this fundamental change was to stimulate investment, production and trade in agriculture by making market access conditions more transparent, strengthening the link between national and international markets, and relying more on the market. By introducing tariff rate quotas, negotiators effectively replaced one set of quantitative restrictions with another. The quotas have led to complaints about administration or licensing. In addition, quotas generate rents and encourage wasteful rent-seeking behaviour.

Non-tariff barriers (NTBs) are border measures or other Government actions other than tariffs that restrict trade.

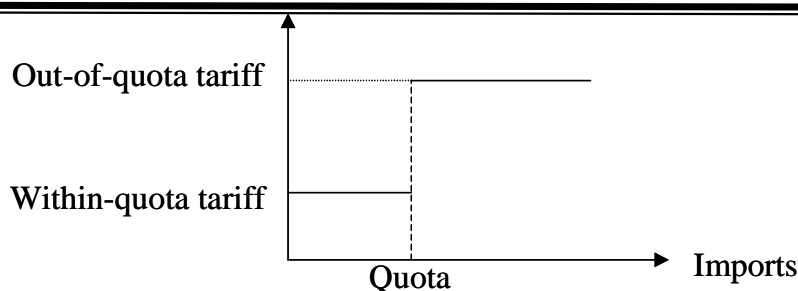
Under the AoA, defined NTBs which were not tariffed had to be eliminated.

Tariff rate quotas: The application of a reduced tariff rate for a specified quantity of imported goods. Imports above this quantity are subject to full tariff rate.

Minimum Access

The tariff rate quotas were set at three per cent of domestic consumption in the base period 1986-1988. Over the implementation period, the minimum access tariff quotas were expanded to five per cent.

One example is the quotas on chilled boneless beef imported into the European Union, corresponding to the HS code HS 02013000. Namibia has a bilateral quota of 13,000 tonnes. Imports up to the quota face a low within-quota tariff of €242/tonne, while the higher out-of-quota tariff of 12.8 per cent + €3034/tonne is imposed on larger volumes (Figure 1).



In 2005, 43 WTO members had 1,425 tariff rate quotas (TRQ). Developed countries hold roughly 60 per cent of the TRQs. The number of TRQs in each country varies from one (Chile) to 232 (Norway). The majority of TRQs are on cereals, meat products and fruit and vegetables¹³. Only about 50 per cent of the existing quotas are enforced. On the other hand, quotas that are enforced are occasionally under-filled. Members must notify WTO as to how they administer the TRQs. WTO identifies seven principal methods of quota administration (see table below).

Method of TRQ administration	Explanation	Share of all TRQs
Applied tariffs	Unlimited imports are allowed at or below the within-quota rate, i.e. quota not enforced.	47
License on demand	Licenses are required to import at the in-quota rate; if demand exceeds the quota, volume is usually reduced proportionately among applicants.	25
First come, first served	The first units are charged the lower in-quota rate	11
Historical	Right to import is based on market share in base period.	5
Auction	Right to import at low rate is auctioned; rents are usually captured by importing country.	4
State trader producer group	Right to import at low rate is granted to state trading organization.	2
Mixed	Combination of two or more of these methods	4
Others	Not specified or do not correspond to above methods.	2

Source: D. Skully (2001), *The Economics of Tariff-Rate Quota Administration*, ERS Technical Bulletin 1893.

Tariff Reduction Commitments

The Agreement on Agriculture specifies for each agricultural product a country-specific maximum tariff that can be applied to imports (these maximum tariffs are contained in the country schedules). This is the bound tariff rate. Developed countries and some developing countries bound their tariffs at rates which they applied during the base period of the Uruguay Round. However, many developing countries have bound their tariffs at ceiling levels that were higher than their applied rates during the base period.

Bound rates: For each tariff line in each member country, there exists a maximum tariff that can be applied.

13 WTO 2002, Tariff and other quotas, Background Paper by the Secretariat, TN/AG/S/5 and WTO 2004, Agriculture negotiations, Backgrounder.

Over the implementation period of the Uruguay Round, these bound tariffs had to be reduced. Developed countries had to reduce their tariffs by 36 per cent on average (table 2). The minimum reduction for each tariff line was 15 per cent. This combination of an average cut and a minimum cut per tariff line is called "Uruguay Round formula". For developing countries, the reduction commitments were two-third of this, while LDCs were exempted from any reduction commitments.

Since the reductions under the Uruguay Round Formula were average cuts rather than cuts in averages¹⁴, average tariffs are still high in agriculture (see next Section).

Table 2: The Uruguay Round formula

	Developed countries	Developing countries
	per cent	per cent
Average tariff cut (simple average, all products)	36	24
Minimum tariff cut per product	15	10

Special Safeguard Provisions

The last provision on the market access side is the special safeguard (SSG) that belongs to the tariffication package. For markets that were initially protected by non-tariff barriers, a special safeguard provision allows countries to levy additional duties of up to 33 per cent of the corresponding MFN rate against imports to accommodate a possible import surge or a price fall beyond a predetermined level. Certain conditions have to be fulfilled.

- First, the country must have reserved the right to use the special safeguard provision for the specific products.
- Second, there must either be a shipment at prices below a reference level, a so-called price trigger, or a surge of imports, which is called a volume trigger. There are limitations in the use of the additional duty.

The SSG is an easier-to-use alternative to the safeguard mechanisms provided through Article XIX of GATT 1994 as it is easier to invoke and does not require an injury test¹⁵. In addition, the SSG can be activated under a volume-based trigger or a price-based trigger. Currently, only 39 WTO members have reserved the right to use the special safeguard mechanism.¹⁶

¹⁴ For example, if one product is bound at 100 per cent and this product is reduced by 15 per cent and another product is bound at 10 per cent and reduced by 57 per cent, the average cut is 36 per cent $((15+57)/2=36)$ but the cut of the average tariff is only 19 per cent (from 55 per cent to 44.65 per cent). This is the difference of the so-called average cut versus cut of the average.

¹⁵ Under XIX of GATT 1994, a country has to provide proof of serious injury to the domestic production caused by imports.

¹⁶ These are Australia, Barbados, Botswana, Bulgaria, Canada, Colombia, Costa Rica, Czech Republic, Ecuador, El Salvador, EU, Guatemala, Hungary, Iceland, Indonesia, Israel, Japan, Malaysia, Mexico, Morocco, Namibia, New Zealand, Nicaragua, Norway, Panama, Philippines, Poland, Republic of Korea, Romania, Slovak Republic,

III.2.2. Implementation

Tariffs

Despite the tariff reductions agreed at the Uruguay Round, there remains a considerable degree of protection in agricultural products. Table 3 illustrates this by presenting simple averages of bound and applied out-of-quota tariffs in developed and developing countries for agricultural and non-agricultural products. Developed countries have an average bound tariff rate of 38 per cent. The applied out-of quota tariff rate, which does not take lower within-quota tariffs and preferential tariffs into account, is 34 per cent, slightly smaller. This is the so-called Most-Favoured Nation (MFN) tariff. Under WTO's MFN principle, members cannot impose differential tariffs on different trading partners. Exceptions to this general principle include preferential tariffs for LDCs and developing countries (non-reciprocal preferential access) or members of regional trade agreements (reciprocal preferential access). Almost all countries are members of one agreement or another.

Bound rates:

Maximum possible tariff rates resulting from multilateral trade negotiations.

Applied rates: Tariff rates actually applied by customs at the border.

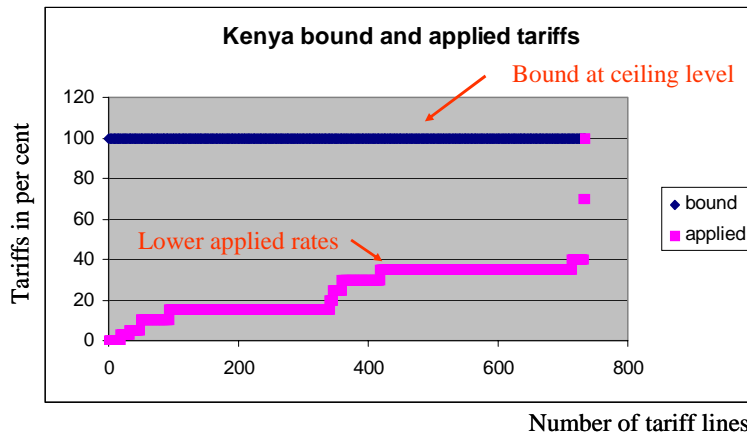
Table 3: Bound and MFN applied rates

		Bound	Applied
Agriculture	Developed countries	38	34
	Developing countries	61	25
Non-Agriculture	Developed countries	4	3
	Developing countries	20	13

Source: UNCTAD calculations based on TRAINS and WTO data

Developing countries tend to have higher bound rates but smaller applied rates than developed countries. Bound rates are on average 61 per cent whereas applied rates are only 25 per cent. Least developed countries, with 78 per cent, have the highest bound rates but applied rates at 39 per cent are considerably smaller (not shown in the table). The so-called "binding overhang" is a result of binding tariffs at ceiling levels during the Uruguay Round. Figure 3 shows the tariff structure for Kenya, which is a typical example for many developing countries. Tariff lines are sorted by applied tariffs in ascending order. There are only a small number of tariffs where applied tariffs are at or close to bound tariffs.

South Africa, Swaziland, Switzerland-Liechtenstein, Chinese Taipei, Thailand, Tunisia, United States, Uruguay and Venezuela.

Figure 3: Tariff structure of Kenya

The data presented in table 3 do not take into account preferential rates. When this is done, developed countries on the whole apply rates that are lower than those applied by most developing countries. UNCTAD's trade-weighted estimates indicate that there are notable exceptions to this generalization. Norway, Switzerland, and Japan (46 per cent), for example, have higher rates of protection on imports of processed agricultural products than China (15.4 per cent), Latin America (16.5 per cent), Asian newly industrialized countries (20.2 per cent) and transition economies (19.7 per cent). However, North Africa and Middle East countries also have high rates of protection¹⁷. Regarding processed agricultural products, several developing regions are less protected than Western Europe or Japan.

The high tariffs in agriculture compare with much lower tariff rates for non-agricultural products. Applied rates here are only 4 and 13 per cent (Table 3).

Tariff Structure

In addition to high average tariffs, tariff peaks and tariff escalation distort trade. Even after full implementation of the Uruguay Round commitments, tariffs are very high for some sensitive products and tariffs tend to be higher for processed products than for unprocessed products. This is one of the obstacles for developing countries in their efforts to establish processing industries for exports.

An UNCTAD–WTO joint study demonstrates that peak tariffs occur in major agricultural staple foods such as meat, sugar, milk, butter and cheese, cereal and tobacco products¹⁸.

Tariff escalation: Tariffs increase with the degree of processing, i.e. tariffs are higher for processed products than for raw material (e.g. tariff is 5 per cent for oranges but 30 per cent for orange juice).

Tariff peaks: National tariff peaks are often defined as tariffs that are higher than three times the national average.

¹⁷ UNCTAD's calculations take into account MFN and preferential rates, as well as estimates of non-tariff protection in Laird, S., op. cit. page 21.

¹⁸ UNCTAD/WTO, "The Post-Uruguay Round Tariff Environment for Developing Country Exports", Geneva, UNCTAD, TD/B/COM.1/14, October 1997.

Tariff escalation still remains in a number of product chains, often those of importance to developing countries such as coffee, cocoa, oilseeds, vegetables and fruits. It is important to point out, however, that UNCTAD’s analysis of tariff levels reveals that the problem of tariff escalation exists not only in agriculture but also in manufacturing and is a feature not only of developed markets but also in developing countries, although in the latter this phenomenon is less striking.

Products with the highest frequency and rates of tariff peaks:

- » Beef
- » Sugar
- » Cereals

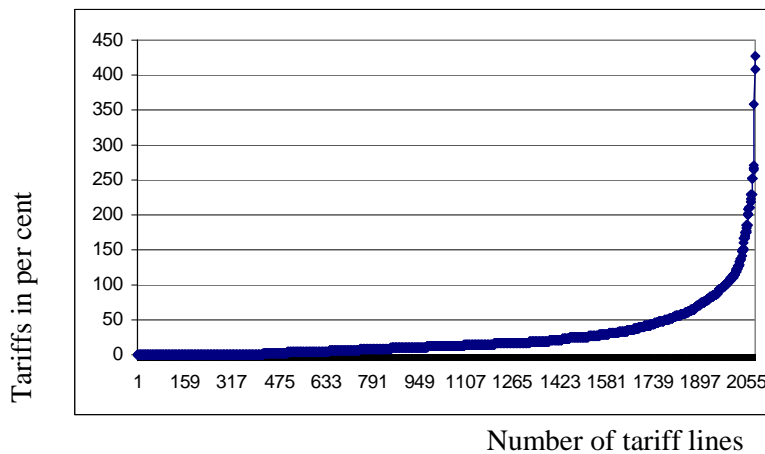
Table 4: Tariff escalation in the United States

Description	Tariffs (%)
Cotton, not carded or combed and waste	1
Cotton, carded or combed	5
Cotton, yarn and sewing thread	8
Knitted or crocheted fabrics	14
Knitted or crocheted articles of apparel and clothing	11

Source: UNCTAD

Thus, the Uruguay Round Agreement on Agriculture did not substantially change the tariff structures of those WTO Members that protect their markets through tariff peaks and escalating tariffs. This often results in high effective rates for value-added products. Figure 4 shows the EU tariff structure. Graphs for the US and Japan look very similar but scales vary as tariffs tend to be smaller in the US and higher in Japan compared with the EU. The structure in these three countries is very different from the tariff structure of most developing countries, such as Kenya shown in figure 3.

Figure 4: Tariff structure in the EU



Source: UNCTAD calculation of ad valorem equivalent tariffs based on WTO method (Paris),
 Note: Five products with tariffs above 500% not plotted.

Types of tariffs and non-ad valorem tariffs

Another issue regarding tariff structures is the type of tariff. While ad valorem tariffs are expressed as a fixed percentage of the value of the goods (e.g. 5 per cent), specific tariffs are fixed charges per unit of imported products (e.g. US\$ 2 per pound). Other types of duties include mixed rates, such as US\$3 per pound plus 7 per cent, and alternative rates (e.g. 10 per cent or, if higher, US\$3 per pound). In addition, tariffs can be based on technical factors, such as alcohol or sugar content or on time of the year, i.e. seasonal rates which are increased or decreased usually in accordance with the growing season in the importing country.

Non-ad valorem tariffs can be converted into ad valorem equivalent tariffs (AVEs). AVEs are the tariff values given as a percentage of the c.i.f. value of imports. It is necessary to do this to calculate an average tariff or to categorize tariffs into various bands as agreed in the July Framework. Figure 5 gives the formula that is used to convert a compound tariff into an AVE. A problematic element in the calculation is the unit import price. Estimating a unit import price is not straightforward, as it is subject to several variations and several different methods exist. In addition, the unit import price of the same product could differ from one source of imports to another. AVEs also vary over time as prices change. Because of this variability, the conversion methodology was the subject of prolonged discussion prior to the Paris mini-ministerial in May 2005. The guidelines for the conversion of final bound non-ad valorem duties on which participants agreed are described in section B.3.

Ad valorem tariff: Fixed percentage of the value of the goods (e.g. 5 per cent)

Specific tariffs: Fixed charges per unit of imported products (e.g. US\$ 2 per pound).

Compound rate: Normally a form of a combination of an ad valorem rate and a specific rate (e.g. 5 per cent plus \$0.5/ton).

Mixed rate: Choice between an ad valorem rate and a specific rate depending on conditions such as *whichever higher*.

Technical rate: Final tariff rate depends on the contents of a processed product (e.g. volume of a specific input).

Non-ad valorem tariffs are first and foremost a developed country phenomenon. In the European Union, 45.6 per cent of agricultural tariff lines are non-ad valorem tariffs, in the United States the figure is 43 per cent, in Canada 28.2 per cent and in Japan 12.6 per cent¹⁹. Some five per cent of agricultural tariffs in developing countries are non-ad valorem tariffs, and most LDCs have none.

Figure 5: Example for conversion of a compound tariff into an AVE

European Union: “Live bovine animals, domestic species, steers (bullocks) of a weight exceeding 220 kg” (HS: 01029020): 10.2% + 931 Euros/tonne

General formula:

$$AVE = \frac{\text{Specific tariff}}{(\text{Import unit value} * \text{Quantity conversion factor} * \text{Exchange rate})} * 100$$

Import Unit Value in 1999 = 1.281 Euros / Kg

$$\frac{931 \text{ Euros/Tonnes}}{(1.281 \text{ Euros/Kg} * 1000 * 1)} * 100 + 10.2 = 72.7 + 10.2 = 82.9$$

Source: UNCTAD calculation based on AMAD data

An UNCTAD study has shown that non-ad valorem tariffs²⁰:

- are used more often in the agricultural sector than in other sectors;
- are more commonly used in products that are considered to be “sensitive”;
- are often those which constitute tariff peaks.

Tariff Rate Quotas (TRQs):

Developments which have taken place within the Committee on Agriculture have shed light on some problems Members have encountered with the implementation of the tariff quotas commitments. The main spheres of contention have been the administration methods of such tariff quotas and the level of quota fill²¹. The majority of the TRQs have been administered by "applied rates" (where

Tariff rate quota fill rate:
 The “fill rate” is the ratio of actual imports made under a tariff rate quota to the total tariff rate quota volume of the product concerned. The average fill rate during the UR implementation period was around 60 per cent.

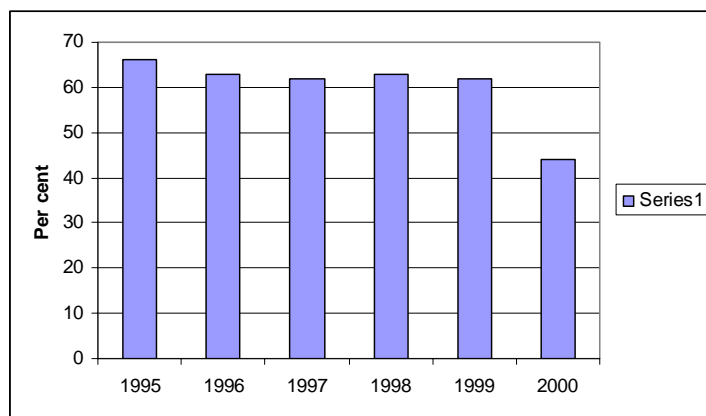
¹⁹ WTO Negotiations on Agriculture: Assessment of Non-Ad-Valorem Tariffs as a Tariff Barrier, informal technical note from Miho Shirotori, UNCTAD, October 2004.

²⁰ Shirotori, M., “WTO Negotiations on Agriculture. Impact of non-ad valorem tariffs as a tariff barrier”, Geneva, Informal Note, UNCTAD, DITC, 2003.

imports of the products concerned are allowed into the country in unlimited quantities at the in-quota tariff rate or below; 49 per cent), "licences on demand" (24 per cent) and "first come, first served" (10 per cent). Some countries have additional conditions in connection with principal administration methods such as domestic purchase requirements or past trading performance.

In the first year of implementation of the Uruguay Round, there was a simple average fill rate of 66 per cent - a percentage that decreased in following years (see Graph 1). Minimization of the trade-distorting implications of TRQs would require the use of transparent and impartial methods for the allocation of import licenses²². However, questions of whether a certain method is transparent enough and non-discriminatory are still debated.

Graph 1: Simple average TRQ fill rates (per cent)



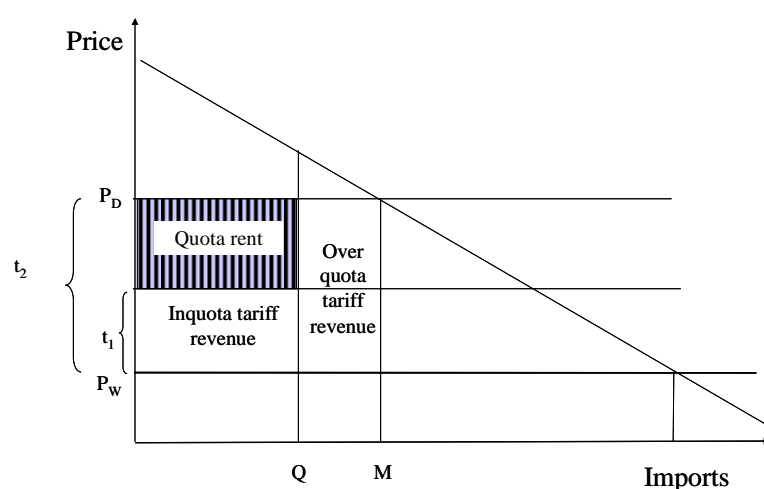
Source: WTO 2001, G/AG/NG/S/8/Rev.1; Years 1999 and 2000 based on (fewer) data that were available.

Another important issue regarding TRQs is the generation and distribution of quota rent. Quota rent exists if the domestic price P_D is determined by the higher out-of-quota tariff (t_2 in figure 2) and the in-quota import faces the lower within-quota tariff t_1 . It could be that this rent is captured by the exporting country, as is for example likely to be the case if quotas are allocated on an historical basis, such as EU sugar imports. Part of the rent may be captured by intermediaries (as is likely to be the case with banana exports to the EU) or the importer may capture the rent, as would be the case if the quotas are auctioned.

²¹ The principal allocation methods are "applied tariffs", "first come, first served", "licenses on demand", "auctioning", "historical importers", "imports undertaken by state trading entities", "producer groups or associations" and some "other" mixed or not clearly specified methods, WTO Secretariat, G/AG/NG/S/8/Rev.1, 2001.

²² Certain administration methods could effectively block imports under TRQs, while the AoA does not provide a guideline on the preferred nature of the TRQ administration methods. The TRQ administration methods in question are those which do not reflect the market demand or the purchase decision of importers, such as discretionary import licensing, involvement of state trading enterprises in the purchase or sale of import quotas or import licences conditional on concurrent purchase of the domestic products. More open and market-oriented administration methods are automatic import licensing or first come, first served.

Figure 2: Quota Rents



Special agricultural safeguard (SSG)

During the implementation of the Agreement on Agriculture, between 1995 and 2001, ten WTO Members made use of the SSG. In the above-mentioned period, the US was the major user of price-based SSGs, accounting for 51 per cent of total price-based SSGs used up to 2001. The second largest user of the price-based SSG was Poland, which accounted for 25 per cent. With regard to volume-based SSGs, the EC was the major user (followed by Japan), accounting for 57 per cent of volume-based SSGs used during the same period (Table 5).

Some Members have identified problems with the volume and price trigger levels. Many developing countries criticize the SSG as mainly a provision for developed countries. First, most tariff items for which the right to take recourse to the SSG have been reserved are in developed countries. Second, even if available to them, developing countries would find the SSG difficult to apply since the necessary data are often not available.

Table 5: Safeguard Actions 1995-2001

	Price-Based	Volume-Based
EC	65	147
Hungary	7	0
Japan	18	86
Korea	18	4

Poland	126	7
Slovak Republic	0	1
Switzerland	7	0
US	256	6
Costa Rica	4	
Czech Republic	0	5

Source: Based on WTO, G/AG/NG/S/9/Rev.1, 2002

Non-tariff barriers (NTBs)

As tariffs are declining, non-tariff barriers are becoming increasingly important as both protection and regulatory trade instruments²³. NTBs comprise action directly related to trade such as anti-dumping measures, steps linked to trade such as standards, and general public policies such as investment restrictions. The seven categories used by WTO in its most recent inventory of non-tariff measures are shown in the box²⁴.

UNCTAD's database on NTBs shows a sharp increase in the use of technical measures and a decrease in the use of most other measures. Developing countries and LDCs appear to be the most exposed to NTBs. In 2002, some 40 per cent of exports from LDCs were subject to NTBs. The most frequent notifications of NTBs of concern to developing countries to the Negotiating Group on Market Access for Non-agricultural Products are Technical Barriers to Trade, Customs and Administrative Procedures and Sanitary and Phytosanitary Measures²⁵. Within the category Customs and Administrative Procedures, the two most prominent barriers are rules of origin and import licensing. Countries report that rules of origin are discriminatory, unreasonable or inconsistent. Preferential rules of origin are of great concern to LDCs since they may contribute to low utilization rates. LDCs wish to see rules of origin relaxed in the hope that their exports would increase. Anti-dumping duties

Non-tariff measures (WTO classification):

- (I) Government participation in trade and restrictive practices tolerated by Governments;
- (II) Customs and administrative entry procedures;
- (III) Technical barriers to trade;
- (IV) Sanitary and phytosanitary measures;
- (V) Specific limitations (e.g. quantitative restrictions);
- (VI) Charges on imports; and
- (VII) Other (comprising intellectual property issues, safeguard measures and business practices).

²³ More information on NTBs can be found in UNCTAD, Methodologies, Classifications, Quantification and Development Impact of NTBs, TD/B/COM.1/EM.27/2, 23 June 2005.

²⁴ TN/MA/S/5/Rev.1, 28 November 2003.

²⁵ ANALYSIS OF NON-TARIFF BARRIERS OF CONCERN TO DEVELOPING COUNTRIES, OECD Trade Policy Working Paper No. 16.

also fall into the category Customs and Administrative Procedures. LDCs have called for a moratorium on this measure against their exports.

Most complaints in the area of TBT pertain to technical regulations and standards. Standards are likely to increase production costs and can affect trade flows if domestic and foreign producers face different costs or have different abilities to meet requirements²⁶. One example is the German health standard for ocratoxin A in coffee. Coffee-exporting countries complain that the standard could result in a rejection of a significant amount of coffee imports. NTBs can cause losses to trading partners and can be used to protect domestic industries. Consumer and producer interests and the difficulties faced by poorer countries in dealing with NTBs have to be taken into account in multilateral negotiations. Technical assistance could be provided to developing countries and LDCs to help them cope with TBTs and SPS measures in order to effectively improve market entry conditions.

Market access versus market entry

Market access must be distinguished from market entry. While market access conditions are determined by the legal and administrative conditions imposed by the importing countries under internationally agreed trade rules, the ability to enter a market is a function of both the competitiveness of the exporter and the characteristics of supply chains and the structure of markets. Thus, market access is generally a prerequisite for market entry to occur, but is not sufficient²⁷. Accordingly, developing country exporters (especially those from LDCs), as well as their Governments, need to go beyond market access concerns and also focus on the conditions determining actual market entry.

Distribution networks handling large volumes of agricultural products are usually vertically integrated and specify particular market entry conditions that exporting firms in developing countries must meet. The conditions in question relate to product characteristics such as quality, nature of the production process such as organic farming or sanitary and phytosanitary standards, speed of delivery and reliability of supply. Compliance with such market entry conditions is a prerequisite for participation in entry modes such as direct exportation, partnerships, licensing or trade fairs. It is thus important for developing country producers to comply with these market entry conditions and to engage with these networks since they have in many cases become the core of the logistic chain of international trade and therefore offer the potential for producers of reaching wider markets.

Thus, apart from technical barriers to trade, business practices and other *market entry* issues are becoming more and more important and constitute real challenges for developing and especially least developed countries.

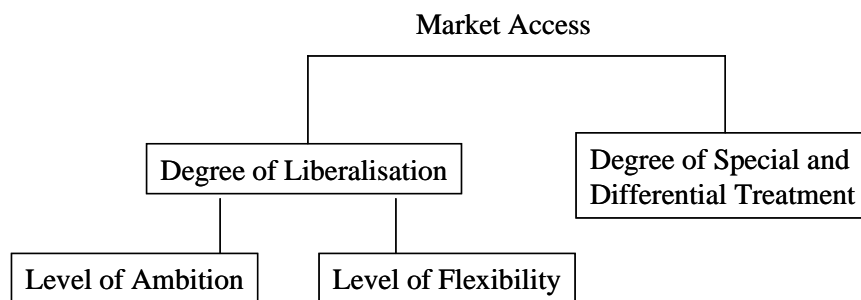
²⁶ World Trade Report 2005, WTO.

²⁷ However, smuggling is an example of market entry without market access.

III.2.3. Negotiations on modalities

The Doha Ministerial Declaration calls for “substantial improvements in market access”. In addition, Ministers agreed to provide special and differential treatment for developing countries. Negotiations on modalities for further commitments on tariffs and tariff rate quotas aim to elaborate a comprehensive approach to address market access improvements by building on existing rules and/or developing new ones as well.

This section summarizes the key issues concerning modalities for market access. Major dimensions here are the degree of liberalization and the degree of special and differential treatment. To simplify, special and differential treatment (SDT) means lesser commitments by developing countries (see Section III.7). The degree of liberalization has two dimensions – the level of ambition, measured for example by the average tariff reduction, and the level of flexibility, that is, exemptions from the formula to protect specific products. Greater flexibility could provide negotiators with an improved ability to trade off lesser tariff reductions in some cases for greater cuts elsewhere.

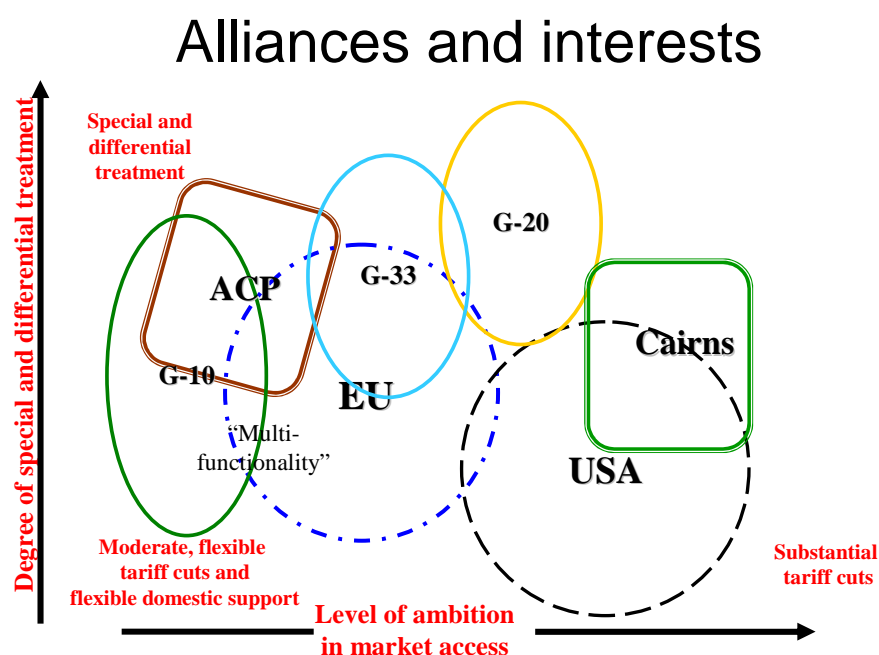


Country interests and challenges

The views of WTO Members concerning modalities for market access vary widely. Various alliances exist, some of them proposing ambitious liberalization scenarios, others less so. Some groups comprise developing and developed countries. Interests among developed countries vary widely, as do the interests of developing countries. Thus, agricultural negotiations are not a "North–South" issue. Graph 3 shows a simplification of alliances and interests along the two dimensions of level of ambition and degree of special and differential treatment. Annex I provides an overview of group members. Of course, there are more dimensions and countries differ in their views regarding the two dimensions displayed in each of the three pillars. Furthermore, some countries, such as India or South Africa, are members of two or more different groups emphasizing different aspects. Most notable is the fact that developing country interests range across the spectrum.

The annual UNCTAD background note by the secretariat for the Trade and Development Board provides a good overview on the Doha negotiations on agriculture, including on its developments²⁸.

Graph 3: Simplification of alliances and interests in the negotiations on agriculture



G33: This is a developing country group, led by Indonesia, that includes mostly small countries such as Barbados, but China and India are also members (see Annex I for members of all groups mentioned here). This group emphasizes the defensive interests of developing countries in agriculture. Often, a high share of members' population depends on agriculture and large parts are (currently) rather uncompetitive in the production of agricultural goods on world markets since they are for example smallholders. Members are specifically supportive of the Special Products (SP) and special agricultural safeguard mechanism for developing countries (SSM), which allows them to protect some of their vulnerable farmers from competition from outside (see section Special and Differential Treatment Provisions below).

G20: Another very influential developing country group. It is a heterogeneous group including among others Brazil, China and India that favours a high degree of special and differential treatment. This means that members are interested in exports specifically to developed countries (thus they favour substantial cuts in developed country tariffs, although some are also interested in increased South–South trade) and state that they are yet not in a position to liberalize their own import regime too much (e.g. because of subsidized exports from the North and because of vulnerable subsistence farmers). They are - compared with the

²⁸ UNCTAD 2003 - 2006, Review of developments and issues in the Post-Doha work programme of particular concern to developing countries, TD/B/50/8, TD/B/51/4, TD/B/52/8, TD/B/53/5.

G33 (although there is some overlap in membership, see Annex I) - more competitive in the production of agricultural products or have at least some competitive sectors. Members also want substantial cuts in domestic support in developed countries. They have been very active in the negotiations by making many proposals including proposals that were found by many WTO Members and the Chair of the negotiating session to be in the middle ground.

Cairns Group: This grouping comprises developed and developing countries that belong to the most efficient and competitive producers of agricultural products in the world, such as Australia and Brazil. Members would like to and could export much more if existing distortions were reduced. This means that they want lower tariffs in both developed and developing countries and the elimination or substantial reduction of domestic support and export subsidies. Nevertheless, some members have some domestic support and State trading enterprises that distort markets. In general, however, they are quite liberal themselves, i.e. they have low tariffs. The Cairns Group does not play as important a role in the Doha negotiations as it did in the Uruguay Round.

United States: It is a competitive producer for a number of products such as maize and has relatively low tariffs itself. Since it would like better market access to other countries, the US favours an ambitious outcome on market access, as reflected in graph 3. Yet the US also pays a substantial amount of support to its farmers as agriculture is a politically sensitive sector. Up until now, it does not appear to be heading towards decoupling the parts of its support that are currently linked to production (e.g. moving towards direct income support, see Section III.3.). It remains to be seen what will be decided for the 2007 US Farm Bill, which is currently under consideration.

EU: The EU is a rather uncompetitive producer of many agricultural products that seeks to protect its farmers against cheaper imports, and has thus high tariffs on sensitive (temperate) products (but low tariffs on products that it does not produce or only in small amounts, such as coffee beans or cotton). The EU does not have a great export interest like the United States. The EU is by far the biggest importer of agricultural products from the South. It also provides the most beneficial preferences to the ACP and LDC groups of countries. The EU supports high standards for food and pays a lot of money to its farmers as domestic support (in absolute and relative terms more than the United States, see section III.3.).

One issue in the negotiations was whether reductions will be made from the final bound rates, i.e. the bound rates in 2000 for developed and 2004 for developing countries, or the lower applied tariff rates.

In the July Package, countries agreed to make cuts from bound rates.

G10: These are mostly uncompetitive developed countries such as Switzerland and Japan, but Mauritius is also a member. Members are major agricultural importers that want to maintain a certain amount of domestic agricultural production, and thus require high tariffs and/or domestic support. To simplify, it can be seen as the opposite of the Cairns Group, and fears that it would have to stop basically any production if forced to completely liberalize its agricultural trading system. Members produce mainly for domestic markets but may export some specialities.

A major challenge in the negotiations on modalities regarding the pillar market access is to find a tariff reduction formula that is balanced with regard to level of ambition, level of

flexibility and degree of special and differential treatment, so that all WTO Members with their differing needs can agree on it. The structure of the formula was agreed in the July Package in 2004 and the WTO Hong Kong Ministerial Declaration in December 2005, but the specific numbers that will determine the exact shape of the formula and the corresponding cuts have yet to be negotiated. Approaches for simplifying tariffs and possible provisions for tariff rate quota expansion and improved administration rules will also be discussed.

Possible tariff reduction formulas

Linear Cut: All tariff lines are reduced by the same percentage, e.g. 50 per cent, no matter whether the starting tariff is high or low. Tariff peaks do not change.

Uruguay Round Formula: Average reduction with minimum reduction for each tariff line (see also Section B.1). Tariff peaks may be worsened although all tariffs are reduced.

Swiss Formula: New tariffs are calculated applying the formula:

$$t1 = (a * t0 / (a + t0))$$

where $t0$ is the initial tariff (bound tariff rate), $t1$ is the final tariff rate (new bound tariff rate) and a is a chosen coefficient value. The smaller a is, the greater the level of ambition, i.e. the lower are the new tariffs. The coefficient a will also be the new maximum tariff, e.g. after applying the Swiss formula no tariff will be higher than this coefficient. The Swiss formula is a harmonizing approach, which means that higher tariffs are reduced more than proportionately. Thus, tariffs come closer together and tariff peaks are effectively addressed.

Blended formula: This formula is a combination of the Uruguay Round and the Swiss approach and a reduction of tariffs to zero. A pre-specified share of tariff lines is subject to one of the three components. Countries would have the flexibility to decide which tariff line is subject to which component.

Tiered approach: Under the tiered approach, bands that depend on the initial tariff are defined and the reduction approach for each band may be different. The Harbinson approach is an example of a tiered approach²⁹. The major difference to a blended approach is that it depends on the initial tariff in which band / component each tariff line falls and that it is not up to the countries themselves to choose.

The Single Approach: Tiered Formula:

- Formula that takes into account different tariff structures
- Each Member (except LDCs) makes a contribution
- Effective special and differential provisions for DCs will be an integral part
- Deeper cuts in higher tariffs

(July Package)

²⁹ Harbinson is the former Chair of the Special (negotiating) Session of the Committee on Agriculture and tabled in March 2003 a first draft of modalities for the further commitments (TN/AG/W/Rev.1).

In the July Package 2004 and the Hong Kong Ministerial Declaration, a tiered approach with four bands has been determined.

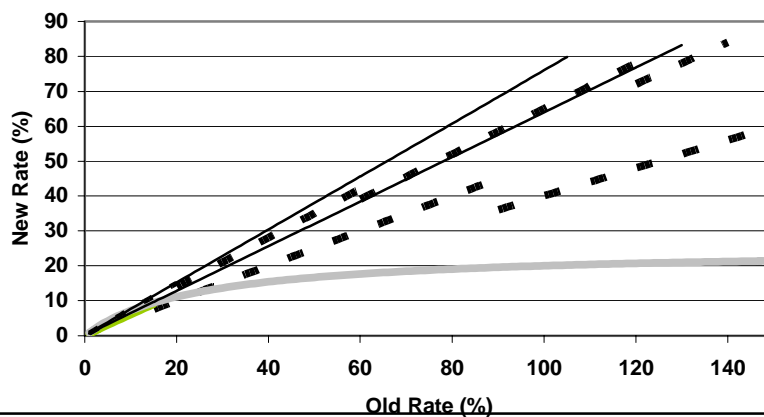
Other methods, such as different rates for different categories, for example steeper cuts on processed products than on raw materials, are also possible.

Table 6: Some major features of the different tariff reduction formulas

		Linear Cut	Uruguay Round Formula	Swiss Formula	Tiered Approach
	Initial Tariff	New Tariff	New Tariff	New Tariff	New Tariff
	%	%	%	%	%
	10	5	4	7	6
	100	50	85	20	40
Average Cut		50	36	54	50
Cut of average		50	19	75	58

Assumptions: UR: Minimum reduction on high tariff and corresponding high reduction of lower tariff; Swiss: Coefficient of 25; Tiered: Percentage reductions equal to average reductions in corresponding bands in Harbinson proposal.

Graph 4: Tariff reduction formulas



Notes: Curved line is Swiss formula with coefficient a=25; straight lines are Uruguay approach for developed (lower line) and developing countries; piecewise linear graph is Harbinson proposal for developed (lower) and developing countries.

Treatment of non-ad valorem tariffs

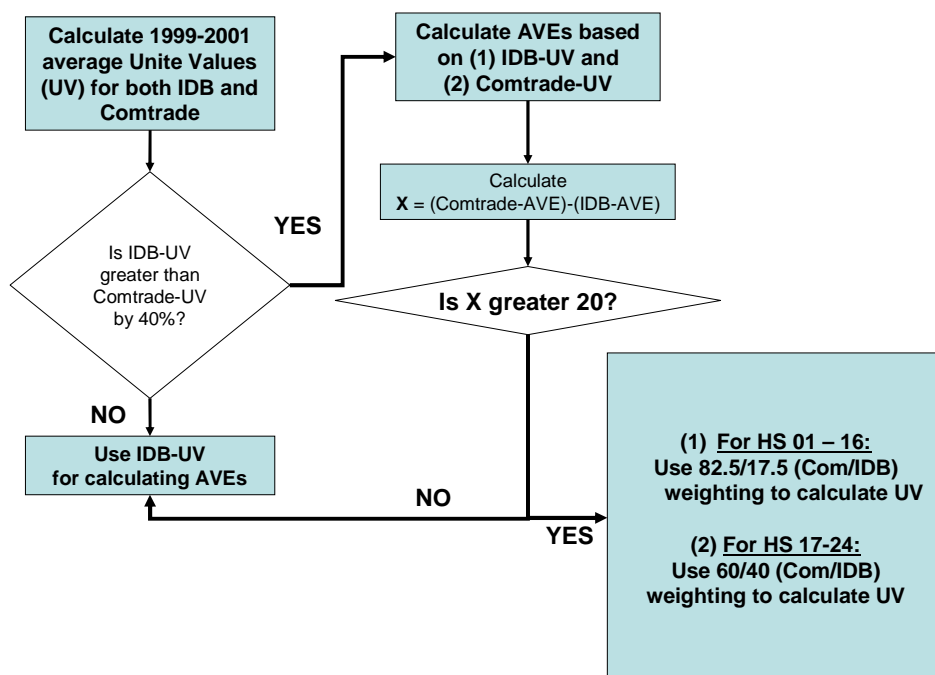
The calculation of AVEs is necessary for specifying the tiered tariff reduction formula, in which the tariff cuts depend on the initial rate. In May 2005, the participants of the mini-

ministerial in Paris set guidelines for the conversion of final bound non-ad valorem duties to ad valorem equivalents (AVEs). The proposed method suggests using the WTO IDB database-based unit values (UV), unless the difference between the UN Comtrade-based UV and IDB-based UV and the corresponding AVEs is too big (in which case tariff lines are caught in a "40/20-filter"). In this case, an average of the two unit values is taken.

Box: "40/20 Filter"

If the AVEs calculated from IDB and Comtrade unit values differ significantly, they would be recalculated using the weighted average of both. This is determined through the "40/20 filter". The weighted average would be used: (1) if the unit value of IDB data is more than 40 per cent higher than that of UN Comtrade data; and (2) if the absolute difference of resulting AVEs is greater than 20 percentage points. The weights used for each IDB and US Comtrade would differ according to product category. Products under HS chapters 1 to 16 (which cover mainly primary products) would be assigned relatively higher weights on Comtrade data (82.5 (Comtrade)/17.5 (IDB)) while relatively higher weights are assigned on IDB data for products under HS chapters 17–24 (60/40) (which cover mainly processed products). Since IDB unit values tend to be higher than Comtrade unit values, AVEs for processed products in HS chapters 17–24 (for which greater weight is assigned on IDB unit value) are likely to result in smaller AVEs than those for raw products in HS chapters 1 to 16. This implies that those processed products with smaller AVEs would be subject to a smaller cut according to a tiered formula. The applicable methodology for sugar is yet to be determined, as a difference in views persisted between countries, including those benefiting from preferences and other sugar exporters.

Figure 6: Method to calculate AVEs

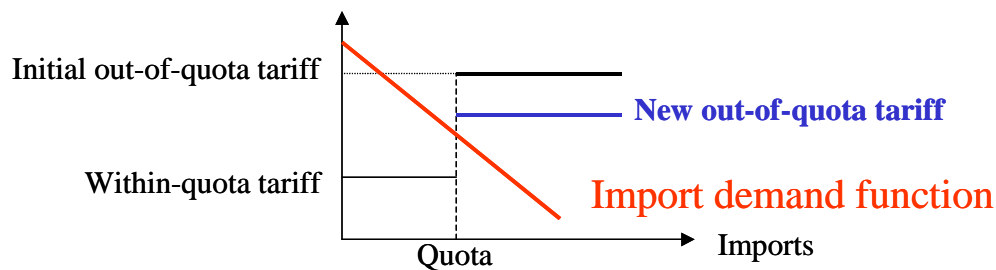


Export interests of developing countries are quite heterogeneous, which makes it difficult to analyse whether the method has a strong impact on the tariff and with this on the reduction of products of export interest to developing countries. In each of the six developed countries EU, Canada, Japan, Norway, Switzerland and United States, some products where developing countries have an export interest are caught in both filters. However, most of the selected products belong to dairy products and cereals which are not of export interest to the majority of developing countries. The most important African agricultural exports in terms of export revenue are cocoa, cotton, coffee, tobacco, sugar, tea and mate, and fruit and nuts. For the majority of these products, the most important market, the EU, is not subject to ad valorem tariffs, or even if so, differences between IDB-based AVEs and Comtrade-based AVEs are very small³⁰.

Tariff rate quotas

One of the WTO Members’ tasks in the current negotiations on agriculture has been the consideration of a number of options for calculating the expansion of tariff quota volumes and general or specific principles on TRQ administration for agricultural products. Four elements are negotiable: in-quota tariffs, out-of-quota tariffs, quota volume and administration of quotas. Depending on the specific situation for each product and each country, the effectiveness of commitments may vary. Figure 7 demonstrates that a reduction of the out-of-quota tariff may not have an impact on imports and domestic prices if import demand lies between the world price plus the within-quota tariff and the world price plus the new out-of-quota tariff at the quota volume. Thus, this issue needs careful consideration.

Figure 7: Tariff rate quota negotiations



Possible approaches for TRQ administration improvements:

- » **Binding general principles** on TRQ administration should be introduced into the Agreement on Agriculture to ensure that all methods of allocation are practicable, predictable and transparent, enable business decisions to be based on commercial considerations and allow full use of minimum market access opportunities by WTO Members.

³⁰ For more information and the corresponding distribution of tariffs among possible bands, see Peters and Shirotori: WTO Negotiations on Agriculture: Conversion of Non-Ad Valorem Duties into Ad Valorem Equivalents, Note 2, UNCTAD/ DITC, May 2005.

- » **Application of existing WTO rules:** Apply existing WTO rules, e.g. Agreement on Import Licensing, relevant Panel findings, COA reviews, MFN principle.
- » **Flexible approach.** Members are free to choose an appropriate administration method as long as it is transparent, fair and non-discriminating.
- » **Negative List Approach:** Prohibit certain administration methods, such as those imposing re-export requirements, allocation only to State affiliated or controlled importers, etc.

Special and Differential Treatment provisions

Regarding market access various S&D provisions are discussed. Important ones are:

- Lower tariff reduction commitments and longer implementation periods;
- Special Products (SP);
- Special Agricultural Safeguard Mechanisms (SSM);
- Preferential access to developed country markets;
- Special provisions for least developed and net food-importing developing countries.

Under the Special Product provisions, a limited number of products would be exempt from reduction commitments or commitments would be lower, so as to enable developing countries to address their food security, rural development and livelihood security concerns. The intention with this provision is not to protect against temporary price shocks or import surges. For this purpose, the Special Agricultural Safeguard Mechanism provides a time-limited safeguard against imports when they threaten to disrupt domestic production. It is supposed to be invoked in reaction to exceptional market conditions.

Market access provisions in the July Package and Hong Kong Declaration

Table 7: Provisions and challenges for market access

Provisions	Challenges
<ul style="list-style-type: none"> ▪ Single approach for developed and developing countries: <i>tiered approach</i> to achieve substantial trade expansion ▪ 4 tariff bands ▪ All contribute (excl.LDCs), S&D integral part ▪ Progressivity: deeper cuts in higher tariffs with flexibilities for sensitive products. <p>Improved access for all products</p>	<ul style="list-style-type: none"> ▪ Single reduction formula has to take different tariff structures of developed and developing countries into account ▪ Ensure meaningful efficiency gains ▪ South–South trade is important ▪ Trade expansion is not a mean in itself, development is the ultimate objective ▪ Tariff barriers are often felt to be the only possibility for developing countries to support vulnerable farmers, hence the special importance of S&D in this connection ▪ How is preference erosion handled?
<ul style="list-style-type: none"> ▪ Members may designate a number of tariff lines to be treated as sensitive 	<ul style="list-style-type: none"> ▪ Products where developing countries have a comparative advantage may be designated as sensitive by developed

<ul style="list-style-type: none"> ▪ TRQ commitments combined with tariff reduction for sensitive products 	<p>countries</p> <ul style="list-style-type: none"> ▪ Many developing countries have less administrative capacities to handle TRQs
<ul style="list-style-type: none"> ▪ Reduction of in-quota tariffs; ▪ Improvements in TRQ administration; ▪ Address tariff escalation; ▪ Special agricultural safeguard (SSG) remains under negotiation 	<ul style="list-style-type: none"> ▪ Achieve transparent and simple TRQ administration ▪ Reduce or eliminate tariff escalation in order to foster industrialization in developing countries
<ul style="list-style-type: none"> ▪ S&D: lesser tariff reduction or TRQ expansion commitments ▪ Flexibility to designate Special Products, based on criteria of food and livelihood security and rural development needs ▪ Special Safeguard Mechanism (SSM) will be established ▪ Importance of long-standing preferences is recognized 	<ul style="list-style-type: none"> ▪ What is an appropriate lower reduction commitment for developing countries? ▪ How flexible are the criteria to select special products and what are the commitments? ▪ Find flexible and effective SSM rules ▪ Harbinson proposal is reference for preference issue: tariffs on certain products could be reduced less if some developing countries highly benefit from preferences on that product. However, preferences would be eroded to a certain degree. It was indicated that some form of compensation is possible.

Elements that are to be determined in the negotiations include:

- Thresholds for defining the bands;
- The type of tariff reduction formula to be applied to each tariff band;
- The role of a tariff cap in a tiered formula; and
- Treatment of tariff escalation in tariff reduction formula.

The treatment of non-tariff barriers (NTBs) is not addressed in the Framework and remains to be tackled in agriculture negotiations. Developing countries have attached importance to addressing NTBs, including SPS standards, because their impact has been increasingly felt as tariffs are lowered, thereby affecting market entry conditions.

After countries agreed on the July Package 2004, the negotiations focused on technical issues such as the selection of tiers, formulas for the different tiers, and criteria for the selection of sensitive and special products. At the Hong Kong Ministerial conference, a few more details were determined but controversial issues such as level of ambition were not clarified.

Market access remains the least advanced pillar. The EU's latest offer would see an average reduction of 39 per cent in its own farm tariffs, compared with a G20 proposal for an average cut of 54 per cent and the US's proposed 68 per cent reduction. The ACP States proposed an overall average reduction of 36 per cent for developed countries, while the G10, composed mainly of net food-importing developed countries, proposed similar targets. Similarly, differences exist regarding the capping of high tariffs, where some groups propose maximum tariffs of 75 per cent (United States) and others reject any capping (G10 and ACP). For

developing countries, maximum cuts (in the highest tier) range from 30 per cent (ACP) to "slightly lesser reduction" than 90 per cent (US).

The formula is important for all developing countries. The higher the cut in developed countries, especially in the EU, the higher the preference erosion for the beneficiaries. On the other hand, developing countries would benefit from increased exports that do not enjoy preferential access.

Another difference pertains to the numbers of sensitive products that a country (developed or developing) can designate, which are not to be subject to the formula cuts but only to lower reductions. No convergence emerged in Hong Kong. The EU has proposed the number of eight per cent of all agricultural tariff lines, while the United States and the G20 have put forward the number of one per cent only. For its part, the G10 has proposed up to 15 per cent. The ACP States have proposed that products relating to long-standing preferences be designated as sensitive in order to address the problem of preference erosion. Whether or not the number of sensitive products makes a significant difference to the level of ambition depends on compensatory expansion to allow greater imports through tariff rate quotas. Too much flexibility can significantly reduce the potential gains from the Doha Round.

As regards special products, DCs were granted the right to self-designate an appropriate number of tariff lines as SPs "guided by indicators based on food security, livelihood security and rural development". No convergence has been reached over the number of SPs. Proposals are between five tariff lines to 20 per cent of all agricultural tariff lines. On the special agricultural safeguard mechanism SSM, proposals also differ significantly in the details. Despite the successful agreement, from the perspective of most developing countries at the Hong Kong meeting, that there would be a price trigger and volume trigger, the details would determine whether or not it would be an effective tool for developing countries.

Concerns and issues raised by developing countries

- Choosing a tariff reduction formula that effectively eliminates tariff peaks and tariff escalation in developed countries for products of export interest to developing countries;
- Restraining the flexibility given to sensitive products of developed countries (product selection, flexibility in tariff cuts and TRQ expansion) so as not to undermine market access opportunities for developing countries;
- Eliminating special safeguard measures (SSG) for developed countries;
- Finding ways to link market access improvement to market entry enhancement;
- Determining the appropriate degree of "proportionality" in tariff cuts for developing countries, taking into account the fact that tariffs are the only protection given to their agricultural producers to counter subsidized production and exports of developed countries;
- Designing the SP and the SSM in such a way as to allow developing countries sufficient policy flexibility with respect to food security, livelihood security and rural development.

Source: UNCTAD, TD/B/51/4

Suspension of the negotiations

The major sticking points that led to the suspension of the negotiations in July 2006 were the uncompromising positions of various Members in not reducing their high agricultural tariffs and the unwillingness of some to commit themselves to real cuts in their domestic support. In various meetings before the suspension, the United States had demanded substantial market access improvements in the EU and elsewhere, whereas others had called for real cuts of domestic support in the United States.

The EU signalled after the Hong Kong meeting that it was prepared to move from its earlier offer of average cuts of 39 per cent closer to the developing country group proposal (G20) of 54 per cent. Reportedly, the EU signalled possible cuts of an average 51 per cent. The United States earlier proposed cuts of around 66 per cent. Due to the binding overhang in developing countries, some Members complained that applied rates in some developing countries were only be marginally reduced under the G20 proposal, where developing countries would make average cuts of 36 per cent at most in connection with the agreed flexibilities³¹. Another issue was the exemptions permitted under special and sensitive products. The number of sensitive and special products makes a significant difference for the overall level of ambition. Too much flexibility in exemptions from tariff reduction commitments could well significantly reduce market access improvements. However, whether or not the number of sensitive products makes a significant difference for the level of ambition depends on the agreed compensatory expansion to allow greater imports. But the degree of compensatory expansion has not been agreed and was also controversial. Most developing countries insist that these exemptions would be necessary for their countries for food security, livelihood security and rural development.

III.3. Domestic support

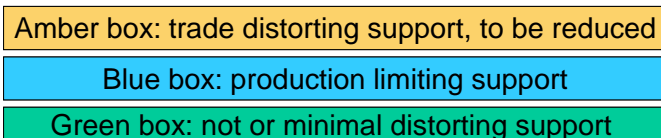
III.3.1. Provisions of the Agreement on Agriculture

The second of the three pillars of agriculture is domestic support. The objective of the Uruguay Round was to discipline and reduce trade-distorting domestic support while leaving scope for Governments to support specific sectors. The rules allow for the design of domestic agricultural policies in response to the wide variety of the specific circumstances in individual countries.

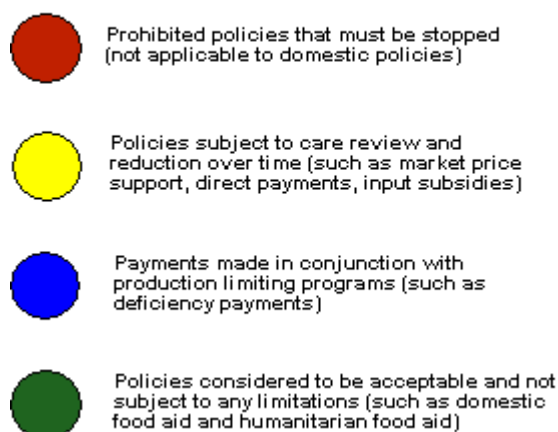
The approach agreed upon is to classify domestic support according to its effects on trade and production. In WTO terminology there are three boxes. The Amber Box comprises trade-distorting domestic support. The Blue Box comprises production-limiting support and the Green Box “no or at most minimal” trade-distorting support measures.

³¹ A simulation exercise by Australia showed that applied tariffs in for example Brazil would be reduced on average by 0.8 per cent and in India by 4.4 per cent. WTO Committee on Agriculture: Applied Tariff Simulations - Agriculture Summary of Results, JOB(06)/152.

In WTO terminology, domestic support is classified by “boxes” according to their effect on production and trade



The WTO's Traffic Light



Amber Box support:

Direct support to:

- Reduce input costs
- Maintain output prices
- Reduce marketing costs

The Aggregate Measurement of Support (AMS) was designed as a measure of domestic support against which reduction commitments could be made.

Source: USDA

The Amber Box

The most trade-distorting domestic support measures are the Amber Box measures. The AoA established a method to quantify this trade-distorting domestic support that is provided to domestic producers within a year: the "Total Aggregate Measurement of Support" (AMS).

These are for example market price support measures or payments that are directly linked to the production. Price support measures can be provided either through direct payments from Governments or through transfers from other groups. If a Government sets an administered price, producers are supported by a transfer from consumers. Any surplus at the administered price must be acquired and disposed of by the Government, so part of the producer support may come from taxpayers.

Countries that had trade-distorting support during the base period of the Uruguay Round had to calculate their AMS that includes all product and non-product specific support in one single figure. This AMS had to be reduced during the implementation period of the Uruguay Round by 20 per cent in developed and 13 per cent in developing countries. A country is prohibited from exceeding the annual bound limit in any year. The AMS is an aggregate measure, as the

name implies, so reductions need not apply to specific products. Governments can switch support from one product to another from year to year.

De Minimis Levels of Support

The AoA includes a "*de minimis*" provision which allows countries to exclude in the calculation of the Total Aggregate Measurement of Support trade-distorting subsidies that make up a given proportion (five per cent in the case of developed countries and 10 per cent in the case of developing countries) of the value of production of individual products or, in the case of non-product-specific support, the value of total agricultural production. Countries are not required to reduce the trade-distorting support if it is within the product-specific or non-product-specific *de minimis* levels.

Table 8: Amber Box provisions in the Agreement on Agriculture

	Developed countries	Developing countries	Least developed countries
Reduction Commitments	20%	13.3%	No reduction commitments
Implementation Period	6 years	10 years	---
<i>De minimis</i> level	5%	10%	---
Other S&D provisions		Exempt from reduction commitments are generally available investment and input subsidies to poor producers, and domestic subsidies to encourage diversification from growing illicit narcotic crops.	

Green and Blue Box measures and certain development programmes were not subject to reduction commitments.

The Green Box

Domestic support measures that have "no, or at most minimal, trade-distorting effects or effects on production" (AoA, Annex 2) and meet some additional criteria are exempt from reduction commitments and fall into the Green Box. There is no limit to Green Box expenditure, but there is controversial discussion about what support programmes should be classified in this category because some measures are often seen to be not non-distorting or minimally distorting (see section III.3.2).

Non-trade-distorting (Green Box) support to:

- General services
- Public stockholding
- Domestic food aid
- Direct payments to producers
 - Decoupled income support
 - Income safety net
 - Disaster relief
 - Producer retirement programme
 - Resource retirement programme
 - Investment aid
 - Environmental protection
 - Regional assistance programme

The additional criteria are that programmes are publicly funded, do not include price support and meet other policy-specific criteria, such as the requirement that support is for general services or income safety nets.

Green Box support measures comprise for example infrastructure building, pest and disease control, research and training. The Green Box also provides for the use of direct payments to producers that are not linked to production decisions, in the form of so-called decoupled support.

The Green Box applies to both developed and developing countries, but in the case of developing countries special and differential treatment is provided in respect of additional flexibility regarding governmental stockholding programmes for food security purposes and subsidized food prices for urban and rural poor.

The Blue Box

Blue Box payments are direct payments under production-limiting programmes that are made on fixed areas or yield or a fixed number of livestock. Payments made on 85 per cent or less of the base level of production are also allowed. In contrast to Green Box payments, production is still required but payments do not relate directly to current output. Inclusion of the Blue Box provision was basically a political strategy required to bring the negotiations to a close, and the specifics primarily benefited the United States and the European Union. The idea behind the Blue Box is to provide support without encouraging production. However, producers are likely to increase production if they believe the Government may in the future update the base period.

Blue Box payments :

Direct payments

- Linked to production-limiting programmes
- Given to specific products

Blue Box was originally considered as an interim measure, which now seems to become a permanent rule.

Development Programmes

Certain development programmes make up a third category of exempted domestic support measures. They include investment and input subsidies that are provided by developing countries to low-income or resource-poor producers. There is no definition of "low-income" or "resource-poor".

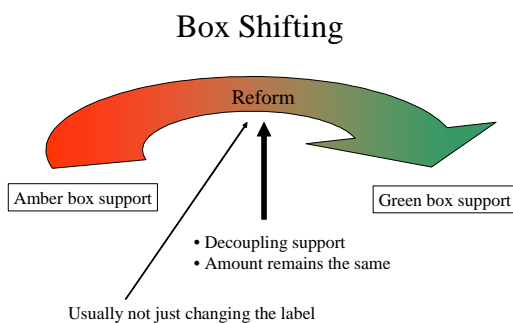
Table 9: Domestic support provisions in the Agreement on Agriculture

Provision	Specified in the AoA
Amber Box	Article 6.1 and in members schedule
<i>De minimis</i>	Article 6.4
Blue Box	Article 6.5
Green Box	Annex 2
Development programmes	Article 6.2

III.3.2. Implementation

For most Members, domestic support reduction commitments required only modest reform because much of the decline in expenditure had already occurred by the time the Uruguay Round was completed³². Blue Box policies were excluded from AMS calculations after 1995, but not from the base year AMS from which reductions had to be made. Additionally, AMS reduction commitments allowed countries to shift support from one product to another depending for example on world prices, since commitments were only made on the *total aggregate* measure.

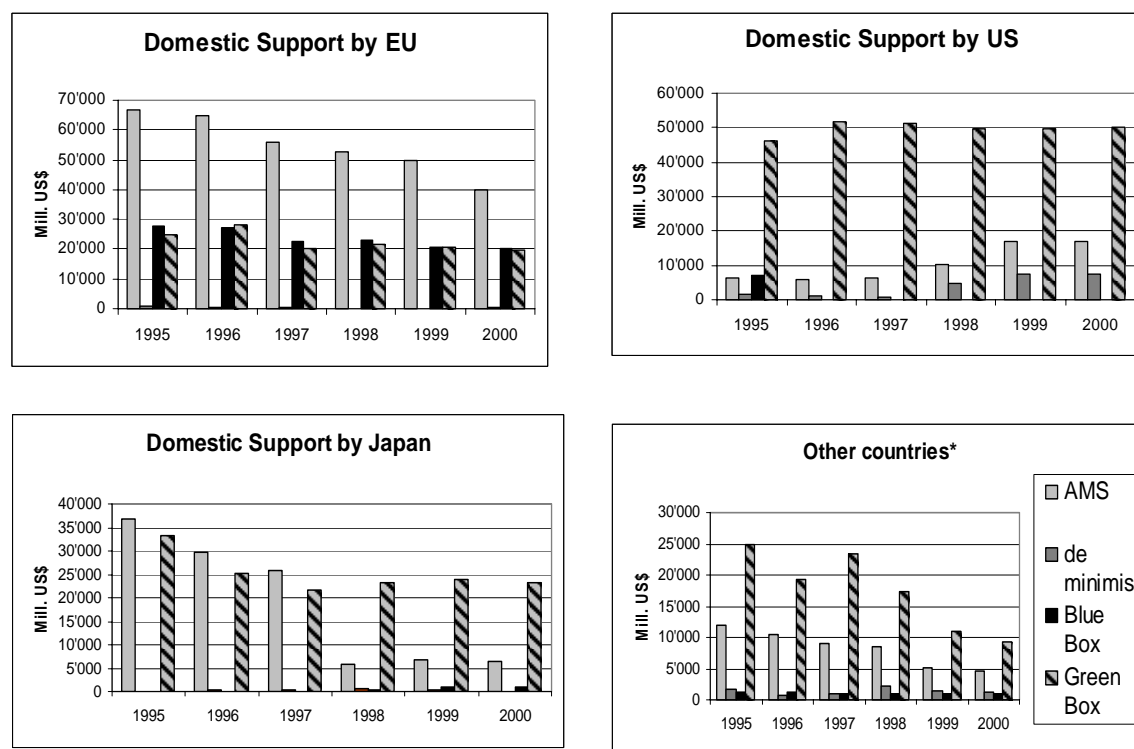
Furthermore, even in cases where commitments became binding, countries tended to shift support into the reduction-exempted Blue or Green Boxes so that the total amount of support (comprising all boxes) did not decrease. This is the so-called box-shifting, which may be beneficial if it is the result of a real reform that reduces the trade distortion. However, there is concern that box-shifting enables countries to reclassify policies without undertaking meaningful reforms. Support programmes may qualify for different boxes and different countries may put similar support programmes into different boxes, thereby undermining the purpose of the domestic support reduction commitments.



³² Laird, S., “Issues for the Forthcoming Multilateral Negotiations on Agriculture”, Zaragoza, IAMA, 1999.

Members are required to provide information on domestic agricultural support to the WTO Committee on Agriculture. In the OECD countries in 2000, 38, 12 and 46 per cent of domestic support was allocated to the Amber, Blue and Green Boxes, respectively³³. The remainder includes *de minimis* and other exempt categories.

Graph 5: Composition of domestic support



Source: USDA from WTO notifications, * Number of included countries changes

Table 6: Notified Domestic Support in 1995 and 2000

	Amber Box (AMS)	De minimis (AMBER)	Blue Box	Green Box	Total
	\$m	\$m	\$m	\$m	\$m
1995	121 570	4 019	35 907	129 011	290 507
2000	67 727	9 313	21 979	102 466	201 486

Source: UNCTAD calculation based on ERS/USDA calculation from WTO notifications

³³ Harry de Gorter et al. (2004), Domestic Support: Economics and Policy Instruments, in Agriculture and the WTO, Ed. Ingco and Nash, World Bank.

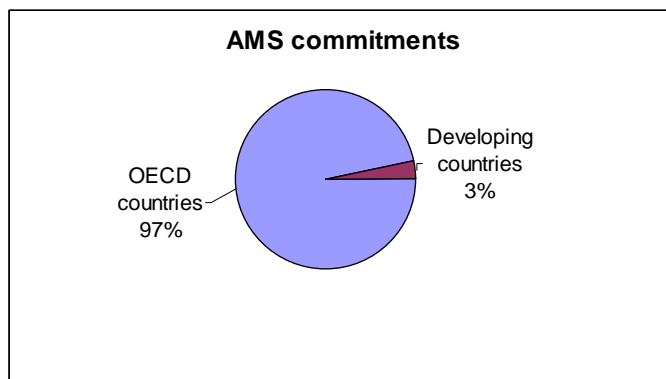
Amber Box

Thirty-four Members had commitments to reduce their Amber Box subsidies. The other WTO Members are not allowed to provide Amber Box support that exceeds *de minimis* levels since they did not have such support measures during the base period of the Uruguay Round.

The AMS is not an accurate measure of current trade-distorting domestic support, given that in addition to direct subsidies it includes support generated by the gap between administered domestic prices (such as EU intervention prices) and base period (1986-88) world reference prices.

Table 7: Countries with AMS commitments

Argentina	Iceland	Rep. of Korea
Australia	Israel	Slovak Republic
Brazil	Japan	Slovenia
Bulgaria	Jordan	South Africa
Canada	Lithuania	Switzerland-LI
Colombia	Mexico	Chinese Taipei
Costa Rica	Moldova	Thailand
Croatia	Morocco	Tunisia
Cyprus	New Zealand	United States
Czech Republic	Norway	Venezuela
EU	Papua New Guinea	
Hungary	Poland	



Source: UNCTAD calculation

Developing countries see an imbalance in the rules under the Agreement on Agriculture because developed countries with ample monetary resources are allowed to continue to provide farm support within their AMS commitments, while developing countries with budgetary constraints or different policies during the Uruguay base period have a de facto zero AMS level. Indeed, 97 per cent of the final AMS commitment levels in 2000 accrued to OECD countries.

The notification process reveals that the European Union, the United States and Japan account for over 85 per cent of total domestic support under the AMS. All countries except Argentina and Iceland were below their baselines between 1995 and 2001 (i.e. their utilization rate was below 100 per cent). Most countries have changed their domestic support policies to comply with the Agreement on Agriculture³⁴. The United States for example converted Amber Box into Green Box support for crops by eliminating the target price. The European Union reformed its Common Agricultural Policy (CAP) in 2003 by decoupling parts of the payments, thus shifting the decoupled direct income payments into the Green Box.

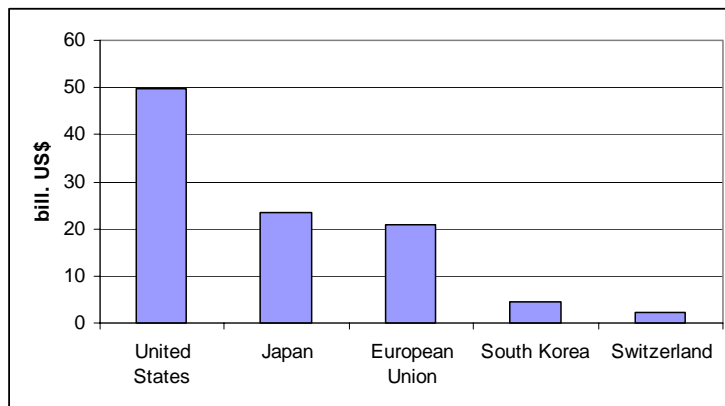
	AMS Utilization Rate (2000)
	%
United States	88
EC-15	62
Japan	17

Source: UNCTAD calculation based on WTO notifications

Green Box

The use of Green Box measures appears to be expanding as more and more domestic support is decoupled and shifted into the Green Box. Some 50 countries notified WTO of the use of Green Box support during 1995 and 2000. The five countries with the highest expenditures are the United States, Japan, the European Union, Republic of Korea and Switzerland. Between 1995 and 2000, the leading categories of support were general services (39 per cent) and domestic food aid (32 per cent). Other forms of support, such as structural adjustment through investment aids, environmental programmes and decoupled income support, each accounted for 5-7 per cent of total Green Box support.

³⁴ Harry de Gorter et al. (2004), Domestic Support: Economics and Policy Instruments, in Agriculture and the WTO, Ed. Ingco and Nash, World Bank.

Graph 6: Green Box expenditures for the five countries with the highest expenditures, 1998-2000

Source: USDA calculations from WTO notifications

This Green Box support is considered to be non- or only minimally trade-distorting, but there is no WTO definition of non-trade distorting support and the trade-distorting effects of direct payments are difficult to measure. Furthermore, it is not clear how best to deal with the "multifunctionality" of agriculture, an issue strongly related to Green Box support, since this type of support comprises measures intended to achieve objectives not directly related to agricultural production such as improving environmental conditions. Recently, there have also been decisions by WTO's Dispute Settlement Body on the classification of support programmes (see Chapter IV).

Green Box support has been criticized by agricultural exporters such as Cairns Group³⁵ members and developing countries that are not in a position to provide high amounts of domestic support. They argue that even decoupled direct payments distort production and trade. For example, direct payments of a high magnitude can offset farmers' fixed costs, which are higher than variable costs for most crops. Developed countries would be able to cross-subsidize exports by covering farmers' fixed costs, allowing them to remain in business or even inducing them to enter production³⁶. Several attempts have been made to estimate whether green box support measures are trade distorting and if so to what extent. A recent paper by the UNCTAD India Team³⁷ provides evidence that the magnitude of trade distortion may not be minimal.

³⁵ The Group includes major food exporters from both developed and developing countries and was formed in 1986 in Cairns, Australia. See Annex I.

³⁶ De Gorter, H. (2004), "Market Access, Export Subsidies, and Domestic Support: Developing for New Rules for the Agreement on Agriculture", in *Agriculture and the New Trade Agenda*, Ingco, M. D. and, Winters, A. L. (Eds), Cambridge University Press.

³⁷ UNCTAD India Team (2007): "Green Box Subsidies: A Theoretical and Empirical Assessment", forthcoming.

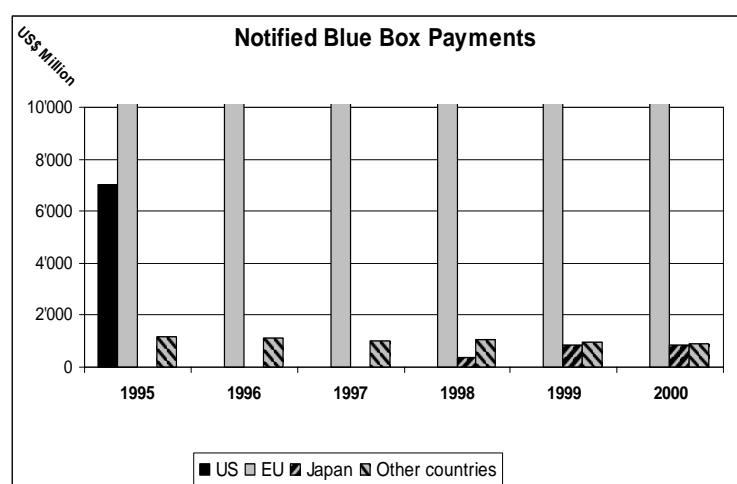
Blue Box

Blue Box policies were seen as acceptable but temporary or transitional policies that would help pave the way for further reforms of domestic support policies over time.

Only a few countries or groups of countries have actually used or use the Blue Box:

- the European Union
- Estonia, Slovak Republic, Slovenia
- Iceland
- Japan
- Norway
- United States

Graph 7: Notified Blue Box payments 1995 - 2000 (US\$ Million)



Source: UNCTAD calculation based on WTO notifications

Major Blue Box policies include EU area payments to farmers for diverting area to cereals, oilseeds, and protein crops, slaughter premiums for beef cattle and calves, and "headage payments" for beef and dairy cattle. The net effect of these payments is indeterminate. On the one hand, these payments require setting aside a proportion of planted land and keeping it idle. On the other hand, payments appear to increase output of certain commodities because farmers have to plant cereals, oilseed, or protein crops to be eligible for the subsidy³⁸.

Paying farmers not to produce (some Blue Box measures) or eliminating the requirement to produce (some Green Box measures) can also be trade-distorting because farmers may have

³⁸ De Gorter, *ibid.*

an incentive to stay in production to receive more payments in the future, if they expect base periods to be updated.

Total support to agriculture

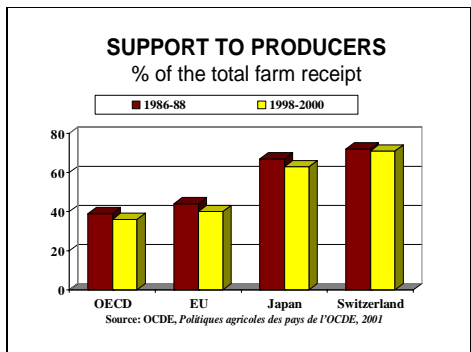
The OECD estimates the "Total Support to Agriculture" (Total Support Estimate, TSE) in OECD countries. This measure is quite different from the domestic support commitments under WTO terminology. For example, the OECD measure includes indirect payments from consumers to producers via higher domestic prices due to import tariffs.

Despite the reduction commitments, the level of support in 2003 was more or less the same as in 1988 in OECD countries. Total support to agriculture in the OECD amounted to US\$ 350 billion in 2003, against total agricultural production of US\$ 681 billion valued at the farm gate³⁹. In absolute terms, most of the support goes to producers of milk, meat, sugar and grains in the United States, the European Union and Japan. Support is provided in various forms. Border protection (tariffs and export subsidies) in the OECD accounted for US\$ 160 billion in transfers to producers. Domestic support payments amounted to US\$ 96 billion and included payments based on input and output use, area and headage payments, historical entitlements and other payments. The remainder includes general services and is generally considered non-distorting.



Support to Producers in OECD Countries

- Total support to agriculture in the OECD amounted to \$350 billion in 2003 (TSE)
- Total agricultural production of \$681 billion (2003)
- Mainly: Milk, meat, sugar and grains
- Various forms of support to producers
 - Border protection (e.g. tariffs): \$160 bill.
 - Domestic support payments: \$96 billion
 - General Services (Research, ...)



³⁹ OECD (2004), Agricultural Policies in OECD, Paris.

III.3.3. Negotiations on modalities

The Doha Ministerial Declaration calls for “substantial reductions in trade-distorting domestic support”. In addition, Ministers agreed to provide special and differential treatment for developing countries.

This section summarizes some negotiating positions and discusses the domestic support provisions in the July Package and Hong Kong Ministerial Declaration.

The early US proposal for domestic support reductions is to reduce over five years the non-exempt support as defined by the Aggregate Measurement of Support (AMS) (Amber Box) as well as production-limited (Blue Box) support to at most five per cent of the average value of agricultural production. By some later date, all non-exempt domestic support would be eliminated. *De minimis* payments, i.e. support not exceeding five per cent (ten in developing countries) of the total value of production, would be excluded from reductions and subsequent elimination. Developing countries would have special conditions to enable them to provide additional support to facilitate development and food security.

The early EC proposal involves maintaining the Amber, Blue and Green Boxes essentially unchanged and reducing the Amber Box Aggregate Measurement of Support by 55 per cent. The Green Box criteria would be expanded to encompass so-called non-trade concerns such as rural development, the environment and animal welfare. A flexible Green Box would allow support to be switched from the non-exempt Amber Box to the exempt Green Box. Finally, the EC proposes eliminating the *de minimis* provision in developed countries.

The position of most developing countries is to eliminate major portions of Amber Box support and reduce them on a product-specific basis. A significant cut will be made within the first year. The *de minimis* threshold is to be reduced for developed countries but not for developing countries. The Blue Box will be eliminated. Furthermore, developing countries aim to streamline Green Box criteria or cap the Green Box so that it cannot be used by developed countries as a loophole for continued production support. SDT domestic support under Article 6.2 AoA will be expanded. This position is supported by the G20 but also, by and large, by the Cairns Group of agricultural exporters.

“On average in OECD countries, support to producers accounts for 31 per cent of total farm receipts, of which 78 per cent is in the form of market price support, output payments and input subsidies. Support levels differ between countries and commodities, with higher support being given to those producers that are most exposed to international competition. Producer support to rice producers corresponded to 80 per cent of farm receipts, while support to producers of sheep meat, sugar and milk corresponded to 45 per cent or more. In summary, developed countries have failed to use the opportunity to implement commitments on reduction of agricultural support in a way that would have been beneficial for developing countries⁴⁰ .”

⁴⁰ UNCTAD, “World Commodity Trends and Prospects. Note by the Secretary-General”, Geneva, UNCTAD, A/57/381, 5 September 2002.

The reduction in domestic support can be expected to reduce production and raise world prices. Some LDCs and NFIDCs fear higher food bills and terms of trade losses. Thus, it would be necessary to establish practical and effective support measures for LDCs and NFIDCs to offset the effects on their consumers of higher agricultural prices.

Domestic support provisions in the July Package and the HKD

Graph 8: Overview of domestic support provisions in the July Package and HKD

JULY PACKAGE and HKD on Domestic Support		
<p>Overall Reduction Target</p> <ul style="list-style-type: none"> • Overall cut = AMS + <i>de minimis</i> + Blue Box capping = tiered approach, 3 bands • The total value should not exceed 80% of the combination of the three in the final implementation year. 		
<p style="text-align: center;">AMS cuts</p> <ul style="list-style-type: none"> • Tiered approach, 3 bands • Greater cuts by countries using higher levels of AMS • Capping of product-specific AMS 	<p style="text-align: center;"><i>De minimis cuts</i></p> <ul style="list-style-type: none"> • By all countries (except LDCs) • S&D 	<p style="text-align: center;">Blue Box</p> <ul style="list-style-type: none"> • Capping at [5%] of the agricultural production value • Revision of the definition and criteria
<p>Green Box</p> <ul style="list-style-type: none"> • Revision of the criteria, including programmes for DCs 		
<p>S&D</p> <ul style="list-style-type: none"> • Longer implementation period • Lower reduction rates • Continued access to the “Development Programme” (Article 6.2) • Exemption from the <i>de minimis</i> cuts if “almost all support” is for subsistence and resource-poor farmers and if no AMS entitlement • No reduction commitments by LDCs 		

Table 10: Provisions and challenges for domestic support

Provisions	Challenges
Overall trade-distorting support	
<ul style="list-style-type: none"> ▪ The sum of all trade-distorting support (AMS + <i>de minimis</i> + level to be determined of Blue Box) to be reduced based on tiered formula with three bands. ▪ Initial reduction of 20 per cent ▪ Effective cuts in trade-distorting support 	<ul style="list-style-type: none"> ▪ Reduce substantially the total amount of trade distorting support ▪ Take into account the difference between applied and bound rates
Amber Box	
<ul style="list-style-type: none"> ▪ Final bound total AMS to be 	<ul style="list-style-type: none"> ▪ Appropriate reduction in the three bands and special

<p>reduced (tiered approach with 3 bands and greater reduction of higher AMS).</p> <ul style="list-style-type: none"> ▪ Product-specific AMS to be capped at historic level; some of such AMS subject to reduction. 	<p>and differential treatment for developing countries</p> <ul style="list-style-type: none"> ▪ Product-specific caps / reductions: prevent shifting between commodities ▪ What will be the base for capping the product-specific support?
<ul style="list-style-type: none"> ▪ All countries reduce <i>de minimis</i>, except if for subsistence and resource-poor farmers ▪ Countries without AMS entitlements do not have to reduce <i>de minimis</i> 	<ul style="list-style-type: none"> ▪ Lower reduction commitment for developing countries
Blue Box	
<ul style="list-style-type: none"> ▪ Blue Box modified to include (i) direct payments under production-limiting programme OR (ii) direct payments unrelated to current production (no production required) ▪ Flexibility provided if large percentage of support placed in Blue Box 	<ul style="list-style-type: none"> ▪ Restrict broadening and weakening of definition of the Blue Box. ▪ Set stringent criteria for the Blue Box to prevent box-shifting if it is not the consequence of a meaningful reform. ▪ Set criteria so that degree of trade distortion is limited. ▪ Ensure that Blue Box payments are less trade-distorting than Amber Box payments.
<ul style="list-style-type: none"> ▪ Final Blue Box support to be capped at [5%] of historical total value of agricultural production 	<ul style="list-style-type: none"> ▪ Prevent high payments before final level is reached ▪ Will the capping be effective? (Only the EU and Norway will face reductions at the current Blue Box payment level)
Green Box	
<ul style="list-style-type: none"> ▪ Green Box criteria to be reviewed while keeping the basic concepts, principles and effectiveness remain and taking due account of non-trade concerns ▪ Improve monitoring & surveillance ▪ Criteria reviewed to ensure that programmes of developing countries that cause no more than minimal trade-distortions are effectively covered 	<ul style="list-style-type: none"> ▪ Tighten up rules to ensure minimal trade distortions (How to measure the degree of trade-distortion?) ▪ Treatment of direct payments ▪ Is strengthening cross-compliance (current Green Box criteria already provide for payments under environmental programmes and other non-trade concerns) useful for restricting distortions? ▪ Ensure that minimal trade-distorting programmes that reflect developing country needs are included.
Special and Differential Treatment	
<ul style="list-style-type: none"> ▪ SDT: Longer implementation period and lower reduction coefficients; ▪ Continued access to AoA 6.2 (rural development etc); 	<ul style="list-style-type: none"> ▪ Enhance the provisions under AoA 6.2. ▪ Be aware that domestic support commitments are weighted against developing countries, which are not allowed or able to make extensive use of this measure.

Elements that are to be determined in the negotiations include:

- Percentage reduction in bands for overall reduction and for AMS reduction;
- Base period for product-specific AMS caps;
- Definition of development-linked *de minimis* in developing countries,
- Criteria for Blue Box; and
- Criteria for Green Box.

Ministers agreed in Hong Kong on three bands both for the AMS reduction and the overall cut of trade-distorting domestic support with higher linear cuts in higher bands. As the Member with the highest level of permitted support, the EU will be in the top band, followed by the US and Japan. All other countries, including developing countries, are in the third band. Some convergence concerning the AMS reduction, overall cuts in trade-distorting support and reduction of *de minimis* levels have been noted. Disciplines would be developed that "achieve effective cuts in trade-distorting domestic support".

The range of proposed cuts (from October 2005) is between 53 and 80 per cent for overall trade-distorting support for the three countries in the top two tiers. Greater differences remain on criteria. On the new Blue Box support, the G20, supported by the EU, proposed additional criteria to ensure that payments are less trade-distorting. However, the proposal has been rejected by the United States. No decision was taken at Hong Kong on these Blue Box issues. The G20 and some developed Cairns Group members have sought stricter disciplines for both the current (production-limiting) and the new (without production restrictions) Blue Boxes.

In Hong Kong, developing country Members without AMS entitlements secured exemption from *de minimis* and overall cuts. Additionally, Green Box criteria will be reviewed to ensure that programmes of DCs that cause not more than minimal trade-distortions are effectively covered. There was no mention of additional disciplines for existing Green Box measures, as requested by many developing countries. There is concern as to whether the provisions regarding trade-distorting support will effectively lead to a substantial progressive reduction of these measures, since reductions would be from bound levels, which are often higher than the current support, and a broader range of support measures could be shifted into the new Blue Box (or over to the Green Box).

Concerns and issues raised by developing countries

- The choice of a reduction formula for the AMS that reduces the currently applied support on a product-specific basis so that substantial reduction is achieved for all products of export interest to developing countries;
- Establishment of stringent criteria for Blue and Green Boxes to prevent box-shifting;
- The implications of *de minimis* cuts by developing countries, and identification of the type of *de minimis* support that qualifies as being given to subsistence and resource-poor farmers.

Source: UNCTAD, TD/B/51/4

Suspension of the negotiations

As mentioned in section III.2., major sticking points that led to the suspension of the negotiations in July 2006 were the EU's tariff reduction offer and to a certain extent reduction exemptions in DCs and domestic support commitments in the United States.

Before the suspension, the US offered to reduce its level of trade-distorting support to around US\$ 22 billion annually. Since current expenditure is lower, this was found inadequate by most developing countries, which were calling for higher cuts of around 12 billion; the EU demanded cuts that would result in less than US\$ 20 billion for the overall commitment of the United States⁴¹. Since the EU reformed the Common Agricultural Policy in 2003 and shifted most of its support into the reduction-exempt box of no or at most minimal trade-distorting support (Green Box) through decoupling, the major difficulty in the negotiations was the support level in the United States.

III.4. Export competition - export subsidies

III.4.1. Provisions of the Agreement on Agriculture

The last of the three pillars of agriculture is export competition or export subsidies⁴². The proliferation of export subsidies in the years leading up to the Uruguay Round was one of the main issues addressed in the negotiations. The right to use export subsidies is now limited and export subsidy expenditure has been reduced⁴³.

Export subsidies subject to reductions comprise

- Direct export subsidies contingent on export performance;
- Producer-financed export subsidies;
- Export marketing subsidies;
- Cost-reduction measures, e.g. transport subsidies;
- Subsidies on incorporated products, e.g. milk in cheese.

When producers receive prices that exceed world prices, an exportable surplus requires a subsidy so that it can be sold on the world market. The export subsidy is the difference between the world and domestic prices (see box for other categories.) As world prices rise, export subsidies automatically diminish.

⁴¹ WTO Committee on Agriculture: Agriculture Negotiations, Agriculture Domestic Support Simulations, JOB(06)/151.

⁴² The expression export subsidies is sometimes used in a narrow sense where it describes direct export subsidies paid to producers (scheduled export subsidies) and sometimes in a broader sense where it includes other forms of promotion as well. Here, we use the term export competition in the broader sense.

⁴³ The export subsidies provision in the AoA is one area which most clearly distinguishes the WTO rules and disciplines on agricultural products from those on non-agricultural products. The use of export subsidies is prohibited except for those provided within the framework of the AoA. Article 3 (Prohibition) of the WTO Agreement on Subsidies and Countervailing Measures stipulates that, "Except as provided in the Agreement on Agriculture...", export subsidies and subsidies contingent upon the use of domestic products over imported goods are prohibited.

Other forms of subsidizing exports:

The current Agreement on Agriculture does not include subsidy components in export credits, State trading enterprises and food aid in reduction commitments. These issues are discussed in Sections D.2. and D.3. However, export subsidies that are not explicitly mentioned in the AoA are forbidden. Some disciplines regarding food aid, although loosely defined, are mentioned in the AoA.

Reduction commitments:

The countries that had export subsidies during the base period have commitments concerning the budgetary outlay (i.e. maximum amount of money) and the volume (i.e. maximum quantity) that can be subsidized. Countries without base period export subsidies are not allowed to provide them. An exception is developing countries that could provide subsidies during the implementation period to reduce the costs of marketing exports and internal transport and freight charges on export shipments.

The Uruguay Round product-specific export subsidy reduction commitments in terms of volumes were 36 per cent for developed countries and 24 per cent for developing countries. Budgetary outlay reductions were 21 per cent and 14 per cent, respectively.

Table 4.1 Export subsidy reduction commitments

	Developed	Developing
	%	%
Volume	36	24
Expenditure	21	14

III.4.2. Implementation

Currently, only 25 WTO members are allowed to use export subsidies and have reduction commitments⁴⁴. The actual level of export subsidies provided depends on production, world prices and exchange rates, and therefore fluctuates. Between 1995 and 2000, on average US\$ 6.2 billion of export subsidies were provided worldwide. The European Union accounts for almost 90 per cent of these subsidies. However, the latest available data from the years 2000

⁴⁴ Australia, Brazil, Bulgaria, Canada, Colombia, Cyprus, Czech Republic, EU, Hungary, Iceland, Indonesia, Israel, Mexico, New Zealand, Norway, Panama, Poland, Romania, Slovak Republic, South Africa, Switzerland-Liechtenstein, Turkey, United States, Uruguay, Venezuela.

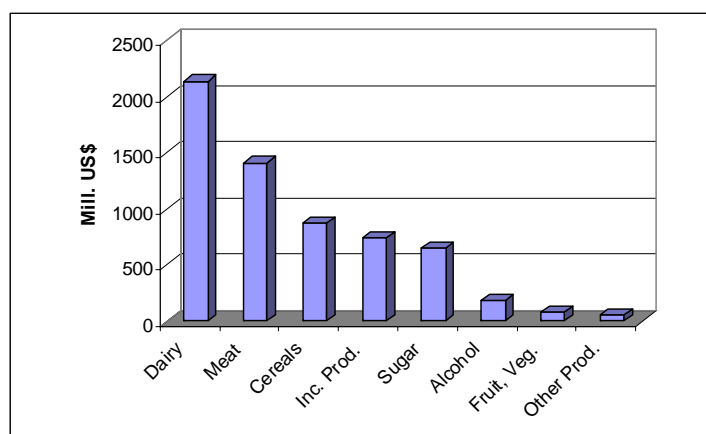
and 2001 show that the use of export subsidies in the European Union has declined by more than 50 per cent since the beginning of implementation⁴⁵.

Since most of the export subsidies are provided by developed countries from the Northern hemisphere, the bulk of subsidies apply to temperate products. Almost 35 per cent go for dairy products and 23 per cent for meat (see Figure 8). Producers of cereals, incorporated products and sugar also receive a considerable amount. Beef, which is of interest to some developing countries, represents almost 60 per cent of all meat subsidies.

Use of Export Subsidies: Averages from 1995 to 2000 for countries with the highest expenditures		
	Average 95- 2000	Share of total
	Mill. US\$	%
EU	5,503.4	88.7
Switzerland	311.5	5.0
Norway	85.7	1.4
USA	83.6	1.3

Source: Peters (2006), Export Subsidies, Policy Issues in International Trade and Commodities Study Series No 32, UNCTAD

Figure 8: Export Subsidies by Commodity Group

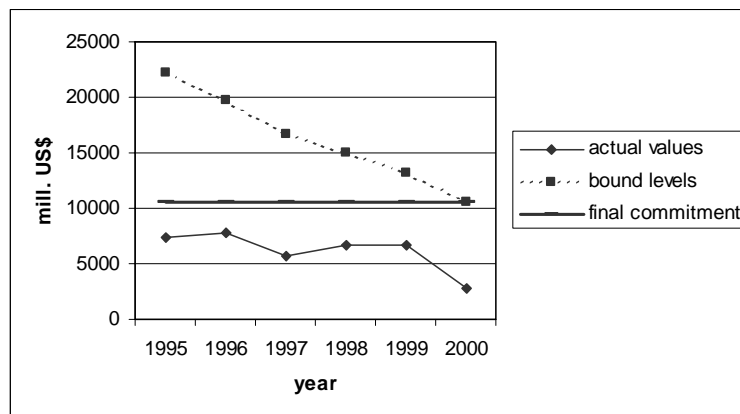


Source: UNCTAD calculation based on WTO notification

⁴⁵ Data in this section are drawn from Peters (2006), "Roadblock to Reform: The Persistence of Agricultural Export Subsidies", UNCTAD Policy Issues in International Trade and Commodities Series No. 32.

Global export subsidy expenditure, averaging US\$ 6.2 billion over the period 1995 to 2000, is well below the final 2000 commitment value of US\$ 11 billion, a utilization rate averaging a scant 59 per cent. This estimate hides a great deal of variation, both between countries and between products. Some countries that were allowed to subsidize their exports did not do so at all, whereas other countries took full advantage. For example, Norway's utilization rate was 153 per cent, as against 119 per cent for Switzerland, 80 per cent for the EU, and 14 per cent for the US⁴⁶. Bulgaria, Brazil, Indonesia, Panama and Uruguay did not use export subsidies although they were entitled to do so. Variations concerning different products are discussed below.

Figure 9: Bound and actual export subsidy expenditure, all countries



Source: UNCTAD calculations based on WTO notifications

The above given numbers relate to scheduled export subsidies. However, other forms of export subsidies exist. Export credits, whose use has been expanding in recent years, may also distort export competition when the credit conditions go beyond what private arrangements could achieve. Exporting State trading enterprises or single-desk traders may cross-subsidize, which would also distort trade. Finally, food aid may be used as a surplus disposal instrument.

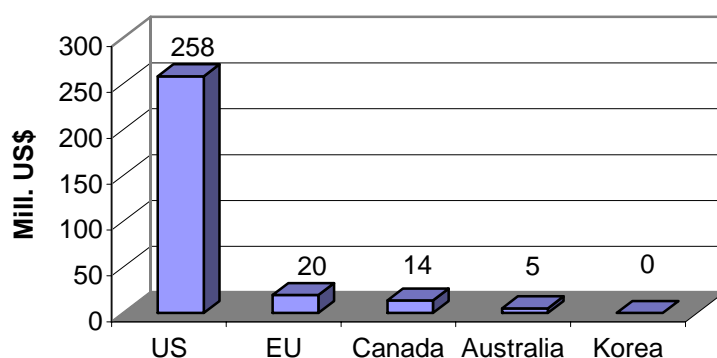
Export subsidies are considered trade-distorting as they provide exporters receiving the subsidies with a direct price advantage, encourage overproduction and depress world prices. The provision of export subsidies is counter-cyclical to the world price movement, which can exacerbate price fluctuations. The lower and more variable prices hurt vulnerable producers in developing countries. However, most of the export subsidies are on temperate products like dairy and cereals. Therefore, consumers in net food-importing developing countries benefit from the lower prices in the short run.

⁴⁶ This rate is the average of actual subsidies between 1995 and 2000 divided by the 2000 commitment value, summed over all products. Since commitment values decreased during that period, the rate may be higher than 100 per cent. The average utilization rate, calculated for each year and each product, is smaller (see below). However, using the year 2000 commitment levels shows whether countries are constrained currently or in the near future rather than whether they were constrained in the past.

Export credits

The results of an OECD study on export credits⁴⁷ suggest that the overall trade-distorting effect of export credits on total trade in agriculture products is very small, although certain export credit programmes do bias targeted importers' purchasing decisions and do distort markets. Total export credits facilitated on average 4.4 per cent of world trade between 1995 and 1998, but of these, only a portion are estimated to have distortional effects. The use of export subsidies increased during this period, both overall and relative to total trade. The total subsidy element amount is estimated to have been US\$ 300 million in 1998. Of this, the US provides 86 per cent, the EU 7 per cent (excluding intra-EU credits), Canada 5 per cent and Australia 2 per cent (see Figure 10). The US is the largest user of export credits and its export credits have the highest subsidy content at 6.6 per cent. Cereals account for almost half of the subsidy element of all used export subsidies.

Figure 10: Subsidy element amount of export credits



Source: OECD (2000); EU data excluding intra-EU export subsidies

Food aid

Food aid increases total world consumption but can also displace commercial exports. A distinction between the two is necessary. If the food aid displaces other exports and is used to dispose of surplus, it has the same trade-distorting effect as a cash export subsidy. Studies have shown that a proportion of the food aid that is currently provided is supply-driven rather than demand-driven and is used as a disposal tool.

Food aid may replace local production, and some products such as vegetable oil that are provided as food aid can be produced by developing countries. Since food aid does assist in reducing hunger in emergencies, alternative methods of assistance such as cash aid have to be introduced.

⁴⁷ OECD (2000), "An Analysis of Officially Supported Export Credits in Agriculture", OECD, Paris. Participating countries voluntarily provided the data, which are confidential.

State Trading Enterprises (STEs)

Exporting State-owned companies, marketing boards or similar enterprises could be a means of subsidizing exports. STEs or similar enterprises may

- Benefit from price pooling between domestic and export sales which may lead to consumer-financed subsidies,
- Benefit from Government guarantees;
- Have a monopoly when buying commodities for export; or
- Not have commercial objectives.

Of concern is whether a monopoly given by a Government to an exporting enterprise is per se suspect or whether it is the actions of the enterprise that would determine whether it is subsidizing exports or not. It has been argued that private companies can also have monopoly power, use the commercial practice of differential pricing, and may receive Government help when struggling for existence.

State Trading Enterprises (STEs) are State organizations that exert monopoly or near monopoly power over the purchases and sales of a country's agricultural products.

Activities of STEs were not specifically disciplined in the URAA.

Article XVII of the GATT states that STEs must operate in accordance with commercial considerations and in a non-discriminatory way.

III.4.3. Negotiations on modalities

The Doha Ministerial Declaration calls for "reductions of, with a view to phasing out, all forms of export subsidies".

This section summarizes some negotiating positions and discusses the export competition provisions in the July Package and the Hong Kong Ministerial Declaration.

The early EU proposal was an average "substantial" cut in the volume of export subsidies and an average 45 per cent cut in the level of budgetary outlays, on the condition that all forms of export subsidization are treated on an equal footing. The European Union proposed to eliminate export subsidies completely for certain key products for developing countries. The trade-distorting elements of export credits should be subjected to strict disciplines. The early US proposal was to reduce to zero the levels of scheduled budgetary outlays and quantity commitments on export subsidies. On export credits, disciplines should be developed. This is stricter than the EU proposal concerning export subsidies but less strict concerning export credits, which reflects the use in the United States of these two instruments.

The Cairns Group has always taken a strong position concerning export competition. It has proposed eliminating and prohibiting all forms of export subsidies for all agricultural products. The African Union did not demand the elimination of export subsidies until the European Union itself signalled its willingness to eliminate them if other countries followed suit. This offer is conditional on other members removing State trading

Parallelism:

Equal treatment of

- Export subsidies as scheduled

Subsidy components in:

- Export credits
- Trade-distorting practices of STEs

enterprises and export credits with subsidy components (“parallelism”). The offer contributed to the agreement on the framework for modalities, which provides for the elimination of export subsidies by a certain date.

Most countries argue that subsidized export credit, along with export guarantees and insurance, various forms of food aid and certain activities of State trading enterprises, could be used to circumvent export subsidy commitments. They call for disciplines on the subsidy portion of these measures. Others argue, however, that export credits do not contain large amounts of subsidies and are useful for food security in importing countries suffering from financial crises or food supply problems. In some developing countries, STEs are considered to be conducive to development. Developing countries benefiting from emergency or non-emergency food aid have expressed concern over the possible negative impact on the availability of food aid. At the Hong Kong Ministerial meeting, countries agreed to provide a "safe box" for bona fide food aid to deal with emergency situations. It was further agreed to eliminate commercial displacement through effective disciplines on in-kind food aid, monetization (i.e. selling parts of the food to cover for example transport expenses) and re-exports. It remains, however, technically difficult to measure the subsidy components in these measures.

Export competition provisions in the July Package and Hong Kong Declaration

Table 11: Provisions and challenges for export competition

Provisions	Challenges
<ul style="list-style-type: none"> ▪ Parallel elimination of all forms of export subsidies by 2013 ▪ Progressive reduction 	<ul style="list-style-type: none"> ▪ The July Package was the first WTO agreement to propose eliminating all export subsidies. ▪ Achieve progressive reduction for products of interest to developing countries. ▪ Avoid negative implications of the elimination for net food importers due to increasing food prices.
<ul style="list-style-type: none"> ▪ Export subsidies as scheduled ▪ Subsidy components in export credits (conditions) ▪ Trade-distorting practices of STEs ▪ Food aid not in conformity with disciplines 	<ul style="list-style-type: none"> ▪ Find appropriate provisions for differential treatment in favour of LDCs and NFIDCs w.r.t. credits. ▪ Flexibility for developing countries with respect to STEs if important for development. ▪ Continue to allow genuine food aid (emergency and non-emergency food aid) and eliminate commercial displacement at the same time.
<ul style="list-style-type: none"> ▪ Continued recourse to AoA 9.4 for reasonable time after end date ▪ Appropriate provisions on credits for NFIDCs 	<ul style="list-style-type: none"> ▪ Sufficiently long “reasonable period” for which developing countries have access to AoA 9.4 subsidies

Elements that are to be determined in the negotiations include:

- Methods to measure export subsidy components in export credits, STEs and food aid;
- Conditions that ensure availability of food aid for countries in need but avoid commercial displacement; and
- Appropriate provisions on credits for NFIDCs.

Members agreed on the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by the end of 2013, with the reduction of a substantial share within the first half of the implementation period. The four measures are scheduled export subsidies, export credits, State Trading Enterprises and food aid. Some convergence on disciplines for export credits with a repayment period of less than 180 days (longer repayment periods will be forbidden) was noted by Ministers in Hong Kong. On STEs, disciplines relating to exporting STEs will extend to the future use of monopoly powers so that such powers cannot be used to circumvent the direct disciplines on STEs.

On food aid, a "safe box" for bona fide food aid will be provided to ensure that new disciplines that would eliminate commercial displacement would not unintentionally impede efforts to deal with emergency situations. Effective disciplines on in-kind food aid, monetization and re-exports would be agreed. Appropriate provisions in favour of LDCs and net food importers as provided for in the Marrakesh Decision will be completed as part of the modalities. A paper on food aid presented by the African Group and the LDCs in March 2006 was welcomed by many Members as a sound basis for further negotiations. Criteria for emergency food aid would be included in the "safe box". An emergency situation has, for example, to be identified by a UN agency or jointly declared by the Government concerned and a relevant international organization. Disciplines on non-emergency food aid would include that it has to be provided in full grant form; be untied; only exceptionally be monetized; not be re-exported, etc. Many African countries feared that the new disciplines on food aid would prevent countries from providing the necessary amount of food aid.

Concerns and issues raised by developing countries

- Progressive elimination of all forms of export subsidies, in particular direct export subsidies;
- The role of export credits and STEs used by developing countries in their development strategies, and their appropriate reflection in the SDT provisions;
- Due priority given to putting in place mechanisms (trade, aid and financing mechanisms) to alleviate possible negative impacts on LDCs and NFIDCs.

Source: Partly UNCTAD, TD/B/51/4

The issue of direct export subsidies is no longer as important as it was in the Uruguay Round because expenditures have been reduced. The elimination of the remaining export subsidies will most likely reduce global production, putting upward pressure on prices of exports currently receiving the subsidies. Most developing and least developed countries are importers of many subsidized products and would be worse off following the elimination of export subsidies on these products (e.g. wheat and dairy products). Regarding other products

such as sugar, developing and least developed countries would benefit from the elimination (Peters 2006).

III.5. Sectoral initiative in favour of cotton

In 2003, four West African countries – Benin, Burkina Faso, Chad and Mali – submitted at WTO a joint proposal on “Poverty Reduction: Sectoral Initiative in Favour of Cotton”⁴⁸. The countries asked for the elimination of domestic support and export subsidies on cotton and for financial compensation while subsidies were being phased out. The African cotton producers suffer from very low cotton prices and the resultant export earning losses. There are several reasons for this, such as competition from other materials but also support to production in other countries, mainly provided by the United States.

- **Cotton** production accounts for 5 to 10 percent of **GDP** in Benin, Burkina Faso, Chad and Mali.
- Cotton contributes significantly to **export revenue** in the four countries.
- Estimates of the **impact of elimination** of trade-distorting subsidies on cotton vary, but many are in the range of plus 10 to 20 per cent of world prices.

(Source: FAO)

The July Package provides that the cotton issue raised by four West African countries would be “addressed ambitiously, expeditiously and specifically” in the agriculture negotiations. This is in contrast to calls to address cotton as a stand-alone issue outside the agriculture negotiations. The reference to the word “specifically” was made to ensure that negotiations would focus on cotton. A subcommittee on cotton was established in 2004 to review progress. Negotiations should encompass all trade-distorting policies affecting the sector, including tariffs, domestic support and export subsidization. Compensation for losses suffered by the West African cotton producers will be considered in the context of development and financial support programmes. The subcommittee met regularly and discussed both trade and development issues. Progress in cotton has subsequently been linked to progress in agriculture. There are many development projects under consideration by many different donors and international organizations.

At the Hong Kong Ministerial, Ministers addressed both trade and development tracks (see box below and Annex II). Although the decision to remove some of the trade distortions on cotton was welcomed, a number of countries have found the Ministerial Declaration not sufficient to address the problem that cotton producers face in some developing countries since the vast majority of trade distortions stem from domestic support. The current amount of export subsidies (only through export credits) is relatively small and tariffs in developed countries on cotton are already zero or low. Domestic support in some countries remains very high. The EU had offered and partly committed itself unilaterally to eliminate all tariffs, export subsidies and trade-distorting domestic support in 2006.

⁴⁸ TN/AG/GEN/4.

Table 12: Provisions in the July Package and HKD on the "Cotton Initiative"

Provisions	Challenges
<ul style="list-style-type: none"> ▪ The trade-related aspects of Sectoral Initiative on Cotton will be pursued in the agriculture negotiations ▪ Linked development aspects: consult with the relevant international organizations <p>Subcommittee on cotton will meet periodically</p> <ul style="list-style-type: none"> ▪ Eliminate all forms of export subsidies by developed countries in 2006 ▪ Developed countries give duty-free and quota-free market access for cotton exports from LDCs from the beginning of the implementation period of the round ▪ More ambitious and quicker reduction of domestic support on cotton than other domestic support 	<ul style="list-style-type: none"> ▪ Receive support from Bretton Woods Institutions and other countries/organizations outside of the WTO ▪ On the most controversial aspect of domestic support: achieve effective reductions in order to support developing country cotton producers
<ul style="list-style-type: none"> ▪ "Work on cotton under all the pillars will reflect the vital importance of this sector to certain LDC Members and we will work to achieve ambitious results expeditiously." 	<ul style="list-style-type: none"> ▪ Flexibility given in each of the pillars will not be used on cotton.

Recent developments on cotton include the submission by the Cotton Four (C4) countries on the modalities to reduce domestic support on cotton more deeply and more rapidly (TN/AG/GEN/12). The submission proposes a cotton-specific formula so that the additional cut for cotton would be greater if the general cut for agriculture is more modest; the additional cut would not need to be large if the general reduction for agriculture is already ambitious. These cuts would take place over a period that is one-third of the general implementation period for AMS cuts. The proponents called for an agreement to eliminate all trade-distorting domestic supports by a date to be agreed on before the end of the Doha Round. They also called for a ceiling on Blue Box subsidies for cotton of one-third of the ceiling on the Blue Box for agriculture as a whole.

The WTO dispute on cotton is likely to have implications for the prospects for an early resolution of the cotton issue.

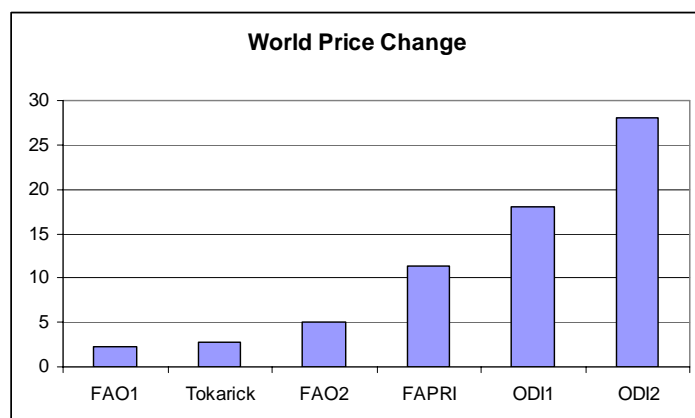
- The cotton panel found that certain US payments to farmers, such as "Product Flexibility Contract" (PFC) and "Direct Payments" (DP) amounted to trade-distorting domestic support.

- Payments were related to the type of production undertaken and could therefore not be categorized as allowed "decoupled payments".
- "Export credit guarantees" and "step 2 marketing payments" were prohibited export subsidies and had to be withdrawn "without delay"⁴⁹.

Economic impact of elimination of cotton subsidies

Tariffs and export subsidies on the global cotton trade are rather low and virtually no gains accrue to developing countries if these are eliminated. The major distortion is domestic support. In terms of assisting specific developing countries, including the C4 in West Africa, removing domestic support in developed countries is a blunt instrument because the benefits also go to non-African exporters, including the major suppliers, namely Australia, Uzbekistan and Brazil. Nonetheless, according to a World Bank study⁵⁰, the benefits of total reform in the cotton sector for sub-Saharan African exporters are quite large, US\$ 147 million in 2001 dollars, compared with other forms of agricultural liberalization. In percentage terms these welfare gains are substantial. However, potential welfare losers include countries that import cotton, including textile producers Turkey, India and Mexico. Estimates suggest that developing countries as a group would be net losers when the increased cost of textile imports is taken into account. Net beneficiaries include USA and EU taxpayers, who would no longer need to support their cotton producers. The likely price increases vary, however, substantially among various studies (see figure below).

Figure: Change in cotton world price after elimination of all distorting support



Source: FAO Policy Brief No. 1

III.6. Other provisions in the Agreement on Agriculture and the current negotiations

This section provides an overview of other provisions that are either part of the current Agreement on Agriculture or the negotiations on agriculture.

⁴⁹ Under the "Step 2" cotton programme, US cotton producers are paid the difference between the domestic cotton price and the world market price to ensure that their cotton can be sold profitably on foreign markets.

⁵⁰ Anderson, K. and Valenzeula, E. (2006) 'WTO's DOHA Cotton Initiative: How will it affect developing countries?', Trade Report 35929, Washington D.C.

Export restrictions

Other provisions in the Agreement on Agriculture are that countries imposing export restrictions have to take into account possible negative effects on importing countries concerning food security. Corresponding notifications are required.

Peace Clause

The so-called Peace Clause regulates the application of other WTO agreements to subsidies. For example, Green Box support cannot be subject to countervailing measures. Other domestic support measures may be the target of countervailing measures but due restraint is to be exercised. The Peace Clause expired in 2003/04. Some developed WTO members are in favour of renewing it.

Dispute settlement

In addition, the Agreement on Agriculture specifies that in the case of a dispute involving provisions of the Agreement on Agriculture, the general WTO dispute settlement procedures shall apply.

Food aid conditions

The Marrakech Decision relating to the least developed and net food-importing developing countries recognizes that these countries may experience negative effects in terms of food availability from external sources on reasonable terms and conditions during the reform programme. The Decision was intended to address the needs of poor States. However, there has been some criticism that it has not been adequately implemented. In December 2000, the WTO General Council instructed the Committee on Agriculture to examine problems facing food importing developing countries. The Committee's recommendations regarding implementation-related issues were approved by the WTO Fourth Ministerial Conference in November 2001. In this regard, the Doha Ministerial Conference approved recommendations in the areas of ⁵¹ :

- Food aid;
- Technical and financial assistance in the context of aid programmes to improve agricultural productivity and infrastructure; and
- Financing of normal levels of commercial imports of basic foodstuffs.

Geographical indications

A geographical indication (GI) is a term used to describe both the origin and characteristics of a product. Geographical indications are discussed under Trade-Related Aspects of Intellectual Property Rights (TRIPS) but also in the agriculture negotiations, whereupon specific terms could be reclaimed for use only by producers in the original geographical area. They typically apply to wine but also to other goods such as cheese and meat. Examples include "Champagne", "Cognac", "Edam", "Mozzarella" and numerous others.

⁵¹ For further details, see WTO documents: G/AG/11, 12, 13 and 14 and G/AG/R/33.

Food safety

Food safety deals with the issue of whether multilateral trade agreements limit Governments in protecting their consumers from unsafe food. It is related to the sanitary and phytosanitary (SPS) provisions. Developments in food safety issues since the end of the Uruguay Round include concerns about genetically modified organisms. Disease outbreaks such as BSE, foot and mouth disease and avian influenza, although not strictly food safety issues, have raised concerns about trade and health impacts. All negotiators seem to accept that consumers must be protected while avoiding disguised protectionism.

Sectoral initiatives

Sectoral initiatives aim to reduce tariffs and / or subsidies to zero or more ambitiously for products of a specific sector. Examples may include cotton or fisheries. The lower tariffs can be applied on trade within a subgroup of countries, e.g. all major importing countries. This kind of liberalization has been undertaken in the Uruguay Round, and advocates say it should be explored again in the current agriculture negotiations. Opponents argue that it would distract attention from more comprehensive liberalization and that it would be almost impossible to strike a sectoral deal that would benefit all developing countries.

Tropical products

Paragraph 43 of the July Package refers to the long-standing commitment to fully liberalize trade in tropical agricultural products, also mentioned in the Preamble of the URAA. The issues are the meaning of "fullest liberalization" and the selection of products to be covered. Would this include sensitive products such as rice, sugar and bananas? Several developing countries including the developing Cairns Group members put forward this idea, while others oppose it and claim that long-standing preferences have to be taken into account.

Non-trade concerns

Non-trade concerns are about objectives of agriculture other than producing food and fibre. These are concerns over food security, the environment, structural adjustment, rural development, poverty alleviation and so on. The Doha Declaration states that "we take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture". Most countries accept that agriculture is not only about producing food but also has other functions, including these non-trade objectives. The question is whether distorting subsidies are needed in order to help agriculture perform these other functions.

III.7. Special and differential treatment

III.7.1. Provisions of the Agreement on Agriculture

A fundamental principle of GATT and later WTO is to treat all Members equally, as illustrated by the MFN and national treatment clauses. Nonetheless, an important factor in expanding membership to include developing

S&D for LDCs: The UR AoA exempts LDCs from all reduction commitments, i.e. they do not have to cut bound tariffs, reduce domestic support or export subsidies. The question arises as to whether LDCs are free to use domestic support and / or export subsidy measures without limits.

countries is the provision of special and differential treatment (S&D) to developing countries, which have less stringent obligations when it comes to reform.

Table 13: Special and Differential Treatment provisions in the URAA

The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries recognizes that these countries may experience negative effects in terms of food availability from external sources on reasonable terms and conditions during the reform programme.

III.7.2. Implementation

While there have been several provisions in the area of special and differential treatment, these have not always been effective in improving trading conditions for developing countries. The number of beneficiaries was small. Three possibilities exist:

- STD provisions in the URAA were not sufficient;
- The provisions have not been implemented;
- Developing countries could not use the possibilities effectively.

<p>Developed countries are to provide greater market access to products of interest to developing countries (DCs).</p>	<p>Developing countries could offer ceilings bindings on unbound products in lieu of reduction commitments.</p>
<p>Least developed countries were exempted from reduction commitments.</p>	<p>Developing countries are able to implement reduction commitments over longer periods of time.</p>
<p>Rates of reduction applying to developing countries in market access, domestic support and export subsidies would be two-thirds of those applying to developed countries.</p>	<p>Some domestic support measures of developing countries were exempted from reduction commitments as part of their development programmes.</p>
<p>Developing countries allowed higher "de minimis" support (10 per cent of the total value of production (5 per cent for developed countries).</p>	<p>Exemption for developing countries from reducing certain export subsidy measures (e.g. related to marketing and shipment of exports).</p>

There exist examples for all three problems. However, a recent review undertaken by the WTO Secretariat concluded that while the special and differential treatment provisions enshrined in the Agreement on Agriculture appear to have been effectively implemented (from the Secretariat's perspective, based on the notifications), implementation issues discussed above such as tariff escalation, box-shifting and food aid used as a disposal tool, to name only one issue for each pillar, sometimes make it difficult for developing countries to benefit from the multilateral trading rules. Furthermore, even if market access conditions have been improved, market access conditions often remain difficult due to e.g. SPS, rules of origin and market structure in importing countries.

Many developing countries see in the rules an imbalance against themselves. The current rules allow for example for 97 per cent of allowable Amber Box support to be provided by OECD countries or for tariffs in many developed countries that stand at several hundred per cent for some sensitive products, which is higher than what developing countries can impose on their sensitive products. Thus, these issues need to be addressed in the current negotiations. Certain areas in the present Agreement on Agriculture, as well as many of the new areas under consideration, will require additional special provisions for developing countries.

III.7.3. Negotiations on modalities

The Doha Declaration gave S&D a central position in the current round of negotiations, which has accordingly been denoted by the WTO as the *Doha Development Round*.

Most countries agree that asymmetries between developed and developing countries in terms of size, supply capacity, competitiveness and human, institutional and regulatory capacities require special and differential treatment (SDT) to ensure equal treatment among unequal partners in the international trading system. SDT should be recognized as a dynamic instrument for catching up in respect of trade success. The negotiations should deliver an outcome that is consistent with the ambition set out in the Doha mandate.

There is still a debate over appropriate special provisions for least developed and/or developing countries. Although some countries question whether WTO is the right organization to handle development issues, most countries acknowledge the need for S&D either due to the fact that development and trade issues cannot be separated or simply because an agreement is possible only by consensus. The extent of S&D provisions, however, is controversial. There are two major options in the negotiations. One is to find an extent of S&D that can be accepted by all countries, and the other is to introduce a multiplicity of plurilateral agreements that do not have to be signed by all Members. In the Uruguay Round tradition, current negotiations try to find forms of S&D that are acceptable to all Members.

Various S&D provisions are discussed and have partly been agreed upon in the July Package and/or Hong Kong Declaration. The most important are:

- Lower reduction commitments concerning tariffs and domestic support measures such as *de minimis* payments;
- Longer implementation periods;

- Expanded Government measures of assistance such as domestic support to encourage agricultural and rural development (Article 6.2, Agreement on Agriculture);
- Expanded access to Green Box measures;
- Different coefficients for tariff reductions;
- Expanded tariff rate quotas administered by developed countries;
- Special Products (SP);
- Special Agricultural Safeguard Mechanisms (SSM);
- Preferential access to developed country markets;
- Special provisions for least developed, net food-importing developing countries and for small and vulnerable countries. This introduces the notion that developing countries are heterogeneous, with differing capacities and needs.

Further key terms in the negotiations are:

- **Development Box:** The idea of a Development Box originated from the recognition of the fact that agriculture plays a key role in the economic and social development of developing countries, and cannot be treated in the same manner as agriculture in developed countries. The like-minded group suggested various measures be included under the "Development Box", calling for developing countries to be exempt from various AoA obligations in all of the three pillars. For example, developing countries could enjoy the flexibility of import controls, tariff barriers and domestic support for domestically produced items until they are produced competitively and in sufficient quantities. However, other developing countries suggest a more narrow use of the term Development Box, comprising all S&D measures for developing countries in the area of domestic support.

Most of these initial ideas are not reflected in the July Package or HKD. However, many special and differential treatment provisions (see above) are part of the agreements entered into thus far.

- **"Development needs":** The Doha Declaration provided qualitative conditions for S&D – that S&D should (i) be operationally effective" and (ii) meet "development needs". Developing countries suggest that their needs are food security, rural development, poverty alleviation and product diversification. The measures required to meet these needs remain to be agreed upon.
- The **"one-size-fits-all"** approach: Current S&D provisions are geared to all developing countries alike (except for LDCs which receive their own S&D and to a certain extent NFIDCs). Some countries claim that the best approach to S&D provisions for developing countries would be to meet country-specific agricultural and development concerns. This would mean that the degree of S&D treatment would depend on a country's agricultural production and trade capacity. This approach is also favoured by major developed countries. Negotiations focused on special provisions for "small and vulnerable countries".

The July Package and the HKD reconfirm SDT as an integral part of the Agreement on Agriculture.

Table 14: Provisions and challenges for special and differential treatment other than those mentioned in Tables 7, 10 and 11

Provisions	Challenges
<ul style="list-style-type: none"> ▪ Least developed countries: - full access to all SDT provisions - no reduction commitments ▪ Developed Members, and developing country Members declaring themselves in a position to do so, provide duty-free and quota-free market access for LDCs ▪ If countries have difficulties, they provide free access for at least 97 per cent of their tariff lines by 2008 ▪ Developing countries can phase in their commitment 	<ul style="list-style-type: none"> ▪ Achieve full duty-free and quota-free market access for products originating from LDCs ▪ Address non-tariff barriers (e.g. rules of origin) ▪ Include provisions to improve supply capacity in LDCs ▪ Find effective rules to protect LDCs and NFIDCs against disadvantages from liberalization
<ul style="list-style-type: none"> ▪ Concerns of recently acceded Members will be addressed 	<ul style="list-style-type: none"> ▪ Take into account that recently acceded countries have on average lower commitments

CHAPTER IV:

DISPUTES ON AGRICULTURAL TRADE

Article 19 of the AoA determines that the WTO Dispute Settlement Understanding (DSU) shall apply to the settlement of disputes under the AoA. Earlier, several WTO disputes on agricultural products have addressed issues related to the SPS Agreement. More recently, WTO dispute settlement has seen several cases directly related to the AoA.

IV.1. United States – subsidies on upland cotton

IV.1.1. Summary

The case *US–Upland Cotton* (WT/DS267..) concerns certain US subsidies to producers, users and/or exporters of upland cotton, as well as the respective legislation and other instruments underlying such subsidies (e.g., provisions of the 2002 Farm Security and Rural Investment Act). The Dispute Settlement Body (DSB) established a Panel in 2003, dealing with a complaint by Brazil against the US. Thirteen countries reserved their rights to participate in the proceedings (e.g., Argentina, Australia, Benin, China, the EC and India).

Challenged measures

- marketing loan programme payments
- user marketing (step 2) payments
- production flexibility contract payments
- market loss assistance payments
- direct payments
- countercyclical payments

Brazil claimed that the US subsidies are actionable or prohibited subsidies and argued that the measures are inconsistent with the US obligation under the AoA, the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the General Agreement on Tariff and Trade (GATT)⁵². Both the Panel and the Appellate Body (AB) found certain US measures to be inconsistent with the AoA and the SCM Agreements.

The Panel made both procedural and substantive findings. Procedural findings mainly related to questions whether certain matters fell within the Panel's terms of reference. Important substantive findings related to, among others:

- (i) Export credit guarantee programmes;
- (ii) US legislative provisions providing for user marketing (step 2) payments to domestic users and exporters of upland cotton;
- (iii) The 2000 ETI Act (FSC Repeal and Extraterritorial Income Exclusion Act);
- (iv) The Peace Clause (Art 13 AoA) and

⁵² In principle, all WTO agreements and understandings on trade in goods apply to agriculture, for example the GATT 1994 and WTO agreements on matters as subsidies and countervailing measures, customs valuation, import licensing procedures or pre-shipment inspections. However, whenever there is a conflict the provisions of the AoA prevail. See section III.1.2.

(v) Brazil's allegation of serious prejudice⁵³.

The AB addressed appeals from both, the US and Brazil; in so doing, it upheld some, reversed others and amended some of the Panel's findings. In sum, the AB recommended that the DSB request the US to bring the inconsistent measures into conformity with its obligations. The DSB adopted the Panel and AB reports on 21 March 2005. In 2005, the US stated its intention to comply with the recommendations and rulings of the DSB in a manner that respected its WTO obligations⁵⁴. The reasonable period of time for compliance expired in 2005. On 18 August 2006, Brazil requested the establishment of an Article 21.5 "compliance panel". On 28 September 2006, further to a second request, the DSB agreed to establish such a panel⁵⁵.

Article 21.5 "compliance panel"

Article 21.5 proceedings address those measures that are taken to comply with the recommendations and rulings of the DSB.

Hence, the cotton "compliance panel" examines whether the measures implemented by the US were in conformity with the rulings of the DSB.

According to Brazil, the US had adopted no implementation measures at all and the measures it had implemented fell short of compliance. The US countered by arguing that it had fully implemented the DSB's rulings by repealing the Step 2 programme, that it had ceased operating two of its export credit programmes, and that it had substantively modified programmes to remove export subsidy elements.

IV.1.2. Main issues

Regarding the **US export credit guarantee programme**, Brazil claimed that the favourable terms provided under US export guarantee programmes were effectively export subsidies and inconsistent with the AoA and the SCM Agreements. It asserted that the subsidy effects applied not only to cotton but also to other eligible commodities.

The Panel found that (certain of) the US programmes⁵⁶ were inconsistent with Article 8 of the AoA (explaining that, notwithstanding Article 10.2 AoA⁵⁷, certain export credit guarantee programmes were export subsidies applied in a manner that resulted in the circumvention of the US export subsidy commitments). The Panel also found that exports of upland cotton and

⁵³ The Panel's findings concerning Brazil's allegations of serious prejudice dealt mainly with the SCM Agreement, which is not the focus of this training module.

⁵⁴ According to the South Centre Quarterly on Trade Disputes Vol 1:1, the US had originally indicated that it would seek to comply with the ruling through the then ongoing negotiations, which it considered the most effective way for dealing with subsidies.

⁵⁵ In the 21.5 proceedings, Argentina, Australia, Canada, Chad, China, the European Communities, India, Japan, Thailand and New Zealand reserved their third party rights.

⁵⁶ Notably these are the GSM 102, GSM 103 and SCGP export credit guarantee programmes.

⁵⁷ Article 10.2 AoA reads as follows: "Members undertake to work toward the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith."

of certain other unscheduled agricultural products supported under the programmes (as well as exports regarding one scheduled commodity, i.e. rice), were inconsistent with Article 8 AoA. These guarantees constitute per se export subsidies prohibited by the SCM Agreement (Articles 3.1(a) and 3.2 SCM). Finally, the Panel also found that certain guarantees were not inconsistent with Article 8 AoA and that it must treat these guarantees as if they were exempt from actions under the GATT and the SCM Agreement.

Among other things, the AB confirmed the Panel's findings that the programmes constituted a per se export subsidy (within the meaning of item (j) of the illustrative list of export subsidies in Annex I of the SCM Agreement). The AB also upheld the Panel's findings that those export credit guarantee programmes were export subsidies under Article 3.1 (a) SCM and that they were inconsistent with Article 3.1 (a) and 3.2 SCM). Another major AB finding in this respect was that Article 10.2 of the AoA did not carve out or exempt export credit guarantees from the export subsidy disciplines imposed by the AoA (note however that one Member of the AB Division had a separate opinion on this issue).

The issue of export credit guarantees is delicate, because in the DWP's agriculture negotiations, some WTO Members would like to extend and improve the rules preventing circumvention of export subsidy commitments. At the same time, some argue that export credits and respective guarantees are useful for food security in importing countries, and moreover, do not contain large amounts of subsidies.

The Panel's finding on export credit guarantees also triggered several arguments in Brazil's appeal, most importantly **arguments regarding circumvention**. In essence, the Panel had found that in respect of upland cotton and other unscheduled agricultural products, the US applied export credit guarantees that constituted export subsidies in a manner that resulted in circumvention of its export subsidy commitments (this finding was not appealed). As regards scheduled products, however, the Panel had also found (and had done so without explanation) that Brazil had failed to establish actual circumvention in respect of poultry meat and pig meat.

Brazil appealed the Panel's finding that Brazil had not established that the US export credit guarantees were "applied in a manner that results in ... circumvention" of the US commitments. Brazil also appealed the Panel's interpretation and application of the phrase "threatens to lead to circumvention" in Article 10.1 AoA (the Panel had interpreted this phrase so as to require "an unconditional legal entitlement" to receive the relevant export subsidies as a condition for a finding of threat of circumvention).

As regards circumvention of export subsidy commitments, the AB made the following findings. It reversed the Panel's finding that Brazil had not established actual circumvention in respect of poultry and pig meat⁵⁸; it modified the Panel's interpretation⁵⁹ of the phrase "threaten to lead to ... circumvention" (in Article 10-1 AoA); it upheld (for different reasons)

⁵⁸ In light of insufficient uncontested facts in the record, however, it declines to complete the legal analysis to determine whether the United States' export credit guarantees to poultry meat and pig meat have been applied in a manner that "results in" circumvention of the United States' export subsidy commitments, within the meaning of Article 10.1 of the AoA.

⁵⁹ According to the Panel, this would require "an unconditional legal entitlement" to receive the relevant export subsidies as a condition for a finding of threat of circumvention.

the Panel's finding that Brazil had not established that the export credit guarantee programmes at issue were generally applied to scheduled agricultural products other than rice and other unscheduled agricultural products (not supported under the programmes) in a manner which threatened to lead to circumvention of US export subsidy commitments (within meaning of Art 10.1 AoA); and it found that the Panel had not erred in confining its examination of Brazil's threat of circumvention claim to scheduled products other than rice and unscheduled products not supported under the US export credit guarantee programmes.

The case also brought important findings as regards **user marketing (Step 2) payments**. Step 2 payments are made to exporters and domestic mill users to compensate them for purchasing higher-priced US upland cotton.

The Panel found that the respective legislative provisions were inconsistent with the US obligations under Article 3.3 (export subsidies) and 8 (export competition commitments) of the AoA, and that they were prohibited subsidies under Article 3.1 (a) and (b) and 3.2 of the SCM Agreement (export and import substitution subsidies). The AB upheld the Panel's findings on both of the appealed issues; first, that Step 2 payments to domestic users were subsidies contingent on the use of domestic over important goods and therefore inconsistent with Article 3.1 (b) and 3.2 SCM Agreement; second, that Step 2 payments to exporters of US upland cotton (according to the 2002 FSRI Act) were subsidies contingent on export performance according to Article 9.1 (a) of the AoA and inconsistent with Article 3.3 and 8 AoA as well as Articles 3.1 (a) and 3.2 SCM Agreement.

In their findings, the Panel and the AB considered Step 2 payments to eligible exporters separately from payments to domestic users. Among other things, this suggests that different aspects of the same measure may be challenged on different grounds. Arguably, this could give wider scope for challenging subsidies that appear as individual measures but provide for several types of subsidies. Another important implication regarding import substitution subsidies is that compliance with the AoA does not mean exemption from the provisions of the SCM Agreement. Along these lines, one could envisage situations where the AoA and the SCM will probably apply concurrently.

The Panel had also made important findings regarding the **Peace Clause** and the **Green Box**. Article 13 of the AoA exempted (during a 9-year implementation period starting in 1995) qualifying measures from action under the SCM Agreement and the GATT 1994⁶⁰. For example, the Panel had found that the production flexibility contract and direct payments were related to the type of production undertaken after the base period and thus were not Green Box measures conforming fully to paragraph 6(b) of Annex 2 AoA. They were, therefore, not exempt by virtue of Article 13 (a) (ii) from actions under Article XVI GATT and Part III of the SCM Agreement. The AB upheld and modified certain of the Panel's findings regarding the Peace Clause. For example, the AB upheld the Panel's finding that two challenged measures (i.e., production flexibility contract and direct payments) were related to the type of production undertaken after the base period. They were, therefore, not Green Box measures conforming fully to paragraph 6(b) of Annex 2 AoA; and consequently not covered by the Peace Clause. The AB modified the Panel's interpretation of the phrase "support to a specific commodity" in Article 13(b)(ii), but upheld the Panel's conclusion that the challenged domestic support measures granted support to upland cotton. Finally, the AB upheld the Panel's finding that (between 1999 and 2002) the challenged domestic support

⁶⁰ These are actions under Articles 5 and 6 SCM Agreement and Article XVI:1 of the GATT 1994.

measures granted support to upland cotton in excess of that decided during the 1992 benchmark period. Therefore, these measures were not exempt by reason of the Peace Clause.

Another – systemically important – finding relates to the fact that **expired programmes can be challenged**. The legislative basis of two of the subsidy measure (the production flexibility contract payments and the market loan assistance payments) had expired at the time the Panel's terms of reference were established. Nevertheless, both the Panel and the AB agreed that these measures could still be subject to challenge in the dispute settlement system. This would suggest that there exist considerable disciplines for pre-existing subsidies, arguably making it impossible for a WTO Member to avoid a challenge by simply revoking its laws while allowing the subsidies to have a continuing effect.

IV.1.3. Implications and Broader Context⁶¹

The Panel and the Appellate Body reports imply that, without the Peace Clause protection, a number of agricultural subsidies currently used by the US and other developed Members of WTO become potentially actionable under the SCM Agreement. The US has been asked to bring its measures in question "into conformity with its obligations" under the WTO Agreements. While accepting the Appellate Body findings, the US and the EU expressed that certain interpretations and approaches made by the Panel and the AB had not followed the legal interpretations that they considered to be correct, i.e. agricultural subsidies should be governed under the subsidy provisions of the AoA before the corresponding provisions of the SCM Agreement⁶².

The US repeated its initial position that "negotiation, rather than litigation, was the most effective way to address distortions in agricultural trade." Cuts in farm subsidies made in the US 2006 federal budget (adopted in March 2005) had no link with the Appellate Body findings. The disputed subsidies under the 2002 Farm Bill 2002 were still expected to be running until the 2007 harvesting year.

Even if the US took no action, some analysts argue that it is unlikely that Brazil will retaliate. They maintain that raising tariffs on imports from the US (mainly capital goods) as retaliation would harm Brazilian domestic industry more than it affects US exporters. Some expect, however, that the DSB findings will influence the ongoing negotiations on agriculture. The finding could provide a strong legal justification to developing countries' argument that the criteria of the Green Box and the Blue Box should ensure that they are least trade-distorting. The G20's proposal on Blue Box criteria, submitted in March 2005, may form the basis for further negotiations. Developing countries are also encouraged to demand a renewal of the Peace Clause. If the DSB findings become the baseline for interpreting agricultural subsidies, many countries will need not only to cut the subsidy spending but also to change the contents of the subsidy programmes, which would be very politically sensitive.

⁶¹ See "The WTO DSB on US Cotton - Implication on the Negotiations on Agriculture", UNCTAD Informal Note, Miho Shirotori, 2005.

⁶² From the statements made on 21 March, at the adoption of the Appellate Body report in the US cotton case. (http://www.wto.org/english/news_e/news05_e/dsb_21march05_e.htm)

IV.2. European Communities – Export Subsidies on Sugar

IV.2.1. Summary

In the *EC – Sugar* case, Australia, Brazil and Thailand brought challenges against EC measures related to the subsidization of the sugar industry (WT/DS265..., WT/DS266..., WT/DS283...).

Further to a series of second requests to establish a panel the DSB established a single panel at its meeting on 29 August 2003. Sixteen countries, mainly ACP countries and India, reserved their third party rights in support of the EC position. Canada, China, Colombia, New Zealand, Paraguay and the US joined third parties in support of the complainants.

The complainants (Australia, Brazil and Thailand) claimed that the export subsidies provided by the EC were in excess of its annual commitment levels set out in the EC schedule. More specifically, they argued that the export subsidy commitment in the EC schedule did not include the "ACP/India equivalent sugar" and that C sugar was supported with an export subsidy. The EC argued that it was, by virtue of footnote 1 in its schedule of commitments, authorized to export an amount of sugar equivalent to the imports of ACP/Indian sugar and that the exports of C sugar did not benefit from export subsidies.

The Panel circulated its report on 15 October 2004. Subsequently, the 28 April 2005 AB ruling (addressing appeals by both the EC and the complainants) upheld the Panel's major findings to the satisfaction of the complainants. All challenged aspects of the EC sugar regime were found to be in violation of the WTO AoA.

The AB recommended the DSB to request the EC to bring the inconsistent measures into conformity with its obligations. On 19 May 2005, the DSB adopted the AB report (and the Panel report as modified by the AB report).

The EC agreed to implement the findings within the reasonable period of time. The parties resorted to arbitration for determining the reasonable period of time for implementation. On 28 October 2005, the Award of the arbitrator was circulated to Members, in which the arbitrator determined that the reasonable period of time was 12 months and 3 days, expiring on 22 May 2006. In early June 2006, Australia, Brazil and Thailand reached an Understanding with the EC under Articles 21 and 22 of the DSU.

EC sugar regime

- organized according to A, B and C sugar
- minimum price to be paid for all sugar that is produced and sold internally
- guarantees minimum price to be paid by EC purchasers for imports of sugar from ACP states and India (imported at zero duty)
- guarantees minimum prices for A and B sugar beet
- C sugar (produced in excess of A and B quota levels) is not eligible for domestic price support and must be exported
- EC covers the difference between the world market price and the EC price through "export refunds", with a view to enabling exports at world market prices (sugar prices within EC are 2 to 3 times higher than world prices).

IV.2.2. Main issues

One central element of the dispute was **footnote 1 in the EC schedule** of agricultural commitments. During the Uruguay Round, 25 Members drafted schedules to retain their right to subsidize their agricultural exports of those products included in their schedules. The EC schedule contains a footnote specifying the level of subsidization the EC had committed. The EC argued that the footnote entitled it to additionally subsidize sugar export in the volume equivalent to its ACP/Indian sugar imports. The complainants disagreed.

According to the AB, nothing suggested that the EC had assumed a commitment to limit subsidization of "ACP/India equivalent sugar". In that context, the AB referred to the ordinary meaning of the words in the footnote and to the EC notification practice in the Article 18 AoA review process. Moreover, the AB found that the footnote was inconsistent with Article 3.3 of the AoA (which requires a Member to schedule commitment levels for both, budgetary outlay and quantity) and with Article 9.1 of the AoA (which requires the scheduling of "reduction commitments"). The EC footnote, in turn, does not set a commitment level of budgetary outlays and expressly states that the EC is not making any reduction commitments for ACP/Indian sugar. The AB found in addition that Members cannot - in their schedules - depart from the provision of the AoA.

These findings may give rise to several implications, particularly for the scheduling of commitments in agricultural schedules. Most importantly, footnotes in schedules (and the commitments therein) have legal effect as long as they satisfy the requirements set out in the AoA. Consequently, in their scheduling, Members are advised to closely follow the provisions of the Agreement, as the latter prevails over Members' schedules.

Another central element of the case related to the **cross-subsidization of C sugar**. Under the EC sugar regime only A and B sugar are formally eligible for domestic support and export subsidies. C sugar is not. Thus, exports of C sugar are not counted as part of the level specified in the EC schedule. The complainants claimed, however, that exporters of C sugar also receive export subsidies, in violation of Article 9.1 (c) of the AoA. Their claims embraced two forms of export subsidies. Amongst others, the complainants alleged that (i) producers of C sugar were able to buy C beet at a below cost price (as a result of governmental action); and (ii) that producers of C sugar were able to export C sugar at a below cost price and finance these sales through high profits made on sales of A and B sugar (which again are the result of governmental action, more specifically cross-subsidization).

On both claims, the Panel and the AB found in favour of the complainants. The finding has important implications for the borderline between domestic support measures and export subsidies. Obviously the two are linked, including because of the possible spillover effects of domestic support measures. In this case, it was the domestic price support for A and B sugar that facilitated cheap exports of C sugar. These spillover effects will be inconsistent with the AoA in cases where there is a requirement of exportation (although it is not clear whether this requirement must be de jure or can also be de facto). In this event, a domestic support measure turns into an export subsidy.

A third important issue related to the **process of adoption of agricultural schedules**. While the complainants raised the inconsistency of the EC schedule (footnote 1) with the AoA as arguments in the dispute settlement case, they had remained silent on that issue at the time of

the conclusion of the AoA. The EC argued that that silence should be viewed as a lack of objections and consequently, the complainants should not be allowed to bring such claims subsequently. In legal terms, the EC argued that the complainants were “estopped”⁶³ from bringing their claims.

The AB disagreed. It first stated that it was not clear whether the principle of estoppel applied at all in the WTO dispute settlement. Moreover, it stated that the Panel did not identify any facts or statements by the complainants where they had admitted that the EC measure was WTO-consistent or where they had promised that they would not take legal action against the EC. The AB also stated that there was little in the DSU which would explicitly limit the right of WTO Members to bring an action. The fact that a measure has not been challenged over a number of years should not be interpreted as tantamount to tacit acceptance of that measure by the silent members. Along these lines, countries - when negotiating - may wish to be careful to not make explicit statements that they view another Member’s schedule as WTO-consistent.

IV.2.3. Implications and Broader Context

The ruling has a series of wider implications, including for commodities other than sugar. Its most important implications, however, will arise for ACP countries. To meet the requirement to reduce subsidized sugar exports, the EU has agreed to cut the prices offered to European sugar farmers by 36%. The subsequent increase in domestic consumption and decrease in production will most likely reduce exports. This opens up the world markets to low-cost producers such as Brazil, Thailand and Australia. However, it also lowers returns for a range of ACP countries that have preferential access to the EC market.

APC countries and India receive the internal EU price on specified quotas. Following the implementation of the ruling, these returns may now be diminished. As a consequence, the ACP countries and India would face adverse impacts on their preferential arrangements and, as preference-dependent countries argue, more broadly, on their socio-economic development. In the context of the proceedings, these countries claimed that the EC sugar regime was construed in such a way that the various components of the regime systematically depended on each other. Taking apart one particular aspect would weaken and damage the very fabric of the preferential arrangements they were benefiting from (Cotonu Agreement). This would call for utmost care to be taken when trying to rearrange the sugar regime. The AB, in a footnote, acknowledged the arguments of the ACP countries regarding the importance of sugar production for their economies and the importance of preferential access to EC market in that context. However, the report also stated that the AB Division was unable to regard these considerations as relevant for its legal interpretation.

All of this may have far-reaching implications for ACP countries. Some argue that they may have to rely on the goodwill of the EC regarding the extent to which it will honour the terms of the Cotonu Agreement. Already prior to the AB ruling, the EC – when envisaging reform of its sugar regime – had proposed to help these countries mitigate the potential effects of

⁶³ Estoppel is a common law doctrine. Where one party has been induced to act in reliance on the assurances of another party, in such a way that it would be prejudiced were the other party later to change its position, such a change in position is “estopped” – that is it is “precluded” (see Panel report, paragraph 7.72).

reform. How exactly this will work (particularly, if such adjustment support is at the expense of EC farmers) remains to be seen.

A related case is the Canadian dairy dispute. According to the ruling in this case, domestic support to commodities in surplus has similar effects to export subsidies.

IV.3. The Canada – Dairy Case

IV.3.1. Summary

In the *Canada–Dairy case* (WT/DS103...), the United States and New Zealand complained against Canada's dairy policy. More specifically, they complained against Canada's supply management system for industrial milk. The main issue was whether the Canadian programme, which sets up a higher price for milk used domestically than for milk processed for dairy product exports, would be in violation of Canada's export subsidy disciplines. The case raises central issues on the definition of export subsidies. In essence, the case suggests that domestic support to commodities in surplus has similar effects to export subsidies. It has been argued that such a view would effectively remove – or at least erode – the distinction between export and domestic subsidies.

Canadian dairy policy in dispute

- The Canadian Government secured an artificially high price level for domestically sold dairy products via a complex system.
- Prices for exports were kept at a lower level.

The first Panel and AB decisions on this issue saw a series of follow-up proceedings (Art 21.5 proceedings, arbitration proceedings) and, finally, ended through a mutually agreed solution in 2003.

IV.3.2. Main issues

The main components of Canada's system are production quotas, support prices, and border protection. Regulatory jurisdiction over trade in dairy products is a complex system divided between the federal government and the provinces. In their complaints, the US and New Zealand referred to a series of measures, including the Canadian Dairy Commission Act, Agreements of the Canadian Dairy Commission, the Inter-provincial Comprehensive Agreement on Special Class Pooling, the National Milk Marketing Plan, the operations of the Canadian Milk Supply Management Committee and many more.

Both the United States and New Zealand requested consultations in 1997. When establishing the panel, the Dispute Settlement Body agreed that the issue be consolidated and made subject to one single Panel. Australia and Japan (and the US in respect of the New Zealand claims) reserved their rights to participate as third parties.

Both complaints covered several WTO Agreements, including the Agreement on Agriculture, GATT obligations, the SCM Agreement and the Agreement on Import Licensing. The two

central complaints focussed on alleged export subsidies for dairy products and Canada's administration of the tariff rate quota on milk. Regarding the export subsidies, the US claimed that Canada established and maintained a system of "special milk classes" through which it maintained high domestic prices, promoted import substitution, and provided export subsidies for dairy products going into world markets. According to the US, these practices would distort markets for dairy products and adversely affect US sales of dairy products. Regarding the tariff quota, for imports of fluid milk and cream, the US claimed that Canada had refused to permit commercial import shipments within the quota, effectively administering this tariff quota in a manner that denied market access⁶⁴. Similar to the US, New Zealand complained about Canada's "special milk classes"⁶⁵. New Zealand also claimed violation of GATT Art. X:1 on the administration of trade regulations.

The Panel found against Canada on several of these claims. For example, the Panel found that Canada's measures violated its obligation under GATT (Art II:1 (b) on schedules of concessions) and under the AoA (Articles 3.3 and 8), by providing export subsidies as listed in Article 9.1 (a) and 9.1 (c) of the Agreement on Agriculture⁶⁶.

Canada appealed the ruling and the AB report (circulated in October 1999) reversed, partly reversed and upheld the Panel's rulings. For example, the AB report reversed the Panel's interpretation of Article 9.1(a), and, as a consequence thereof, also reversed the Panel's finding that Canada had acted inconsistently with its obligations under Article 3.3 and 8 of the AoA. The AB upheld the Panel's finding that Canada was in violation of Article 3.3 and 8 of the AoA regarding the export subsidies listed in Article 9.1 (c) of the AoA. Finally, the AB partly reversed the Panel's findings that Canada had violated its obligations under Article II:1 b of GATT.

In 2001, the US and New Zealand initiated Article 21.5 proceedings, in an attempt to challenge those measures which had been *taken to comply* with the recommendations and rulings of the DSB. Following the request for the establishment of an Article 21.5 "compliance panel", the DSB referred the matter to the original panel, with the EC, Australia and Mexico reserving their third party rights (March 2001). In its report, the compliance panel ruled against Canada, which appealed the report. The AB report gave rise to a debate about what should be the benchmarks for determining whether exports are subsidized (with the US and New Zealand opposing the AB benchmarks); how to assess whether a system is based on Government actions (e.g. whether the freedom of Canadian dairy farmers not to produce for

⁶⁴ The US supported its claim with a series of provisions, including the AoA (Art. 3 on concessions and commitments; Art. 4 on market access; Art. 8 on export competition commitments; Art. 9 on export subsidy commitments and Art. 10 on how to prevent circumvention of these commitments on export subsidies); the GATT 1994 (Art., II on schedules of concessions, X on the administration of trade regulations; XI on the elimination of quantitative restrictions; and Art. XIII on the non-discriminatory administration of quantitative restrictions.); the SCM Agreement (Art 3 on the prohibition of export subsidies); and the Agreement on Import Licensing (Articles 1,2,3).

⁶⁵ More specifically, New Zealand argued that the "special milk class scheme" was inconsistent with several provisions of the AoA (Art. 3 on concessions and commitments; Art. 8 on export competition commitments; Art. 9, on export subsidy commitments and Art. 10 on how to prevent circumvention of these commitments on export subsidies).

⁶⁶ Art 3.3 AoA establishes that Members shall not provide certain export subsidies, more specifically, those listed in Art 9 para 1 AoA shall not be provided in excess of what is specified in the schedule of commitments (the schedules specify the budgetary outlay and quantity commitment levels for the products concerned) and such subsidies shall not be provided for any agricultural product which is not referred to in the schedule. Art 9 para 1 AoA lists different types of export subsidies, amongst which direct subsidies (para a) and payments on the export of agricultural products that are financed by virtue of governmental action, (para c). See chapter xxx of the module.

export prevents the system from being considered an export subsidy); and whether countries' domestic support measures can spill over and "erode" countries' export subsidy commitments.

The AB ruling was followed by a second recourse by the US for the establishment of a compliance panel, which in turn was followed by arbitration procedures, ultimately suspended in order to allow the parties to find a mutually agreed solution (according to Art. 3.6 of the DSU). On 9 May 2003, Canada and the US; and Canada and New Zealand, informed the DSB that they had reached mutually agreed solutions, under Article 3.6 of the DSU in both disputes.

IV.3.3. Implications and Broader Context

Although dairy products are mainly produced in developed countries, their production impacts on developing country farmers. Oxfam International reports for example that Jamaica's dairy farmers are not able to sell their fresh milk to local cheese producers since they are unable to compete with subsidized European milk powder⁶⁷.

But the implication of the ruling goes far beyond the Canadian dairy sector. In essence, the case suggests that domestic support to commodities in surplus has similar effects to export subsidies and has thus to be treated as such. It has been argued that this would effectively remove – or at least erode – the distinction between export and domestic subsidies.

⁶⁷ Taken from UNDP (2003), "Making Global Trade Work for People", page 121.

CHAPTER V:

SIMULATING ECONOMIC EFFECTS FROM TRADE LIBERALIZATION

Quantitative analysis of the effects of trade policies on economic outcomes is increasingly used. Computable general equilibrium models and partial equilibrium models can be used to compare an economy or sector with or without specified policy changes. They show possible output, price, trade and revenue effects of different liberalization scenarios. The simulation results can then be taken into account by policymakers when they consider their options. The degree of precision in the simulations and that of reported results depends on the quality of data that go into the model and the degree of sensitivity of the results to model variations that rely on assumptions⁶⁸. For example, the coefficients that are used are estimated using data from the past and thus an implicit assumption is that economic agents behave like they did in the past. Another example of assumptions is the labour market, where it can be assumed that the market always clears since wages are fully flexible or where trade union or efficiency models allow for unemployment. Different assumptions lead to different results. Despite their limitations, however, quantitative models can provide very useful information for policymakers.

V.1. Agricultural Trade Policy Simulation Model ATPSM

The Agricultural Trade Policy Simulation Model (ATPSM)⁶⁹ is a trade policy simulation model capable of detailed analysis of agricultural trade policy issues. It can be used as a tool by researchers and negotiators alike for quantifying the economic effects, at the global and regional levels, of changes in national trade policies. Alternatively, it can be used to consider the potential changes resulting from unilateral action by individual countries or actions required under multilaterally negotiated agreements. However, it is not yet suitable for analysing regional trading agreements.

ATPSM is a deterministic, partial equilibrium, comparative static model. It analyses the effects of price and trade policy changes on supply and demand using a system of simultaneous equations that are characterized by a number of data and behavioural relationships designed to simulate the real world. The model solution gives estimates of the changes in trade volumes, prices and welfare indicators associated with changes in the trade policy environment. A feature of the model is its handling of a two-tier tariff structure whereby imports within a quota level attract a relatively low tariff, and out-of-quota imports face a higher tariff. Rents associated with these quotas are explicitly modelled within ATPSM. The model comprises 35 commodities and 165 countries, including the 27 European Union countries as one region.

⁶⁸ For more information of the possibilities and limitations of quantitative models, see Piermartini and Teh: "Demystifying modelling methods for trade policy", WTO working paper 2005.

⁶⁹ ATPSM has been developed by UNCTAD and FAO. DFID (UK) provided financial assistance. See Peters and Vanzetti (2004), Handbook on the Agricultural Trade Policy Simulation Model, UNCTAD Policy Issues in International Trade and Commodities Study Series, for a technical and non-technical description of the model. GTAP is another well-known model that is widely used to analyse trade policy changes (see section V.2).

UNCTAD Agricultural Trade Policy Simulation Model (ATPSM) is a tool whose main purpose is to evaluate the various agricultural trade policy changes that may be proposed in the WTO negotiations or unilateral trade policy changes.

Trade policy changes that can be simulated by the model include:

- » Reduction of out-of-quota tariffs, either by a certain percentage or using the so-called Swiss or tiered formulae;
- » Reduction in export subsidies;
- » Change in tariff rate quotas;
- » Changes in domestic support; and
- » Change in production quotas.

The model output includes estimates of:

- Prices
- Output
- Exports and imports
- Quota rents

Typical results from ATPSM

ATPSM can be used to simulate changes to the three pillars: market access, domestic support and export subsidies. A scenario that simulates multilateral liberalization such as the one proposed in the current round of negotiations typically yields the following results.

Tariff cuts reduce domestic prices and benefit consumers at the expense of domestic producers and taxpayers. World prices are likely to rise to the benefit of exporters. Countries that do not reduce tariffs in certain sectors face higher domestic prices in these sectors to the disadvantage of their consumers.

Domestic support measures in developed countries appear to increase global production, forcing down world prices if the supporting countries are big. This benefits consumers in net food-importing and developing countries at the expense of net exporters. Since producers in both of these groups of countries face lower prices as a result of domestic support in developed countries, most developing countries are demanding the reduction of domestic support. However, since much domestic support is given to sectors subject to quantitative constraints (e.g. production quotas), the effect of reducing domestic support on production and trade is dampened.

Export subsidies reduce world prices. The removal of export subsidies is likely to raise world prices of temperate products to the detriment of net food importers. The major beneficiaries are developed country taxpayers in the subsidizing country and competing exporting producers.

The size of these effects depends on the specific scenario that is simulated. Vanzetti and Peters (2003) and Peters and Vanzetti (2004)⁷⁰ show simulation results for various proposals that have been made in the current negotiations.

V.2. Potential global gains from liberalization

Estimates of the contribution of agriculture and food to global welfare gains from completely removing trade barriers globally vary greatly but could be as high as US\$ 165 billion (Anderson, 2004). Developing countries would receive about one-quarter of these gains. Their gains would be considerably smaller if they do not reduce their own tariffs. The ERS of the USDA (2001) assesses the potential benefits of full elimination of all agricultural distortions to be US\$ 56 billion. The ERS also finds that most of the potential gains to developing countries of US\$ 21 billion would come from developing countries' reform of their own policies (obtained from von Braun et al. 2002). Hertel et al. (1999) estimate US\$ 70 billion welfare gains from a 40 per cent cut in agricultural tariffs and export and production subsidies. Laird et al. (2003) project gains of US\$ 22 billion from a 50 per cent cut in all agricultural tariffs and provide a good overview of estimates of several other studies on global welfare effects of multilateral trade liberalization. All of these studies use the general equilibrium model GTAP and/or the GTAP database⁷¹. Peters and Vanzetti (2004) use the partial equilibrium model ATPSM, discussed in the previous section, to simulate trade policy changes as proposed in the current agriculture negotiations. Global annual welfare gains in the "Harbinson proposal" scenario are US\$ 13 billion and in the "Derbez text scenario" US\$ 7 billion. In a full liberalization scenario, gains would be about US\$ 25 billion; as with Anderson (2002), developing countries would receive some 30 per cent of this.

V.3. Distribution and transfer effects

The studies indicate that on a global level, there are significant efficiency gains from liberalizing the agricultural sector. However, distribution and transfer effects between producers, consumers and governments are of a greater magnitude. These depend on several factors (Vanzetti and Peters, 2003).

- Removing or reducing import tariffs, domestic support or export subsidies leads to increasing world market prices for agricultural goods. Price increases for most goods are modest, 1 or 2 per cent⁷². Prices for temperate products such as dairy products, meat and sugar increase much more than the prices for tropical products such as tea, coffee and cocoa since most of the protection and support is on temperate products⁷³.
- Producers in a country gain the most if others but not the host country liberalize. Producers initially protected by high tariffs and support measures tend to lose.

⁷⁰ Vanzetti and Peters (2003), "The good, the bad and the ugly: Three Proposals for Agricultural Policy Reform", in "Processing Towards the Doha Development Agenda", Inama, S. And Xuto, N. (Eds), ADB and UNCTAD. Peters and Vanzetti (2004), "Shifting Sands, Searching for a Compromise in the WTO Negotiations on Agriculture", UNCTAD Policy Issues in International Trade and Commodities Study Series.

⁷¹ GTAP is the Global Trade Analysis Project located at the Purdue University.

⁷² The price changes vary from model to model and depend on the specific scenario. The pattern, however, remains more or less the same.

⁷³ This does not necessarily mean that prices will rise. Perhaps a price decrease will only be slowed down. However, the IMF predicts rising world food prices in the near future.

- Consumers gain a lot in countries that remove high border measures and when domestic prices fall. Consumers in countries in which no liberalization occurs lose from higher world prices.
- Countries with high initial protection gain from liberalization in general, at least if gains/losses from consumers, producers and Governments are equally weighted. Politicians may, however, not weight all agents equally.
- Net food-exporting countries gain in general. However, this depends on the type of imports and exports, since relative price changes are not equal.
- Net food-importing countries often lose. However, this depends once again on the trade structure and the supply capacity.
- The change in Government revenue tends to be negative in countries not initially providing export and domestic subsidies on which they save if they were reduced. However, tariff revenue may rise following tariff reductions if the rise in import volume offsets the fall in the tariff rate. However, if tariffs are eliminated tariff revenue falls to zero.
- Countries adversely affected by preference erosion gain from higher world market prices and the improved opportunities to export elsewhere. Therefore, they do not necessarily lose from further trade liberalization.

CHAPTER VI:

WTO ACCESSION⁷⁴

This chapter aims to provide an overview of the issues that require careful consideration by acceding countries during their accession negotiations on agriculture. The chapter consists of the following three sections: (A) the process of the negotiations and cross-cutting issues of importance to acceding countries; (B) negotiations on the "three pillars"; and (C) the experience of recently acceded countries in the Doha Round.

The negotiations on agriculture are one of the most complex and time-consuming elements of the accession negotiations for the following reasons:

1. An acceding country is requested to ensure that its agricultural policies are in compliance with the rules and disciplines under the WTO Agreement on Agriculture (AoA). During the negotiations on improvement of market access conditions (e.g. binding and reductions, if necessary, of tariffs), an acceding Government's support to agricultural producers and exporters will be put under scrutiny by WTO Members. Those measures that are considered "trade-distorting" according to AoA criteria may become subject to reduction to the level agreed to in the course of accession negotiations. This may require a substantial reform in agricultural policy, especially in countries where Government intervention has been playing a major role in the agricultural sector.
2. The rules used during the Uruguay Round (UR) on agriculture, especially those on agricultural market access commitments, are not automatically applicable to acceding countries. Furthermore, there is no agreed parameter with regard to an acceding country's level of commitments that are "commercially viable" and "appropriate to the level of economic development". The commitments concerning agriculture in the past accession cases varied from one country to another, and contained different elements of "WTO-plus" or "WTO-minus"⁷⁵. The level of the UR commitments made by WTO members, as well as the record of the implementation of those commitments, cannot be automatically used as the reference point for acceding countries in evaluating whether their commitments could be considered to be at the "appropriate" level. However, it is useful to look at the commitments of newly acceded members.
3. New rules and disciplines for multilateral liberalization in agriculture are currently under negotiation in the Doha Round. An acceding country should thus pay close attention to the development of those negotiations. Observer status in the negotiations is granted to acceding countries, but they are not allowed to be a part of any decision-making process.

⁷⁴ This chapter is based on Miho Shirotori, "WTO Accession Negotiations on Agriculture", *WTO Accessions and Development Policies*, UNCTAD (UNCTAD/DITC/TNCD/11), 2001.

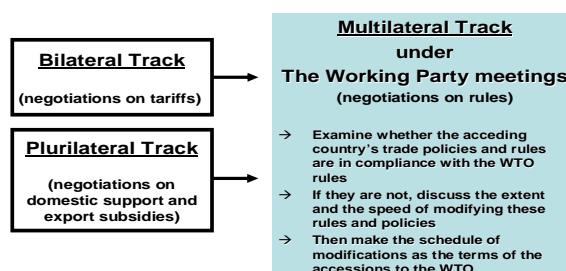
⁷⁵ "WTO-plus" means that there has been a tendency in the accession negotiations to press for commitments beyond the requirements of the WTO agreements. "WTO-minus" means that provisions on SDT in the WTO agreements take the specific situation of developing countries, LDCs and countries in transition into consideration.

VI.1. The accession negotiations on agriculture - the process and the issues

VI.1.1. The process of the negotiations on agriculture

In the negotiations on WTO accession, the trade regime (i.e. policies, institutions and rules) on agriculture of the acceding country is examined, in accordance with the AoA. There are three different tracks of negotiations to follow, depending on the issues for discussion.

The Negotiation Process



Bilateral track

Negotiations on agricultural market access, such as the "appropriate" level of tariffs for an acceding country, take place as a part of overall negotiations on agricultural and non-agricultural products. Upon the submission of the "initial offer" of tariffs, an acceding country negotiates the level of tariff binding and possible tariff reductions to reach the "appropriate level" with interested WTO Member countries on a bilateral, confidential, request-and-offer basis.

Plurilateral track

Negotiations on domestic support and export subsidies take place on a plurilateral basis, i.e. in informal working party meetings on agricultural policies, with an interested group of WTO Members. In plurilateral meetings, the acceding country's current agricultural policies are scrutinized, based on information provided by the acceding country in its Memorandum of Foreign Trade Regime and those subsequently provided in a supporting table on domestic subsidies, commonly called by its document code, an "ACC/4" table.

Multilateral track

The multilateral track – or the formal Working Party meetings – is the mechanism that oversees the entire accession process. The progress and the outcome of the negotiations that took place in bilateral and plurilateral tracks are reported to the Working Party meeting. Based on this information, WTO Members examine whether the acceding country's trade regime is in compliance with the WTO rules or not. If it does not meet the WTO rules, WTO Members negotiate with the acceding country to identify the appropriate level and the speed for modifying these rules and policies, which are to be adopted as the acceding country's commitments under the terms of accession to the WTO.

VI.1.2. The "base period" and its selection

For all three areas of commitments, the starting point of the negotiations is to select the base period from which reductions in tariffs and agricultural subsidies are to be scheduled.

With regard to market access (e.g. tariffs), an acceding country may be requested by some WTO Members to select the currently applied tariffs as the base for tariff reductions. This would be clearly a "WTO-plus" type of commitment. In practice, the bound tariff rates of many developing countries far exceed their corresponding applied tariff rates.

As for domestic support and export subsidies, acceding countries should provide the supporting tables, ACC/4, which contain detailed information on the use of domestic support and export subsidies including their monetary values in the three most recent representative years. It is almost customary for some WTO members to insist that the time period indicated in the ACC/4 should be the natural choice for the base period for the reduction commitments.

Taking the most recent period as the base may cause some difficulties for countries undergoing economic transformation. In these countries, the current policy measures are merely transient ones and may not represent their long-term agricultural policy objectives. In the case of the UR negotiations, WTO Members had almost ten years between the base period (1986-1988 for domestic support and 1986-1990 for export subsidies) and the beginning of the implementation of commitments (1995). This acted as a sufficient transition period for adjusting their domestic policy structures.

VI.1.3. "Developing country" status and least developed countries

As shown in previous chapters, the AoA provides developing countries with special and differential (S&D) treatment, such as a longer period for implementing commitments and a lower degree of tariff reductions than developed countries.

In the past, there have been several cases where acceding countries, despite their low- to middle-income economic level, were not granted the right to use the S&D provisions in their entirety. In practice, whether or not a country received developing country status has been determined on a case-by-case basis, largely influenced by political rather than economic circumstances surrounding each acceding country. There is no official criterion for the developing country status in the WTO framework, and the status was previously granted on the basis of self-declaration⁷⁶.

During the post-Uruguay Round period, two LDCs - Cambodia and Nepal - acceded to the WTO. Prior to their accession, WTO Members adopted a General Council Decision on accession of LDCs, which agreed on the guidelines for negotiations for the accession of LDCs to the WTO to be "... facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible". The guidelines include:

⁷⁶ For instance, Republic of Korea and Mexico, which are Members of the OECD, maintain developing country status within the WTO framework.

- » Members shall *exercise restraint* in seeking concessions and commitments on trade in goods and services from acceding LDCs;
- » Acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs;
- » Special and Differential Treatment provisions shall be applicable to all acceding LDCs;
- » Commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO;
- » Upon request, WTO Members may, through coordinated, concentrated and targeted technical assistance from an early stage, facilitate the accession of an acceding LDC.

Whether WTO Members closely followed the Decision during the accession process of these two LDCs is subject to interpretation. For instance, concerning tariffs, the guidelines state that "WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs", but there is no clear definition of "exercise restraint". However, during the bilateral negotiations, both Cambodia and Nepal at times faced resolute requests from developed country WTO Members to bind tariffs on some agricultural products at the ongoing applied level.

VI.2. Accession negotiations on the three pillars

VI.2.1. Agricultural market access

In the area of agricultural market access, there are two commitments that all acceding countries should make without exception. These are elimination of non-tariff measures (e.g. import ban, quotas, variable levies, etc.) and binding of all agricultural tariffs.

Tariff binding and tariff reductions

Acceding countries offer a bound rate for each agricultural tariff line, which acts as a ceiling above which tariffs will not be raised in the future. Tariff offers by an acceding country should therefore ideally reflect the acceding country's long-term agricultural interests.

Market Access:

- Elimination of non-tariff measures
- Binding all tariffs
- Agricultural tariffs in negotiated bilaterally
- Basis: current applied?
- Reductions: to "appropriate" level
- Tariffication does not apply to acceding countries (i.e. non-tariff barriers have to be tariffied but it is not an equivalent level of

Although some WTO Members consider that the tariffs that are currently applied should be the basis for binding, from which reductions may be made if viewed necessary, the initial offers of many acceding countries in the past included bound rates which exceeded their applied tariffs. The tariff offers made by Mongolia and Estonia, for instance, included bound rates ranging between 5 and 30 per cent, while their applied agricultural tariffs at the time of accession negotiations were zero. Table 15 shows the average tariff on which the

corresponding acceded country and the WTO Members agreed. Figure 11 demonstrates that countries that acceded after 1995 have on average lower tariffs than GATT Members.

In the course of the ongoing WTO negotiations on agriculture, many developing countries have argued that the bound/applied tariff gap is a flexibility or a “policy space” that is necessary for them to accommodate external and/or internal economic shocks to their generally vulnerable agriculture production. Some developing country Members also suggested that the bound/applied tariff gap should be considered as “credits” to unilateral trade liberalization taken up by many developing countries in recent years.

The “appropriate” tariff level

Tariff concessions offered by an acceding country are expected to be “commercially viable”, “meaningful in trade terms” or “appropriate to the level of economic development”. However, there is no numerical benchmark for such criteria, and in reality the level of “appropriateness” is determined on a case-by-case basis in bilateral negotiations. Looking at the tariff commitments by countries recently acceded to WTO, the simple average of bound tariffs ranges from 11.7 per cent (Kyrgyz Republic) to 34.9 per cent (Bulgaria). The maximum tariff rates of those countries rarely go above 50 per cent, unlike the bound agricultural tariffs in developed and developing countries which are much higher – 100 per cent on some sensitive products. Some developing countries that opted for the ceiling binding have bound rates of above 100 per cent on all products.

In bilateral negotiations vis-à-vis countries with export interests, an acceding country should be prepared to receive requests for substantial cuts in its tariff level. The lack of bargaining power on the side of an acceding country is obvious. However, a well-formulated argument, when backed by substantive evidence and a sound long-term development policy objective, has been proven successful in justifying the appropriateness of tariffs set by the acceding country on some key sensitive product items.

Tariffication – elimination of non-tariff barriers

In formulating the initial tariff offer, an acceding country should take into account the commitment to eliminate all non-tariff measures (NTMs), such as quantitative import controls (e.g. quotas, import prohibition), variable import levies, minimum import prices, etc., upon the date of the accession. To accommodate the impact of NTM elimination to the domestic market, WTO Members used the modality of “tariffication” during the Uruguay Round (see above). Many developing countries bound their tariffs at ceiling levels.

Neither the tariffication option nor the ceiling binding method is automatically granted to acceding countries. Some WTO Members hold the view that those modalities were intended only for the UR negotiations, and are not applicable to the accession negotiations. The possibility of applying the tariffication method should be negotiated with WTO Members on a product-by-product and case-by-case basis.

Tariff rate quotas

The tariffication modality is linked to the introduction of a (tariff rate quota (TRQ) system. Although the initial aim of the TRQ system was to aid exporters, more and more acceding countries now seem to consider TRQs as an AoA-consistent measure to control import quantities. WTO Members that are major agricultural exporters discourage acceding countries from making any TRQ commitment, thus avoiding having to secure a market share by receiving a bilateral quota allocation. Among countries that recently acceded to WTO, Ecuador, Bulgaria, Panama and Latvia made TRQ commitments.

Tariff Rates Quotas
see section III.2.1.

If TRQs are negotiated, an acceding country should expect that WTO Members with export interests may request country-specific allocation of TRQs as “current” market access opportunities if they have been historical suppliers. Some Members may request not only a share of the quota but also an increase over time, although under the AoA the current access quantities do not need to increase throughout the implementation period. They may also push for a sufficiently low level of within-quota tariff rates, if not duty-free access, and transparency in the TRQ administration methods, such as domestic regulations regarding the allocation of quotas among importers. WTO Members tend to encourage acceding countries to resort to open and market-oriented administration methods, such as automatic import licensing or first come, first served.

Special Safeguard (SSG) measures

The right to use the tariffication modality is also linked to the right to use Special Safeguard (SSG) measures on selected commodities. In past accession cases, acceding countries were *not* automatically granted the right for SSG actions. However, an acceding country may negotiate for the right to resort to SSGs on certain key products, especially those that are essential for domestic food security, by providing a sound justification. Bulgaria, Ecuador, Panama and Chinese Taipei⁷⁷ managed to nominate a number of products as being subject to SSG.

Special Safeguard
(SSG) measures see
section III.2.1.

Table 15: Market access commitments of acceded countries

	Entry date	Average Tariffs (%)	Staging (max.years)	TRQ	SSG
Ecuador	01/96	25.8	5	YES	YES
Bulgaria	12/96	34.9	5 – 6	YES	YES
Mongolia	01/97	18.4	0	-	-
Panama	09/97	26.1	14	YES	YES
Kyrgyzstan	12/98	11.7	0	-	-
Latvia	02/99	33.6	8	YES	-

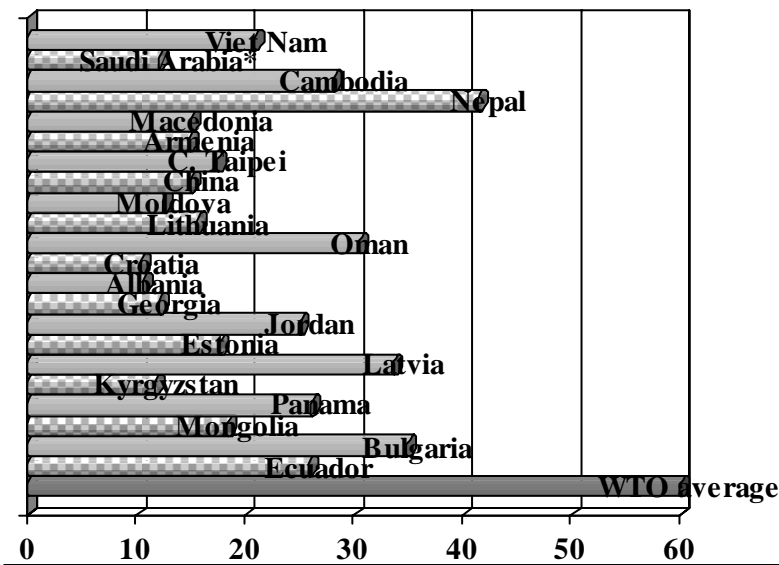
⁷⁷ Defined in the United Nations as Taiwan Province of China

Estonia	11/99	17.7	4	-	-
Jordan	04/00	25	10	-	
Georgia	06/00	12.1	5	-	-
Albania	09/00	10.6	7	-	-
Croatia	11/00	10.4	5	YES	-
Oman	11/00	30.5	4	-	-
Lithuania	05/01	15.6	7	YES	-
Moldova	07/01	12.4	4	-	-
China	12/01	15	9	YES	-
C. Taipei	½	17.5	5	YES	YES
Armenia	02/03	14.8	0	-	-
Macedonia	04/03	15	4	YES	-
Nepal	04/04	41.4	2	-	-
Cambodia	10/04	28.1	7	-	-
Saudi Arabia*	12/05	12.1	5	-	-
Viet Nam	01/07	20.9	7	YES	-

Note: Implementation period relates to agricultural products; *Saudi Arabia: Some imports such as some swine and alcoholic products are prohibited. A few specific tariffs such as tariffs on tobacco products have not been taken into account in calculating the average. Cambodia: Implementation period is greater than zero for only four tariff lines.

Source: WTO countries' schedules

Figure 11: Bound rate averages



VI.2.2. Accession commitments on domestic support

Accession commitments on agricultural domestic support may force an acceding country to undertake substantial “reform” in the structure and the future direction of its agricultural policy. The impact will be particularly large for countries where Government intervention has been playing a vital role in the agricultural sector.

Domestic support measures that are subject to the reduction commitments

Domestic support measures that are deemed trade-distorting are classified as the “Amber Box” measures and have to be quantified in terms of the base period total Aggregate Measurement of Support (AMS) from which annual reductions are made (see section III.3.1). Acceding countries are often pressured by some WTO Members to refrain from the use of Amber Box measures. Generally, the majority of countries in the accession process reported that Amber Box measures did not exist, had already been eliminated, or were in the process of elimination in the course of the following years, largely due to acute fiscal constraints.

Because countries are not allowed to increase the total spending on Amber Box measures at the level above the *de minimis* limit, zero AMS in the base period implies relinquishing the right to use Amber Box measures in the future.

In the accession to WTO during the post-Uruguay Round period, only a number of countries managed to maintain some parts of the AMS-type of domestic support measures (e.g. Bulgaria, Croatia, Jordan, Lithuania, Moldova and Chinese Taipei⁷⁸). There is also a significant variation in terms of the width of the S&D provisions that were accorded to recently acceded countries. For instance, Ecuador, Mongolia, Panama, Georgia and Jordan are entitled to the *de minimis* limit of 10 per cent, while for Bulgaria, Kyrgyz Republic and Estonia the *de minimis* limit is 5 per cent. Latvia was given a transitory period to shift from around 8 per cent *de minimis* limit to 5 per cent by 2003. China’s *de minimis* level was set at a somewhat unusual level of 8.5 per cent. China and many other acceding countries did not receive the right to use the “development measures”.

Domestic support:

- The acceding country should provide detailed information of all domestic support measures that existed in the base period, in a technical note called **ACC/4**.
- WTO Members examine the notified measures in plurilateral meetings.
- If Amber Box measures exist, the acceding country is requested to reduce them.

ACC/4:

An accurate ACC/4 facilitates the acceding country's negotiations in plurilateral meetings. The ACC/4 should correctly categorize domestic support according to the AoA classification; be coherent with the information given in the MTR; and provide sound statistics.

⁷⁸ Defined in the United Nations as Taiwan Province of China.

Domestic support measures that are exempted from the reduction commitments

Under WTO rules, countries are free to use the Green Box without any restrictions. However, the use of such exempt measures is sometimes beyond the economic capacity of many acceding developing countries, or the types of measures listed in those boxes are not relevant to agricultural conditions and circumstances of acceding countries. For instance, many of the measures included in the Green Box reflect circumstances of countries where the level of agricultural production is not expected to rise further. However, developing countries generally aim to increase agricultural production. The Green Box also provides special measures for economies in transition.

Exempt measures:

- Green Box
- Blue Box
- Development Box
- *de minimis*

Table 16: Domestic support and export subsidy commitments. Selected countries.

	AMS cut	Phase-in period	<i>De minimis</i>	Export subsidies
	%	Years	%	
Ecuador	-	-	10	0
Bulgaria	79	2	5	Yes
Mongolia	-	-	10	0
Panama	-	-	10	Yes
Kyrgyzstan	-	-	5	0
Latvia	-	-	5 (8 until 2003)	0
Estonia	-	-	5	0
Jordan	13	7	10	0
Georgia	-	-	10	0
Albania	-	-	10	0
Croatia	20	5	5	0
Oman	-	-	10	0
Lithuania	15	5	5	0
Moldova	20	4	5	0
China	-	-	8.5	0
C. Taipei	20	8	10	0
Armenia	-	-	5 (10 until 2008)	0
Macedonia	20	4	5	0
Nepal	-	-	10	-
Cambodia	-	-	10	-

Saudi Arabia	13	10	10	0
Viet Nam	No cuts	-	10	0

Source: WTO countries' schedules

VI.2.3. Accession commitments on export subsidies

Under the AoA, Members are committed not to provide export subsidies above the total level specified in their own Schedules and not to introduce new export subsidies that are not included in their reduction commitment.

In the past, Bulgaria and Panama included the reduction commitments on export subsidies in their Schedules. Other acceded countries had zero export subsidies in the base period or had agreed to eliminate the export subsidies that existed in the base period by the time of accession.

WTO Members agreed in the "July Framework" of 2004 that all forms of export subsidies were to be eliminated within a timeframe to be agreed. For this reason, it is highly unlikely that an acceding country would be allowed to maintain some export subsidies or granted the right to maintain export subsidies, if it uses any.

Export Subsidies:

- Commitments are negotiated in plurilateral negotiations.
- If an acceding country did not use export subsidies during the base period, it has no right to use them in the future.
- Export subsidies will be eliminated for all WTO Members within a time period to be agreed.

ANNEX I:

NEGOTIATING GROUPS

The **Cairns Group** members are Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

The **G33** countries include Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Cote d'Ivoire, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Mauritius, Madagascar, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Republic of Korea, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe.

The members of the **G20** are Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Venezuela and Zimbabwe.

G10: Bulgaria, Chinese Taipei, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, Republic of Korea and Switzerland.

G90: Angola, Antigua and Barbuda, Bangladesh, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea (Conakry), Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Zambia and Zimbabwe.

These groups are neither mutually exclusive nor exhaustive. Some countries are members of two groups. Members of the European Union negotiate as a group, represented by the European Commission.

ANNEX II:

WTO DOCUMENTS

Annex II.A

Doha Work Programme, Decision Adopted by the General Council on 1 August 2004, Framework for Establishing Modalities in Agriculture (WT/L/579)

1. The starting point for the current phase of the agriculture negotiations has been the mandate set out in Paragraph 13 of the Doha Ministerial Declaration. This in turn built on the long-term objective of the Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform. The elements below offer the additional precision required at this stage of the negotiations and thus the basis for the negotiations of full modalities in the next phase. The level of ambition set by the Doha mandate will continue to be the basis for the negotiations on agriculture.

2. The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed will need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. Agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns. Non-trade concerns, as referred to in Paragraph 13 of the Doha Declaration, will be taken into account.

3. The reforms in all three pillars form an interconnected whole and must be approached in a balanced and equitable manner.

4. The General Council recognizes the importance of cotton for a certain number of countries and its vital importance for developing countries, especially LDCs. It will be addressed ambitiously, expeditiously and specifically, within the agriculture negotiations. The provisions of this framework provide a basis for this approach, as does the sectoral initiative on cotton. The Special Session of the Committee on Agriculture shall ensure appropriate prioritization of the cotton issue independently of other sectoral initiatives. A subcommittee on cotton will meet periodically and report to the Special Session of the Committee on Agriculture to review progress. Work shall encompass all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition, as specified in the Doha text and this Framework text.

5. Coherence between trade and development aspects of the cotton issue will be pursued as set out in paragraph 1.b of the text to which this Framework is annexed.

DOMESTIC SUPPORT

6. The Doha Ministerial Declaration calls for "substantial reductions in trade-distorting domestic support". With a view to achieving these substantial reductions, the negotiations in this pillar will ensure the following:

- Special and differential treatment remains an integral component of domestic support. Modalities to be developed will include longer implementation periods and lower reduction coefficients for all types of trade-distorting domestic support and continued access to the provisions under Article 6.2.
- There will be a strong element of harmonization in the reductions made by developed Members. Specifically, higher levels of permitted trade-distorting domestic support will be subject to deeper cuts.
- Each such Member will make a substantial reduction in the overall level of its trade-distorting support from bound levels.
- As well as this overall commitment, Final Bound Total AMS and permitted *de minimis* levels will be subject to substantial reductions and, in the case of the Blue Box, will be capped as specified in paragraph 15 in order to ensure results that are coherent with the long-term reform objective. Any clarification or development of rules and conditions to govern trade-distorting support will take this into account.

Overall Reduction: A Tiered Formula

7. The overall base level of all trade-distorting domestic support, as measured by the Final Bound Total AMS plus permitted *de minimis* level and the level agreed in paragraph 8 below for Blue Box payments, will be reduced according to a tiered formula. Under this formula, Members having higher levels of trade-distorting domestic support will make greater overall reductions in order to achieve a harmonizing result. As the first instalment of the overall cut, in the first year and throughout the implementation period, the sum of all trade-distorting support will not exceed 80 per cent of the sum of Final Bound Total AMS plus permitted *de minimis* plus the Blue Box at the level determined in paragraph 15.

8. The following parameters will guide the further negotiation of this tiered formula:

- This commitment will apply as a minimum overall commitment. It will not be applied as a ceiling on reductions of overall trade-distorting domestic support, should the separate and complementary formulae to be developed for Total AMS, *de minimis* and Blue Box payments imply, when taken together, a deeper cut in overall trade-distorting domestic support for an individual Member.
- The base for measuring the Blue Box component will be the higher of existing Blue Box payments during a recent representative period to be agreed and the cap established in paragraph 15 below.

Final Bound Total AMS: A Tiered Formula

9. To achieve reductions with a harmonizing effect:

- Final Bound Total AMS will be reduced substantially, using a tiered approach.

- Members having higher Total AMS will make greater reductions.
- To prevent circumvention of the objective of the Agreement through transfers of unchanged domestic support between different support categories, product-specific AMSs will be capped at their respective average levels according to a methodology to be agreed.
- Substantial reductions in Final Bound Total AMS will result in reductions of some product-specific support.

10. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

De Minimis

11. Reductions in *de minimis* will be negotiated taking into account the principle of special and differential treatment. Developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers will be exempt.

12. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

Blue Box

13. Members recognize the role of the Blue Box in promoting agricultural reforms. In this light, Article 6.5 will be reviewed so that Members may have recourse to the following measures:

- Direct payments under production-limiting programmes if:
 - such payments are based on fixed and unchanging areas and yields; or
 - such payments are made on 85% or less of a fixed and unchanging base level of production; or
 - livestock payments are made on a fixed and unchanging number of head.

Or

- Direct payments that do not require production if:
 - such payments are based on fixed and unchanging bases and yields; or
 - livestock payments made on a fixed and unchanging number of head; and
 - such payments are made on 85% or less of a fixed and unchanging base level of production.

14. The above criteria, along with additional criteria, will be negotiated. Any such criteria will ensure that Blue Box payments are less trade-distorting than AMS measures, it being understood that:

- Any new criteria would need to take account of the balance of WTO rights and obligations.
- Any new criteria to be agreed will not have the perverse effect of undoing ongoing reforms.

15. Blue Box support will not exceed 5% of a Member's average total value of agricultural production during an historical period. The historical period will be established in the negotiations. This ceiling will apply to any actual or potential Blue Box user from the beginning of the implementation period. In cases where a Member has placed an exceptionally large percentage of its trade-distorting support in the Blue Box, some flexibility will be provided on a basis to be agreed to ensure that such a Member is not called upon to make a wholly disproportionate cut.

Green Box

16. Green Box criteria will be reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production. Such a review and clarification will need to ensure that the basic concepts, principles and effectiveness of the Green Box remain and take due account of non-trade concerns. The improved obligations for monitoring and surveillance of all new disciplines foreshadowed in paragraph 48 below will be particularly important with respect to the Green Box.

EXPORT COMPETITION

17. The Doha Ministerial Declaration calls for "reduction of, with a view to phasing out, all forms of export subsidies". As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date.

End Point

18. The following will be eliminated by the end date to be agreed:

- Export subsidies as scheduled.
- Export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days.
- Terms and conditions relating to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below which are not in accordance with disciplines to be agreed. These disciplines will cover, *inter alia*, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade.
- Trade-distorting practices with respect to exporting STEs including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses. The issue of the future use of monopoly powers will be subject to further negotiation.

- Provision of food aid that is not in conformity with operationally effective disciplines to be agreed. The objective of such disciplines will be to prevent commercial displacement. The role of international organizations as regards the provision of food aid by Members, including related humanitarian and developmental issues, will be addressed in the negotiations. The question of providing food aid exclusively in fully grant form will also be addressed in the negotiations.

19. Effective transparency provisions for paragraph 18 will be established. Such provisions, in accordance with standard WTO practice, will be consistent with commercial confidentiality considerations.

Implementation

20. Commitments and disciplines in paragraph 18 will be implemented according to a schedule and modalities to be agreed. Commitments will be implemented by annual instalments. Their phasing will take into account the need for some coherence with internal reform steps of Members.

21. The negotiation of the elements in paragraph 18 and their implementation will ensure equivalent and parallel commitments by Members.

Special and Differential Treatment

22. Developing country Members will benefit from longer implementation periods for the phasing-out of all forms of export subsidies.

23. Developing countries will continue to benefit from special and differential treatment under the provisions of Article 9.4 of the Agreement on Agriculture for a reasonable period, to be negotiated, after the phasing-out of all forms of export subsidies and implementation of all disciplines identified above are completed.

24. Members will ensure that the disciplines on export credits, export credit guarantees or insurance programmes to be agreed will make appropriate provision for differential treatment in favour of least developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries. Improved obligations for monitoring and surveillance of all new disciplines as foreshadowed in paragraph 48 will be critically important in this regard. Provisions to be agreed in this respect must not undermine the commitments undertaken by Members under the obligations in paragraph 18 above.

25. STEs in developing country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status.

Special Circumstances

26. In exceptional circumstances, which cannot be adequately covered by food aid, commercial export credits or preferential international financing facilities, ad hoc temporary financing arrangements relating to exports to developing countries may be agreed by Members. Such agreements

must not have the effect of undermining commitments undertaken by Members in paragraph 18 above, and will be based on criteria and consultation procedures to be established.

MARKET ACCESS

27. The Doha Ministerial Declaration calls for "substantial improvements in market access". Members also agreed that special and differential treatment for developing Members would be an integral part of all elements in the negotiations.

The Single Approach: A Tiered Formula

28. To ensure that a single approach for developed and developing country Members meets all the objectives of the Doha mandate, tariff reductions will be made through a tiered formula that takes into account their different tariff structures.

29. To ensure that such a formula will lead to substantial trade expansion, the following principles will guide its further negotiation:

- Tariff reductions will be made from bound rates. Substantial overall tariff reductions will be achieved as a final result from negotiations.
- Each Member (other than LDCs) will make a contribution. Operationally effective special and differential provisions for developing country Members will be an integral part of all elements.
- Progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products. Substantial improvements in market access will be achieved for all products.

30. The number of bands, the thresholds for defining the bands and the type of tariff reduction in each band remain under negotiation. The role of a tariff cap in a tiered formula with distinct treatment for sensitive products will be further evaluated.

Sensitive Products

Selection

31. Without undermining the overall objective of the tiered approach, Members may designate an appropriate number, to be negotiated, of tariff lines to be treated as sensitive, taking account of existing commitments for these products.

Treatment

32. The principle of 'substantial improvement' will apply to each product.

33. 'Substantial improvement' will be achieved through combinations of tariff quota commitments and tariff reductions applying to each product. However, balance in this negotiation will be found only if the final negotiated result also reflects the sensitivity of the product concerned.

34. Some MFN-based tariff quota expansion will be required for all such products. A base for such an expansion will be established, taking account of coherent and equitable criteria to be developed in the negotiations. In order not to undermine the objective of the tiered approach, for all such products, MFN-based tariff quota expansion will be provided under specific rules to be negotiated taking into account deviations from the tariff formula.

Other Elements

35. Other elements that will give the flexibility required to reach a final balanced result include reduction or elimination of in-quota tariff rates, and operationally effective improvements in tariff quota administration for existing tariff quotas so as to enable Members, and particularly developing country Members, to fully benefit from the market access opportunities under tariff rate quotas.

36. Tariff escalation will be addressed through a formula to be agreed.

37. The issue of tariff simplification remains under negotiation.

38. The question of the Special Agricultural Safeguard (SSG) remains under negotiation.

Special and differential treatment

39. Having regard to their rural development, food security and/or livelihood security needs, special and differential treatment for developing countries will be an integral part of all elements of the negotiation, including the tariff reduction formula, the number and treatment of sensitive products, expansion of tariff rate quotas, and implementation period.

40. Proportionality will be achieved by requiring lesser tariff reduction commitments or tariff quota expansion commitments from developing country Members.

41. Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries.

42. A Special Safeguard Mechanism (SSM) will be established for use by developing country Members.

43. Full implementation of the long-standing commitment to achieve the fullest liberalization of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops is overdue and will be addressed effectively in the market access negotiations.

44. The importance of long-standing preferences is fully recognized. The issue of preference erosion will be addressed. For the further consideration in this regard, paragraph 16 and other relevant provisions of TN/AG/W/1/Rev.1 will be used as a reference.

LEAST DEVELOPED COUNTRIES

45. Least Developed Countries, which will have full access to all special and differential treatment provisions above, are not required to undertake reduction commitments. Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least developed countries.

46. Work on cotton under all the pillars will reflect the vital importance of this sector to certain LDC Members and we will work to achieve ambitious results expeditiously.

RECENTLY ACCEDED MEMBERS

47. The particular concerns of recently acceded Members will be effectively addressed through specific flexibility provisions.

MONITORING AND SURVEILLANCE

48. Article 18 of the Agreement on Agriculture will be amended with a view to enhancing monitoring so as to effectively ensure full transparency, including through timely and complete notifications with respect to the commitments in market access, domestic support and export competition. The particular concerns of developing countries in this regard will be addressed.

OTHER ISSUES

49. Issues of interest but not agreed: sectoral initiatives, differential export taxes, GIs.

50. Disciplines on export prohibitions and restrictions in Article 12.1 of the Agreement on Agriculture will be strengthened.

Annex II.B.

DOHA WORK PROGRAMME, Ministerial Declaration,

Adopted on 18 December 2005 (WT/MIN(05)/DEC)

Agriculture negotiations

4. We reaffirm our commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration and to the Framework adopted by the General Council on 1 August 2004.

We take note of the report by the Chairman of the Special Session on his own responsibility (TN/AG/21, contained in Annex A). We welcome the progress made by the Special Session of the Committee on Agriculture since 2004 and recorded therein.

5. On domestic support, there will be three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support, with higher linear cuts in higher bands. In both cases, the Member with the highest level of permitted support will be in the top band, the two Members with the second and third highest levels of support will be in the middle band and all other Members, including all developing country Members, will be in the bottom band. In addition, developed country Members in the lower bands with high relative levels of Final Bound Total AMS will make an additional effort in AMS reduction. We also note that there has been some convergence concerning the reductions in Final Bound Total AMS, the overall cut in trade-distorting domestic support and in both product-specific and non product-specific *de minimis* limits. Disciplines will be developed to achieve effective cuts in trade-distorting domestic support consistent with the Framework. The overall reduction in trade-distorting domestic support will still need to be made even if the sum of the reductions in Final Bound Total AMS, *de minimis* and Blue Box payments would otherwise be less than that overall reduction. Developing country Members with no AMS commitments will be exempt from reductions in *de minimis* and the overall cut in trade-distorting domestic support. Green Box criteria will be reviewed in line with paragraph 16 of the Framework, *inter alia*, to ensure that programmes of developing country Members that cause not more than minimal trade distortion are effectively covered.

6. We agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013. This will be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realized by the end of the first half of the implementation period. We note emerging convergence on some elements of disciplines with respect to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below. We agree that such programmes should be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially oriented discipline. As a means of ensuring that trade-distorting practices of STEs are eliminated, disciplines relating to exporting STEs will extend to the future use of monopoly powers so that such powers cannot be exercised in any way that would circumvent the direct disciplines on STEs on export subsidies, government financing and the underwriting of losses. On food aid, we reconfirm our commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. To this end, a "safe box" for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, we will ensure elimination of commercial displacement. To this end, we will agree effective disciplines on in-kind food aid, monetization and re-exports so that there can be no loophole for continuing export subsidization. The disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid will be completed by 30 April 2006 as part of the modalities, including appropriate provision in favour of least developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision. The date above for the elimination of all forms of export subsidies, together with the agreed progressivity and parallelism, will be confirmed only upon the completion of the modalities. Developing country Members will continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end date for elimination of all forms of export subsidies.

7. On market access, we note the progress made on *ad valorem* equivalents. We adopt four bands for structuring tariff cuts, recognizing that we need now to agree on the relevant thresholds – including those applicable for developing country Members. We recognize the need to agree on treatment of sensitive products, taking into account all the elements involved. We also note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism. Developing country Members will have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and

price triggers, with precise arrangements to be further defined. Special Products and the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture.

8. On other elements of special and differential treatment, we note in particular the consensus that exists in the Framework on several issues in all three pillars of domestic support, export competition and market access and that some progress has been made on other special and differential treatment issues.

9. We reaffirm that nothing we have agreed here compromises the agreement already reflected in the Framework on other issues including tropical products and products of particular importance to the diversification of production from the growing of illicit narcotic crops, long-standing preferences and preference erosion.

10. However, we recognize that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, we agree to intensify work on all outstanding issues to fulfil the Doha objectives; in particular, we are resolved to establish modalities no later than 30 April 2006 and to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006.

Cotton

11. We recall the mandate given by the Members in the Decision adopted by the General Council on 1 August 2004 to address cotton ambitiously, expeditiously and specifically, within the agriculture negotiations in relation to all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition, as specified in the Doha text and the July 2004 Framework text. We note the work already undertaken in the Sub-Committee on Cotton and the proposals made with regard to this matter. Without prejudice to Members' current WTO rights and obligations, including those flowing from actions taken by the Dispute Settlement Body, we reaffirm our commitment to ensure having an explicit decision on cotton within the agriculture negotiations and through the Sub-Committee on Cotton ambitiously, expeditiously and specifically as follows:

- All forms of export subsidies for cotton will be eliminated by developed countries in 2006.
- On market access, developed countries will give duty and quota free access for cotton exports from least developed countries (LDCs) from the commencement of the implementation period.
- Members agree that the objective is that, as an outcome for the negotiations, trade-distorting domestic subsidies for cotton production be reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable. We commit ourselves to give priority in the negotiations to reach such an outcome.

12. With regard to the development assistance aspects of cotton, we welcome the Consultative Framework process initiated by the Director-General to implement the decisions on these aspects pursuant to paragraph 1.b of the Decision adopted by the General Council on 1 August 2004. We take note of his Periodic Reports and the positive evolution of development assistance noted therein. We urge the Director-General to further intensify his consultative efforts with bilateral donors and with multilateral and regional institutions, with emphasis on improved coherence, coordination and enhanced implementation and to explore the possibility of establishing through such institutions a mechanism to deal with income declines in the cotton sector until the end of subsidies. Noting the importance of achieving enhanced efficiency and competitiveness in the cotton-producing process, we urge the development community to further scale up its cotton-specific assistance and to support the efforts of the Director-General. In this context, we urge Members to promote and support South-South cooperation, including transfer of technology. We welcome the domestic reform efforts by African cotton producers aimed at enhancing productivity and efficiency, and encourage them to deepen this

process. We reaffirm the complementarity of the trade policy and development assistance aspects of cotton. We invite the Director-General to furnish a third Periodic Report to our next Session with updates, at appropriate intervals in the meantime, to the General Council, while keeping the Sub-Committee on Cotton fully informed of progress. Finally, as regards follow-up and monitoring, we request the Director-General to set up an appropriate follow-up and monitoring mechanism.

Balance between Agriculture and NAMA

We recognize that it is important to advance the development objectives of this Round through enhanced market access for developing countries in both Agriculture and NAMA. To that end, we instruct our negotiators to ensure that there is a comparably high level of ambition in market access for Agriculture and NAMA. This ambition is to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment.

