THE WTO AGRICULTURE NEGOTIATIONS
AND DEVELOPING COUNTRIES

A background paper on the occasion of the 5th WTO Ministerial Conference in Cancún, Mexico 10–14 September 2003

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EXECUTIVE SUMMARY

Recommendations

- Developing countries and civil society organisations should continue to press for genuine reform to the WTO Agreement on Agriculture. This must involve faster and deeper reform to all forms of export subsidies and support to agriculture production by developed countries.

- Proposals by developing countries to establish a Balancing Mechanism to counter subsidised imports, as well as to institute an overall cap on all forms of domestic support, should be supported.

- Developing countries should not be expected to undertake fast, deep and across the board agricultural trade liberalization as a result of the current negotiations, given the negative impact of such liberalization on their food security situation to date.

- Any attempt to eliminate provisions on strategic products (SPs) and special safeguards (SSM) from the final agriculture text, or to overly restrict their flexibility, should be forcefully countered.

- Developing country concerns regarding food/livelihood security and rural development require a set of measures to be adequately tackled: they should not be presented with a set of mutually exclusive options.

Introduction

The WTO’s Agreement on Agriculture (AoA) undermines developing countries’ ability properly to address their food security and development needs. This is in part because, during the Uruguay Round, no distinction was made between on the one hand, ordinary commercial crops, and on the other, those staple and sensitive products that are vital to the food security and income of poor farmers. Trade liberalization commitments applied to all crops alike.

While the AoA forces developing countries to cut tariffs, which are in many cases their only means of protecting their farmers, there are numerous loopholes that allow rich countries to continue to subsidise their own farmers, enabling them to dump products on the world market at less than the cost of production. This fundamental imbalance between North and South has meant that developing country farmers (who constitute 97% of the world’s farm population) have faced devastation as a result of liberalization-induced surges of imports, many of them produced by heavily-subsidised agribusiness in the developed world.

It is now apparent to many developing countries that the current renegotiation of the AoA, under way since early 2000, must therefore incorporate exemptions to exclude staple foods and other sensitive crops from further trade liberalization. Albeit in a watered down form, this demand was taken up by the Chair of the Agriculture negotiations, Stuart Harbinson, in his ‘draft modalities’ text of March 2003, in which he proposed the creation of two instruments: ‘strategic products’ and ‘special safeguard measures’. SPs and SSM have since become a central and controversial aspect of the negotiations and is likely to loom large at the Cancún ministerial meeting in September 2003. This briefing sets out the background to these development issues in the AoA, the positions of the key players, and makes a series of recommendations for ensuring a pro-development outcome to the agriculture negotiations.
Strategic/Special Products: Key Points

What is Proposed by Developing Countries?
Agricultural products on whose production low-income and resource poor farmers depend for their basic food needs and income should be exempted from further tariff reductions.

Why is this important?
Under the AoA, tariff reductions in developing countries, in conjunction with northern agricultural subsidies and dumping, have led to numerous instances of import surges of food and other crops and a long-term deterioration in agricultural trade balances. These have particularly hurt small farmers.

Putting a pause to trade liberalization by exempting sensitive crops from further tariff reductions can play a vital role in national development programmes directed at increasing small farmer production and productivity, and maintaining and creating employment opportunities in the rural areas.

What is in the Harbinson draft modalities text?
The text proposes that members agree on a specific number of SPs. SPs should be permitted lower tariff reductions than other crops. Tariffs on SPs should be reduced by an average of 10 per cent with a minimum reduction rate per tariff line of 5 per cent. In contrast, developing countries would be required to reduce tariffs on non-SP products by between 40 and 25 per cent on average.

Critical Issues

1. Who decides on the list of SPs?
Pro-SP developing countries propose that given the variety of national situations, each developing country should be allowed to self-designate SPs in accordance with its own development needs. To prevent abuse, a ceiling should be place on the maximum number of SP tariff lines, determined as a percentage of all domestically produced agricultural products.

Members of the Cairns Group (which is hostile to the SP concept) want multilaterally agreed criteria for the designation of SPs. Suggestions include that only products with ‘reasonably’ low tariffs should be eligible; that the country must be a net importer of the products designated as SPs; and/or that the country concerned does not hold a large share of the world market for a particular product. The final list of SPs to be designated by each country should also be multilaterally agreed.

The US has always opposed the concept and the EC sees the Uruguay Round approach for tariff reductions as sufficiently flexible to address the food security and rural development concerns of developing countries.

2. Tariffs on SPs
Pro-SP developing countries argue that the Harbinson draft’s insistence on further tariff reductions on SPs is mistaken, since they view the SP concept as the avenue for exempting from further trade liberalization those agricultural products important to food/livelihood security and rural development. Even a 5 per cent tariff reduction on SPs could be troublesome for countries that bound their tariffs at low levels during the Uruguay Round.

The Cairns Group, EC and US, on the other hand, argue that developing countries should contribute to the reform process by lowering tariffs to some degree on all products, including SPs.
3. Access to the Special Safeguard
Pro-SP developing countries object to having to choose between SPs and the Special Safeguard, as initially proposed in the Harbinson draft. They point out that the two mechanisms deal with different problems – SPs with structural issues such as dumping, SSM with short-term import fluctuations, and so both are required.

Export-oriented WTO members, in particular members of the Cairns Group and the US argue that SPs should not have recourse to the SSM under any circumstances.

Current Debate
The whole concept of SPs is now under threat, and has become hostage to the wider debate on the tariff reduction formula for a revised AoA. The Chairman’s report to the Trade Negotiations Committee in July 2003 suggested that members should decide whether to retain the SP concept in tandem with deciding on the formula for tariff reductions, reflecting the position of the Cairns Group, the US and the EC that if the Uruguay Round formula for tariff reductions is adopted, the concept of SPs should be dropped altogether.

Pro-SP developing countries argue for no tariff reduction commitments on SPs. Were the concept to be completely dropped, these products would be subject to the general reduction targets for developing countries. Even if the Uruguay Round approach is used there is no guarantee that the minimum reduction rate of 10% used at that time would be adopted in the current negotiations; it could be higher. Therefore, they see the level of uncertainty surrounding the formula approach as a further reason to support a comprehensive, self-declared form of SPs.

More recently, the EC and the US have presented a joint text in which there is no reference to the SP concept. In fact, these countries propose to apply the same formula for tariff reduction for developed and developing countries with lower reduction rates and longer implementation periods for the latter. This approach disregards the concerns of developing countries as articulated throughout the negotiations. Instead, the burden of reform would disproportionately fall on developing countries were this approach to be adopted.

Special Safeguard Mechanism: Key Points
During the Uruguay Round it was felt that the elimination of non-tariff barriers in agriculture would render some sectors particularly vulnerable to external shocks. Therefore, members that tariffied were granted the right to use special safeguards in agriculture. Most developing countries did not tariffy and hence do not have access to the SSG, even though they have dismantled non-tariff barriers in much the same way as other WTO members.

Constraints regarding the trigger mechanisms for using the current SSG as well as restrictions related to the remedy measures that can be applied have led developing countries to propose the establishment of a new special safeguard mechanism available to all developing countries to help them address import surges and price volatility.

What is Proposed by Developing Countries?
Many have called for the SSG provisions to be abolished and a new SSM to be established for all developing countries. They argue that since developed countries have access to other instruments to protect farmers’ income and stabilize domestic markets, they do not need an SSG.

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1 Tariffication refers to the process by which non-tariff measures existing prior to the Uruguay Round were converted to a tariff equivalent which provided a similar level of protection. See Annex 3.
2 WTO document JOB(02)/177/Rev.1. Proposal presented by Cuba, Dominican Republic, Grenada, Honduras, Nicaragua, Nigeria, Pakistan, Sri Lanka and Venezuela.
Why is this important?
Due to trade liberalization, developing countries have become more vulnerable to short-term import surges, which can have devastating and permanent impacts on small farmers and rural communities.

What is in the Harbinson draft modalities text?
The draft modalities text suggests in attachment 2 the establishment of a special safeguard mechanism for developing countries but provides no details. A separate draft was developed and discussed in parallel to the main modalities text to fill that blank.  

In his (subsequent) report to the TNC, the Chairman linked the SSM to decisions regarding the formula approach for tariff reductions, thereby reflecting to some extent the position of the export-oriented WTO members that the SSM should be made conditional on the depth of trade liberalization adopted by developing countries.

Critical Issues

1. Product Coverage
Most developing countries favour extending the SSM to cover all agricultural products. They argue that import surges and steep drops in prices for any crop can have deleterious effects on their rural economy, employment and farmers’ income levels, and there is no reason to exclude a priori some agricultural products from protection against import surges as suggested by the Chairman in his draft on safeguard measures.

Cairns Group members want the SSM to be eligible only on products in which ‘deep’ tariff cuts are undertaken and oppose SPs (if they are ever established), having access to safeguard measures.

2. Trigger mechanisms
The Chairman’s draft text provides for both price and volume-triggered safeguards. That is, safeguards could be invoked both on the basis of a drop in prices or a significant increase in the volume of imports. However, some members of the Cairns Group, the EC and the US have indicated that price safeguards are not transparent and difficult to monitor, given the ease with which governments can manipulate prices in order to trigger the SSM.

Developing countries have proposed that the new SSM include both price and volume-triggered safeguards following the structure of the current SSG – particularly if the right to the SSG is extended.

Current Debate
Members of the Cairns Group in general are not sympathetic to the SSM. Developing countries of the group are particularly concerned with the impact of safeguards measures (and SPs) on South-South trade. Some of them, led by Argentina, argue that safeguards should be abolished altogether and replaced by a new Special and Differential Countervailing Measure (SDCM) allowing the imposition of retaliatory tariffs on subsidised (i.e. northern-produced) imports.

The Chairman appears to agree with the Cairns Group, and in his draft on a possible SSM he has taken the position that imports from other developing countries should be excluded. Developing country importers disagree, arguing that import surges cause severe economic and social distress regardless of their origin and that such a restriction considerably limits the value of the SSM. To address concerns on South - South trade, proponents of the SSM have instead suggested excluding

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3 Details regarding the content of the special safeguard draft are presented in Annex 2 of the paper.
4 WTO document JOB(02)/169 Rev. 2. Proposal presented by Argentina, Bolivia, Costa Rica, Ecuador, Paraguay, Malaysia, Philippines and Thailand.
imports from other developing countries from the application of the SSM only when such imports are not significant.

Most developed countries, including the EC and Cairns Group members, are more inclined to the idea of extending the right to special safeguards to developing countries. Developed countries see the SSM as the easiest way to respond to the concerns of developing countries regarding food security and rural development without jeopardizing their export interests. They clearly see a temporary measure such as the SSM as less damaging to their export interests than the more permanent concept of SPs. In general, all these countries would support a very targeted approach and strict criteria, mostly conditioned on improved market access, for granting access to the SSM to developing countries.

The EC/US joint text also proposes the establishment of an SSM for use by developing countries, but only for ‘import sensitive products’.

The key concern for pro-SSM developing countries in the coming months is to guarantee that SPs have access to safeguard measures and that the SSM is not conditioned on deep tariff reductions. This would be particularly damaging to countries with already low bound rates, for which relinquishing the right to the SSM may be preferable to undertaking further deep tariff cuts. In such circumstances, these countries would be once more deprived of the instruments they need to address import surges.
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I. BACKGROUND

The Agreement on Agriculture of the Uruguay Round (AoA) effectively brought trade in agriculture within the purview of the Multilateral Trading System. This first attempt to subject agriculture to the principles of the GATT/WTO, although significant, did little to correct the cumulative effects of years of subsidies and protection to agriculture world-wide.

Current negotiations on agriculture started in the year 2000 as specified in the AoA, to continue the reform process to establish a “fair and market oriented agricultural trading system” \(^5\). The Doha Ministerial Conference (Doha, Qatar, November 2001) established a new mandate for the negotiations identifying specific objectives on each of the pillars or areas of the negotiations – market access, domestic support, and export competition – and tight timelines for conducting and concluding the negotiations (See Annex 1 for the Doha mandate on Agriculture). Furthermore, agriculture negotiations became part of the Single Undertaking agreed by members in the Doha Ministerial Declaration (DMD), which greatly expanded the WTO negotiating agenda beyond the built-in agenda of agriculture and services and raised the stakes of the negotiations as a whole, in particular for developing countries.

II. STATE OF PLAY IN THE AGRICULTURE NEGOTIATIONS

Since the Doha Ministerial Conference, the focus of the negotiations has been on devising a set of ‘modalities’ in agriculture. The term modalities refers to the numerical targets for further commitments in the different areas of disciplines established in the AoA during the Uruguay Round and new rule elements that define the framework within which trade under the new commitments will take place \(^6\). Therefore, the modalities agreed will determine the depth, scope and speed of further trade liberalization in agricultural trade in developed and developing countries. This is thus a decisive phase of the negotiations.

Although the negotiations have advanced, these have not contributed in any significant way to bringing WTO members’ positions closer together. The deadline envisaged in the DMD for establishing modalities in agriculture – 31 March 2003 - was missed and further technical and other consultations after that date have not so far produced any breakthrough to solve the impasse in the negotiations. Wide differences among members still remain on fundamental aspects of the negotiations, including differing views as regards the level of ambition required by the Doha mandate on each pillar of the negotiations.

Within a difficult context and lacking guidance from the membership, the Chairman of the Committee on Agriculture Special Session (the body charged with conducting negotiations on agriculture) in early 2003 produced a draft modalities paper, on his own responsibility. Although still rejected by some members as a suitable basis for the negotiations and strongly criticized by most, the draft modalities text, also know as the Harbinson draft, constitutes to date the only common reference for guiding the discussions on modalities \(^7\).

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\(^5\) Article 20 of the Agreement on Agriculture of the Uruguay Round

\(^6\) There is however, no agreed definition of the term ‘modalities’, either in the context of agriculture negotiations or any other area of the Doha work programme.

\(^7\) The Chairman of the CoA Special Session prepared a first draft on 17 February 2003 (TN/AG/W/1) which failed to bridge differences among WTO members. He then produced a revised version of that draft on 18 March 2003 (TN/AG/W/1/Rev.1) but no agreement on modalities, based on that revised First Draft modalities paper was possible within the deadline established by the DMD.
Most recently, in his last report to the Trade Negotiations Committee before the Ministerial Conference in Cancún, the Chairman presented, again under his own responsibility, an assessment of the areas that require urgent attention by members if modalities are to be agreed. The report (TN/AG/10), which contains the draft modalities text attached ‘for reference’ (TN/AG/W/1/Rev.1), will be forwarded by the General Council to Ministers for consideration in Cancún. The report could be modified to reflect any progress achieved up to the date of the Ministerial Conference in September 2003.

On 13 August 2003 the EC and the US presented a joint text proposing an ‘approach’ on some elements within the three pillars of the AoA. The EC and the US made no effort to address the concerns of developing countries in their text, prompting a strong negative reaction from many developing countries. Consultations are under way on how to proceed in the few remaining days before the Cancún Ministerial Conference, including what text should be presented to Ministers for their consideration and decisions as appropriate. There is much concern among developing countries that the EC/US paper, which is devoid of development content, could become the basis for the negotiations.

In addition, the EC/US text only suggests adopting a ‘framework’ at Cancún with no reference to specific numbers or targets for reduction as well as no details on some rule elements, such as the proposed special safeguard (SSM) for developing countries, all of which, it is proposed, should be clarified later. This two-stage approach towards the adoption of modalities is particularly dangerous for developing countries, for the overall balance of rights and obligations can only be assessed once the specific targets for reduction are known. Furthermore, the interest of developed countries, in particular of the EC, in adopting a ‘framework’ agreement on agriculture at Cancún is to enable it to continue pressuring for the expansion of the negotiating agenda to include decisions to start negotiations on the Singapore issues.

II-A Overall negotiating interests and positions of major players in agriculture negotiations

It has been clear throughout that the market access pillar constitutes the most contentious area in the negotiations. This stems from the particular support structure and agricultural systems among WTO members, as well as their experience in implementing the AoA since the conclusion of the Uruguay Round.

The Cairns Group favours radical and comprehensive reform in agriculture, placing particular emphasis on improved market access in developed and developing countries and the elimination of export subsidies. It has submitted ambitious proposals in all areas of the negotiations, including domestic support, but the group by itself lacks the strength to determine the outcome of the negotiations. It has therefore established a de facto alliance with the US to forward their joint

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8 The Trade Negotiations Committee (TNC) was established in accordance with the DMD to oversee the negotiations. The TNC further reports to the General Council, which is the highest authoritative body of the WTO in the intervals between the Ministerial Conferences.

9 Singapore issues are four discipline areas incorporated to the WTO Work Programme at the 1996 Singapore Ministerial Conference with a limited mandate for analytical work. The DMD reaffirms this mandate and foresees the possibility that negotiations on these issues shall commence following a decision by explicit consensus among WTO Members in Cancún. The four Singapore issues are the following: Transparency in government procurement, trade and investment, trade and competition policy and trade facilitation. Developing countries have consistently opposed any attempt to start negotiations on these issues since 1996.

10 The Cairns Group is an informal grouping of WTO Members established during the Uruguay Round to promote the liberalization of agricultural trade at the multilateral level. Currently, the Cairns Group includes 18 WTO Members: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.
priorities in the negotiations (export subsidies and market access). It is clear that for the Cairns Group, regardless of the results of negotiations on domestic support, improved market access, in particular in developing country markets, constitutes the minimum acceptable outcome of the current negotiations.

The United States on the other hand, favours a selective approach towards trade liberalization in agriculture. Its negotiating stance has been one of maximising market access opportunities for its diversified export base and targeting the protection and support programmes provided by other WTO members for elimination. The US has moved faster than the EC to shield its own support policies under the exempt categories of the AoA (i.e. de minimis provisions and green box) and has benefited from the lack of multilateral disciplines in areas such as export credits and guarantees, which it uses extensively to promote its agricultural exports world-wide. Therefore, the differences between the US and the EC in the areas of domestic support and export promotion are more a matter of technicalities and pace of reform than one of objectives: both want to preserve considerable flexibility to support their agricultural sectors, legitimised by the multilateral system of the WTO, and guarantee their leading presence in world markets by means of export subsidisation, if necessary.

The European Union although slower, is definitely moving towards a scheme of support to agriculture along US lines, designed to fit within the current framework of the AoA. The recently agreed reform of the Common Agriculture Policy (CAP) would shift a large percentage of the blue box payments to the exempt category of the green box and previous reforms would allow the EC to reduce the trade distorting supports of the amber box to levels equal to or even greater than those suggested by the Chairman in the draft modalities text. The European Commission (EC) has indicated its readiness to deepen reform on export subsidies, which it has progressively reduced over the years, (although they remain significant for certain sectors like dairy, sugar and beef). The EC has conditioned any progress in this area to tightened disciplines on food aid and export promotion programmes of the US, setting the stage for trade-offs within this area.

Since the EC and US look able to reach a deal on domestic support and export competition, market access has been the major stumbling block for reaching agreement between the EC and the US: each favours a different formula for determining the depth of cuts in tariff reductions. The EC is particularly concerned with having flexibility to smooth and delay the reform process in some sensitive sectors (which coincide with those still heavily dependent on export subsidies) and therefore cannot support a formula approach as that proposed by the US and the Cairns Group specifically designed to eliminate the very tariff peaks behind which those sensitive sectors have been shielded from competition. For the US and the Cairns Group the choice of the formula for tariff reductions is not only about market access in the EC but about improved market access across all WTO members, particularly the fast growing markets of large and populous developing countries.

In between these opposing views of the Cairns Group and the US on one hand, and the EC and other WTO members of similar position (i.e. Switzerland, Norway, Japan) lie the vast majority of developing countries.

Developing countries have insisted throughout the negotiations that their main objective is to redress the imbalances in the current agreement. In that respect, they have stressed the need to consider the interplay between the pillars of the agreement. That is, that modalities in the different discipline areas should be interlinked to guarantee that progress in all pillars occurs in tandem and in such a way as to significantly reduce or eliminate trade distorting domestic support and export subsidies in OECD countries before further trade liberalization is required from developing countries.

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11 See the Glossary at the end of the paper for definitions of WTO terms such as de minimis and green box
12 The EC negotiates on behalf of all EU member states in the WTO
Such a stance is not a protectionist device: it results from the unsatisfactory experience of developing countries with the implementation of the AoA. While the expected benefits in terms of improved export performance did not materialize and the support levels to agriculture in the OECD countries actually increased, the agreement eroded developing countries' ability to defend themselves against the dumping of subsidised imports by forcing them to reduce tariffs, which are in many cases the only instrument used by poor countries to protect their agricultural sectors.

In that respect, deepening reform within the current framework would only exacerbate the problems faced by developing countries so far. Therefore, they have proposed a ‘Balancing Mechanism’ by means of which developing countries would be allowed to impose additional tariffs equivalent to the subsidy component of imports. That is, failure by OECD members to commit and implement genuine reform would trigger a defence mechanism in developing countries at the border to keep out of their markets cheap, subsidised produce from the North.

In addition, developing countries have clearly articulated what real reform in agriculture would imply: a swift elimination of export refunds and other forms of export subsidisation, as well as the elimination of trade distorting domestic support and a thorough review of the exempt categories of support (in particular the green box or Annex 2 of the AoA) to guarantee that measures protected by such exemption are truly, non- or minimally trade-distorting. Furthermore, a group of developing countries have proposed capping production subsidies.

Vulnerable groups of developing countries such as the Least Developed Countries (LDCs) and Net Food Importing Developing Countries (NFIDCs) as well as those developing countries dependent on preferences have called for their particular circumstances and difficulties to be addressed in the current negotiations by creating mechanisms that would allow them to cushion the impact of reform on their own vulnerable sectors and economy. LDCs and NFIDCs have proposed the establishment of a revolving fund that would ease their short-term difficulties for financing normal levels of food imports by providing access to concessional funding. Developing countries dependent on preferences have called for the preservation of the preferential margins and some form of compensation for the preference erosion caused by trade liberalisation.

II-B Strengths and weaknesses of the Chairman’s revised first draft modalities from the perspective of developing countries

Given the expectations of developing countries as detailed above, the draft modalities text gives serious cause for concern, mainly because it would deepen the reform process within the current structure of the AoA. The level of ambition as regards market access commitments required from developing countries contrasts with the timid and cosmetic reform envisaged in the domestic support and export competition pillars, creating a real danger of exacerbating the existing inequities of the agreement, in turn undermining rather than supporting the development prospects of developing countries.

The main thrust of the draft modalities text aims at further liberalizing trade in agriculture in developing countries amid a highly distorted international environment. For that reason, many developing countries are particularly concerned that Special and Differential Treatment provisions (S&D) be included that adequately address their development needs. While the draft modalities included some useful ideas (discussed below), it should be remembered that these are only minor and limited exceptions to the general rules and commitments, and would only partially remedy the

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13 Proposal presented by the delegation of the Philippines and supported by other developing countries in the course of the negotiations. See WTO documents JOB(02)/111, JOB(02)/174 and JOB(02)/169 Rev.2.
negative effects of inequitable trade rules and the liberalization of agriculture trade on the poor, rural population of developing countries.

The two key components of S&D in the draft modalities text are the concept of Strategic/Special Products proposed for minimum tariff reductions and the Special Safeguard Mechanism (SSM) for developing countries. Building and improving on those provisions has become the main focus of attention of many developing countries in recent months and is likely to continue to be so up to (and perhaps after) the Ministerial Conference in Cancún, for such provisions have become the source of much controversy among WTO members.

The draft modalities continue to legitimise dumping in agricultural trade

Dumping in agriculture consists of the sale of agricultural products in international markets at less than their cost of production. This is possible due to a combination of production and export subsidies provided by developed countries and legitimised by the AoA. Furthermore, the AoA requires due restraint to be exercised by WTO members in challenging those subsidies either through dispute settlement procedures or imposing additional duties to compensate for the subsidy component of imports. The practice of dumping leads to depressed low prices becoming a structural feature of agricultural markets and deprive competitive developing countries from export opportunities. Furthermore, dumped imports displace local farmers from their own domestic markets. Some calculations put the margin of dumping of US exports between 20 per cent and 57 per cent for several commodities. The extent of dumping resulting from the EC support programmes can also be significant for some commodities.

To address this structural problem substantial change needs to be introduced in the AoA. The draft modalities text, however, takes a very gradual approach towards reforming subsidies on production and exports. It proposes that export subsidies be eliminated in line with the DMD. However, the overall timeframe for achieving the objective is nine years. For a group of products (representing 50 per cent of budgetary out-lays) the elimination of export subsidies should take place within 5 years. Such reductions will take place from the bound rather than actual level of expenditures in recent years. Therefore, this formulation could mean that most actual or current subsidies would be eliminated only after 9 years, given the differences between the bound and the actual expenditures of export subsidy providers, in particular the EC.

Moreover, the proposed disciplines on export credits, credit guarantees and insurance programmes, as well as food aid, include loopholes that undermine their effectiveness, allowing members to elude their export subsidy reduction commitments. In both these areas, allowance will be made for ‘non-conforming programmes or transactions’ which could be set against export subsidy commitments. Therefore, non-conforming export credit programmes and food-aid transactions could be maintained at least for the implementation period of commitments on export subsidies, set at nine years for developed countries. Furthermore, flexibilities sought by the US in the disciplines on export credit programmes and the definition of bona fide food aid would mean that little if any adjustment would be required to US policies.

In the area of domestic support, the proposed modalities are even more inadequate. Firstly, the categories of support established during the Uruguay Round are maintained. This would allow members to introduce only cosmetic reforms by shifting support between boxes, allowing them even to increase support over time, as happened during the Uruguay Round through ‘exempt’ payments under the green box. Furthermore, in response to the EC’s request, the draft modalities

text expands the green box criteria to include direct payments under animal welfare programmes and no significant changes are introduced in the other eligibility criteria for current green box programmes, even though its ‘minimal’ impact on trade and production has been questioned, following the experience since the Uruguay Round\textsuperscript{16}. Secondly, the end objective of eliminating so-called ‘trade distorting’ support (the amber box) is nowhere to be found in the draft modalities, which instead would only require such support to be reduced. In parallel, developing countries are required to undertake drastic tariff reductions across the board\textsuperscript{17}.

This approach of ‘more of the same’ regarding production and export subsidies implies that the dumping effects of support and protection policies in OECD countries will continue to displace developing countries from third markets, depriving them of the potential benefits of an open trading regime. Even worse, dumped produce will displace farmers from their own domestic markets with devastating effects on their food and livelihood security, and rural development.

By failing to recognize and address the interplay among the pillars of the agreement, ignoring the proposal for a Balancing Mechanism presented by developing countries and suggestions to cap the overall level of domestic support, including the green box, the draft modalities text legitimises dumping as a structural feature of agricultural trade. This approach works to the detriment of developing countries and perpetuates the imbalance and inequity of the AoA.

**Meaningless Special and Differential Treatment for Developing Countries**

The draft modalities text is based on the premise that all WTO members, including developing countries, must contribute to the reform process. On this basis, S&D for developing countries is subsidiary to the general rules and commitments, merely providing temporary exceptions to those rules.

The draft modalities text proposes the Uruguay Round approach towards S&D: Developing countries will be provided longer time frames and lower (though not significantly so) reduction commitments. Most of such provisions are in fact meaningless for the large majority of developing countries, which do not have the right to provide export subsidies\textsuperscript{18} or the means to do so, or administer TRQs\textsuperscript{19} or provide trade distorting domestic support to their agricultural sectors as most developed countries do.

\textsuperscript{16} The own EC’s experience with decoupling in the cereals sector from the beginning of the 90s is that cereal production has increased. Similarly, direct payments under Production Flexibility Contracts of the US by depending on historical production provides an incentive to farmers to maintain or even increase their production base, particularly if there are expectations that the base period for calculating the payments will be updated as happened in the US Farm Bill adopted in May 2002. See Tim Rice, *CAP Reform Agreement and implications for developing countries: A preliminary analysis for Action Aid*, 1 July 2003.

\textsuperscript{17} According to the Chairman’s text the depth of cuts will depend on the level of the final bound rate established during the Uruguay Round. Small and poor countries such as Cuba, Honduras, and Sri Lanka with tariffs at or below 50 per cent would be required to reduce tariffs by 30 per cent on average. Many African countries, whose tariffs were bound at higher levels using tariff ceilings (e.g. 100 per cent), will be required to reduce their tariffs by 40 per cent on average.

\textsuperscript{18} Only those countries that provided export subsidies at the time of the Uruguay Round and inscribed export subsidy commitments in their schedules of commitments have the right to provide those subsidies. The following developing countries have the right to provide export subsidies: Brazil, Colombia, Indonesia, Mexico, Panama, South Africa, Turkey, Uruguay and Venezuela. WTO document TN/AG/S/8.

\textsuperscript{19} During the Uruguay Round it was agreed that only those countries that undertook tariffication were given the option to establish commitments on TRQs. Most developing countries did not tariff but rather established tariff ceilings. The following developing countries inscribed TRQ commitments in their schedules: Barbados, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Indonesia, Malaysia, Mexico, Morocco, Nicaragua, Panama, Philippines, South Africa, South Korea, Thailand, Tunisia, and Venezuela. WTO document TN/AG/S/6.
In the specific area of market access, the Uruguay Round approach in terms of S&D is a matter of particular concern for most developing countries, which rely mainly on tariffs to protect their agricultural sectors and stabilize their domestic markets. Further eroding this instrument generates natural resistance in developing countries, particularly given the slow pace and superficial reform suggested in the other pillars of the agreement.

In this context, provisions on SPs and SSMs are no more than compensatory measures provided to developing countries to cushion the expected negative impact of further trade liberalization in a highly distorted environment. Nevertheless, they represent the most concrete S&D measures provided to developing countries in the draft modalities text to address concerns regarding food security, livelihood security and rural development. However, the extent to which these provisions would in practice provide protection to developing countries of course depends on the results of the detailed negotiations.

In the area of domestic support, proposals by the Chairman to expand the scope of Article 6.2 on Special and Differential Treatment for developing countries, as well as Annex 2 of the Agreement related to the exempt category of support also represent positive steps. Such provisions recognize the need for developing countries to enhance food production and protect and support small farmers. However, due to financial constraints most developing countries could not, at least in the immediate future, make use of such provisions to the extent desired. Moreover, efforts to improve agriculture productivity and increase production using these flexibilities may be hampered by the continuing presence of subsidised cheap imports or be destroyed by import surges before achieving success. Therefore, it is imperative that developing countries be given the maximum flexibility in the market access pillar of the agreement.

Section III of this background paper discusses in more detail the origins and importance of the SP and SSM concepts, as well as the main aspects of the controversy surrounding them. It is worth indicating at this point though, that its inclusion in a final modalities text is far from guaranteed. Strong opposition from the Cairns Group, the US and even the export-led interests of the EC has generated significant resistance to including such provisions in any modalities text to be agreed in the negotiations. The recent joint EC/US text does not include any reference to SPs. As Special and Differential Treatment for developing countries the text only provides for lower reduction commitments and longer implementation periods and a special safeguard to be established for developing countries for import-sensitive products.

III. STRATEGIC/SPECIAL PRODUCTS AND SPECIAL SAFEGUARD MEASURES FOR DEVELOPING COUNTRIES

Provisions on strategic/special products and special safeguard mechanisms (SSM) constitute an attempt by the Chairman to respond to developing countries’ concerns regarding food security, livelihood security and rural development, expressed throughout the course of the negotiations. Such provisions are included in the context of new commitments on trade liberalization in agriculture expected from developing countries.

III-A Origins and importance of SPs and SSM

From the start of the negotiations, developing countries have stressed the importance of the agricultural sector for their economic development and for their economic, social and political stability.

In addition they have stated their dissatisfaction with the results of the implementation of the agreement on agriculture and the negative impact that trade liberalization in agriculture has had on
their food security and rural development. Availability of food through imports is not sufficient to address food security concerns of developing countries as trade liberalisers claim. According to the UN’s Food and Agriculture Organization (FAO), whether increased per caput food availability is due to increased domestic production or imports is significant for food security.

‘A situation where increased per caput food availability is due to increasing domestic production accompanied by falling imports, or even by increasing imports, may be seen as strengthening food security. On the other hand, a situation where per caput food availability is decreasing because of falling domestic production, or even where it is increasing but only because per caput food imports are growing even more rapidly, may be seen as unsustainable in the longer term without a concomitant rise in export earnings’\(^{20}\).

It has been well documented that as result of the implementation of the AoA developing countries’ agricultural imports have increased faster than their exports. Numerous instances of import surges have been registered in developing countries during the implementation process. Dependence on food imports has increased amid plummeting export earnings, leading to the type of unsustainable situation referred to by the FAO\(^{21}\).

Whereas developed countries make use of domestic support programmes and border measures to protect domestic production and farmers, developing countries rely substantially more on border measures due to their financial constraints and lack of sophisticated market-based mechanisms to manage risk related to agricultural production and trade. Furthermore, within the context of the AoA, most developing countries can only rely on tariffs within the bound levels established during the Uruguay Round, since other border measures available to WTO members, such as TRQs and Special Safeguard measures were denied to them by linking access to those instruments to the tariffication process,\(^{22}\) which most of them did not undertake.

Therefore, developing countries have stressed the need to approach further trade liberalization in agriculture with extreme caution. They have emphasized the need for a pause in trade liberalization of agricultural products on whose production low-income and resource poor farmers depend for their basic food needs and subsistence income. This would imply exempting such products from further tariff reductions. Such measures in conjunction with national development programmes directed at increasing production and productivity in the agriculture sector aim at enhancing food production, maintaining and creating employment opportunities in the rural areas and protecting farmers from cheap subsidized imports.

These concerns were elaborated in a number of proposals presented by a group of developing countries starting as early as the year 2000, when they suggested the creation of a ‘Development Box’ for developing countries.\(^ {23}\) The thrust of the proposal was to provide flexibility to developing countries to enhance domestic food production and to adopt other measures to protect the livelihood of their resource poor farmers, including concrete measures to address dumping and import surges\(^ {24}\).

\(^{20}\) See, FAO, Developing country experience with the implementation of the Uruguay Round Agreement on Agriculture: Synthesis of the findings of 23 country case studies. Paper presented in a Symposium in Geneva on 2 October 2002.

\(^{21}\) See footnote 15.

\(^{22}\) Tariffication refers to the process by which all non-tariff measures existing at the time of the Uruguay Round were converted to a tariff equivalent which provided a similar level of protection. Those tariff equivalents were bound in each member’s schedule of commitments.

\(^{23}\) For subsequent submissions and other information, see the Development Box website on http://www.iatp.org/tradeobservatory/library/index.cfm?c_id=42

Responding partially to the concerns of developing countries on food security and rural development, the Chairman of the CoA Special Session included in his draft modalities text provisions for special treatment for developing countries, allowing them to slow the pace of reform for certain products. It also provided a window for establishing a special safeguard mechanism to developing countries facing import surges. In this context, most of the discussions on Special and Differential treatment in agriculture have focused on the political and technical considerations that would allow such provisions to be included in a revised AoA.

Within the framework of the proposed modalities text, which would largely maintain the iniquitous structure of the current AoA, provisions on SPs and SSM acquire a particular importance: these constitute the only concrete provisions that would provide some flexibility to developing countries in the area of market access for undertaking the internal adjustment required under a new round of trade liberalization in agriculture, which moves rapidly in market access while adopting a more gradual and flexible approach towards both production and export subsidies.

III-B Critical points of discussion with regard to the SPs and SSM

The concepts of Strategic/Special Products and SSM have been discussed within the framework of commitments on market access. Both instruments have been addressed from the perspective of the defensive interests of developing countries in the current negotiations. Both concepts have been opposed by WTO members, in particular Cairns Group members and the US, due to their concerns regarding the impact of such instruments on their export interests.

Approaches to the designation of Strategic/Special Products

Discussions regarding SPs have mainly focused on how they should be determined. The first modalities text used the term ‘strategic products’ but the term was then changed to ‘special products’ in the revised modalities text, reflecting the concerns of some WTO members that such a concept would be used by developing countries to shield a large number of products from trade liberalization.

The term special products allows for a more narrowly constructed justification for the designation of products linked to food and livelihood security and rural development. The term strategic products more appropriately conveyed the significant role that agriculture plays for development in most developing countries, creating the basis for a designation based on broader development considerations, including the export potential of some agricultural products. For that reason, many developing countries prefer to continue using the term ‘strategic products’.

The Chairman’s approach

The draft modalities text proposes that members agree on a specific number of SPs to be designated either at the 6 or 4-digit level of the Harmonized System (HS), to be determined. The level of specification of the HS required, coupled with an arbitrary restriction on the number of SPs to be designated would limit the scope of protection. Most developing countries favoured a 4-digit HS level designation that is more comprehensive in terms of the product coverage but this was rejected.

25 Developing countries have argued for a special provision to be included in the revised AoA that would allow them to rapidly respond to a significant increase in imports or a drop in prices by raising tariffs for the product concerned or establishing quantitative restrictions. Otherwise local prices will drop to levels at which local farmers cannot compete.

26 The term Harmonized System (HS) refers to the internationally agreed nomenclature devised by the World Customs Organization for designating products for trade and customs purposes. The HS extends up to the 6-digit level of specification. Beyond that, there are no common bases for the designation of products at the international level.
by the Cairns Group members for that very reason. These countries would favour a very limited number of SPs and a precise specification of the products protected. Agreeing on a maximum number of SPs to be designated would not be an easy task, considering the different conditions and needs of developing countries.

**Devising criteria for the designation of SPs**

During consultations on SPs, members of the Cairns Group have insisted that there should be multilaterally agreed criteria for the designation of the SPs. Moreover, it has been suggested that the list of SPs to be designated by each country should also be multilaterally agreed.

Some indicators closely related to food security and rural development, such as the number of people employed in the production of a particular crop, the contribution of a specific product to the diet of the population, the share of an agricultural product in total agricultural GDP, etc. have largely been ruled out due to, among other reasons, the poor availability of reliable data, particularly at a high level of HS disaggregation.

Another set of criteria has been proposed, drafted to minimise the impact of the SP concept on trade. Some of the criteria proposed include the level of tariff for the product concerned, suggesting that only products with ‘reasonably’ low tariffs should have access to this instrument; that the country be a net importer of the products designated as SPs; that the country concerned does not hold a large share of the world market for a particular product; that the number of SPs be limited, etc.

Such approaches would give pre-eminence to the commercial interests of the export-oriented members of the WTO over the food/livelihood security and rural development concerns of the importing country. This would not be a faithful reflection of the DMD, which recognizes that food security and rural development are fundamental concerns of developing countries that need to be adequately addressed in the current negotiations.

**Self-declaration**

Building on the draft modalities text and in reaction to the calls from other WTO members for strict criteria, a group of developing countries presented a proposal for the designation of SPs.

The basic tenet of the proposal is that the criteria for the designation of SPs are food and livelihood security and rural development, as stated in the draft modalities text and the DMD, and that no further criteria should be devised. Each developing country should be allowed to self-designate the SPs based on a numerical target to be determined as a percentage (to be defined), of domestically-produced agricultural products.

Under this approach, each developing country would make a judgement regarding what products would best serve and address its food and livelihood security and rural development concerns. Proponents of this approach have indicated that these concerns are not negotiable. Neither can these be traded-off on the basis of commercial considerations. Deciding on a percentage of domestically-produced agricultural products rather than an arbitrary ceiling for the number of SPs, would make allowance for the size and agricultural system of various developing country members of the WTO, without being the unlimited exception feared by opponents of the SP concept. Unfortunately, no attempt has so far been made in the Committee on Agriculture to discuss the feasibility of this approach.

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27 WTO document JOB(03)/59 of 20 March 2003. Proposal presented by Cuba, Dominican Republic, Honduras, India, Indonesia, Republic of Korea, Nigeria, Turkey, Peru, Philippines, Sri Lanka, and Venezuela. These countries and others have established an informal alliance of Friends of SPs to coordinate their positions.
**Treatment of Strategic/Special Products**

The draft modalities text proposes a set of measures linked to SPs. All of them relate to flexibility to developing countries regarding new commitments in market access.

**Tariff reductions**

The Chairman has proposed a lower or ‘minimum’ reduction rate for tariffs on SPs using the Uruguay Round approach for tariff reductions. It is proposed that tariffs on SPs be reduced by an average of 10 per cent with a minimum reduction rate per tariff line of 5 per cent. For non-SP products, developing countries would be required to reduce tariffs between 40 and 25 per cent on average depending on the level of the final bound tariff agreed during the Uruguay Round for a particular product.

The approach by the Chairman would therefore imply at least a 5 per cent tariff reduction for SPs. Moreover, to meet the average reduction target of 10 per cent, tariffs for some SPs would need to be reduced by more than 5 per cent. This approach is grossly inadequate, since developing countries view the SP concept as the avenue for exempting agricultural products important for food/livelihood security and rural development (strategic products from their development perspective), from further trade liberalization. Even a 5 per cent tariff reduction in SPs could be troublesome for countries that bound their tariffs at low levels during the Uruguay Round.

**Access to the Special Safeguard Mechanism?**

The first draft modalities text linked SPs and SSM by limiting access to the special safeguard mechanism only to SPs. Furthermore, the lower tariff reduction proposed for SP was reserved only to those SPs for which the right to use the SSM was not retained. Such a link was dropped in the revised draft modalities due to concerns from all camps of the negotiating spectrum: most developing countries were concerned with the limited scope proposed for the special safeguard and for the choice that they were required to make between undertaking larger tariff reductions for SPs or relinquishing the right to use the SSM. Export-oriented WTO members, in particular those members of the Caims Group and the US were concerned that already highly protected products through the SP concept could be further shielded from liberalization by having access to the envisaged SSM. They forcefully argued that SPs should not have recourse to the SSM under any circumstances.

**Treatment of SPs under TRQ commitments**

The draft modalities text proposes that SP products be exempted from the obligation to expand TRQ volumes, which otherwise would have to be expanded to 6.6 per cent of current domestic consumption in developing countries. Regarding the in-quota tariff, the first draft modalities text required no reduction commitments from developing countries, but the revised text included a provision to reduce in-quota tariffs for products in which quotas have been historically under-

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28 Tariff Rate Quotas (TRQs) refer to the commitment given by some WTO Members as a result of the Uruguay Round to provide market access opportunities for a specified volume (i.e. quota volume) of imports at a lower tariff rate than the tariff rate resulting from tariffication. Imports above the quota volume are subject to the higher tariff rate resulting from tariffication.

29 The draft modalities text would allow developing countries using TRQs to opt for limiting quota volumes to 5 per cent of current domestic consumption for one-quarter of the total number of TRQs if for an equal number quota volumes are expanded to 8 per cent.
filled\textsuperscript{30}. No exception to this provision has been made for SPs, implying that for products designated as SPs for which quota volumes have been under-filled, the in-quota tariff would have to be reduced. No specification has been made regarding the depth of cut in the in-quota tariffs. Neither were those specifications made during the Uruguay Round. In-quota tariffs were determined on the basis of bilateral negotiations with interested WTO members and set at low levels to guarantee improved market access for those products in which trade had been low or non-existent.

Therefore, developing countries with access to TRQs would be vulnerable to bilateral pressures to reduce their in-quota tariffs with no guidelines provided by the modalities on how or by how much those tariffs should be reduced. This exercise could be quite onerous for those developing countries, given the low starting point of the in-quota tariffs, especially if no exceptions are contemplated for SPs.

**Current state of the debate on SPs**

During recent consultations on SPs, members seem to be further apart than ever. This is the consequence, to a large extent, of the broader divisions regarding the formula approach for tariff reductions.

Members continue to be split on the formula for tariff reductions with the Cairns Group and the US insisting on harmonisation and a drastic reduction of tariffs while a group of 75 WTO members supports a more gradual approach to liberalization, insisting on the Uruguay Round formula.

Given this impasse, the Cairns Group and the US are concerned that the SPs exception would further diminish the expected benefits on market access, already threatened by the lack of flexibility of the EC (i.e. they may have to settle for the Uruguay Round approach for tariff reductions). The EC on the other hand, has indicated that in its view, the Uruguay Round formula provides the flexibility sought by developing countries for undertaking only minimum cuts in tariffs for sensitive products.

Therefore, the whole concept of SPs has been questioned and is in danger of becoming hostage to decisions regarding the formula approach for tariff reduction. This is certainly the approach taken by the Chairman of the CoA Special Session in his report to the TNC. Although acknowledging developing countries’ arguments for maximum flexibility in market access based on food/livelihood security concerns and rural development, he suggests that members should decide whether to retain the SP concept in tandem with the decision on the formula for tariff reductions. Basically the Chairman’s report reflects the position of the Cairns Group, the US and the EC that under a scenario where the Uruguay Round is adopted for tariff reductions, the concept of SPs should be dropped altogether.

The Cairns Group has also argued that it is not appropriate to discuss the exceptions (i.e. SPs) before having clarity on the general rules and commitments. That is, it is necessary that a decision be made on the formula for tariff reductions and the depth of reform before agreeing on what could be a large loophole to the disciplines on market access for developing countries. These countries are also concerned at the insistence of proponents of the SP concept on self-declaration and the proposed exception of quota expansion commitments for SPs included in the draft modalities text.

On the other hand, the very same uncertainty regarding the formula approach for tariff reductions is one more reason for developing countries in favour of SPs to insist on self-declaration and oppose criteria that would reduce the scope of the instrument even before having clarity as to the extent of tariff cuts to be required from them as a general rule. As mentioned above, even the Uruguay

\textsuperscript{30} Quota under-fill refers to a situation where imports under the TRQ for any particular product (i.e. imports at the specified lower tariff rate) are below the total quota volume.
Round approach includes a minimum reduction rate per tariff line which would have to be decided in the course of the negotiations. While using the Uruguay Round formula for tariff reductions, the concerns of the US and the Cairns Group could partially be accommodated by negotiating a higher reduction target than the one used during the Uruguay Round and favoured by the EC. Therefore, there is no guarantee that the minimum reduction rate per tariff line for developing countries would be established at 10 per cent as happened during the Uruguay Round, which would require tariff reductions of more than 10 per cent for some products to meet the average. In the absence of SPs, all products will be subject to at least the minimum reduction per tariff line agreed, were the Uruguay Round approach to be used.

Some members of the Cairns Group have also brought into the discussion the need to put a time limit on exceptions provided under the category of SPs. This suggestion reflects concerns of export-oriented WTO members over creating a permanent exception to trade liberalization in agriculture for certain products that would be carried over into successive trade rounds.

All these scenarios fall far short of the stance of developing countries in the ‘Friends of SPs’, which want total exemption from tariff reductions for sensitive products. For these countries, it is a matter of shielding some agricultural products from further trade liberalization, not merely slowing the pace of liberalization as reflected in the draft modalities text and the Chairman’s report to the TNC so far. This latter approach reflects the stance of the Cairns Group, the US and the EC that all WTO members should participate on an equal footing in the reform process, including developing countries.

Under these circumstances, the main priority of developing countries in negotiating modalities in agriculture is to guarantee that the SP concept is maintained regardless of the formula approach for tariff reductions. Another critical element is how to designate SPs, should these be included in the modalities text. Given the strong opposition of the Cairns Group, the US and even the EC to the SP concept, in particular under a scenario where the Uruguay Round formula is adopted for tariff reductions, pressure would mount either for devising strict criteria and limiting the scope of products to be designated SPs and/or to differentiate among developing countries in deciding which may have access to SPs.

The Joint EC/US text did not include any reference to SPs. In fact, the paper suggests an approach on market access which would make the burden of reform fall disproportionately on developing countries.

The EC and the US propose three categories of products, for which different formula for tariff reductions will apply. The first category will be subject to the Uruguay Round; the second category to the Swiss formula and for the third category tariffs will be brought to zero. Members will agree multilaterally on the percentage of tariff lines that will be placed under each category but it will be up to each member to decide what products to place within each category.

This approach has been tailored to the tariffs schedule of the EC and the US, which have a few tariff lines protected by high tariff peaks and an average low tariff for the rest of their schedule. Therefore, these countries will shield their tariff peaks under the first category while applying the Swiss formula to the majority of their low tariffs. The Swiss formula produces proportionally lower reductions at low levels of tariffs. In addition, the EC and the US already provide duty free access to certain products which they use as inputs to their industries; these could be in the third category. As S&D these countries propose merely lower reduction commitments and longer implementation

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31 During the Uruguay Round, developed countries were required to reduce tariffs by 36 per cent on average with a minimum reduction rate of 15 per cent per tariff line. For developing countries the target was set at two-thirds: 24 per cent on average with a minimum reduction rate of 10 per cent per tariff line.

32 The Swiss formula is a mathematical expression particularly useful to address tariff peaks. Using this formula higher tariffs will be cut proportionally more than lower tariffs.
periods. There is no certainty over how S&D would be treated in each of the elements of the suggested categories. Presumably, different percentages of tariff lines would be included under each category and the targets for reduction would be lower and the implementation period longer for developing than for developed countries.

This approach would be very onerous for developing countries that opted for tariff ceilings during the Uruguay Round. Although countries may make use of the flexibility under the first category for some products, the rest of their tariff lines would be cut using the Swiss formula, resulting in deep tariff cuts across the board.

There is no reference in the joint EC/US text to the least developed countries (LDCs). Therefore, it is not clear whether these countries will be exempt from tariff reductions. This issue has been controversial, with some developed countries arguing that all WTO members should participate in the reform process.

On the other hand, the EC and the US have suggested that the S&D elements to be included in the proposed framework should be adjusted (i.e. watered-down) for ‘significant net-food exporting’ developing countries. Although the issue of categorisation among developing countries has regularly arisen during the discussions on S&D, this is the first clear attempt to establish such distinctions. Developing countries of the Cairns Group have strongly reacted to this proposition.

**Special safeguard mechanism for developing countries**

The debate on access to a new special safeguard mechanism for developing countries has been closely intertwined with the debate on SPs. The revised modalities text severed the link with SPs but this step reflects difficulties among members in reaching agreement, rather than a move towards convergence, as mentioned earlier.

**Scope of the SSM: origin of imports and product coverage**

The draft modalities text suggests in attachment 2 the establishment of a special safeguard mechanism for developing countries but provides no details. A separate draft was developed and discussed in parallel to the main modalities text to fill that blank.\(^3\)

Most developing countries that do not have access to the current SSG\(^4\) have called for these provisions to be abolished and a new SSM to be established for all developing countries. However, members of the Cairns Group oppose the extension to all developing countries of the right to use safeguard measures. Some of them argue that safeguards should be abolished for both developed and developing countries and replaced with a new Special and Differential Countervailing Measure (SDCM) for developing countries, involving the imposition of retaliatory tariffs on subsidised imports. Some of these countries are particularly concerned with the impact of safeguard measures (and SPs) on South-South trade and see the SDCM as an alternative to the SSM. However, the SDCM would only apply to imports from developed countries whereas the SSM would apply to all imports regardless of their origin.

\(^3\) See Annex 2 for the main elements of the Chairman’s draft on an SSM for developing countries.

\(^4\) The Special Safeguard provisions of the AoA (Art. 5) are only available to those countries that tariffed during the Uruguay Round. In addition, these provisions establish restrictions on the extent of the remedy measures to be used (e.g. the additional duty under the safeguard measure cannot exceed 33 per cent of the applied tariff rate) and the particular circumstances under which the measures can be triggered (e.g. prices have to fall by more than ten per cent of the reference price for the measure to be triggered). The SSM proposed by developing countries suggests easing these restrictions and using quantitative restrictions as a remedy for import surges.

\(^5\) WTO document JOB(02)/169 Rev. 2. Proposal presented by Argentina, Bolivia, Costa Rica, Ecuador, Paraguay, Malaysia, Philippines and Thailand.
Developing countries in favour of the SSM attempted to address the concerns regarding the effects of the SSM on South-South trade by proposing that where imports from other developing countries are not significant (i.e. no more than 3 per cent of total imports of the product concerned and no more than 9 per cent of imports of the product concerned from countries below the 3 per cent threshold taken together) such imports shall be exempted from the application of the SSM.

However, the Chairman took a different approach. He suggested that imports from other developing countries should be excluded from the imposition of safeguard measures in the new SSM under all circumstances, thereby giving comfort to developing countries within the Cairns Group. Such an approach ignores the fact that the economic and social distress caused by import surges is the same regardless of the origin of imports and that such a restriction may render the SSM useless for developing countries by severely limiting its scope. Developing country members of the Cairns Group support the exclusion whereas proponents of the SSM have asked the Chairman to eliminate this provision from his draft modalities on safeguards. This is a critical element that must be settled if modalities on a new SSM are to be adopted.

The other component on the scope of the SSM is the product coverage of the mechanism in the importing country. Most developing countries favour extending the SSM to cover all agricultural products, in particular SPs. They have argued that import surges and steep drops in prices have deleterious effects on their rural economy, employment and farmers’ income levels, and there is no reason to exclude a priori some agricultural products from the protection against import surges as initially suggested by the Chairman.

Conditions determining access to the SSM

Cairns Group members consider the SSM should work as an incentive for WTO members to undertake further tariff reductions, by making it available only for products in which ‘deep’ tariff cuts are undertaken. They oppose SPs (if they are ever established) having access to safeguard measures. Linking access to the SSM to the level of tariffs is mistaken because it confuses the role and intent of tariffs in developing countries. Safeguard measures aim at responding to emergency situations due to import surges and are temporary by their very nature. The general level of tariffs, which constitute the only means of supporting farmers’ income and protecting agriculture in many developing countries, therefore cannot be traded off in return for safeguard measures.

Furthermore, the need for special safeguards in agriculture was recognized during the Uruguay Round and access to such an instrument was granted to products in which the tariffication process resulted in high tariffs. It was felt at that moment that the elimination of non-tariff barriers would render agricultural products vulnerable to external shocks and import surges and that the high tariffs resulting from tariffication would not be enough to address this problem. Therefore, the SSG provisions were established to cushion the transition process towards a tariff-only regime. Developed countries took advantage of this flexibility by reserving the right to use the SSG for a large number of products: for example, Canada reserved the right to use the SSG for 150 tariff lines, the EC for 539 tariff lines, Japan for 121 tariff lines, the US for 189 tariff lines, and Switzerland for 961 tariff lines. On the other hand, only 22 developing countries can use the current SSG. The most vulnerable members of the WTO, whose trade in agricultural products takes place under a tariff-only regime much the same as that of the rest of WTO members, have been denied access to such instrument so far. The repeated instances of import surges during the implementation of the AoA have made access to the SSM a priority for most developing countries.

36 WTO document JOB(02)/177/Rev.1. Proposal presented by Cuba, Dominican Republic, Grenada, Honduras, Nicaragua, Nigeria, Pakistan, Sri Lanka and Venezuela.


38 See, FAO, Some Trade Policy Issues relating to trends in agricultural imports in the context of Food Security, (CCP 03/10), December 2002, for an assessment of the extent of import surges in developing
Features of the SSM

Little discussion has so far taken place regarding the actual mechanism to trigger the safeguard measures and the trade remedy to be provided.

The Chairman’s draft text provides for both price and volume-triggered safeguards. That is, safeguards could be triggered either because prices drop beyond a reference price to be established in the mechanism or because import volumes increased beyond a stated reference level. The proposal by a group of developing countries referred to above provides for both price and volume-triggered safeguards. However, some members of the Cairns Group, the EC and the US have indicated that price safeguards are not transparent and difficult to monitor, given the ease with which governments can manipulate prices in order to trigger the SSM.

Regarding the remedy measures to be applied as a safeguard, it has been suggested that any measure to address import surges should be limited to additional tariffs being imposed on the applied rate (which are lower than bound rates in most developing countries). Proposals by developing countries to establish quantitative restrictions (i.e. quotas) as a safeguard measure have been strongly opposed by members of the Cairns Group as a step backwards in the reform process. In addition, it has been suggested that the additional tariffs under safeguard measures should not exceed the final bound tariff level for a specific product agreed during the Uruguay Round. Proponents of the SSM have opposed this constraint, in particular those with already low bound tariffs.

Current state of discussions regarding SSM

During technical discussions on the SSM, it has been made clear that developed countries of the Cairns Group, the US and the EC would favour extending the right to special safeguards to developing countries. Most of these countries see the SSM as the only instrument that should be provided to developing countries in order to address their concerns regarding food/livelihood security and rural development. They clearly see a temporary measure such as the SSM as less damaging to their export interests than the more permanent concept of SPs. The EC and other developed countries with similar positions have tried to condition support for the SSM to securing the continued right to use the current SSG for themselves. Developing countries of the Cairns Group would favour the establishment of the SSM as long as imports from developing countries (i.e. their own exports) are spared from its application. In general, all these countries would support a very targeted approach and strict criteria, mostly conditioned on improved market access, for granting access to the SSM to developing countries.

In his report to the TNC, the Chairman linked the special safeguard for developing countries to decisions regarding the formula approach for tariff reductions, thereby reflecting to some extent the position of the export-oriented WTO members of conditioning the SSM to the depth of trade liberalization adopted by developing countries. But he also provided comfort to the EC camp by presenting for decision whether the current SSG should be eliminated at all. The draft modalities text had assumed the SSG would be abolished, providing options only for the time frame for its elimination (either five or seven years).

More recently, the EC/US joint text includes the commitment to establish a special agricultural safeguard for use by developing countries for ‘import sensitive products’. This qualifier is a clear reference to criteria to be determined in the future for deciding the product coverage of the SSM.

countries. FAO analysis on this issue suggests that import surges have occurred more frequently in the post-1994 period (i.e. after the adoption of the AoA).
Therefore, it seems that agreement to grant developing countries access to the SSM may be feasible, considering the negotiating interests and positions of key players in the negotiations both on the Cairns Group side as well as on the EC-led group. However, the terms and conditions attached to such provisions may be quite demanding and its scope very limited, to the point of rendering the SSM ineffective as a defence mechanism against import surges.

A key concern for developing countries in particular in the coming months is to guarantee that SPs have access to safeguard measures and that the SSM is not conditioned on deep tariff reductions. This would be particularly damaging to countries with already low bound rates, for which relinquishing the right to the SSM may be preferable to undertaking deep tariff cuts. In such circumstances, these countries would be once more deprived of the instruments they need to address import surges.

IV. RECOMMENDATIONS FOR FURTHER ACTION

Given the wide differences among WTO members on critical issues of the negotiations, an agreement on modalities at the 5th Ministerial Conference in Cancún looks difficult. The US and the EC, as well as some developed countries of the Cairns Group have broader interests in the Doha round beyond agriculture which may oblige them to work hard to avoid an impasse in agriculture that would damage progress in the overall Doha work programme.

But whether at Cancún or at any time thereafter, the outcome of the negotiations should not be one in which developing countries are forced to bear a disproportionate burden of reform.

In that respect, civil society should continue to press for genuine reform in agriculture. This would require improvements in the proposed draft modalities text to increase the depth and pace of reform in all forms of export subsidies and support to agriculture production by developed countries. Furthermore, proposals by developing countries for a Balancing Mechanism to counter subsidised imports, as well as to institute an overall cap on all forms of domestic support should be supported, particularly given the failure by the major WTO trading partners to eliminate distortions in production and trade.

On the other hand, the basic premise that developing countries must fully contribute to the reform process on agriculture with only minor and temporary exceptions to the general disciplines must be questioned, based on the unsatisfactory results of the implementation of the AoA and the negative impact to date of trade liberalization on their food security situation. These countries should not be expected to undertake fast, deep and across the board trade liberalization as a result of the current negotiations. In this respect, any attempt to eliminate provisions on SPs and SSM from any modalities text to be agreed, as well as attempts to overly restrict their flexibility, should be forcefully countered for disregarding the commitment made by WTO members in the DMD to provide meaningful and effective S&D to developing countries to address their needs regarding food and livelihood security, and rural development.

Attempts to force developing countries to choose between various S&D instruments should be condemned. Developing country concerns regarding food/livelihood security and rural development require a set of measures to be adequately tackled – there is no single ‘magic bullet’. Developing countries should not be presented with mutually exclusive options, requiring them to choose between lower reduction rates, protection for sensitive products or access to a safeguard mechanism. Developing countries’ needs should be given at least equal rank to those of developed countries, which are already covered in the draft modalities text by flexible disciplines on domestic and export subsidies and various border measures (i.e. TRQ administration, specific tariffs which are not addressed by the draft modalities text, access to the SSG for a large number of products, etc.).
Developed country fears that a large percentage of trade in developing countries would become exempt from reform were SP provisions to be granted are exaggerated, as are the concerns regarding the impact of SPs and SSM on South-South trade. First, developing countries apply lower tariffs than their bound rates at the WTO either as a consequence of commitments under regional integration schemes or arrangements with the multilateral financial institutions. Second, provisions such as special safeguards aim at addressing instances of import surges or emergency situations in much the same way as developed countries do today through the SSG provisions.

Both these provisions are about increasing the flexibility available to developing country governments in meeting their people’s development needs. They are not meant to block current trade flows, not least because imports are an important component in the food security strategy of most developing countries. Examples provided to reject the concept of SP assume that main import products would be targeted for special protection which may not necessarily be the case, given the impact of tariffs on consumer prices, which developing countries are also keen to maintain at low levels.

On the other hand, flexibility in market access should allow developing countries to regain space for domestic food production where it has been lost due to previous trade liberalization and creating and maintaining that space for sectors which are critical for a sustainable, long-term food security strategy. In addition, such provisions would provide an opportunity for exploiting to a larger extent the potential of agriculture for rural and economic development in general. Development, food/livelihood security and rural development concerns of developing countries cannot be compromised for the sake of commercial interests enshrined in the WTO.

Lastly, concerns over the impact on trade of special and differential treatment provisions for developing countries take attention away from the root of distortions in international markets, which the current draft modalities text does not address. The cosmetic reform proposed in the area of domestic support and export promotion may still be watered down before an agreement on modalities is reached. As mentioned before, the SP and SSM provisions represent in this context defensive mechanisms to allow developing countries to partially protect themselves against the effects of open trade in a distorted environment.
ANNEX 1

DOHA MINISTERIAL DECLARATION MANDATE ON AGRICULTURE NEGOTIATIONS

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. 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.

14. Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.
ANNEX 2

MAIN FEATURES OF THE DRAFT ON SPECIAL SAFEGUARD MECHANISM (SSM) FOR DEVELOPING COUNTRIES PROPOSED BY THE CHAIRMAN OF THE COA SPECIAL SESSION

The new special safeguard mechanism for developing countries would include price and volume-triggered safeguards. That is, the measures would be triggered either as a result of a drop in prices or a significant increase in the volume of imports as defined in the mechanism itself. The current SSG contemplates both these options.

The SSM would only be available for products that meet certain conditions to be developed in the course of the negotiations, and have been designated as SSM in the schedule of commitments of the Member concerned. This reference to ‘conditions’ has given rise to proposals for all kinds of restrictions, including allowing products to be eligible for SSM only if deep cuts in tariffs are undertaken.

It is further proposed that processed products should be \textit{a priori} excluded from the SSM coverage and that no more than a maximum number of tariff lines to be determined in the negotiations, should be subject to the SSM. According to previous consultations, the Cairns Group and the US, if ever agreeing on the SSM to be established, would limit its scope to a very few products indeed.

The draft text suggests imports from other developing countries should be excluded from the application of the SSM. This particular provision would be the only basis on which developing countries of the Cairns Group would support the establishment of the SSM. On the other hand, proponents of the SSM strongly oppose this restriction.

Regarding the trigger mechanism on prices, the draft suggests that the reference price to decide whether the safeguard could be triggered or not would be determined on the basis of the monthly average price over a three year period. This goes closely in line with the proposal presented by a group of developing countries on safeguards.

Regarding the volume-triggered safeguard, it is proposed that imports should exceed 125 per cent of the average import level over a recent period before the measure can be triggered. Most developing countries have indicated this threshold is too demanding.

With respect to the remedy measure to be imposed, the draft proposes an additional duty of 30 per cent over the applied rate. Given the low level of applied tariffs in developing countries this would not provide for effective protection against import surges in many cases. The proposal by a group of developing countries to use quantitative restrictions as a safeguard measure is not reflected in the draft text.

With respect to the relationship between the SSM and the SSG, the Chairman’s draft proposes the SSG be eliminated for developed countries within 5 or 7 years. Developing countries that currently have access to the SSG will continue to do so, in addition to the new SSM. These countries could not, though, invoke both provisions for the same product at the same time. Given the constraints that are being proposed on the new SSM, proponents of the SSM have expressed their concerns that a special and differential provision could be more strict and limited in scope than the current SSG available to developed countries.

\footnote{39 See Annex 2 of WTO document TN/AG/10}
ANNEX 3

GLOSSARY OF TERMS

Amber Box: Price support and production-linked subsidies considered as production and trade distorting. Support of this kind was quantified during the Uruguay Round as the Aggregated Measurement of Support (AMS). The AMS for each WTO Member is listed in the Schedule of commitments of the country concerned and is subject to reduction as part of each WTO Member’s commitments.

Blue Box: Agricultural support (i.e. subsidies) provided by WTO Members under Art. 6.5 of the AoA. This provision allows WTO Members to provide direct payments to agricultural producers on the condition that such payments are part of programmes aimed at limiting agricultural production and that they meet the production-related criteria specified therein. These payments are currently not subject to reduction commitments – i.e. they do not need to be reduced or eliminated.

Bound tariffs: The tariff rates or levels specified in the schedule of commitments of each WTO member for every tariff line. These tariff levels represent the maximum tariff that may be applied by each Member at any time for a specific product. Bound tariffs may be different from the actual applied tariff in that the latter could be below or at the bound tariff level.

De minimis provisions: Art. 6.4 of the AoA allows WTO Members to exempt from the calculation of the “amber box” (i.e. AMS) product-specific and non-product-specific support below a certain threshold level. For developed countries that threshold has been set at 5 per cent of the value of agricultural production of the product concerned in the case of product-specific support, and at 5 per cent of the value of total agricultural production for non-product-specific support. For developing countries, the threshold is 10 per cent.

Green Box: Agricultural support measures that meet the general and program-specific criteria identified in Annex 2 of the AoA. In general, such measures must be government-funded and do not entail price support. In addition, they must fall within and comply with the additional conditions specified for each programme listed in Annex 2. These measures may include direct payments provided to agriculture producers that are not directly linked to the farmer’s production decisions (de-coupled payments). These measures are given the “green light” in that they are not subject to reduction commitments – i.e. they do not need to be reduced or eliminated.

Tarification process: The process by which all non-tariff measures existing previous to the Uruguay Round were converted to a tariff equivalent which provided a similar level of protection. The resulting tariffs were, therefore, in some cases, very high.

Tariff Rate Quotas: These are treaty commitments or obligations made or assumed by WTO Members as a result of the Uruguay Round to provide a specified quota (i.e. level or volume) of market access opportunities for imported goods at a lower tariff rate than the tariff rate resulting from tariffication. Goods imported over the quota are subject to the higher tariff rate resulting from tariffication.
ANNEX 4

LIST OF ABBREVIATIONS

AoA  WTO Agreement on Agriculture
CI  Caritas Internationalis
CIDSE  International Cooperation for Development and Solidarity
CoA  WTO Committee on Agriculture
DSB  Dispute Settlement Body (WTO)
DMD  Doha Ministerial Declaration
EC  European Commission
EU  European Union
FAO  Food and Agriculture Organisation of the United Nations
GATT  General Agreement on Tariffs and Trade
HS  Harmonised System
LDCs  Least Developed Counties
LMG  Like Minded Group (of countries in the WTO)
MDGs  Millennium Development Goals
NFIDC  Net Food Importing Developing Countries
S&D  Special and Differential Treatment
SDCM  Special and Differential Countervailing Measure
SP  Strategic Products
SSG  Special Safeguard measures (existing AoA)
SSM  Special Safeguard Mechanism (proposed for the new AoA)
TNCs  Transnational corporations
TRQs  Tariff Rate Quotas
UNDP  United Nations Development Program
US  United States
WTO  World Trade Organisation
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