

**NOTE ON THE EXPIRY OF THE PEACE CLAUSE: SOME ELEMENTS FOR
CONSIDERATION BY DEVELOPING COUNTRIES**

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**NOTE ON THE EXPIRY OF THE PEACE CLAUSE: SOME ELEMENTS FOR
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I. INTRODUCTION

1. According to Art. 20 of the Agreement on Agriculture (AoA) the reform process should continue through new negotiations which started in the year 2000. Although progress has been achieved in understanding the positions and concerns of members, no concrete result can be presented so far. Significant differences among members on fundamental aspects of the negotiations and the lack of engagement on the part of the EU until internal policy reform was achieved in late June 2003 made impossible for members to agree on modalities by the date stipulated in the Doha Declaration. Moreover, attempts by the EU and the US to revise downwards the level of ambition envisaged in the Doha Declaration by presenting in mid-August a joint proposal for a 'framework' – instead of modalities – which would have preserved high levels of subsidies, further compromised any progress on agriculture and paved the way for the disappointing results of the Fifth Ministerial Conference (Cancún, Mexico, 10 to 14 September 2003). All of this may imply that the conclusion of negotiations on agriculture will most likely be delayed beyond the date established in the Doha Ministerial Declaration for the completion of all the negotiations on 1 January 2005.
2. The status quo may therefore prevail in most areas of the WTO work programme. However, in the particular case of agriculture the expiry of the peace clause on 31 December 2003 would change the legal framework applicable to export subsidies and production subsidies within the WTO. The 'Peace Clause' is the term usually used to refer to the due restraint provision of Art. 13 of the AoA. The expiry of the peace clause would open the opportunity for WTO members to have facilitated recourse to countervailing measures and dispute settlement cases against the support policies to agriculture provided by OECD countries.
3. Many WTO members, in particular developing countries have expressed throughout the negotiation process their opposition to proposals to extend the peace clause. One could argue that as a result of the stalemate in the negotiations and the absent of clear commitments for further reduction in support to agriculture on the part of the OECD countries, the expiry of the peace clause is even more pressing for developing countries.
4. It is not clear whether negotiators in Geneva would be able to resume the stalled talks on any area of the Doha Work Programme before the date of the

¹ The purpose of the present analytical note is to provide background information to developing countries regarding the legal implications of the expiry of the peace clause and highlight some elements for consideration were the issue of extension of the peace clause be presented to them for discussion in the WTO context. It is not meant to suggest specific course of actions or prescribe ways of proceeding by developing countries on any particular issue.

expiry of the peace clause and whether this particular issue would be taken up for consultation any time soon. However, such possibility should not be ruled out due to the keen interest shown by developed countries in the extension of this provision.

5. Therefore, although it is not in the interest of developing countries to discuss this issue it may be put to their consideration by other WTO members. In that case, it would be important for developing countries to prepare for discussions on whether to extend the peace clause and if so, trade-offs or commitments from the EC/US can be obtained in exchange for developing countries' concession.
6. The purpose of this note is to assist developing countries in preparing for such discussions. The first section provides a brief historical perspective of the AoA and the peace clause provision. The second section looks at the legal implications of the expiry of the peace clause with respect to the green box and other domestic support measures, as well as export subsidies. The fourth and fifth sections provide a broad assessment with respect to the vulnerability of production and export subsidies of developing and developed countries given the expiry of the peace clause. The final section provides some elements to be considered by developing countries if the issue of the extension of the peace clause is presented for discussion.

II. HISTORICAL BACKGROUND OF THE PROVISIONS ON AGRICULTURE SUPPORT

7. Agriculture trade had effectively escaped the disciplines of the GATT multilateral trading system until the adoption of the Uruguay Round Agreement on Agriculture. The indefinite waiver provided by GATT members to the US in 1955 and the consolidation of the Common Agriculture Policy of the European Union (CAP) throughout the 1950-1960's into a regime that did not follow any effective multilateral constraint established the basis for the disarray of world agricultural markets that became unbearable by the mid-1980's. By that time there was a "widespread sense that the system of farm support had become too costly and troublesome, that these programs were largely responsible for the chaos in world agricultural trade, and that international solution to these domestic problems was necessary to provide the basis for modified trade rules and an agreement to lower external protection."²
8. Early attempts to address the problem of support to agriculture in a holistic way, using the all-compressing indicators being developed in the OECD were however abandoned at the time of the 1988 Mid-Term Montreal Ministerial during the Uruguay Round when the notion of the three pillars – market access, domestic support and export subsidies - was embraced for addressing support to agriculture. This shift towards a compartmentalized approach

² Josling, Timothy: Agricultural Trade Policy: Completing the Reform, Institute for International Economics, Washington, D.C., April 1998, page 24.

towards support as well as the modest commitments undertaken by members for reducing support have led to disciplines in this area as being not constraining for members throughout the implementation period.

9. As it is well known, disciplines were crafted with domestic support policies of developed countries in mind. The Blair House agreement between the EU and the US (November 1992) included among others, provisions to legitimize the CAP reform policies introduced in Europe in June 1992 as well as the US deficiency payments under the blue box, and it was decided that disciplines on distorting domestic support would be reflected in an aggregate measure (AMS) rather than on a product-specific basis, as previously discussed. Furthermore, as part of this arrangement it was agreed to seal the political understanding on domestic support by introducing in any multilateral agreement on agriculture provisions to shield support measures from challenge in the WTO strengthened dispute settlement disciplines. This arrangement was reflected in Article 13 of the Agreement on Agriculture known as the Peace Clause.
10. Notwithstanding this, “[...] the expiry of the Peace Clause was also a part of that settlement, and hence of the balance of advantages and obligations negotiated at that time.”³ In that respect, the expiry of the peace clause was meant to put pressure on countries that heavily subsidize their agricultural sectors to seek negotiating compromises for a continued reduction of support as part of further negotiations in the WTO or face legal challenges to domestic farm policies and the use of sanctions by trading partners affected by those support measures. Obviously, the leverage that the expiry of the peace clause would place in the hands of WTO members interested in furthering the reform process would depend on the extent that it would represent a real threat to the support policies of developed countries.
11. Such an assessment is difficult to make. The vulnerability to challenge in the WTO would rest on the particularity of specific measures and its effects on world markets. In that respect, a case by case analysis is warranted. The next section would attempt to identify the legal implications of the expiry of the peace clause or the venues that would be opened to WTO members to challenge support measures and address their effects in the domestic and third markets.

III. LEGAL IMPLICATIONS OF THE EXPIRY OF THE PEACE CLAUSE

12. There are three main remedies or actions with respect to which the peace clause provides a shield. Protection of the peace clause relates to the following provisions of otherwise applicable WTO legal framework to subsidies:

³ Josling, Timothy, *Domestic Farm Policies and the WTO Negotiations on Domestic Support*, Invited paper presented at the International Conference on Agricultural Policy reform and the WTO: where are we heading?, Capri, Italy, 23-26 June 2003, page 16.

- a) recourse to countervailing measures based on Article VI of GATT 1994 (Anti-dumping and countervailing duties) and part V of the Subsidy and Countervailing Measures Agreement (SCM);
 - b) dispute settlement actions based on Article XVI of GATT 1994 (Subsidies) and provisions of the SCM agreement related to actionable subsidies (Part III of the SCM agreement); and
 - c) dispute settlement actions based on non-violation nullification or impairment of the benefits of tariff concessions in the sense of paragraph 1(b) of Article XXIII of GATT 1994 and the Understanding on the Settlement of Disputes.
13. The level of protection provided by the peace clause varies according to the category or type of subsidy as determined by the AoA definitions. Consequently, so will the implications of the expiry of the peace clause with respect to different types of subsidies.

A. Green Box (Annex 1 of the Agreement on Agriculture)

14. Protection under the peace clause is strongest with respect to green box subsidies. Until the expiry of the peace clause green box programmes are completely shielded from countervailing measures and dispute settlement actions based on the subsidies agreement and non-violation complaints.
15. According to the AoA definitions, measures complying with the general and specific criteria of Annex 2 of the AoA shall have 'no or minimal effects on production and trade'. On this basis, these measures were exempt from reduction commitments and provided strong protection under the peace clause aimed at helping and encouraging WTO members to change their farm policies towards green box compatible programmes.

1. Countervailing measures

16. With respect to **countervailing measures**, once the peace clause elapses WTO members will be able to invoke Article VI of GATT 1994 and relevant provisions of the SCM agreement to initiate procedures on countervailing measures against those subsidies. For countervailing measures to be imposed on imports a series of substantive and procedural requirements detailed in the SCM Agreement must be fulfilled by the country seeking relief from imports. First, the subsidy in question must meet the definition of subsidy provided by Article 1 of the SCM agreement and be specific in terms of Article 2 of the same agreement; second, the application of countervailing measures can only proceed once "sufficient evidence has been provided of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article

VI of GATT 1994 as interpreted by this Agreement⁴, and (c) a causal link between the subsidized imports and the alleged injury.”

17. According to analysts, countervailing claims against green box subsidies may be difficult to sustain even after the expiry of the peace clause “because Green Box subsidies are the least trade distorting agricultural subsidies, many Green Box measures are non-actionable because they are non-specific (such as General Services, as defined in Annex 2 of the Agriculture Agreement), or considered so legitimate that national countervailing duty laws preclude actions aimed at them (such as support to relieve natural disasters).”⁵
18. However, such considerations do not hold true for all programmes contemplated in Annex 2 of the AoA. Direct payments to producers under the green box are provided to producers of specific commodities in the EC and the US and are quite significant. It is the actual design and implementation of the specific green box subsidies which will determine the extent to which the imposition of countervailing duties to compensate the alleged effects of such measures in the importing country can be sustained.
19. Obviously, one of the limitations of this venue for challenging subsidies after the expiry of the peace clause is that countervailing measures address the effects of subsidies in the local or domestic market but fails to compensate for the effects of subsidies in third markets.

2. Actions based on Article XVI of GATT 1994 and Part III of the SCM Agreement

20. On the other hand, the expiry of the peace clause would make green box subsidies actionable as per Part III of the SCM agreement. This means that although legal under the WTO AoA (provided they meet the general and specific criteria specified in Annex 2 of the AoA) WTO members will be able to challenge these subsidies by imposing countervailing measures and bringing cases before the Dispute Settlement Body.
21. Challenges against actionable subsidies can only be sustained when those subsidies are deemed to cause ‘adverse effects’. The relevant provisions of the SCM agreement contemplate three different forms of adverse effects as well as substantive and procedural requirements to sustain such claims. This first type of adverse effect is **injury to the domestic industry** as a result of subsidized imports into the market of the member making the claim (i.e. the importing country). WTO members may impose countervailing measures to protect from the effects of the subsidy in the domestic market and/or file a dispute

⁴ The determination of injury must be made in accordance with the provisions of Article 15 of the SCM. This provision requires an “examination of both (a) the volume of the subsidized imports and the effect of the subsidized import on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic market.”

⁵ Josling, Timothy and Steinberg, Richard, *When the Peace Ends: The Vulnerability of EC and U.S. Agricultural Subsidies to WTO Legal Challenge*, Journal of International Economic Law, 6(2), Oxford University Press, 2003, page 381.

settlement case that may lead if sustained by the Dispute Settlement Body, to the elimination of the adverse effects or the removal of the subsidy. Article 10 – footnote 35 – of the SCM agreement allows both procedures to be followed in parallel although only one form of relief to be made available for the domestic market of the importing member. The requirements mentioned in section III.1 i) to prove injury to the domestic industry are applicable here.

22. The second adverse effect contemplated by the SCM is **nullification and impairment of benefits accruing from GATT 1994**. The meaning of the term ‘nullification and impairment’ in this context is the same as that used under Article XXIII of the GATT 1994. Therefore, the legal reasoning and jurisprudence developed by GATT practice in the application of this article is also relevant to analyze adverse effects under the SCM agreement. Cases of nullification or impairment as per Article XXIII: 1(b) of the GATT 1994 are usually referred to as non-violation complaints because the complaining party does not need to allege violation of a WTO obligation. Article 26 of the Understanding for Settlement of Disputes requires though to the complainant to provide “a detailed justification” of his case “including the demonstration of a causal link between the invoked measures and nullified or impaired benefits. Even if such a claim is admitted, the ultimate goal is not the withdrawal of the measure concerned, but rather the achievement of a mutually satisfactory adjustment, usually by means of compensation.”⁶
23. Josling et al. suggest that nullification and impairment cases might not be a useful venue for challenging agricultural subsidies after the expiry of the peace clause due to the development of the doctrine of reasonable expectations within the GATT/WTO framework. “[S]ince 1950, panels have consistently required a successful non-violation claimant to demonstrate that at the time it negotiated for the benefit that was subsequently impaired it had no reasonable expectation of application of the measure that caused impairment.”⁷ Given the structure of the AoA particularly as it refers to green box subsidies, analysts argue, “a complainant would not be in a position to assess in good faith that the subsequent introduction or increase of a Green Box subsidy was not to be reasonably anticipated at the moment a concession was made.”⁸
24. The third adverse effect under Article 5 of the SCM agreement refers to **serious prejudice to the interests of another Member**. “Given that serious prejudice can arise in any market affected by an actionable subsidy (whether in an importing country, the country granting the subsidy, or a third country), it is the criterion designed to challenge subsidized competition in the

⁶ Chambovey, Didier, *How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies in the WTO Framework*, Journal of World Trade, 36(2), 2002, page 332.

⁷ Josling, Timothy and Steinberg, Richard, *When the Peace Ends: The vulnerability of EC and U.S. Agricultural Subsidies to WTO legal Challenge*, Journal of International Economic Law, 6(2), Oxford University Press, 2003, page 379-380.

⁸ Chambovey, Didier, *How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies in the WTO Framework*, Journal of World Trade, 36(2), 2002, page 334.

subsidizing country or third-country markets.”⁹ Serious prejudice is deemed to exist when any or several of the effects stipulated in Article 6 of the SCM agreement occur. These effects are: i) displacement or impediment of the imports of the like product in the market of the subsidizing country; ii) displacement or impediment of exports of a like product to a third country market; iii) significant price undercutting by the subsidized product as compared with the price of a like product in the same market or a significant price suppression, price depression or lost sales in the same market; and iv) an increase in the world market share of the subsidizing member in a particular subsidized primary product or commodity.¹⁰

25. GATT/WTO jurisprudence in relation with the application of GATT 1994 and the SCM agreement indicates that when analyzing the ‘market effects’ of subsidies as required by these provisions panels have demanded complainants to prove by positive evidence the causal link between the subsidized imports and serious prejudice. In addition, it would be necessary to prove that no other factors¹¹ could have led to the alleged effects and that the circumstances specified in Article 6.7 of the SCM agreement do not exist or are insignificant. This article details a series of circumstances whose existence may contribute in a significant way to displace or impede exports to third markets and/or the market of the subsidizing country hence making difficult to sustain that subsidies are causing such effects.
26. The burden of proving causality rests on the complainant, except in the cases of alleged impediment or displacement in third markets. In such cases, the complainant needs to provide evidence of ‘change in relative shares of the market’ as required by article 6.4 of the SCM agreement. To demonstrate ‘change in relative shares of the market’ would entail to provide evidence of the following: a) an increase in the market share of the subsidized product; b) indications that the market share of the subsidized product remains constant in circumstances in which in the absence of the subsidy, it would have declined; and c) indication that the market share of the subsidized product declines but at a slower rate than would have been the case in the absence of the subsidy.
27. However, the burden of proving that the circumstances established in Article 6.7 existed and were significant, in which case no serious prejudice could be sustained, lies on the respondent hence lowering the standards for arguing a case on the part of the complainant.

⁹ *Idem.*, page 324.

¹⁰ Foot note 17 to the SCM agreement indicates that the fourth effect of increased in world market share would be applicable to the extent that no other multilaterally agreed specific rules apply to the trade in the product or commodity in question. There is no agreement among analysts on whether this provision could be invoked to challenge agriculture subsidies given that the AoA of the Uruguay Round is ‘specific’ to trade in agriculture.

¹¹ As suggested by Article XVI:3 of GATT 1994 on export subsidies.

3. *Actions based on Non-violation complaints*

28. These were covered in section III.A 2.

B. Trade distorting subsidies, including amber and blue box and support within *de minimis* levels

1. *Countervailing duties*

29. The peace clause provides only partial protection for these subsidies during its validity. During the period of the peace clause WTO members do have a right to initiate countervailing duty investigations but shall exercise due restraint. “[T]he obligation to exercise due restraint in initiating investigations is not specified and can certainly be observed by applying a slightly altered procedure, say a less automatic or expeditious one, that would not otherwise limit the right of a Member to resort to countervailing duty actions.”¹² Once the peace clause lapses such constraint will be lifted.

30. Although the provision on due restraint is a “weak discipline [...] few countervailing duty cases have been brought during the course of the peace period and it is difficult to see how the expiry of the Peace Clause will open a floodgate to countervailing duty claims around the world.”¹³

31. As explained above, the imposition of countervailing measures against subsidized imports would require proving injury to the domestic industry and a causal relationship between the subsidized imports and the alleged injury in the terms explained in section III.1i) above. In addition to the ‘due restraint’ clause, the requirement to prove injury to the domestic industry, particularly in the case of agriculture in the developing countries where farmers may be dispersed and not organized, may contribute to explain why these provisions have not been used during the peace period.

32. Annex 1 to the present note provides details of the countervailing duty investigations involving agricultural products for the period 1995-2003.

2. *Actions based on Article XVI of GATT 1994 or Articles 5 and 6 of the SCM Agreement*

33. The peace clause provides only partial protection to domestic support measures other than green box with respect to actions based on Article XVI of

¹² Chambovey, Didier, *How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies in the WTO Framework*, *Journal of World Trade*, 36(2), 2002, page 337.

¹³ Josling, Timothy and Steinberg, Richard, *When the Peace Ends: The vulnerability of EC and U.S. Agricultural Subsidies to WTO legal Challenge*, *Journal of International Economic Law*, 6(2), Oxford University Press, 2003, page 381-382.

GATT 1994 or Articles 5 and 6 of the SCM agreement. During the peace period, support measures beyond the level decided in the year 1992 are actionable. Once the peace clause lapses, these measures will be actionable regardless of their level.

34. To sustain a case based on Articles 5 and 6 of the SCM agreement provisions made in section III.1ii) are relevant. That is, the subsidy in question must meet the definition of subsidy under Article 1 of the SCM agreement, as well as the requirement of specificity contemplated in Article 2 of the same agreement. Moreover, the complainant will need to sustain with positive evidence that adverse effects have ensued as a consequence of the alleged subsidies either through injury to the domestic industry, nullification or impairment or serious prejudice.
35. Some trade-distorting support measures in terms of the agreement on agriculture are non-product specific (i.e. Non-product specific *de minimis* and AMS), meaning they are available to the agricultural sector in general rather than targeted to specific commodities. These measures may not comply with the specificity requirement of Article 2 of the SCM agreement. On the other hand, many other programmes including those under the blue box are tied to specific commodities and link to production. Their likely impact on markets or 'market effects' could be significant making easier to substantiate, for example, claims of serious prejudice in the sense of Article 6.3 of the SCM agreement.

3. Actions based on nullification and impairment

36. Provisions on the peace clause provide coverage to non-green box subsidies against non-violation complaints to the extent support to a specific commodity does not exceed the level decided in 1992. The lapsing of the peace clause would implicate that "the sole point of reference to trigger non-violation actions will be the actual level of support at the time such a concession was made."¹⁴ This would result in a broader scope for actions by including those situations where the level of subsidies at the time the alleged impaired concession was made, was at or below the level of support decided in 1992 which are now shielded from actions as a result of the peace clause.
37. Past GATT and WTO practice require that a non-violation complaint under Article XXIII:1(b) "must be based on a measure that the complainant could not have reasonably expected or anticipated. This requirement is described in panel reports both as the complainant's reasonable expectations as to the measures that would not be introduced by the Member being complained against, and the complainant's reasonable expectations as to the benefit accruing to it under an agreement. It is also described in terms of what the

¹⁴ Chambovey, Didier, *How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies in the WTO Framework*, Journal of World Trade, 36(2), 2002, page 343.

complainant 'legitimately expected', 'reasonably anticipated' and 'reasonably foresaw.'"¹⁵

38. In effect, among the benefits that Art. XXIII:1(b) seeks to protect and ensure is that the competitive relationship between the products in question established as a result of tariff negotiations would not be upset by the introduction of subsequent new measures (including subsidies) by a member that could not have been reasonably anticipated by the complainant Member at the time that the tariff concessions were negotiated.
39. On the other hand, the AoA's provisions relating to domestic subsidies effectively create an obligation on the part of members to reduce their domestic agriculture subsidies, and that any exceptions to such an obligation are subject to strict compliance with criteria and conditions specified in the AoA. Hence, it could be argued that at the time that the agricultural tariff concessions were negotiated at the end of the Uruguay Round, non-subsidizing members were given the reasonable expectation that, as a result of AoA obligations, domestic subsidies would be reduced by subsidizing members and that the value of the tariff concessions received would not be impaired by the subsequent introduction or increase of domestic subsidies by subsidizing members. In short, non-subsidizing members could not be deemed, by reason of the provision of domestic subsidies by subsidizing members at the time that tariff concessions were negotiated, to have been able to reasonably anticipate that such domestic subsidies would not be reduced or would in fact increase.
40. In that respect, the peace clause period should be seen as a period during which non-subsidizing members waive solely and temporarily their right, *inter alia vis-à-vis* Article XXIII:1 (b), to initiate a non-violation action for the duration of that period, but not their right to benefit from the subsidizing members' tariff concessions and their right to reasonably expect that the subsidizing members would undertake (through progressive reductions of subsidies) to ensure that the benefits from such tariff concessions are not nullified or impaired by their subsidies measures. With the lapsing of the peace clause, the waiver to the procedural right to initiate actions of nullification and impairment will cease and agricultural subsidies, even those complying with the conditions and criteria established in the AoA and each member's Schedule of commitments could be subject to claims under Article XXIII:1 (b) of GATT 1994.
41. Non-subsidizing members must show though that agricultural subsidies have had the effect of upsetting the competitive relationship between imported and domestic agricultural products arising from the tariff concessions negotiated at the end of the Uruguay Round. In this regard, Article 26.1 of the Dispute Settlement Understanding cited above, has to be complied with. It requires "the complaining party to present a detailed justification in support of any

¹⁵ WTO Secretariat, *Non-Violation Complaints and the TRIPS Agreement*, IP/C/W/124, 28 January 1999, para. 50. (citations omitted).

complaint relating to a measure which does not conflict with the relevant covered agreement.”

C. Export subsidies

1. Countervailing measures

42. Export subsidies are only partially protected against countervailing duties during the validity of the peace clause. This provision imposes on WTO members ‘due restraint’ in initiating countervailing duty investigations but does not prohibit such actions. As explained above, although the discipline on due restraint is rather weak WTO members have not made use of countervailing measures to attack export subsidies during the peace period.
43. It is important to indicate that the protection of the peace clause is relevant only for export subsidies provided in compliance with the commitments of each member as reflected in its Schedule. Subsidies to agricultural products other than those listed in the Schedule of commitments of each member, as well as subsidies beyond the specified levels constitute a violation of Article 8 of the AoA.

2. Actions based on the SCM Agreement

44. During the peace clause period export subsidies are not actionable under the SCM agreement under any circumstances (to the extent that subsidies are provided to the products and at the levels reflected in each member’s Schedule of commitments). In that respect, protection of the peace clause is stronger for export subsidies than for amber and blue box subsidies and *de minimis* support which are covered by the peace clause only as they remain under the level decided in 1992.
45. Once the peace clause lapses, it has been argued that agricultural export subsidies, even within the levels established in each member’s Schedule will be prohibited by workings of the relationship between the peace clause and Article 3 of the SCM agreement which prohibits export subsidies. However, some analysts disagree with such assessment based on the interaction of the agriculture agreement and the SCM agreement. On this basis, it is suggested that “[T]he Peace Clause, which is time-limited, constrains actionability through the end of 2003 and does not bear on the question of legality [...] Taking this distinction into account, the proper interpretation of these provisions is that: (1) during the peace period, agricultural export subsidies that exceed the Agriculture Agreement reduction commitments would be subject to legal action under Agriculture Agreement Article 8, but such a violation would not destroy the protection of export subsidies against a claim that they are absolutely prohibited under SCM Agreement Article 3, and (2) more significantly, after the peace period, agricultural export subsidies that

conform with the Agriculture Agreement will be legal, although they may be regulated and actionable under another legal theory.”¹⁶

46. Therefore, the implication of the expiry of the peace clause for export subsidies is that they would be vulnerable to claims of causing adverse effects in terms of Article 5 of the SCM agreement even if maintained under the reduction commitment levels, with strong possibilities of a successful case. That is, providing positive evidence of the negative impact of export subsidies would be easier than with respect to other agricultural subsidies. “The use of such incentives [i.e. export subsidies] expands the share of the exporter in the world market to the detriment of other suppliers, tends to lower world market prices and may encourage higher domestic production than otherwise,”¹⁷ all elements to be taken into account when considering claims on adverse effects and serious prejudice in terms of Articles 5 and 6 of the SCM agreement.

3. Nullification and impairment

47. The peace clause does not provide protection to export subsidies against nullification and impairment. However, the fact that these provisions have not been frequently used throughout the implementation period of the AoA indicates their relative weakness for sustaining a case. It would be difficult to sustain before a Panel that export subsidies within the limits of the reduction commitments, were not expected at the time the concession on a particular agricultural product was made. Were export subsidies be provided to other products than those reflected in the schedule of commitments of the members concerned or be provided in excess of the allowed levels, this would imply a clear violation of the agreement on agriculture (Articles 8 and 10) which do not require the lapsing of the peace clause to be countered.

IV. VULNERABILITY OF DEVELOPING COUNTRY SUBSIDIES TO THE EXPIRY OF THE PEACE CLAUSE

48. The provisions on the peace clause of the AoA apply to production and export subsidies of developed and developing countries alike. Therefore, the expiry of the peace clause should facilitate legal actions against production and export subsidies provided by developing countries.
49. On the other hand, only a few developing countries are entitled to use amber box subsidies (AMS support) and export subsidies since they lost that right during the Uruguay Round (except for export subsidies under Article 9.4 of

¹⁶ Josling, Timothy and Steinberg, Richard, *When the Peace Ends: The vulnerability of EC and U.S. Agricultural Subsidies to WTO legal Challenge*, Journal of International Economic Law, 6(2), Oxford University Press, 2003, page 377-378.

¹⁷ Chambovey, Didier, *How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies in the WTO Framework*, Journal of World Trade, 36(2), 2002, page 348.

the AoA related to marketing costs and internal transport and freight costs). For the vast majority of developing countries the lapsing of the peace clause would be relevant with respect to provisions under Article 6.2, support within the *de minimis* level and Annex 2 of the AoA or green box.

50. Lack of financial resources has constrained the ability of developing countries to provide support to their agricultural sectors. The experience in the implementation of the agreement indicates that developing countries have used green box measures and support under Article 6.2 only to a very limited extent and tend to privilege non-product specific support within the *de minimis* levels.
51. Taking the case of production subsidies under Article 6.2 of the AoA, it may be difficult to sustain that support measures provided by developing countries are specific in the sense of Article 2 of the SCM agreement by the very nature or drafting of such provision. Indeed, Article 6.2 allows developing countries to provide investment subsidies generally available to agriculture and input subsidies available to low-income and resource-poor farmers, that is, support should not be designed to target specific products or product groups if it is to comply with the criteria set forth in Article 6.2. The lapsing of the peace clause would imply that subsidies provided by developing countries under this provision would be actionable in terms of the SCM agreement for effects of countervailing measures and dispute settlement procedures, as well as non-violation complaints under the GATT 1994 agreement which they currently are not due to the protection of the peace clause. Whether particular programmes of a WTO member fulfil the criteria of Article 6.2 of the AoA is an issue related to the interpretation of this specific provision which could be raised at any time regardless of the status of the peace clause. The same difficulties sustaining a case of specificity will arise with respect to agricultural subsidies provided by developing countries under the non-product specific *de minimis* provision.
52. Regarding export subsidies under Article 9.4 the AoA, it is clear that such provision grants developing countries the right to use export subsidies related to marketing costs and internal freight and transport costs without restriction (except for those which undertook reduction commitments regarding export subsidies. These countries should avoid circumventing their commitments on export subsidies by the use of this flexibility) throughout the implementation period whether or not those subsidies were in place before of the entry into force of the agreement. Therefore, it was expected that developing countries could introduce new subsidies or increase the existing subsidies under this provision much the same it is argued that expectations were that developed countries could increase their agricultural subsidies, particularly within the green box.
53. However, even if a case could be brought against subsidies provided by developing countries under specific provisions of the AoA, being these Article 6.2, Article 9.4, *de minimis* support or even amber box (within the levels specified in each member's Schedule) the level of subsidization is generally so

low that proving by positive evidence that adverse effects or injury have ensued to other WTO member as a consequence of agricultural subsidies provided by developing countries would be extremely difficult to sustain.

54. Therefore, the expiry of the peace clause does not represent a threat to subsidies provided by developing countries basically as a result of the low level of subsidization provided by these countries and the non-specific character of those subsidies.

V. VULNERABILITY OF DEVELOPED COUNTRY SUBSIDIES TO THE EXPIRY OF THE PEACE CLAUSE

55. As mentioned above, the actual threat or vulnerability of developed country subsidies to the expiry of the peace clause is difficult to assess. Actions under Article 5 and 6 of the SCM agreement require an analysis of the market effects of subsidies. The structure of particular programmes as well as other factors that may affect market conditions would determine the possibility of sustaining a case against specific subsidies.

56. In this regard, it is important to notice that “in applying the tests under SCM Agreement Article 6.3(a)-(c), the complainant may aggregate specific, actionable subsidies from the subsidizing country, which would make it easier than otherwise for the complainant to establish a *prima facie* case that the aggregate subsidy caused serious prejudice [However,] while aggregation may be permissible for making the complainant’s *prima facie* case, disaggregation would likely be necessary to determine the appropriate remedy, which is to ‘take appropriate steps to remove the adverse effects’ of or to withdraw the subsidy.”¹⁸

57. The experience in the implementation of the AoA indicates that support for agriculture has increased, particularly in the US and the EC such support can be quite significant for certain commodities. The FAO analysis¹⁹ presented in the tables below provide a broad indication of the level of support in OECD countries for specific commodities of particular interest to developing countries. The case of cotton, not reflected in these tables is another example of highly distorted markets due to the presence of subsidies in the QUAD countries (which account for most of support within the OECD).

A. Table 1: Domestic Support

¹⁸ Josling, Timothy and Steinberg, Richard, *When the Peace Ends: The vulnerability of EC and U.S. Agricultural Subsidies to WTO legal Challenge*, Journal of International Economic Law, 6(2), Oxford University Press, 2003, page 388, 390.

¹⁹ <http://www.fao.org/trade/agri-Xs-most-affected.asp?menuItem=sub6>. Some editorial changes were introduced by the South Centre to the original text.

- Commodities are ranked on the basis of the percentage PSE for OECD countries as a whole (using OECD's Producer Support Estimates).
- Rice receives the highest support in percentage PSE term (82%), followed by sugar (51%) and milk (45%).
- Meat (beef & veal, pig meat and poultry meat combined) receives high domestic support in the EU. The total PSE for meat in 2000 was EUR 27 billion with the highest support to beef & veal.
- In the US, sugar, wheat and milk attract high subsidies, with % PSE of 50 on sugar.
- In Japan, rice, wheat and milk are commodities receiving highest %PSE.

Commodities	Total OECD		EU		US		Japan		Canada	
	% PSE ¹	PSE (million USD)	% PSE ¹	PSE (million EUR)	% PSE ¹	PSE (million USD)	% PSE ¹	PSE (million Yen)	% PSE ¹	PSE (million CAD)
Rice	82	28057	11	93	40	717	88	2064	n.c.	n.c.
Sugar	51	6240	50	2699	50	1180	43	42	n.c.	n.c.
Milk	45	38780	43	16752	45	10164	80	565	55	2349
Wheat	41	17524	46	9903	48	5344	86	98	15	584
Sheep meat	40	3764	53	3550	16	62	n.c.	n.c.	n.c.	n.c.
Maize	35	13923	41	2972	33	9165	n.c.	n.c.	24	281
Beef & Veal	32	24318	78	18949	4	1370	32	194	9	518
Oilseeds	30	7642	42	2085	27	4747	56	24	15	419
Poultry	19	6458	53	4662	4	715	12	24	2	39
Pig meat	17	8119	19	4622	4	452	52	245	8	276

Note: n.c. refers to not calculated.

¹ As a percentage of gross value of farm receipts calculated at market prices (Including export subsidy element in export credit);

B. Table 2: Export Subsidies

- Although skimmed milk powder (SMP) and other milk products attract high levels of export subsidies in some OECD countries, these products are little exported by developing regions and hence the negative effect should be small. It could be argued though, that the removal of subsidies could lead to an increase in developing countries' participation in the world market of dairy products. In addition, this practice hurts importing developing countries in other ways, including by causing damage to the domestic industry by means of import surges.

- Poultry meat receives high levels of export subsidies in the US and EU. Asia developing region accounts for a large share of poultry export (21%) and so stands to be affected negatively.
- Asia's share in sugar export is also high (13%) and so suffers from export subsidies by others. Latin America, including Caribbean region, is also large exporter of sugar.
- Meat, oilseeds and grains - commodities that receive high levels of export subsidies - are also exported heavily by Latin American countries.

UNITED STATES

Product group with significant export subsidies ¹	Shares of developing regions' exports of the product in total world exports ²
Skimmed milk powder	SSA (0.1), Asia Dvlpg (2.5), Lat Am (2.5), Carib (0.0), Nr East (0.6)
Poultry meat (42) *	SSA (0.0), Asia Dvlpg (20.7), Lat Am (9.6), Carib (0.0), Nr East (0.4)
Wheat (23)**	SSA (0.1), Asia Dvlpg (1.9), Lat Am (8.5), Carib (0.0), Nr East (1.7)

Source: * FAS/USDA, 2001 ; ** FAOSTAT, 2001

EUROPEAN UNION

Product group with significant export subsidies	Shares of developing regions' exports of the product in total world exports
Cheese (31.9)*	SSA (0.0), Asia Dvlpg (0.5), Lat Am (1.3), Carib (0.0), Nr East (0.7)
Beef (16.7)*	SSA (1.7), Asia Dvlpg (0.6), Lat Am (13.0), Carib (0.0), Nr East (0.1)
Sugar (13.3)*	SSA (6.9), Asia Dvlpg (13.2), Lat Am (26.7), Carib (7.7), Nr East (2.5)
Grains (maize, barley, etc) (11.0)*	SSA (0.4), Asia Dvlpg (7.1), Lat Am (10.8), Carib (0.0), Nr East (0.6)

Source: * European Commission, 1999

JAPAN

Product group with significant export subsidies	Shares of developing regions' exports of the product in total world exports
No export subsidies.	-

CANADA

Product group with significant export subsidies	Shares of developing regions' exports of the product in total world exports
Wheat (15.53)*	SSA (0.1), Asia Dvlp (1.9), Lat Am (8.5), Carib (0.0), Nr East (1.7)
Flour of wheat (2.18)*	SSA (1.8), Asia Dvlp (13.4), Lat Am (5.1), Carib (0.8), Nr East (8.8)
Oilseeds (7.30)*	SSA (1.5), Asia Dvlp (5.4), Lat Am (24.7), Carib (0.0), Nr East (1.1)
Skimmed milk powder	SSA (0.1), Asia Dvlp (2.5), Lat Am (2.5), Carib (0.0), Nr East (0.6)

Source: * FAOSTAT, 2001

Note: - The abbreviations stand for the following: SSA - Sub-Saharan Africa, Asia Dvlp - Asia Developing, Lat Am - Latin America, Carib- Caribbean, Nr East - Near East including North Africa.
- Numbers within parentheses in the product group column represent the share of world exports of each of the QUAD countries for the product in question.

¹ Including export subsidy element in export credit

² Indicates shares of the developing regions' total exports of the product to the world as a percentage of the total world exports of that commodity

58. Annex 2 to the present note provides further information on the level of subsidies provided to agriculture by the United States and the European Union. Attempts have been made to disaggregate support on a product or product group category. As can be seen in those tables, support to specific agricultural products or product groups are quite significant which could provide a sound basis for claims once the peace clause expires.

VI. CONSIDERATION ON THE EXTENSION OF THE PEACE CLAUSE²⁰

59. The AoA is very clear with respect to the expiry of the peace clause. Article 1(f) reads: "implementation period" means the six-year period commencing in the year 1995, except that, for the purposes of Article 13, it means the nine-year period commencing in 1995.²¹

60. Therefore, in order to extend the peace clause an explicit agreement would be required from all WTO members on whether such extension is necessary and in what conditions (i.e. timeframe, trade-offs, etc.) would that extension be

²⁰ This section does not in any way imply that developing countries should favour the extension in the period for expiry of peace clause. Similarly, the suggestions for possible trade-offs do not mean that either such trade-offs are desirable or should be limited to agriculture only. The objective here is to clarify the relevant issues so that developing countries have a better understanding and take an informed decision in pursuance of their negotiating objectives.

²¹ According to Article 1(i) of the AoA and for the purposes of the specific commitments of members, a 'year' may refer to the calendar, financial or marketing year specified in the Schedule of each member. Some have argued that this element could have a bearing in deciding on the exact date that the expiry of the peace clause may be relevant with respect to specific subsidies.

granted if ever. Given that developing countries do not provide production and export subsidies in any significant way, the extension of the peace clause would represent a concession from the part of developing countries to OECD countries that heavily subsidize their agricultural sectors, particularly the US and the EU.

61. As mentioned above, the expiry of the peace clause was meant to put pressure on subsidizing countries to continue the reform process through negotiations of substantial and additional reduction commitments in production and export subsidies that would reduce their vulnerability to challenge in the WTO. For members interested in agriculture reform the largest benefit of the peace clause would have been the persuasive effect that it could have had on subsidizing countries for effectively eliminating distortions in world markets. However, if this 'political' process or negotiations on further commitments fails in the short term, enhanced recourse to the WTO legal framework would then be available with the expiry of the peace clause to challenge subsidies which would renew the pressure to negotiate. In fact, several dispute cases involving agricultural subsidies brought by developing countries against subsidies of developed countries are under consideration by the Dispute Settlement Body. Annex 3 to the present note presents a summary of the dispute settlement cases related to agricultural products which involves subsidies and countervailing measures.
62. Developed countries, particularly the EU, included in their proposals the extension of the peace clause also. Recent domestic policy reforms in the US indicate that this country could be now even more vulnerable than before, to challenges against agricultural subsidies. However, this issue has not been openly discussed during the negotiations. In fact, reference to the peace clause was not included in the revised first draft modalities text prepared by the Chairman of the CoA Special Session in March 2003. Only in the July report to the TNC the Chairman mentioned the peace clause by indicating in a final point that "[p]articipants will be aware that the provisions of Article 13 of the Agreement on Agriculture will expire at the end of 2003."²²
63. The draft ministerial text forwarded to Ministers by the Chairman of the General Council (JOB(150)/Rev.1) included a reference to the peace clause as an issue of interest on which no agreement existed among members. The revised draft ministerial produced by the Chairman of the Ministerial Conference on 13 September 2003 suggested an extension of the peace clause for a period (of months) to be decided.
64. The large majority of developing countries have not shown any interest in discussing this issue. It could be argued in fact, that due to the lack of positive outcome on Agriculture by the Cancún Ministerial and the consequent lack of commitments from the part of OECD countries to substantially reduce distortions in agriculture, the expiry of the peace clause is even more pressing.

²² WTO document TN/AG/10 of 7 July 2003, page 8.

65. On the other hand, it could be argued that “it may be useful to expose domestic support to the rigors of judicial decision but only if at the same time the political process accepts the need for restrictive trade rules and adjust domestic policies accordingly. If that political acceptance is missing then the attempts to restrict domestic farm policy within the WTO may lead to continued conflict and ultimate failure.”²³ EC representatives have certainly taken this stance suggesting it would not be ‘useful’, were the peace clause expire, to bring a flood of dispute cases against agricultural subsidies. In addition, representatives of the EC and the US have suggested they would turn to bilateral and regional arrangement to further liberalize trade and claims have been made that it is the poor and developing countries that lose the most as a consequence of Cancún’s failure. These statements are meant to blame developing countries for the failure of the Ministerial Conference and force them to make concessions in order to resume the stalled Doha Round.
66. Such suggestions are at the very least quite questionable and the reason and consequences of the results of the Cancún ministerial merit a thorough and objective analysis which is beyond the purposes of this note.
67. However, if developing countries consider for any reason proposals for the extension of the peace clause, it would be important to secure support from developed countries on issues of their particular interest. Obviously, every developing country has its own priorities in the negotiations. However, if consensus needs to be found for a positive decision on specific proposals, certain proposals backed by a large number of developing countries come to mind as possible trade-offs:
- i. **Special Safeguards:** developing countries may consider requesting a decision for the extension of the Special Safeguards for use by all developing countries for all products, and a commitment to review Article 5 of the AoA for establishing facilitated safeguard procedures for developing countries on the lines of the proposals presented by a group of developing countries on a Special Safeguard Mechanism (SSM). The experience in the implementation of the AoA indicates developing countries badly need access to safeguard measures (regardless of the expiry of the peace clause) to protect against import surges but this issue has caused unnecessary controversy during the negotiations;
 - ii. **Special Products (SP):** given that developed country subsidies will continue to be protected from legal actions in the WTO, developing countries shall be allowed to increase their bound rates for the products they deem necessary on the grounds of food/livelihood security and rural development concerns, particular if these products are highly subsidized by developed countries. Although this approach would not

²³ Jostling, Timothy, *Domestic Farm Policies and the WTO. Negotiations on Domestic Support*, International Conference on Agricultural policy reform and the WTO: where are we heading? Capri, Italy, June 23-26, 2003, page 20.

address the offensive interests of developing countries of increasing participation in agricultural world markets by addressing distortions, it would at least provide some protection to avoid further deteriorating their food security situation;

- iii. **Facilitated countervailing measures:** as explained above, countervailing measures have not widely being used during the implementation period of the AoA even though the due restraint discipline enshrined in the peace clause is rather weak. One of the reasons to explain this may be the difficulties imposed by the substantive and procedural requirements of the SCM as applicable to the agriculture sector (i.e. the requirement to prove causal relationship between subsidized imports and the alleged injury to the domestic industry), especially in developing countries. One way to go around this difficulty could be to waive the requirement of proving injury for the purposes of imposing countervailing duties on subsidized imports from developed countries. Such waiver would last for the period of extension of the peace clause. Again, this approach would only address the defensive concerns of developing countries in the negotiations but it could be important for putting a halt to a flood of subsidized imports, at least in key sectors.

68. One additional element to be considered in these discussions is the time frame. The peace clause if ever, should not be extended indefinitely or for the duration of the 'reform process' which could take several additional rounds of trade talks. There should be a specific deadline for the expiry of the peace clause. A clear and short deadline would maintain the pressure on the subsidizing countries to negotiate substantial reduction commitments in agriculture support or risking legal challenges in the WTO against agricultural support.

ANNEX 1

**Countervailing Duty Investigations related to Agricultural products
(1995-2003)**

Reporting member	Affected member	Product
Argentina	European Union	Olive oil, packaged and in bulk
Argentina	European Union	Peaches in syrup
Argentina	European Union	Wheat gluten
Australia	Italy	Tomatoes, canned
Australia	France	Brandy, bottled
		Brandy
Australia	Greece	Peaches, canned
Canada	Denmark	Canned Ham
	European Communities	Refined Sugar
Canada	Netherlands	Canned Ham
Chile	United States	Powdered milk
Chile	European Union	Powdered milk
Chile	Poland	Powdered milk
Chile	Czech Republic	Powdered milk
Egypt	France	White sugar
Egypt	Italy	White sugar
Egypt	Spain	White sugar
Egypt	Other EC countries	White sugar
Israel	EEC	Certain baked goods
Israel	Italy	Pasta
Mexico	EC	Bovine meat
New Zealand	European Union	Canned peaches
Peru	European Union	Olive oil
USA	Argentina	Honey
USA	Canada	Certain Durum Wheat*
		Certain Hard Red Spring Wheat*
USA	Iran ¹	In-Shell Raw Pistachios
USA	Iran ¹	Roasted In-Shell Pistachios
USA	Italy	Certain Pasta
USA	Turkey	Pasta
Venezuela	European Union	Potato Flour
Venezuela	European Union	Blue-veined cheese
Venezuela	European Union	Semi-hard cheese
Venezuela	European Union	Gruyère-type cheese

Source: WTO. Semi-annual reports under Article 25.11 of the Agreement on Subsidies and Countervailing Measures.

¹ Iran is not a Member of the WTO

ANNEX 2

UNITED STATES

Table 1: Aggregate Measurement of Support (AMS) (including *de minimis*)

Source: Hart, Chad and Babcock, Bruce, *U.S. Farm Policy and the WTO: How Do They Match Up?*
 The Estey Centre Journal of International Law and Trade Policy, Volume 3, Number 1, 2002.

Commodity	1996	1997	1998	1999	2000	2001	2002
(US\$ Million)							
Barley	1	4	84	42	71	15	43
Corn	28	150	1,534	2,599	2,772	1,092	155
Cottonseed	0	0	0	79	100	85	0
Cotton	3	466	935	2,108	846	2,027	2,067
Dairy	4,691	4,456	4,560	4,308	4,949	4,318	1
Hogs/pork	0	0	123	74	0	0	0
Canola	0	0	8	39	78	27	27
Flaxseed	0	0	2	12	24	12	14
Sunflower	0	0	21	142	145	60	61
Oats	0	0	20	29	45	2	7
Peanut	299	306	340	323	331	320	267
Rice	6	6	21	439	631	486	676
Sorghum	1	2	63	156	85	5	30
Soybean	14	45	1,275	2,905	3,141	3,439	3,574
Sugar	908	1,011	1,055	1,531	1,063	1,022	1,042
Tobacco	-21	-8	-7	322	335	125	-4
Wheat	8	36	516	1,034	889	196	171
Non-product specific	1,115	568	4,584	6,990	6,912	6,445	2,175
Total	7,052	7,043	15,134	23,155	22,481	19,818	10,305

UNITED STATES

Table 2: Export subsidies and food aid

Description of products	Budgetary Outlay (US\$)	Quantity of subsidized exports (Tonnes)	Food Aid (Tonnes)	Quantity of Total Exports
Wheat ¹				
1996		0	1,449,136	33,226,133
1997		0	1,057,187	27,382,902
1998		0	3,202,192	28,626,560
1999	0	0	5,315,092	28,968,203
2000	0	0	2,364,693	27,485,478
2001	0	0	3,158,926 ⁹	25,838,947 ¹⁰
Coarse grains				
1996		0	(Sorghum) 12,949	7,436,463
1997	1,205,000	25,000	(Sorghum) 116,168	7,436,463
1998		0	(Sorghum) 111,688	6,384,529
1999	0	0	(Sorghum) 78,151	8,128,264
2000	0	0	(Sorghum) 45,281	9,283,660
2001	0	0	(Sorghum) 104,405	8,116,427

Description of products	Budgetary Outlay (US\$)	Quantity of subsidized exports (Tonnes)	Food Aid (Tonnes)	Quantity of Total Exports
Rice				
1996		0	188,153	2,051,763
1997		0	111,252	1,953,553
1998		0	382,710	1,911,624

	1999	0	0	935,575	1,948,296
	2000	0	0	303,276	1,981,079
	2001	0	0	255,920	1,892,927
Vegetable oils					
	1996		0	175,074	1,168,083
	1997		0	157,262	2,004,832
	1998			0	1,659,743
	1999	0	0	1,440,380	1,156,218
	2000	0	0	365,258	1,057,155
	2001	0	0	416,095	1,490,729
Butter and butter oil ²					
	1996	*	9,314	0	7,139
	1997	8,852,246	15,648	0	15,727
	1998	451,956	395	0	3,135
	1999	7,318,465	5,298	0	7,285
	2000	0	0	0	4,313
	2001	0	0	0	3,259
Skim milk powder					
	1996	*	69,895	0	39,217
	1997	88,798,424	96,303 ³	0	115,079
	1998	133,284,327	129,810 ⁴	0	79,378
	1999	45,333,000	101,383 ⁶	260,576	141,819
	2000	6,727,480	68,201	24,204	75,012
	2001	53,683,495	68,201	30,040	83,723
Description of products		Budgetary Outlay (US\$)	Quantity of subsidized exports (Tonnes)	Food Aid (Tonnes)	Quantity of Total Exports
Cheese					
	1996	*	3,020	0	20,744
	1997	3,905,189	3,510	0	28,552
	1998	4,164,216	3,122	0	22,302

	1999	5,564,383	3,864 ⁷	0	24,934
	2000	1,760,700	3,030	0	27,192
	2001	931,775	3,030	0	24,550
Other milk products					
	1996	*	2,195	0	1,796
	1997	8,603,833	7,487	3,303	6,532
	1998	7,407,673	5,344 ⁵	0	5,944
	1999	20,304,243	17,908 ⁸	9,250	10,356
	2000	0	0	450	19,502
	2001	0	0	0	23,488
Poultry meat					
	1996		0	0	895,815
	1997	862,500	*	0	2,086,454
	1998	1,399,762	3,546	0	1,828,401
	1999	1,643,460	2,495	74,163	2,286,268
	2000	6,823,325	11,524	0	2,521,169
	2001	0	0	0	2,346,998
Bovine meat					
	1996		0	0	587,367
	1997		0	0	698,380
	1998		0	0	728,839
	1999	0	0	44,946	832,830
	2000	0	0	0	767,491
	2001	0	0	0	782,060
Description of products	Budgetary Outlay (US\$)	Quantity of subsidized exports (Tonnes)	Food Aid (Tonnes)	Quantity of Total Exports	
Pig meat					
	1996		0	0	128,934
	1997		0	0	194,165
	1998		0	0	194,845

1999	0	0	50,005	226,566
2000	0	0	0	223,719
2001	0	0	0	234,114

Source: US notifications to the WTO.

* Discrepancies between quantities and budgetary outlays respond to different reporting timeframes.

¹ Includes wheat bulgur wheat and wheat flour on wheat equivalent basis.

² Includes butter, butteroil, anhydrous milkfat and ghee on a butter equivalent basis.

³ This volume exceeded the annual commitment level of the US for this year. The US availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

⁴ The US exceeded both the budgetary outlay and quantity annual commitment levels for the year 1998. The US availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

⁵ The US exceeded both the budgetary outlay and quantity annual commitment levels for the year 1998. The US availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

⁶ This volume exceeded the annual commitment level of the US for this year. The US availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

⁷ The US exceeded both the budgetary outlay and quantity annual commitment levels for the year 1998. The US availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

⁸ The US exceeded both the budgetary outlay and quantity annual commitment levels for the year 1998. The US availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

⁹ Wheat and wheat flour.

¹⁰ Wheat and wheat flour.

UNITED STATES

Table 3. Production Flexibility Contracts (1,000 US\$)

Program and Commodity	1997	1998	1999	2000	2001
Wheat	1,397,000	1,534,000			
Corn	3,384,000	2,694,000			
Grain Sorghum	338,000	298,000			
Barley	113,000	126,000			
Oats	8,000	9,000			
Upland Cotton	597,000	689,000			
Rice	448,000	498,000			
TOTAL	6,119,814	6,000,580	5,046,071	5,048,750	4,040,639

Source:

- 1997 commodity specific data: <http://www.google.ch/search?q=cache:CA9brfaqSj8J:jan.mannlib.cornell.edu/data-sets/baseline/2000/tab05.wk1+PRODUCTION+FLEXIBILITY+CONTRACT+PAYMENTS+&hl=en&ie=UTF-8>

- 1998 commodity specific data: <http://www.fsa.usda.gov/pas/newsroom/releases/1998/08/0343.htm>

- Data on total amount of payments: USDA-NASS, 2003. <http://www.usda.gov/nass/pubs/agr03/acro03.htm>. Table 11-7 on page XI-8

Note: Production flexibility contracts (PFC) constitute direct payments received by farmers of specific contract commodities (those listed in the table above) based on 85 per cent of the contract acreage times the program yield specified under the program. To receive the payment the contract acreage used for calculating the payments must be use for an agricultural or related activity. The 2002 Farm bill added soybeans, other oilseeds and peanuts to the PFC programme. **The US notifies these payments as decoupled income support under the green box.**

EUROPEAN UNION

**Table 4. Breakdown of expenditures by sector according to the economic nature of the measure (Euro Million)
European Agriculture Guidance and Guarantee Fund (EAGGF)**

	Expenditure	Export refunds	Intervention					
			Total intervention	Storage	Withdrawal from the market + similar operations	Direct aids	Other intervention	
Arable crops								
2000	16,663.1	823.6	15,839.5	464.2	0.0	15,223.1	152.2	
2001	17,466.2	259.8	17,206.4	184.9	1,535.5	16,967.9	-1,490.4	
Sugar								
2000	1,910.2	1,438.8	471.4	312.1	0.0	0.0	159.3	
2001	1,497.1	1,008.2	488.9	281.4	0.0	0.0	207.5	
Olive Oil								
2000	2,210.1	0.2	2,209.9	-8.7	0.0	2,177.0	41.6	
2001	2,523.8	0.2	2,523.6	-1.3	0.0	2,504.9	20.0	
Dried fodder and dried vegetables								
2000	381.3	0.0	381.3	0.0	0.0	68.8	312.5	
2001	374.8	0.0	374.8	0.0	0.0	68.8	312.5	
Textile plants								
2000	991.4	0.0	991.4	0.0	0.0	136.9	854.5	
2001	826.3	0.0	826.3	0.0	0.0	93.1	733.2	
Fruit and vegetables								
2000	1,551.3	46.1	1,505.2	0.0	169.2	356.4	979.6	

2001	1,551.9	50.8	1,505.1	0.0	117.2	439.6	950.3
					Intervention		
	Expenditure	Export refunds	Total intervention	Storage	Withdrawal from the market + similar operations	Direct aids	Other intervention
Wine							
2000	765.5	21.5	744.0	220.8	326.9	0.0	196.3
2001	1,196.7	22.5	1,174.2	280.5	0.0	0.0	893.7
Tobacco							
2000	989.4	0.0	987.7	0.0	0.0	984.8	2.9
2001	973.4	0.0	964.2	0.0	0.0	963.9	9.5
Other sectors							
2000	350.0	38.4	311.6	65.7	0.0	246.5	-0.6
2001	297.3	38.7	258.6	30.4	0.0	228.4	-0.2
Milk and milk products							
2000	2,544.3	1,671.0	873.3	-116.0	0.0	0.0	989.3
2001	1,906.6	1,106.5	800.1	-46.7	0.0	0.0	846.8
Beef/veal							
2000	4,539.6	661.3	3,878.3	-82.7	20.9	3,654.1	266.0
2001	6,054.0	362.6	5,691.4	325.8	512.7	4,714.4	138.4
Sheepmeat and goatmeat							
2000	1,735.6	0.0	1,735.6	4.1	0.0	1,733.7	-2.2
2001	1,447.3	0.0	1,447.3	0.0	0.0	1,449.2	-1.9

	Expenditure	Export refunds	Intervention					
			Total intervention	Storage	Withdrawal from the market + similar operations	Direct aids ¹	Other intervention	
Pigmeat, eggs and poultrymeat								
2000	435.2	348.2	87.0	91.8	0.0	0.0	-4.8	
2001	137.1	115.7	21.4	4.9	9.6	0.0	-15.0	
Other measures in favour of animal products								
2000	11.7	0.0	11.7	0.0	0.0	0.0	11.7	
2001	0.0	0.0	0.0	0.0	0.0	0.0	0.0	

Source:

- Agriculture in the European Union. Statistical and economic information 2001 at http://europa.eu.int/comm/agriculture/agrista/2001/table_en/index.htm

- Agriculture in the European Union. Statistical and economic information 2002 at

http://europa.eu.int/comm/agriculture/agrista/2002/table_en/en34.htm

¹ Based on the definition of direct aids in the Annex to Regulation (EC) No. 1259/1999 of 17 May 1999 (JO L 160, p.113).

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Table 5. Export subsidies and food aid

Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Wheat and wheat flour				
1996-1997	317.5	(Wheat eq.) 14,410.0	(Wheat eq.) 775.6	15,035.3
1997-1998	1,777.7	(Wheat eq.) 13,038.1	(Wheat eq.) 711.1	11,450.9
1998-1999	500.3	(Wheat eq.) 14,017.3	(Wheat eq.) 1,186.1	12,345.0
1999-2000	509.3	(Wheat eq.) 15,606.2	(Wheat eq.) 630.8	15,461.9
2000-2001	108.3	(Wheat eq.) 10,203.7	(Wheat eq.) 436.4	13,520.6
2001-2002	8.5	(Wheat eq.) 1,650.1	(Wheat eq.) 170.9	9,614.1
Coarse grains				
1996-1997	389.0	11,844.5 ²	205.0	12,283.9
1997-1998	273.2	8,770.1 ²	215.5	7,938.9
1998-1999	764.1	14,774.9 ^{2,11}	119.3	12,853.0
1999-2000	730.2	18,379.2 ^{2,11}	136.544.8	16,799.9
2000-2001	191.5	7,080.1 ²	44.8	13,958.6
2001-2002	112.8	3,922.4 ²	58.2	9,161.0
Rice				
1996-1997	72.2 ⁹	226.5 ³	42.5	240.0
1997-1998	32.6	155.9 ^{3,11}	110.2	320.8
1998-1999	25.6	143.9 ³	125.5	274.1
1999-2000	26.4	140.4 ^{3,11}	63.5	218.7
2000-2001	32.3	132.3 ³	21.2	218.2
2001-2002	30.3	132.2 ³	51.5	242.9

Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Rapeseed				
1996-1997	0.0	0.0		444.6
1997-1998	0.0	0.0		350.7
1998-1999	0.0	0.0		798.1
1999-2000	0.0	0.0		1,964.3
2000-2001	0.0	0.0	0.8	449.7
2001-2002	0.0	0.0		254.2
Olive oil				
1996-1997	39.0	140.4 ¹¹		135.4
1997-1998	7.8	94.6		192.5
1998-1999	0.0	0.0		108.6
1999-2000	0.0	0.0		264.8
2000-2001	0.0	0.0		240.4
2001-2002	0.0	0.0		333.0
Sugar ⁴				
1996-1997	525.0	1,200.3 ⁵	19.5 ⁵	4,536.0
1997-1998	779.0 ⁹	1,699.1 ⁵	19.8	5,670.4
1998-1999	794.8 ⁹	1,546.1 ⁵	10.0	5,116.3
1999-2000	470.1	970.6 ⁵	22.0	5,669.0
2000-2001	372.7	197.2 ⁵	24.3	6,023.0
2001-2002	482.8	1,051.9 ⁵	25.1	4,097.0

Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Butter and butteroil				
1996-1997	551.8	276.0 ⁶		258.5
1997-1998	310.5	169.0 ⁶	0.4	165.1
1998-1999	285.7	165.3 ⁶		150.7
1999-2000	333.4	193.9 ⁶	0.2	161.1
2000-2001	337.9	197.2 ⁶	0.3	175.2
2001-2002	324.9	193.7 ⁶	0.8	184.4
Skim milk powder				
1996-1997	170.1	269.5	5.0	273.0
1997-1998	116.4	175.5	6.0	226.5
1998-1999	191.7	221.5	2.5	199.5
1999-2000	337.8 ⁹	417.2	46.0	346.6
2000-2001	26.2	128.0	1.9	233.0
2001-2002	36.7	86.9		118.0
Cheese				
1996-1997	271.3	401.9	0.6	492.5
1997-1998	176.0	324.1		423.0
1998-1999	149.1	226.3		321.0
1999-2000	235.8	305.2	0.5	376.6
2000-2001	238.0	304.6		452.7
2001-2002	188.6	279.5		424.2

Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Other milk products				
1996-1997	732.0	1,140.0	1.7	1,361.4
1997-1998	756.4	1,116.9	0.8 ¹¹	1,284.4
1998-1999	758.9	951.1	0.5	1,153.1
1999-2000	905.4	1,104.0	2.2	1,271.6
2000-2001	410.1	872.6	1.1	1,129.9
2001-2002	402.2	763.8		1,126.4
Beef meat				
1996-1997	1,526.7	1,177.4 ¹¹	1.6 ⁷	1,081.9
1997-1998	840.7	947.2 ⁷	2.1	849.2
1998-1999	642.9	721.7 ⁷	53.9	760.9
1999-2000	726.1 ⁹	766.1 ⁷	101.8	829.1
2000-2001	383.3	474.7 ⁷		515.9
2001-2002	388.4	483.5 ⁷	19.2	536.4
Pigmeat				
1996-1997	71.1	285.9 ⁷		804.4
1997-1998	74.4	212.7 ⁷	0.2	898.2
1998-1999	356.1 ⁹	742.7 ⁷	22.0	1,189.5
1999-2000	243.0 ⁹	694.0 ⁷	36.5	1,199.8
2000-2001	33.8	128.6 ⁷		1,543.8
2001-2002	20.0	71.6 ⁷		970.4
Poultry meat				
1996-1997	73.0	401.4		870.0
1997-1998	76.1	393.7 ^{7,11}		1,009.8
1998-1999	89.7	343.4 ⁷		969.1
1999-2000	75.1	318.0 ^{7,11}		1,042.2
2000-2001	56.8	260.6 ⁷		979.2

2001-2002	60.2	230.4 ⁷		1,105.3
Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Eggs				
1996-1997	6.9	67.9 ⁸		90.8
1997-1998	13.0	103.8 ⁸		120.5
1998-1999	17.3	114.2 ^{8,11}		138.3
1999-2000	14.1	100.6 ⁸		125.7
2000-2001	8.1	83.8 ⁸		106.7
2001-2002	6.0	80.2 ⁸		107.7
Wine				
1996-1997	59.6 ⁹	3,034.9 ¹⁰		10,713.9
1997-1998	37.2	3,016.4 ^{10,11}		12,873.9
1998-1999	29.3	2,471.5 ¹⁰		10,421.0
1999-2000	26.2	2,386.7 ¹⁰		10,715.2
2000-2001	23.7	2,278.9 ¹⁰		11,646.0
2001-2002	22.9	2,283.1 ¹⁰		11,869.6
Fruit and vegetables, fresh				
1996-1997	61.8	874.2		2,169.6
1997-1998	26.0	837.4		2,192.8
1998-1999	31.6	763.0	0.1	1,868.2
1999-2000	37.2	872.6 ¹¹	1.4	2,319.3
2000-2001	27.0	738.4		2,416.3
2001-2002	20.8	704.4	0.5	2,259.4

Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Fruit and vegetables, processed				
1996-1997	10.2	136.1		308.6
1997-1998	5.7	98.5		304.7
1998-1999	4.5	87.1		327.1
1999-2000	5.5	108.4		361.3
2000-2001	3.9	76.1		349.4
2001-2002	3.6	78.7		401.4
Raw tobacco				
1996-1997	3.4	2.0		156.8
1997-1998	0.0	0.0		129.8
1998-1999	0.0	0.0		131.4
1999-2000	0.0	0.0		127.2
2000-2001	0.0	0.0		144.9
2001-2002	0.0	0.0		136.4
Alcohol				
1996-1997	118.5	1,070.4 ¹⁰		1,545.4
1997-1998	105.5	961.5 ¹⁰		1,360.4
1998-1999	121.2 ¹²	1,104.4 ¹⁰		1,884.7
1999-2000	218.6 ¹¹	1,998.3 ¹⁰		1,998.3
2000-2001	95.6	891.0 ¹⁰		1,260.2
2001-2002	52.8	500.0 ¹⁰		1,029.0

Description of products	Budgetary Outlay (Mio ECU) ¹	Quantity of subsidized exports (000 t)	Food Aid (000 t)	Quantity of Total Exports (000 t product weight)
Incorporated products				
1996-1997	565.9	-	15.1	-
1997-1998	553.1	-	12.1	-
1998-1999	573.4 ¹²	-	9.1	-
1999-2000	719.5 ¹²	-	17.0	-
2000-2001	414.0	-	8.0	-
2001-2002	411.6	-	11.6	-

Source: European Communities notifications to the WTO.

Note: According to the modalities agreed during the Uruguay Round, members undertook reduction commitments on subsidies on agricultural products contingent on their incorporation in exported products. Such reduction commitments were based on aggregate budgetary outlays in respect of subsidies on agricultural primary products incorporated in exported products.

¹ Data on budgetary outlays correspond to the relevant marketing year except for incorporated products where the data refers to the financial year.

² Product weight, except malt which is expressed in cereal equivalent.

³ In milled rice equivalents.

⁴ Does not include exports of sugar of ACP and Indian origin on which the Community has no reduction commitments.

⁵ In white sugar equivalents.

⁶ In butter equivalents.

⁷ In carcass equivalents.

⁸ In "shell eggs" equivalents.

⁹ The EC exceeded both the budgetary outlay and quantity annual commitment levels for the reporting period. The EC availed itself of the flexibility provided by the AoA to roll over unused quantities and budgetary outlays of previous years.

¹⁰ 000 hl

¹¹ This volume exceeded the annual commitment level of the EC for the corresponding year. The EC availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

¹² The EC exceeded the annual level of commitment for budgetary outlays. The EC availed itself of the flexibility provided by the AoA to roll over unused quantities of previous years.

ANNEX 3

Dispute Settlement cases related to subsidies and countervailing measures involving agricultural products

Country requesting consultation	Consulted country	Year	Issue
US	Mexico	2003	Rice and beef antidumping measures taken by Mexico
Thailand	EC	2003	EC subsidies on sugar and sugar-containing products
Brazil	USA	2002	USA subsidies on up-land cotton
Australia	EC	2002	EC's Common Organisation of the Market in sugar and its application and implementation
Brazil	EC	2002	Consultation on EC's common organisation of Market in sugar
Canada	USA	1999	Countervailing Duty Investigation with Respect to Live Cattle from Canada
EC	Argentina	1998	Countervailing Duties on Imports of Wheat Gluten from the European Communities
USA	Canada	1997	Measures Affecting the Importation of Milk and the Exportation of Dairy Products
USA	EC	1997	Measures Affecting the Exportation of Processed Cheese
Sri Lanka	Brazil	1996	Countervailing Duties on Imports of Desiccated Coconut and Coconut Milk Powder from Sri Lanka
Phillipines	Brazil	1995	Measures Affecting Desiccated Coconut

Source: WTO. Disputes (requests for consultations) on subsidies and countervailing measures database.



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