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COMMENTS ON THE WTO AGRICULTURE CHAIR'S APRIL 2011 REPORT (TN/AG/26)

SYNOPSIS

The Chair of the Agriculture negotiations provided a report (TN/AG/26) of the state of negotiations on 21 April 2011. His report illustrates that very little had changed in the last two years. Given this situation, the Chair appended the draft negotiating modalities of December 2008 (TN/AG/W/4/Rev.4) to his report.

This Analytical Note provides some commentary on the various outstanding issues highlighted by the Chair. This is followed by a development assessment of the December 2008 modalities (TN/AG/W/4/Rev.4). The most glaring feature of this 'Rev.4' text is the myriad flexibilities provided to developed countries in the areas of Overall Trade Distorting Supports (OTDS); Aggregate Measure of Support (AMS); Blue Box; Green Box; Sensitive Products; Tariff Capping; Tariff Quota Creation; Tariff Escalation. In comparison, the Special and Differential Treatment provided to developing countries are much more limited, such as LDC flexibilities (only effective for LDCs not in customs unions); SVE flexibilities; 2/3 cuts for developing countries; Special Products; Special Safeguard Mechanism (SSM). The SSM, as compared with the Special Safeguard Provision enjoyed by developed countries is a clear illustration of this point.

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Geneva, Switzerland

Executive Summary

1. The Chair of the Agriculture negotiations provided a report (TN/AG/26) regarding the state of WTO agriculture negotiations on 21 April 2011. His report illustrates that very little had changed in the last two years. Given this situation, the Chair appended the draft negotiating modalities of December 2008 (TN/AG/W/4/Rev.4) to his report.

2. This Analytical Note gives a commentary on the various outstanding issues highlighted by the Chair. The issues include specific elements in the Blue Box; Cotton; Sensitive Products; Tariff Cap; Tariff Quota Creation; Tariff Simplification; Special Products; Special Safeguard Mechanism; Tropical and Diversification Products and Long-standing Preferences and Preference Erosion; as well as other issues. It should be noted that not all delegations agree that these are the only outstanding issues.

3. This bulk of this Note then provides a development assessment of the December 2008 modalities (TN/AG/W/4/Rev.4). The most glaring feature of this 'Rev.4' text is the myriad flexibilities provided to developed countries in the areas of

- Overall Trade Distorting Supports (OTDS);
- Aggregate Measure of Support (AMS);
- Blue Box;
- Green Box;
- Sensitive Products;
- Tariff Capping;
- Tariff Quota Creation;
- Tariff Escalation.

4. In comparison, the Special and Differential Treatment provided to developing countries are much more limited, such as

- LDC flexibilities (only effective for LDCs not in customs unions);
- SVE flexibilities;
- 2/3 tariff and domestic support cuts for developing countries;
- Special Products;
- Special Safeguard Mechanism (SSM).

5. A few key points are worth noting:

6. Firstly, the imbalances developing countries had sought to correct arising from the Uruguay Round have not in fact been corrected in the package on the table. In domestic supports, only 'paper cuts' have been offered. Annex 1 illustrates the 'box-shifting' that has taken place instead – whereby developed countries have retained and even increased their use of 'old' flexibilities (e.g. green box) and have even put in place new ones (e.g. the blue box; AMS; base periods etc.) in order to maintain overall levels of domestic supports.

7. Secondly, whilst it sounds very generous that developing countries only have to undertake 2/3 the percentage of domestic support cuts committed to by the developed countries, in reality, this means that Members such as the EU providing up to over 80€ billion in supports per year, and the US over 94 USD billion a year will undertake 'cuts' which they have sidestepped through 'box-shifting'. At the same time, developing countries providing $10 billion or less in domestic supports will have to cut their supports by two-thirds the percentage of 'cuts' made by developed countries. Furthermore, the majority of developing countries – 80 of them – that notified 0 Aggregate Measure of Supports (AMS) in the Uruguay Round will not be able to provide any AMS supports beyond the minimal de minims levels. This means that those who had privileges in the past can continue to have these privileges (with restrictions that are very weak) whilst those (developing countries) that did not enjoy these in the past will not enjoy them in the future.

8. Another feature illustrating the weakness of the 'flexibilities' provided to developing countries is the Special Safeguard Mechanism (SSM). The SSM, as compared with the Special Safeguard Provision enjoyed by developed countries is a clear illustration of how developed countries have maintained flexibilities, whilst developing countries presently have a much poorer version of these flexibilities.

9. All in all, the agriculture package remains highly imbalanced from a development perspective. It will not support developing countries deal with their current challenges – of high international food prices; the urgent need to increase domestic / regional food production; and the recurrent problem of import surges, often of subsidized products from the OECD countries, which displace local farmers from their domestic markets, with serious consequences on rural livelihoods, employment and food security.

I. INTRODUCTION

10. The WTO's Chair of the Agriculture Special Session released a report of 12 pages (TN/AG/26) on 21 April 2011, capturing the work he has undertaken since assuming the role of Chair two years earlier in April 2009. Together with this report, he appends the 6 December 2008 draft text, TN/AG/W/4/Rev.4. The implication is that this text (Rev.4 for short) is the basis of negotiations. However as pointed out by some senior trade diplomats of developing countries, there has not been a serious discussion among WTO members on this draft. Thus, future negotiations should not be based only on this draft.

11. The Chair's report shows that there have not been any concrete changes since the release of Rev.4. The main outstanding questions to be resolved in Rev.4 are still the same ones on the table.

12. The main problems with the current Agricultural text on the table (Rev.4) for developing countries, however, are not immediately obvious when reading the Chair's report (TN/AG/26). This is in part because there are many areas which are fundamentally imbalanced for developing countries, but which, according to the current and previous Chairs are now 'stabilized' and are therefore not major issues requiring discussion. However, these issues remain to be resolved.

13. This commentary points out the elements of imbalance (between developed and developing countries) in the Rev.4 text. The imbalances can be characterized as follows:

i. The imbalance within the agricultural text itself, in terms of the treatment provided to developed and developing countries. Ironically, there are in fact many Special and Differential Treatment (S&D) provisions for developed Countries, whilst for developing countries which are the countries that are supposed to enjoy the S&D, the S&D provisions are very weak.

ii. The imbalance in terms of the impact on agricultural trade, and in particular, the implications for many developing countries' small farmers. Today, agricultural trade is already imbalanced. The bulk of production or trade is concentrated in only a few countries. The majority of developing countries have farmers that are still predominantly engaged in subsistence agriculture. The rules are imbalanced in that they will enable the continuation of protectionist policies of developed countries, especially the US and EU, which have already protected their farmers for decades, whilst reducing further the policy tools available to support subsistence farmers in developing countries.

14. Most developing countries' subsistence farmers have been experiencing long-term crises caused by low applied tariffs and no or few buffers against often artificially cheap imports (due to OECD countries' subsidies). These import surges have for example in parts of Africa, damaged farmers' livelihoods in poultry, dairy, vegetable oils, cereals etc. This has led to the urban-rural migration and increased the number of urban poor. This situation is worse in countries where alternative employment is not available.

15. Especially in the light of the present high world food prices, it is widely acknowledged that many developing countries face difficulties in importing expensive food, and in facing the volatility of food prices, and that they must increase their own food production. Application of Rev.4's disciplines, however, will weaken their ability to do this – in large part because their bound tariffs will have to be lowered. This will in some cases affect applied tariffs and in general will also restrict the policy space required to raise tariffs to enable them to have a viable agriculture sector, particularly as these countries lack the financial resources to provide subsidies.

16. This paper will first look at:

    i. The outstanding issues highlighted by the Chair in his Report (TN/AG/26); and

    ii. The paragraphs providing flexibilities (indeed, Special and Differential Treatment) for developed countries. These numerous provisions will also be compared to the much more restricted S&D provisions for developing countries.

II. THE CHAIR'S REPORT AND OUTSTANDING ISSUES TO BE RESOLVED

17. The Agriculture Chair reports that the following remain outstanding issues in the agriculture negotiations. Most of these issues pertain to market access issues. Almost none relate to the problematic domestic supports provisions in Rev.4:

A. Blue box (para 42, Rev.4)

18. A new Blue Box has been created in these negotiations as a flexibility (in effect a Special and Differential provision) for the US. The only apparently outstanding issue here is the bracketed numbers in paragraph 42 of Rev.4, also pertaining to the US. The US, within the 2.5% average total value of agricultural production between 1995-2000, can provide [(110%) or (120%)] of the legislated maximum product-specific expenditure under the 2002 Farm Bill. i.e., if and when prices drop, the US can use the new Blue Box to provide product-specific subsidies to make up for the price drops.

19. The G20 has noted that such country-specific demands are 'excessive' and 'do not seem justified on technical grounds' (JOB(09)/174, 20 November 2009). They are willing to concede if there is overall balance in the negotiations. The Chair notes (TN/AG/26) that no further technical work is required in this area for a decision.

B. Cotton (para 54/55, Rev.4)

18. A trade solution, according to the Chair 'remains unclear'. Whilst not naming countries, it is clear that the US is not willing to agree to the text on cotton, reducing domestic supports more ambitiously. But it has also not put forward new technical or substantive contributions. This is despite the political-level contacts that have taken place.

C. Sensitive Products (para 71, Rev.4 and TN/AG/W/5)

19. Sensitive Products is a flexibility provision for developed countries in Rev.4. Tariff cuts on Sensitive Products will be less than the formula cuts. In return, countries enjoying 'Sensitive Products' flexibilities will have to provide for tariff quota expansion as a percentage of domestic consumption. The main outstanding issue is the percentage of tariff lines that can be designated as sensitive products. It is more of less accepted that this would be 4% of tariff lines for developed

countries. However, Canada is requesting for 6% and Japan for 8%. Various formulations of tariff quota expansions have been explored between the G20 (developing countries) and Canada and Japan, but there is as yet no agreement. The G20 countries have a tariff quota expansion proposal that is slightly more ambitious than what is in Rev. 4 or the Annotated text of TN/AG/W/5, 6 December 2008.

20. It should also be noted that the number of tariff lines where developing countries can have zero cuts in Special Products is 5%. There has always been a linkage between the percentage of Sensitive Products and the percentage of tariff lines for Special Products. If the percentage of sensitive products rises, the percentage of Special Products lines with zero cuts should also increase.

D. Tariff Cap (para 76, Rev.4 and TN/AG/W/5)

18. Developed countries' tariffs after the tariff reduction commitments should not be over 100%. If they are, according to Rev.4 (para 76), these should only be confined to their sensitive products and countries are to provide an addition 0.5% of quota expansion of their domestic consumption. However, several countries are not satisfied with this, namely Iceland, Japan, Norway and Switzerland. They want tariffs beyond 100% even for non-sensitive products.

19. Within brackets, Rev.4 allows for this, provided the same 0.5% tariff quota expansion is given and tariff cuts are steeper or the implementation period for tariff reduction is accelerated. These are very low ambition 'payment' options. The Chair notes in his Report (TN/AG/26, 21 April 2011) that 'views remain sharply divided'. There is not yet agreement that tariffs outside of sensitive products can exceed 100% and there is no agreement on the payment options.

20. The G20 has made the point that the Swiss formula in NAMA 'implies a capping for all countries' (JOB(09)/174, 20 November 2009). (A coefficient of 22 for instance, would mean that the highest tariff level is 22%). They are therefore unhappy with the capping exceptions for sensitive products in Paragraph 76; the possibility to even have high tariffs beyond sensitive products; and the weak payment options.

E. Tariff Quota Creation (Para 83, Rev.4 and TN/AG/W/6)

18. Most sensitive tariff lines in developed countries already have tariff quotas from the Uruguay Round.

19. Some developed countries now would like to designate some lines which do not currently have tariff rate quotas (TRQs) to be a Sensitive Product (i.e. to be part of the 4% of Sensitive Product lines). There is reluctance by the G20 to agree to this flexibility because there would be 'systemic and commercial implications' (JOB(09)/174, 20 November 2009). They also note that this increases the gap in the level of ambition between NAMA and agriculture. However, they are willing to consider the possibility but only within strict conditions which the demandeurs of new TRQs have not agreed to.

F. Tariff Simplification (para 104, Rev.4)

18. Most of the discussion seems to have centered around the option where 90% of tariffs lines are supposed to be expressed as simple ad valorem tariffs (para 104, Rev.4). However, there is great confusion in this area, where Annex N of Rev.4, if implemented, may allow some countries to bind less than 90% of their tariff lines as simple ad valorem tariffs. The Chair acknowledges in his Report that there are some differences in terminology and procedures between paras 104 – 108 and Annex N.

19. There is as yet no agreement on how the simplification would be carried out. The G20 countries are essentially apprehensive that those countries undertaking tariff simplification might resort to 'dirty simplification', setting ad valorem tariffs at higher levels than their non-ad valorem equivalents, and that the promised 90% binding in ad valorem terms may not actually be delivered.

G. Special Products (SP) (para 129, Rev.4)

20. This is a flexibility for developing countries. According to Rev.4, 12% of tariff lines can be self-designated as 'Special Products'. On average, the 12% of lines must have their tariffs cut by 11%. 5% may have no cut. If this is the case, then the remaining 7% would have to be cut by 19% to arrive at the average 11% cut. This 19% reduction is steep for what are supposed to be special products.

21. For some developing countries, this paragraph has been stabilised. However, for some countries in the G33, the SP should have had a 'two-tier' structure:

- tariff lines experiencing 0 cuts; and
- tariff lines that would have an average cut.

22. Some exporting countries, according to the Chair's Report (TN/AG/26) are concerned about the SPs' impact on their exports.

H. Special Safeguard Mechanism (paras 144/145, Rev.4 and TN/AG/W/7)

23. This is an area where some of the most intense work has been carried out since the release of Rev.4. As the Chair notes in TN/AG/26, many submissions have been made – mostly regarding the conditionalities (e.g. pro-rating; cross-check; seasonality etc) and remedies (eg. in the price-based SSM) that are contained in Rev.4 and in TN/AG/W/7. The G33 countries have asked for relaxation of these conditionalities so that the SSM can actually be operable, but the agricultural exporting countries are on the contrary asking for a tightening of these conditionalities so that their exports would not be affected. Some countries such as SVEs have also submitted proposals requesting flexibilities, given their vulnerability to agricultural imports. The modalities in the SSM thus remain contentious.

24. In the section where the Chair in his report makes some typological corrections, a change has been made to Footnote 24 pertaining to the SSM. According to the change relating to Para 136 of Rev.4, the price-based SSM cannot now be used unless a shipment is 'within the range of normal commercial shipments' of that product entering the customs territory of the importing developing country Member. This will make it even more difficult to use the price-based SSM. It should be noted that the US has used the price-based SSG for volumes as little as 14 and 40 kgs.[1]

I. Tropical and Diversification Products; Long-standing Preferences and Preference Erosion (para 148 and Annex G, and para 149 and Annex H, Rev.4)

25. Some Latin American countries have requested that items identified as Tropical Products would have steeper tariff cuts. However, there is some overlap between this list of Tropical Products and the list of Preference products for which ACP

[1] For details, see South Centre 2009 'The Volume-based Special Safeguard Mechanism (SSM): Analysis of the Conditionalities in the December 2008 WTO Agriculture Chair's Texts', SC/TDP/AN/AG/9.

countries want longer liberalization periods for, so that their preference erosion would take place at a slower rate.

26. Bananas was one such product that belonged to both groups. Others include sugar, flowers, fruits and their juices, arrowroot, peanut oil, tobacco etc. An agreement was made between the EU, the Latin American countries and ACP countries on Bananas on 15 December 2009. Accompanying this was also an agreement resolving the Tropical Products/ Preference Erosion conundrum. Sugar, for instance, was to be a 'sensitive' or 'preference erosion' product which would have a longer liberalization timeframe.

27. The 15 December agreements were a breakthrough in the negotiations, particularly in the area of bananas where the MFN tariff reductions were decided upon. EU agreed to provide 200 € million to ACP countries to adjust to their preference erosion.

28. According to the Chair (TN/AG/26), there are some WTO members who were not party to the agreements which have concerns. This EU/ACP/Latin American deal is seen to be a 'plurilateral' agreement that is still in need of being multilateralised. Some are worried about the impact on their markets. However, the Chair notes that 'in the absence of multilateral agreement, the 15 December proposals should be seen as alternatives to the bracketed options in TN/AG/W/4/Rev.4' (para 43, TN/AG/26).

J. Other issues

29. The Chair notes that there are other issues which have been discussed for which proposals have been tabled, which go beyond what is bracketed or annotated. No conclusions have been arrived at and he therefore does not provide details.

30. In addition to these negotiating issues, the Chair gives an update of the work done under 'Template Development' and 'Data-related Activities'. Both these areas are related to the scheduling of commitments members have to do once the modalities negotiations have been finalised.

31. All in all, the report especially in the area of Rev.4 issues, is nearly a word-for-word copy of a similar one he had provided a year before (TN/AG/25, 22 March 2010), albeit with some additions in a small number of areas, e.g. on the SSM.

III. Imbalances in the Agriculture Text: Flexibilities for Developed Countries and Developing Countries

32. The extent of flexibilities for developed countries in Rev.4 is very wide and quite astounding. They in fact constitute Special and Differential Treatment for developed countries, when SDT is supposed to be for developing countries.

III.1. Flexibilities for Developed Countries

A. Domestic Supports

i) Overall Trade Distorting Domestic Support (OTDS) cuts for the US and the EU will not actually reduce their real applied OTDS.

33. The US' current bound level of OTDS is $48.3 billion. However, the applied OTDS was $12.9 billion in 2007. The 60% cut they will undertake (para 3b, Rev.4) will bring the bound OTDS level to $14.5 billion. This is still above the 2007 level. Thus the US does not have to reduce its actual or applied OTDS. It only has to "cut water" (the value between the bound and applied level).

34. It is a similar situation for the EU. The EU's bound OTDS level is 110.3€ billion. The OTDS cut to be undertaken is 80% (Rev.4, para 3a) and thus the bound level will be 22€ billion. However, in 2007, the actual or applied OTDS of the EU was 19.9€ billion, which was below the bound level. Thus, the EU need not cut its actual OTDS under the new rules. It would only be cutting "water."

35. Since the Uruguay Round, the US and EU have not reduced their overall agricultural domestic supports. Though their OTDS has been reduced, much of the subsidies have been shifted into the Green Box (see later section on Green Box).

ii) Flexibilities for developed countries in Product-Specific Aggregate Measures of Support (AMS) Limits

36. A significant amount of supports provided in US, EU and others are product-specific supports and they are commodities that are exported in competition with

staple crops or very important crops in developing countries e.g. cotton, corn, wheat, rice, meats etc.

37. It is therefore of major interest to developing countries that the subsidies for each of these products are capped and also reduced. However, several kinds of loopholes were introduced into the Rev.4 text (paras 22 – 26) to weaken disciplines in this area.

a. In the Uruguay Round, the AMS for developed countries were reduced by 20% from 1995 – 2000. The current disciplines are Uruguay Round-minus, since they do not require AMS reduction. Furthermore, Para 22 states that countries' average AMS between 1995- 2000 (the UR implementation period) will be the cap for product specific AMS in the Doha Round. This actually means that product-specific AMS entitlements can be increased slightly in the Doha Round, as compared to the end of the UR implementation period!
b. For all developed countries, the caps for product-specific AMS is the average of the 1995 – 2000 period. Para 23 states that for the US, this base period will be 1995 – 2004. This is because the US provided some high product specific supports to key commodities after 2000. The effect of this is that US' product-specific AMS allocation for cotton will be increased from $800 million – $1.136 billion, and for rice, from $176 million to $313 million.[2]
c. Para 24 allows for US, Canada, EU and Switzerland[3] to provide AMS supports at present levels if they have done so in recent years for certain commodities above the de minimis, even if supports had been within the de minimis in the base 1995 – 2000 period.
d. Para 25 allows developed countries to provide product-specific AMS supports up to the maximum ceiling of their de minimis, if their provision in the base period had been less than that maximum level.
e. Countries which have had higher levels of product-specific AMS in the two most recent years of notifications compared to the base period can have two extra years of implementation, as opposed to immediate capping (para 26 of Rev.4). This will be of benefit to Switzerland, Norway and Japan. [4]

[2] Product-specific AMS calculations in Ratna R, Das A and Sharma S (2011) 'Doha Development Agenda for Developed Nations: Carve Outs in Recent Agriculture Negotiations', Discussion Paper no. 8, Centre for WTO Studies, India.
[3] See Ratna, Das and Sharma (2011) ibid for the product-specific details.
[4] See Ratna, Das and Sharma (2011) ibid for the country-specific details.

iii) Blue Box Flexibilities

38. Several types of loopholes are provided to developed countries in the Blue Box subsidies. One of the most prominent is the new expanded Blue Box for the United States.

a. Apart from 1995, the US has not provided Blue Box payments. Blue Box payments related to production-limiting programmes were provided in the Agreement on Agriculture, intended to reduce the intensity of production. The US does not have these programmes. However, since it has reached its limits on AMS support ceilings, it wanted another category of supports to which it could shift some of its AMS payments. The text created a new Blue Box for the US in Para 35b of Rev.4. This new Blue Box gives the US an additional 2.5% of its agricultural production value of 1995 – 2000 to provide what are essentially AMS supports.
b. Blue Box supports cannot exceed 2.5% of the value of production in 1995 – 2000. Large providers of the Blue Box (more than 40% of OTDS is blue in the base period) are provided with a longer implementation period and a more generous Blue Box ceiling entitlement (Para 39 of Rev.4).
c. Para 41 provides flexibility for the EU and Japan.[5] They had not provided Blue Box payments for all the 'Blue box' crops in every single year of the base years. They are now not required to use the base year average (which would be low), but can use the average of the 3 consecutive years in the base period where such supports were given.
d. Para 42 gives the US its own specific way of calculating its Blue Box product-specific ceiling, using the 2002 Farm Bill as a baseline. US can provide (110%) or (120%) of its 2002 Farm Bill product-specific allocation as its Blue Box ceiling as long as in total, its Blue Box allocation is within the 2.5% value of production (in 1995-2000) limit. i.e. the general rule of abiding by the 1995 – 2000 average for product-specific Blue Box payments will not apply to the US!
e. Paragraph 47 addresses the situation where no product-specific support had ever been provided for a product – either in the Blue Box or the AMS. Countries would be able to do so, within specified limits (total amounts of such supports cannot exceed 5% of total Blue Box payments and individual products cannot exceed 2.5% of total Blue Box payments). This is a once-only provision in the

[5] See Ratna, Das and Sharma (2011) ibid for the country-specific details.

Round and countries have to inscribe the products and the amounts into their schedules.

iv) *Green Box Flexibilities*

39. Of all the domestic support loopholes, the Green Box loophole is the most serious, given the tens of billions of dollars of subsidies involved. The reductions in export subsidies as well as supports in the AMS have not led to overall reductions in domestic supports, but instead to increased supports in the Green Box for *both* the US and the EU.

40. Whilst the US's Green Box provision in 1995 was $46 billion, it has increased to $81 billion in 2008. (See table in Annex 1). For the EU, the increase has been even more pronounced, from 18.7€billion in 1995 to 62.6€ billion by 2007; at the same time, its Amber box (AMS) subsidies have fallen from 50€ billion in 1995 to 12€ billion in 2007. The EU's Common are Agricultural Policy reform has seen a shifting from export subsidies and the Amber Box to the Green Box. One of the loopholes in the Agriculture Agreement is that the Green Box was not capped in the Uruguay Round, nor are there adequate disciplines. Unfortunately the new disciplines on the Green Box in the Doha talks are also inadequate.

41. The Green Box is supposed to be non-trade distorting or minimally distorting. However, in practice, this is not the case. Some panel findings as well as several studies have found that Green Box subsidies used by the US and EU have been trade distorting.

42. The panel in the Brazil-US cotton case at the WTO ruled that US green box payments did not belong there because they were tied to production conditionalities (producers were not allowed to plant fruit, vegetables and wild rice), leading to production distortions.

43. Posing an even greater challenge to the fundamental character of the Green Box, the Appellate Body in the Dairy Products of Canada case, in its 3 December 2001 report stated that:

'We consider that the distinction between the domestic support and export subsidies disciplines in the Agreement on Agriculture would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products. Broadly stated, domestic support provisions of that Agreement, coupled with high levels of tariff protection, allow extensive support to producers, as compared with the limitations imposed through the export subsidies disciplines. Consequently, if domestic support could be used, without limit, to provide support for exports, it would undermine the benefits intended to accrue through a WTO Member's export subsidy commitments (para 91). The potential for WTO Members to export their agricultural production is preserved, provided that any export-destined sales by a producer at below the total cost of production are not financed by virtue of governmental action' (para 92).

44. The distortions resulting from the Green Box are due to several factors:

a. *Size of subsidies and wealth effects*. A paper published by the World Bank found that large direct payments influence production decisions: they have risk reduction effects that lead to increased output; they increase base income; help cover fixed costs; influence farmers' investment and exit decisions; and improve farmers' credit worthiness.[6]
b. *Size of payments to general services, environmental services etc*. Large components of the Green Box are composed of General Services and Environmental Services. UNCTAD India 2006 found that their sheer quantity reduces costs of production significantly (by 11%-16% in the study).[7]
c. *Updating and expectations about future policies*. Direct or decoupled payments are often provided on the basis of a historical period. This would not be trade distorting if these payments were limited in time and would be phased out. However, in the case of the US and the EU, the reference years used are being updated. As a result, farmers are not making decisions delinked from production. Many continue to produce in order to ensure that when the historical period is updated, their payments will be assured.
d. *Planting restrictions*. Payments that are tied to planting restrictions affects production. Farmers will continue to produce what they are used to producing before, with trade distorting effects. This was established by the panel in the WTO cotton dispute.
e. *Co-existence of coupled and decoupled payments enhances incentives to overproduce*. Some WTO members mix decoupled payments (Green Box) with coupled

[6] Baffes, F and Gorter H 2005 'Experience with Decoupling Agricultural Support' in Global Agricultural Trade and Developing Countries, edited by Aksoy A and Beghin J, World Bank, Washington.
[7] UNCTAD India Team 2006 'Green Box Subsidies : A Theoretical and Empirical Assessment', India.

payments (e.g. AMS). There is then no real de-linking between payments and production. For example, farmers may receive only 50% of payments if they do not produce (direct payments), but receive 100% of payments if they produce (the other 50% from coupled payments). This makes it highly likely that farmers will continue to produce.

45. In Rev.4, the flexibilities developed countries have in the Green Box have been reinforced and broadened, rather than tightened.

a. The Base Historical Period for Green Box Payments can be updated. In Annex B of Rev.4, in several places, it is provided for that the base historical period upon which direct Green Box payments are made can be exceptionally updated. This can be found in Paragraph 11 b of Annex B (regarding structural adjustment assistance provided through investment aids), and also paragraph 13b (payments under regional assistance programmes). Such updating should not be allowed (see item c above).

In fact, 11b of Annex B in Rev.4 even allows Members which had previously not used such payment support schemes to do so, even in the absence of a pre-existing historical record. This flexibility should only have been limited to developing countries, but is now provided to all members.

b. Rev 4 also fails to make clear that for developed countries, Green Box payments should only be allowed for farmers that have low levels of income, landholding or production levels. The criteria what is 'low income' should also be clearly established.

B. Market Access

46. Developed countries are also provided with flexibilities in the market access component.

Sensitive Products

i) Para 71 as described earlier, provides for 4% of tariff lines to be Sensitive Products. However Canada wants this to be 6% and Japan 8%.
ii) Para 75, is the flexibility for countries that want another extra 2% as Sensitive Products. This would apply to Canada and Japan, and perhaps to some others.
iii) Para 82 has to do with implementation of tariff quota expansion for Sensitive Products. This shall take place over 3 years, but the text does not require this to be carried out in equal installments i.e. after the first installment of ¼ of the quota expansion, the rest can be backloaded.

Tariff Capping

i) Para 76 as described earlier, allows tariffs to go over 100%, even if they are not 'Sensitive products'.

Tariff Quota Creation

i) Para 83, also discussed earlier. Some developed countries want to have new tariff rate quota (TRQ) lines within their Sensitive Products category.

Tariff Escalation

i) The modalities call for steeper tariff cuts where the tariff on a processed product is higher than the tariff on its primary product. This is only for a limited list of products in Annex D (Rev.4). A flexibility for sensitive products is that the steeper tariff escalation cuts do not apply to any Sensitive Product line (para 89).

III.2. FLEXIBILITIES FOR DEVELOPING COUNTRIES

47. There are some general flexibilities for developing countries:

A. LDC Flexibilities

48. It is agreed that LDCs will not have to undertake any reduction commitments. This is a principle inherited from the Uruguay Round.

49. However, many LDCs are in (or plan to be in) customs unions with non-LDCs. They effectively will have to undertake the same tariff cuts as their non-LDC neighbours. LDCs more than any other grouping of developing countries experience the highest volume of import surges – up to 23% of all LDC agricultural imports are import surges.[8]

B. Small and Vulnerable Economy (SVE) flexibilities

50. Even though SVEs have more flexibilities than non-SVE and non-LDC developing countries, they will still have to undertake at least a 24% average tariff cut. Some SVEs have high bound tariffs. However, others do not and could be affected by this. These tariff cuts could exacerbate import surges. SVEs already experience import surges on about 21% of all their agricultural imports.[9]

C. 2/3 Cuts for Developing Countries

51. Developing countries undertaking domestic supports and market access cuts will do two-thirds the percentage cuts undertaken by developed countries. They also have longer implementation periods. Developed countries have 5 years for implementing their market access and domestic supports reduction commitments, developing countries have 8 years.

52. This SDT measure is already weak, but it also enables a serious imbalance. For instance in the area of OTDS cuts, the EU, even with 80% of 'paper cuts' will be able to continue providing its existing levels of total domestic

[8] South Centre 2009 'The Extent of Agriculture Import Surges in Developing Countries: What are the Trends?' SC/TDP/AN/AG/8.

[9] South Centre 2009, SC/TDP/AN/AG/8 ibid.

supports (e.g. of 82.5€billion in 2007). In contrast, developing countries providing less than 10€billion in AMS supports will have to cut their bound AMS rates by 55% and those that did not provide AMS will not be able to provide any at all in the future. 80 developing countries declared zero or negative AMS during the Uruguay Round and are unable to enjoy any AMS supports, beyond the de minimis levels. Only 12 developing countries in the Uruguay Round declared AMS levels over the de minimis amounts. (These are Morocco, Tunisia, Brazil, Colombia, Costa Rica, Mexico, Venezuela, Korea, Thailand, Bulgaria, Cyprus, Papua New Guinea).

53. That is, developed countries which have had privileges in the past can continue to have these privileges, with some weak restrictions, given the present loopholes in the rules. At the same time, developing countries which have not had these privileges in the past will not be able to have them in the future.

D. Special Products (SPs)

54. Even as there are multiple flexibilities for developed countries, and these have been strengthened and multiplied in number over the 10 years of negotiations, the key S&D provisions for developing countries have on the contrary been weakened.

55. The original G33 position of allowing developing countries to have 20% of tariff lines being SPs, was later reduced to 18% and further to 15% by July 2008. However the Rev.4 text only allows for 12%. The SPs provision is made even weaker, through a 'single-tier' approach, i.e. average cuts will have to take into account the 5% of tariff lines that undertake 0 tariff cuts. That means the cuts for the lines which have to undertake tariff cuts are deeper. The G33 had wanted a two-tier approach.

E. Special Safeguard Mechanism (SSM)

56. The developing countries advocating for a SSM for use by developing countries proposed it as a similar instrument to the Special Safeguard Provision (SSG), the SSG being an instrument which mostly developed countries enjoy (as a result of tariffication in the Uruguay Round). In fact the

SSM (as a SDT measure for developing countries) should have more flexibilities than the SSG.

57. However the conditionalities placed on the use of the SSM (the triggers as well as the remedies) are worse than those of the SSG. Many experts are of the view that the SSM, in the form it is in Rev.4, is so complicated that it will be inoperable, and so limited that it will not be effective.

58. The following compares the two instruments, showing how the SSM is inferior to the SSG. (For further details, see South Centre's papers on the SSM[10]).

Volume-based SSM:

- volume triggers (SSG is slightly less favourable if imports are a small part of the domestic consumption, but more favourable if imports are above 10% of domestic consumption)
- remedies (in general SSG more favourable)
- remedy caps (not in SSG i.e. SSG more favourable)
- application of the remedy to applied, not bound tariffs (Rev.4) (developed country SSG users apply remedy to bound rates)
- distinction between the SSM remedy remaining below the pre-Doha bound tariff, or going above the pre-Doha bound tariff (not in SSG i.e. SSG more favourable)
- limits on the number of tariff lines for which the SSM can be used in a year if the remedy goes beyond the pre-Doha bound tariff (SSG more favourable)
- pro-rating in SSM (not in SSG i.e. SSG more favourable)
- seasonality in SSM (SSG seasonality is of benefit to importing country, unlike in SSM i.e. SSG more favourable)
- cross-check conditionality in SSM (not in SSG i.e. SSG more favourable)
- exclusion of negligible trade in SSM (not in SSG i.e. SSG more favourable)
- exclusion of preferential trade in SSM (not in SSG i.e. SSG more favourable)
- notification procedures that are cumbersome in SSM (SSG more favourable)

Price-based SSM

- price trigger (SSM trigger lower than in SSG i.e. SSG more favourable)

[10] South Centre 2009 'The Volume-Based Special Safeguard Mechanism : Analysis of the Conditionalities in the December 2008 WTO Agriculture Chair's Texts', SC/TDP/AN/AG/9 ; 'The Price-based SSM: Trends in Agriculture Price Declines and Analysis of the Conditionalities in the December 2008 Agriculture Chair's Text' SC/TDP/AN/AG/10; 'Comparing the Special Safeguard Provision (SSG) and the SSM: Special and Differential Treatment for Whom?' SC/TDP/AN/AG/11.

- remedy and remedy capped by pre-Doha round bound tariff (SSM remedy better, but becomes worse with the pre-Doha round bound tariff as cap)
- exclusion of price-based SSM from covering en route shipments – i.e. in reality no price-based SSM (SSG more favourable)
- no SSM remedy on the price decline in the ad valorem (AVE) duty of the product (SSG better since developed countries use mixed or specific tariffs)
- cross-check conditionality (SSG has weaker language, so is more favourable)
- seasonality (SSG seasonality is of benefit to importing country, unlike in SSM i.e. SSG more favourable)
- exclusion of preferential trade in SSM (not in SSG i.e. SSG more favourable)
- notification procedures that are more cumbersome (SSG more favourable).

Annex 1.a – EU and US domestic supports

Table: US domestic support based on WTO notifications

Marketing year starting in …	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	6,214	7,030	1,643	14,887	46,041	60,928
1996	5,898	-	1,175	7,072	51,825	58,897
1997	6,238	-	812	7,050	51,252	58,302
1998	10,392	-	4,750	15,142	49,820	64,962
1999	16,862	-	7,435	24,297	49,749	74,046
2000	16,843	-	7,341	24,184	50,057	74,241
2001	14,482	-	7,054	21,536	50,672	72,208
2002	9,637	-	6,690	16,328	58,322	74,650
2003	6,950	-	3,237	10,187	64,062	74,249
2004	11,629	-	6,458	18,087	67,425	85,512
2005	12,943	-	5,980	18,923	72,328	91,251
2006	7,742	-	3,601	11,343	76,035	87,378
2007	6,260	-	2,260	8,520	76,162	84,682
2008	6,255	-	6,697	12,952	81,585	94,537

Note: in USD dollar (x1,000,000).

Annex 1.a – EU and US domestic supports

Table: EU domestic support based on WTO notifications (in USD)

Marketing year starting in …	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	65,637	27,266	1,080	93,983	24,563	118,546
1996	64,964	27,326	967	93,257	28,100	121,357
1997	57,094	23,183	831	81,108	20,602	101,710
1998	52,632	22,986	588	76,206	21,489	97,695
1999	51,325	21,094	590	73,010	23,358	96,368
2000	40,554	20,525	688	61,767	20,179	81,946
2001	35,279	21,249	906	57,433	18,504	75,937
2002	27,042	23,381	1,836	52,260	19,294	71,554
2003	34,943	28,033	2,210	65,186	24,970	90,156
2004	38,827	33,880	2,540	75,247	30,340	105,587
2005	35,366	16,727	1,556	53,650	50,113	103,762
2006	33,439	7,153	2,480	43,072	70,979	114,050
2007	16,931	7,080	3,274	27,286	85,807	113,093

Note: In USD dollar (x1,000,000) using average EUR or ECU/USD exchange rates for the mentioned year (source: EuroStat)

Annex 1.a – EU and US domestic supports

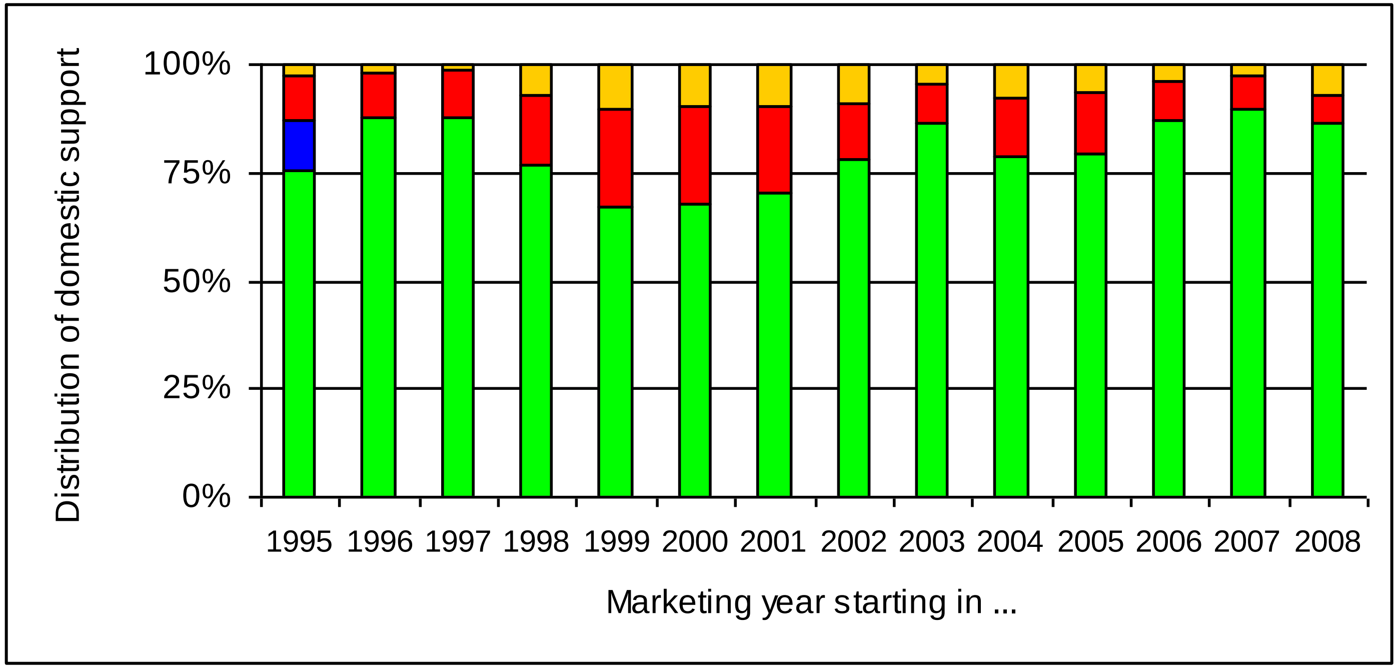
Table : EU domestic support based on WTO notifications (in ECUs/Euros)

Marketing year starting in …	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	50,181	20,846	825	71,852	18,779	90,631
1996	51,163	21,521	761	73,445	22,130	95,576
1997	50,346	20,443	733	71,521	18,167	89,688
1998	46,947	20,504	525	67,975	19,168	87,143
1999	48,157	19,792	554	68,502	21,916	90,419
2000	43,909	22,223	745	66,876	21,848	88,724
2001	39,391	23,726	1,012	64,128	20,661	84,790
2002	28,598	24,727	1,942	55,266	20,404	75,670
2003	30,891	24,782	1,954	57,626	22,074	79,700
2004	31,214	27,237	2,042	60,493	24,391	84,884
2005	28,427	13,445	1,251	43,123	40,280	83,404
2006	26,632	5,697	1,975	34,304	56,530	90,833
2007	12,354	5,166	2,389	19,909	62,610	82,519

Note: in ECU/Euros (x1,000,000).

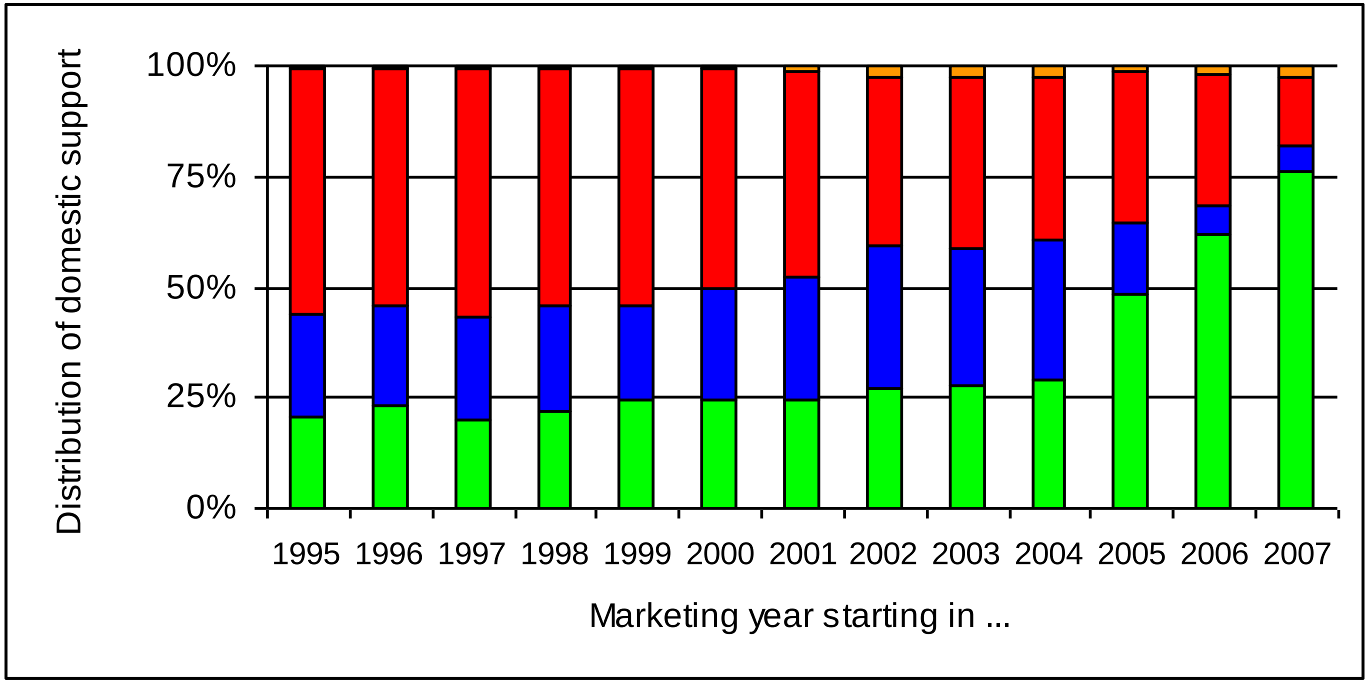
Annex 1.b – distribution of notified domestic support among boxes: red/blue/green/de minimis (orange)

Figure 1: United States



Annex 1.b – distribution of notified domestic support among boxes: red/blue/green/de minimis (orange)

Figure 2: European Union



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