SOUTH CENTRE
An Intergovernmental Organization of Developing Countries

WTO's MC11: Issues and Challenges

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DOHA DEVELOPMENT AGENDA

1. DDA is still on-going, it has not been concluded

Decisions at the WTO must be taken by consensus (Marrakesh Agreement Article IX.1). The Doha Round remains on-going until there is consensus to conclude it. Despite efforts by some Members, there was no consensus to conclude the Round in Nairobi.

"The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting".

Para 30 of the Nairobi MD:

''We recognise that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since the, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organisation''.

As one African Member noted in the 10th Feb informal TNC: '

"the mere expression of divergent views on the DDA does not mean its death. By way of example; the mere expressions of marital discontent in public, by a spouse … does not necessarily mean the dissolution of the marriage. It may lead to, but it is not, a divorce."

2. **Conditions that must be fulfilled before the Round is closed**

The Doha Declaration provides the conditions to be fulfilled for the completion of the DDA negotiations:

Para 45 states that

"When the results of the negotiations in all areas have been established, a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results".

Para 48 states that

"Decisions on the outcomes of the negotiations shall be taken only by WTO Members".

Hence at least 3 conditions must be fulfilled for the conclusion of the Round:

- A Special Session of the Ministerial Conference must be held and the purpose of this Special Session is for Ministers to declare the Round concluded.
- Decisions regarding the 'adoption and implementation of those results'.
- It has to have been a decision taken by WTO Members.

Why is the DDA Important-
a few highlights

- AGRICULTURE
- COTTON
- S&D (para 44)
- July Framework – Singapore issues (investment, competition, transparency in government procurement): *'no work towards negotiations on any of these issues will take place within the WTO during the Doha Round'*.

AGRICULTURE
Losing Production Capacity : Imports increase

- Early 1960s: Developing countries, including LDCs, have US$7 billion in food-trade surplus

LDCs' Food Trade Deficit

- 2002: US$9 billion.
- 2006: US$22 billion
- 2007: US$ 26 billion
- 2014: US$ 37 billion (FAO 2014)

Africa's Food Trade Deficit

- 2013: US$45 (FAO 2014)

NFIDCs – as recognized in WTO

- <u>1996:</u>
  - LDCs + 15 countries (Barbados, Côte d'Ivoire, Dominican Republic, Egypt, Honduras, Jamaica, Kenya, Mauritius, Morocco, Peru, Saint Lucia, Sri Lanka, Trinidad and Tobago, Tunisia and Venezuela).
- <u>2002:</u>
  - LDCs + 23 countries (Botswana, Cuba, Dominica, Jordan, Pakistan, Saint Kitts and Nevis, St Vincent and the Grenadines)
- <u>2012 & 2013:</u>
  - LDCs + 31 countries (Antigua and Barbuda, El Salvador, Gabon, Grenada, Maldives, Mongolia, Namibia, Swaziland)

Small Subset of **List of Import Surges (FAO studies)**

- Kenya – sugar; dairy
- Ghana – rice; tomato paste; poultry
- Cameroon – poultry; rice; vegetable oils
- Tanzania – rice; dairy
- Mozambique – poultry; vegetable oils
- Cote d’Ivoire – rice; poultry
- Honduras- rice
- Indonesia – rice
- Philippines – onions; tobacco
- Nepal – rice
- Sri Lanka – dairy
- Brazil – cotton

FAO Case Studies

Ghana - Tomato Paste: Tomato paste imports from the EU increased by a staggering 650 percent from 3,300 tons in 1998 to 24,740 tons in 2003. Farmers lost 40 percent of the share of the domestic market and prices were extremely depressed.

Ghana – Poultry: Commercial development of the industry started in the late 60s and by the 80s the poultry industry was a vibrant sector. From the 70s to the early 90s, the local industry supplied virtually all of the chicken and eggs consumed in Ghana. Under structural adjustment policy, tariffs were drastically reduced. According to the FAO (2007) poultry imports grew from 4,000 tons in 1998-124,000 tons in 2004. During this time (1998 – 2004) poultry enterprises operated at low capacities, sometimes less than 25% (FAO 2007).

Cameroon - Poultry: Poultry imports increased nearly 300 percent between 1999 and 2004. Some 92 percent of poultry farmers dropped out of the sector. A massive 110,000 rural jobs were lost each year from 1994 to 2003.

- Cote d’Ivoire – poultry: poultry imports increased 650 percent between 2001 and 2003, causing domestic production to fall by 23 percent. As a result, prices dropped, forcing 1,500 producers to cease production and the loss of 15,000 jobs.

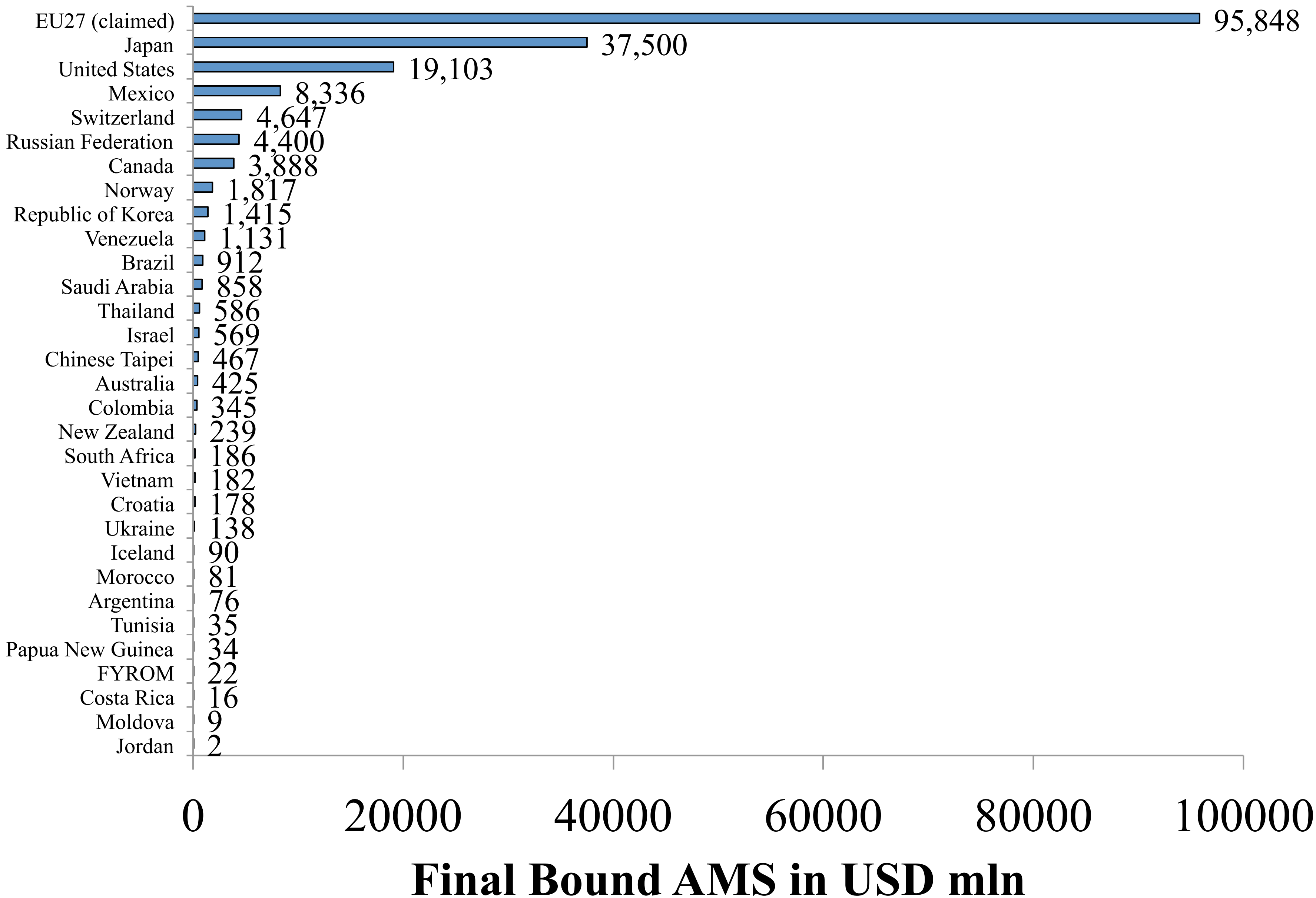
- Mozambique – vegetable oils: vegetable oil imports (palm, soy and sunflower) saw a fivefold increase between 2000 and 2004. Domestic production shrank drastically, from 21,000 tonnes in 1981 to 3,500 in 2002. About 108,000 smallholder households growing oilseeds have been affected, not to mention another 1 million families involved in substitute products (soy and copra). Small oil processing operations have closed down, resulting in the termination of thousands of jobs

- Senegal – Poultry: 70 percent of the poultry industry was wiped out because of EU poultry imports.

Distortions in Agricultural Trade Reinforced in AoA

- Developed countries had AMS entitlements, most developing countries had 0 AMS entitlements
- Large AMS entitlements meant that there were no product specific subsidy limits for developed countries, but these exist for developing countries (10% product-specific de minimis)
- The Green Box was created – most developed countries subsidies have been shifted into the Green Box: 88% of EU's total Domestic Supports; 94% of US' Domestic Supports
- A variety of market access tools were used by the developed countries: 'dirty tariffication'; TRQs; complex tariffs; SSG

AMS Commitments in the UR, All Other Members Bound themselves at 0 AMS



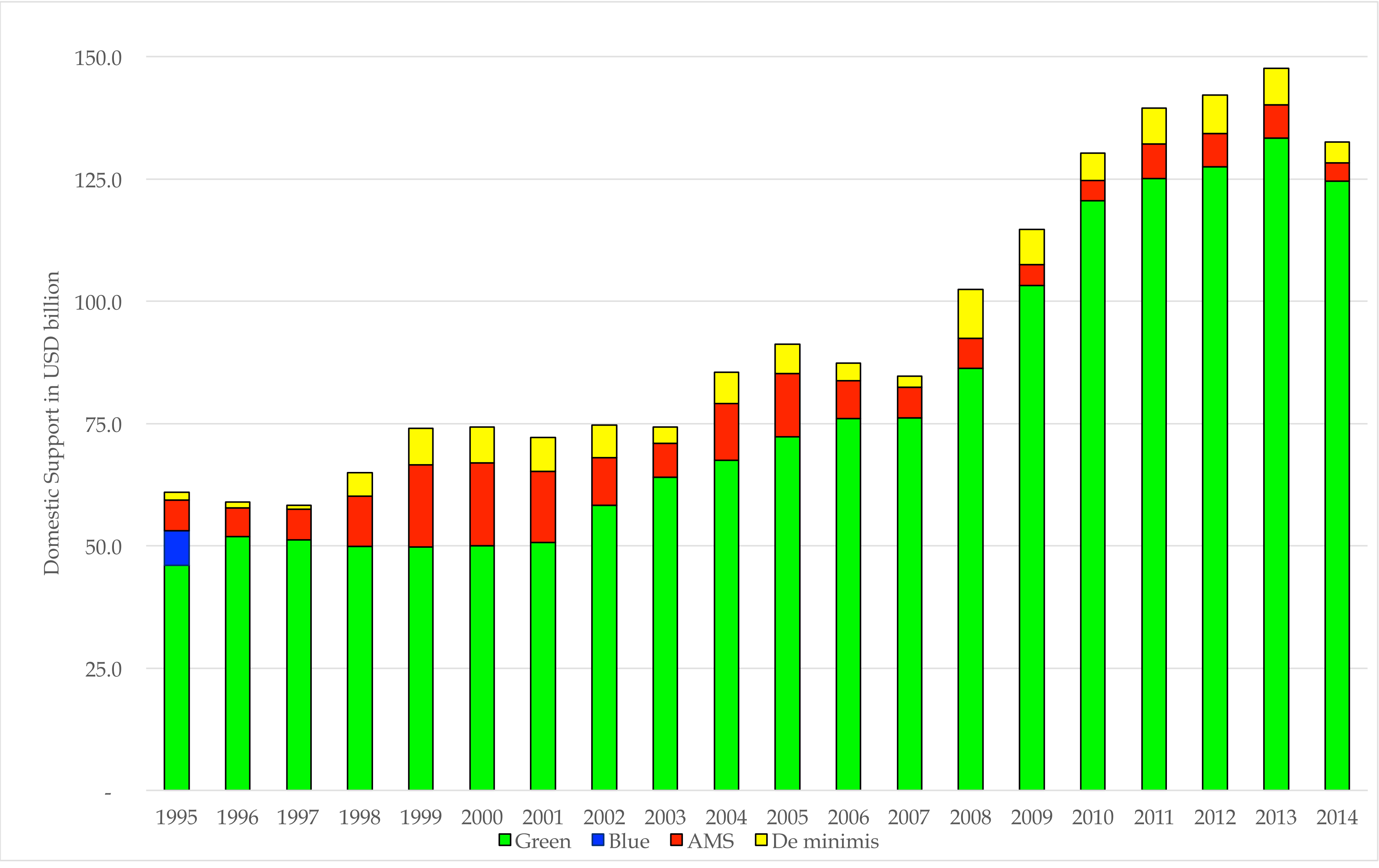
US's and EU's product specific AMS supports to products as a % of the Value of Production of a crop (VOP)

- **EU 2008-2009 (average):**

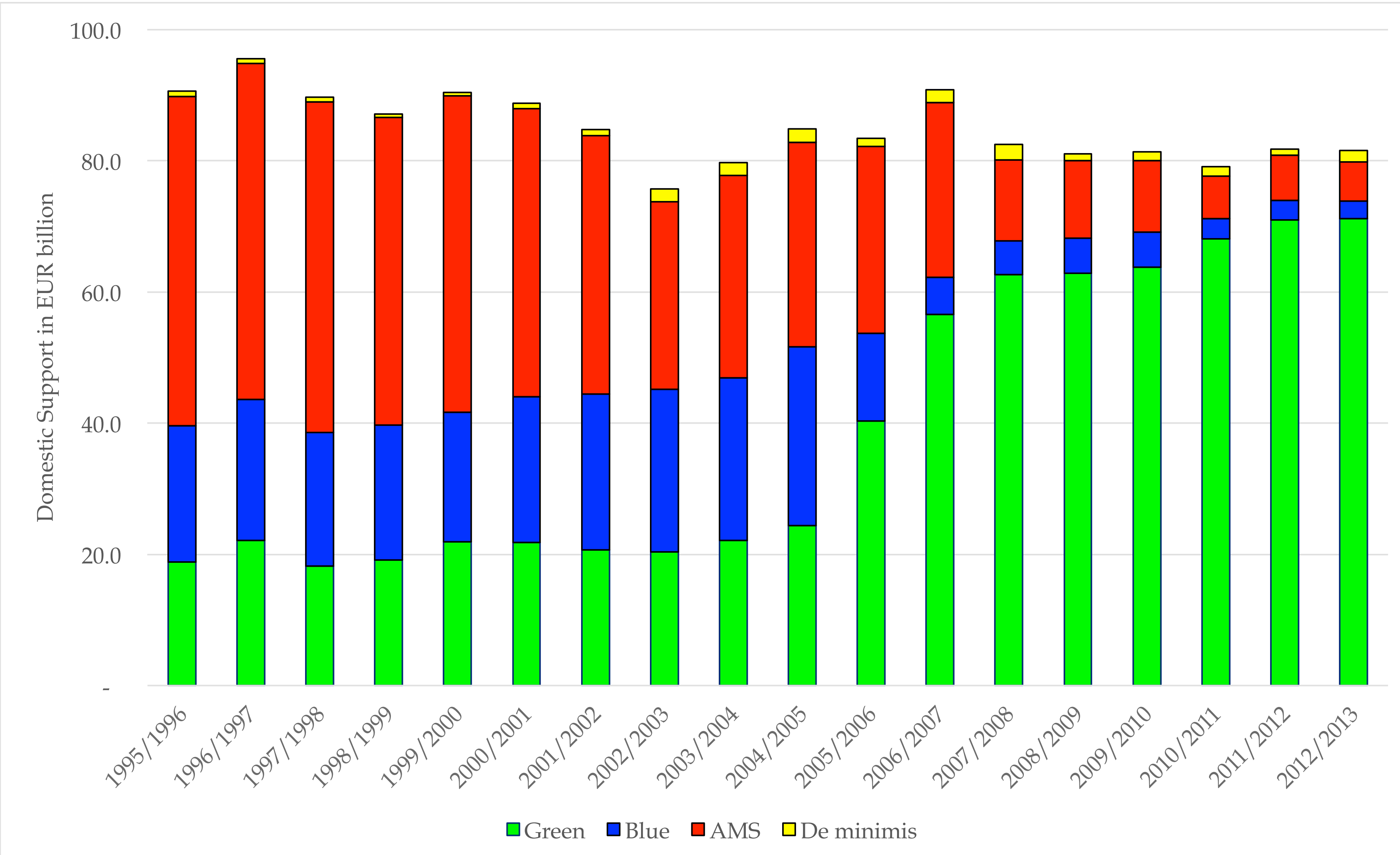
sugar beet 55%, tobacco 62% of VOP

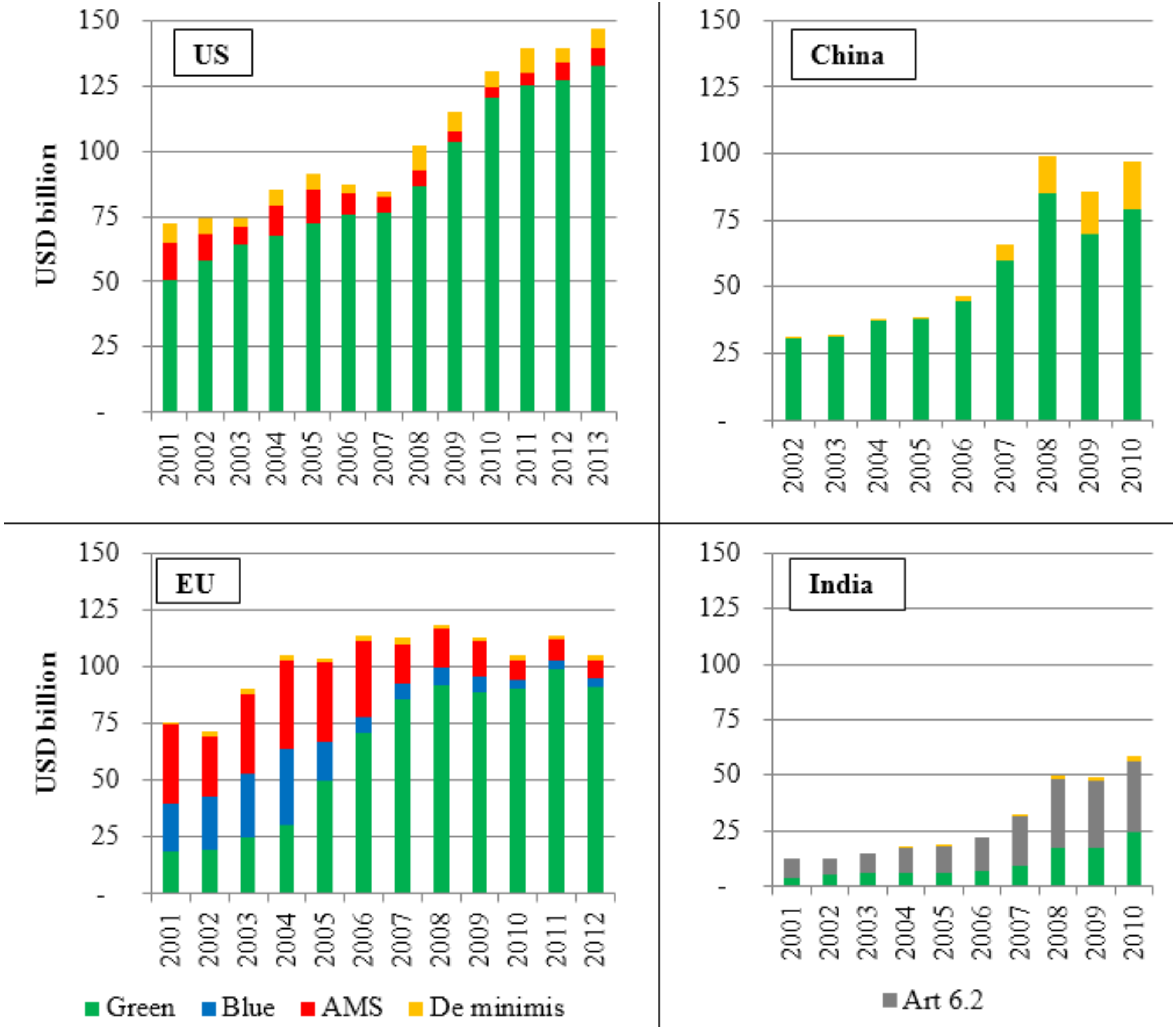
- **US 1999-2001 (average) : soybeans 27%. of VOP**
- **US 1995-2001 (average) : peanuts 35% of VOP**
- **US 2001: sunflower seed 66% of VOP**
- **US 2005: maize : 20% of VOP**
- **EU 1995-2000 : cattle meat EUR 16.5 billion**

Composition of US Domestic Supports as Notified to the WTO



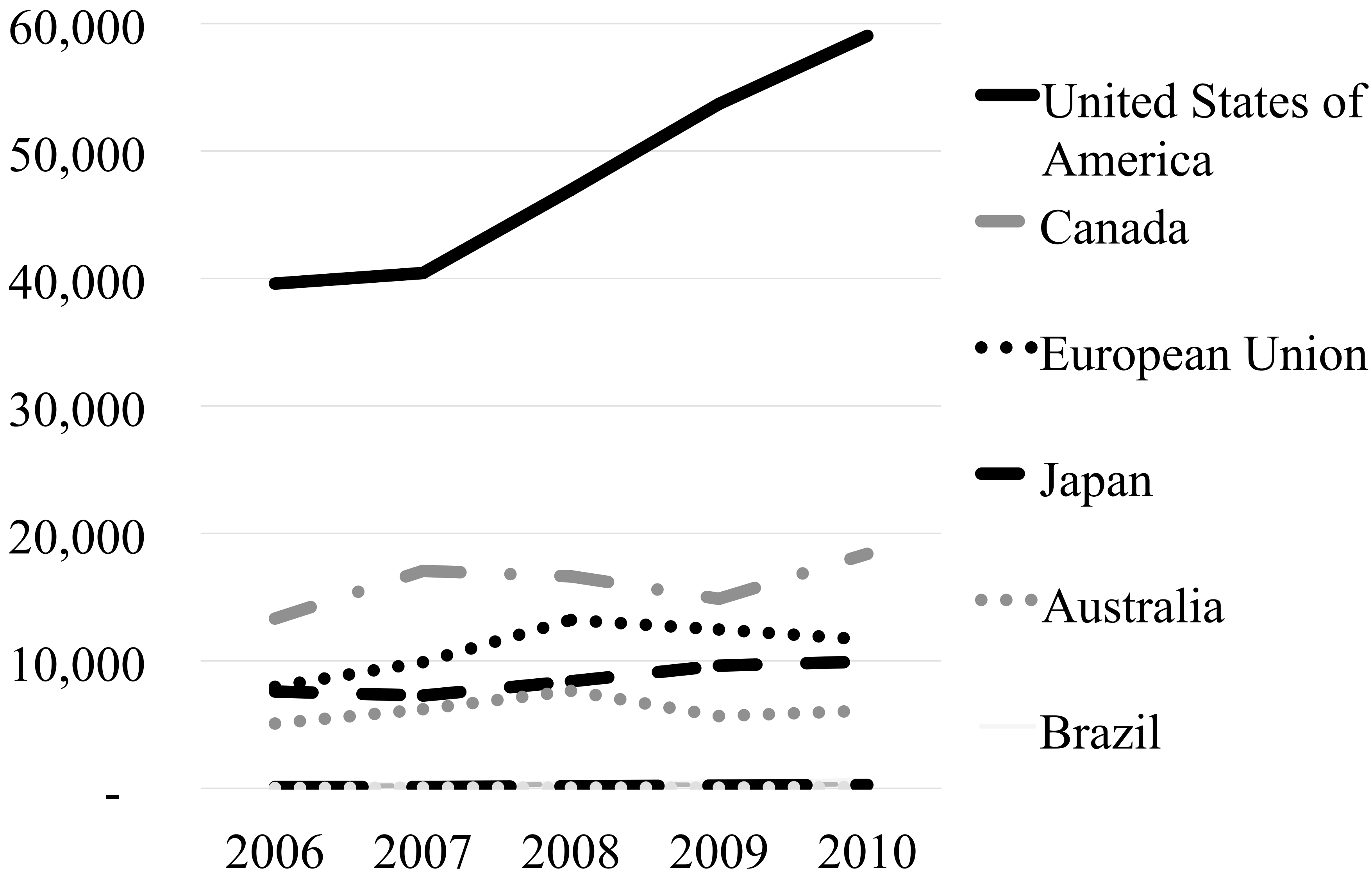
Composition of EU Domestic Supports as Notified to the WTO





US
China
EU
India
USD billion
150
125
100
75
50
25
-
Green
Blue
AMS
De minimis
Art 6.2

Applied domestic support per farmer



EU’s Market price support as % of VOP (2012/2013)

Product	AMS	Production value	Product specific support as % of production value
Silkworms	0.4	0.3	133.3%
Skimmed milk powder	1145	2,156.4*	53.1%
Butter	2743.4	6,531.5*	42.0%
Fiber flax	7	20.6*	34.0%

Source: EU notification for the year 2012/2013, WTO document G/AG/N/EU/26 of 2 November 2015 (Supporting Table DS:4 ‘Calculation of the Current Total Aggregate Measurement of Support’) and author’s calculations

The EU does not notifies production value for skimmed milk powder (SMP), butter and fiber flax as “not available”.:

- Values for SMP and butter inferred from production and price data provided by CLAC.it, a ‘Dairy Economic Consulting firm that analyses the Dairy Market, interprets trends and provides data, news and synthesis’, http://www.clal.it/en/?section=produzioni_burro and http://www.clal.it/en/?section=produzioni_smp
- Values for Fiber flax and natural honey (bee keeping) from FAOstat (average 2012-2013), converted to EUR using USDA Agricultural Exchange Rates (annual, average of years 2012 and 2013)

4th industrial revolution for some

- **Physical goods can be delivered anywhere easily/ cheaply**

- **Artificial intelligence**
  - What can be electrified will be cognitised (nature of goods completely different)
  - Personal Assistant AI will be making consumer decisions

  [Videos: https://www.youtube.com/watch?v=NN4E8-gbo5s (Long version: 2.15m-11.16m; Short version: 6.15m-8m and 10.15m-11.45) If there is time, see also https://www.youtube.com/watch?v=tbblmwKtS8c (What is AI : 1.49m – 2.30m?; Unprecidented velocity of AI: 4.09m-6.32m; Why 3rd industrial revolution is limited -from 11m)]

- **Platforms – disrupting many sectors** eg. Banking plateform

  [Video: https://www.youtube.com/watch?v=tbblmwKtS8c 45.15 or 46m]

- **Products becoming Services ('Servicification')**

  Microsoft executive on large goods companies becoming services companies https://www.youtube.com/watch?v=QYtfMOaSTNY, 14.30-14.50 (also in this video is the example of smart elevators)
  - Elevators – elevator services
  - Self driving cars – transport services
  - Air conditioner – service of chilled air

- **3D printing – 'mass customerisation'**

  [on mass customerisation https://www.youtube.com/watch?v=lsJLZ1UYxGc 4.15m-4.34m
  3 D printing is bringing producer directly to consumer 5.21m]

- **Automation**
  - News article: 'Chinese factory replaces 90% of human works with robots. Production rises by 250%, defects drop by 80%'
  - Jobs automated: receptionists; legal assistants; retail salespersons; cooks; security guards; bartenders; bank loan officers etc

Corporate Interests e.g. Banks

Developed countries' financial executives:

'data location regulations reduce efficiency by requiring institutions to retain people and technology in local markets that they otherwise would not require, reducing margins and resources available for reinvestment. <u>The rules degrade a financial institution's ability to provide service in a seamless way to customers across countries and regions.</u>

<u>'Data localisation regulations may mean that banks' long-standing plans for global consolidation of technology platforms are no longer viable, and they would need to rethink their data and technology architectures'.</u>

(Kaplan J and Rowshankish K 2016 p. 44.)

Others still catching up to 2nd or 3rd Industrial Revolutions

UBS White Paper (Extreme automation and connectivity, 2016):

'The Fourth Industrial Revolution is expected disproportionally to benefit developed markets at the expense of emerging markets, at least given current infrastructures.

Many of these economies have still not dealt with the challenge of previous industrial revolutions. Their output and employment are still largely driven by agriculture, small-scale manufacturing and low-skilled services, large parts of which are in the informal economy. These are economies with low capital stock and high population growth rates.

They will face the threat of the Fourth Industrial Revolution compromising low-skilled jobs via extreme automation, but may not have the technological ability to enjoy the relative gains that could be re-distributed via extreme connectivity.'

Emerging economies = Mexico, Turkey, Egypt, India, South Africa and Brazil

E-COMMERCE

Two models:

- 1998E-Commerce Work Programme:
  Existing Agreements: progressive liberalisation; positive list approach; selective market opening (fragmented markets for exporters)

- New Rules:
  Data should flow freely; Open your market completely [E.g. financial platform moving money between banks in the world]

=> Contradict GATS schedules; open markets completely

E-Commerce

There is already an existing mandate to have rules on E-commerce at the WTO. The basis of these rules would be the existing agreements.

In their wisdom, in 1998, Members had decided that they would look at how to align E-Commerce with the GATS, GATT, TRIPS, and development challenges

The grey areas:

- New Services e.g. cloud computing ; social networking
- Meaning of Members' schedules e.g.Mode 1 opening in retail banking in 1994, does it apply today?
- Is an e-book / e-dress a good or service? Should we treat electronic and physical products 'like' products?

Very urgent need for discussions for legal clarity!

The main area of rules would be the GATS – positive list approach:

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WT/L/274
30 September 1998

(98-3738)

Council for Trade in Services

2.1 The Council for Trade in Services shall examine and report on the treatment of electronic commerce in the GATS legal framework. The issues to be examined shall include:

- scope (including modes of supply) (Article I);
- MFN (Article II);
- transparency (Article III);
- increasing participation of developing countries (Article IV);
- domestic regulation, standards, and recognition (Articles VI and VII);
- competition (Articles VIII and IX);
- protection of privacy and public morals and the prevention of fraud (Article XIV);
- market-access commitments on electronic supply of services (including commitments on basic and value added telecommunications services and on distribution services) (Article XVI);
- national treatment (Article XVII);
- access to and use of public telecommunications transport networks and services (Annex on Telecommunications);
- customs duties;
- classification issues.

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<u>Council for Trade in Goods</u>

3.1 The Council for Trade in Goods shall examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme. The issues to be examined shall include:

- market access for and access to products related to electronic commerce;
- valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994;
- issues arising from the application of the Agreement on Import Licensing Procedures;
- customs duties and other duties and charges as defined under Article II of GATT 1994;
- standards in relation to electronic commerce;
- rules of origin issues;
- classification issues.

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Council for TRIPs

4.1 The Council for TRIPS shall examine and report on the intellectual property issues arising in connection with electronic commerce. The issues to be examined shall include:

- protection and enforcement of copyright and related rights;
- protection and enforcement of trademarks;
- new technologies and access to technology.

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(98-3738)

Committee for Trade and Development

5.1 The Committee on Trade and Development shall examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries. The issues to be examined shall include:

- effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them;
- challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
- use of information technology in the integration of developing countries in the multilateral trading system;
- implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
- financial implications of electronic commerce for developing countries.

This approach is too slow and fragmented for major digital companies that want to sell integrated services

<u>New Set of Rules Suggested (by US, EU, Japan etc)</u>

- Free data flows
- No localisation requirements allowed (Expansion of TRIMS to include services, technology, investment)
- No disclosure of source codes
- No forced technology transfer (US proposal)
- Rules on E-authentication (i.e. no local content allowed in domestic technology

New Rules? What Kind of New Rules would Support Africa?

- Rules about cooperation / Aid to support infrastructure development?
- Rules about technology transfer?
- Rules that support use of local content in domestic technologies and services
- Rules that support regional integration (building the CFTA – giving some protection to domestic suppliers as they learn the ropes of the digital economy e.g. data in x,y,z sectors should be processed locally/ regionally to increase domestic capabilities)

Way Forward on E-Commerce in a Way that Can Support Digital Industrialisation

<u>Continue the Discussions in the 1998 E-Commerce Work Programme</u>

- Classification Issues
- Technological Neutrality
- Scope of Modes 1 and 2
- What is 'likeness'?
- Competition issues
- Increasing the Participation of developing countries
- IP Issues – copyright and TRIPS
- Development: Digital Industrialisation; SMEs

MSMEs

<u>ICC and G20 :</u> 'New WTO disciplines could also play a significant role in building consumer trust in e-commerce, while promoting an online ecosystem in which MSMEs can thrive. Specific measures should include:

- 'Commitments on cross-border consumer protection standards and dispute settlement to build consumer trust and confidence in cross border e-commerce.
- Disciplines to promote technological innovation to enhance online security and reliability based on broadly agreed industry guidelines.
- A prohibition on customs duties for digital products to ensure that customs duties do not impede the flow of music, video, software and games.
- Establishment of a WTO rule to ensure the free flow, storage, and handling of all types—in any sector—of data across borders. Any exceptions to this rule under applicable privacy or security regulations should be limited to public policy objectives and subject to GATS XIV. Such a framework could build on the APEC Cross Border Privacy Rules system and the OECD guidelines on the protection and privacy of trans-border flows of personal data
- Commitments to promote the growth of open digital markets across borders, including appropriate limitations on liability for online platforms that handle user content and transactions.
- Disciplines to promote a free, open and globally-interoperable Internet that enables competition, consumer choice and unhindered access to online content.
- Provisions to embed technological neutrality online, in that all technologies are given the chance to compete in the marketplace—subject to legitimate security or privacy let-outs.
- National treatment in licensing regimes for financial services.
- Provisions that establish and recognize the benefits for consumers of access to Internet services and applications, subject only to reasonable network management.'

‘Misunderstanding the Internet’

James Curran, of the University of London, in ‘Misunderstanding the Internet’ talks about how the internet in the 1990s was claimed to be able to generate wealth and prosperity for all because it could change the terms of competititon between corporate giants and new start-ups. *‘The internet is presented as a stepping-stone in the building of a new progressive social order’*. However, he notes that *‘The central weakness of this theorising is that it assess the impact of the internet not on the basis of evidence but on the basis of inference from internet technology. Yet, readily available information tells a different story : the impact of the internet does not follow a single direction dictated by its technology. Instead, the influence of internet if filtered through the structures and processes of society’*.

- Curran goes on to observe how SMEs continue to have difficulties accessing foreign markets despite the internet. This is caused by quality of telecoms infrastructure, compter access, knoweldge etc. In short, he concludes that the size of corporations continue to matter in being able to capture the benefits of the internet.

E-Commerce Helps Or Hinders MSMEs?

There is huge amount of talk that e-commerce will provide the oppotunity for developing countries' MSMEs to find new markets for niche products (e.g. women making artisanal baskets, ornaments etc). But the fact is that 99 percent of economy is made up not of such niche products but very mundane products for which opening the online route could simply lead to very fierce competition with local suppliers – possibly even marginalising them.

Parminder Jeet Singh: cites example of Kikuu, a fairly new African platform selling cheap Chinese manufactured goods – from **plumbing related goods to light bulbs, scissors, motor parts, cosmetics, garments, toys** etc. Currently, Kikuu supplies to 6 countries : Congo, Cameroon, Tanzania, Uganda, Ghana, and Nigeria.

One site promotes Kikuu as follows :

'The KiKUU app helps you find and purchase a wide selection of quality products direct from Chinese manufacturers. No matter where you are, get access to awesome features all from the comfort and ease of our user friendly app. Best of all, free standard shipping is included in all orders. Download KiKUU and experience the art of buying today!'

This clearly competes directly with African suppliers. Without this platform, some of these markets may have been too small to be serviced efficiently by individual chinese manufacturers of different kinds of goods -- but a platform like Kukuu changes all that. The site also provides complementary e-commerce services for payment, logistics, delivery etc.

http://www.davidbanjoko.com/2016/12/21/kikuu-app-aims-to-help-you-buy-chinese/

Jeet Singh P, forthcoming in a Commonwealth Secretariat publication.

Is the new MSME Agenda about changing S&D in the WTO?

Instead of S&D for developing countries, now it is to a class of economic actors in all countries.

Are all MSMEs alike and deserve the same treatment?

Is there an attempt to change the model of S&D in the WTO?

What about the DDA S&D para 44 issues and MSMEs?

- - TRIMS
- Art XVIII on infant industry protection
- SPS and TBT – support and assistance to meet new export standards so trade is not affected
- Technology transfer

No traction in these negotiations.

Is it not enough, what the Work Programme says about SMEs?

Is the concern for developing countries' MSMEs really genuine?

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- financial implications of electronic commerce for developing countries.

PROCESS ISSUES

1. Most important issues that developed countries want out of the MC are not discussed or negotiated by the Membership ‘due to time constraints’

2. Extension of the Conference by a day - most Ministers are not there to take the most important decision

3. 1 or 1.5 hours to read the final text

4. Small group engaged in the main negotiations; are Africa Gp, LDCs, ACP and other developing country groupings included???

5. Venue of Ministerials

What is success at the Ministerial?

1. Transparent and inclusive process (Rm W format before MC11 and in MC11?)

2. Rolling over of existing mandates: Ecommerce; language from Nairobi on DDA and New Issues

=> No point having an 'updated' multilateral system if most of the Members are not able to industrialise because of the constraints on policy space