



Train for Trade II

EU-UNCTAD joint Programme for Angola



**Commercial
diplomacy**

MANUAL FOR TRADE NEGOTIATIONS ON **AGRICULTURE**



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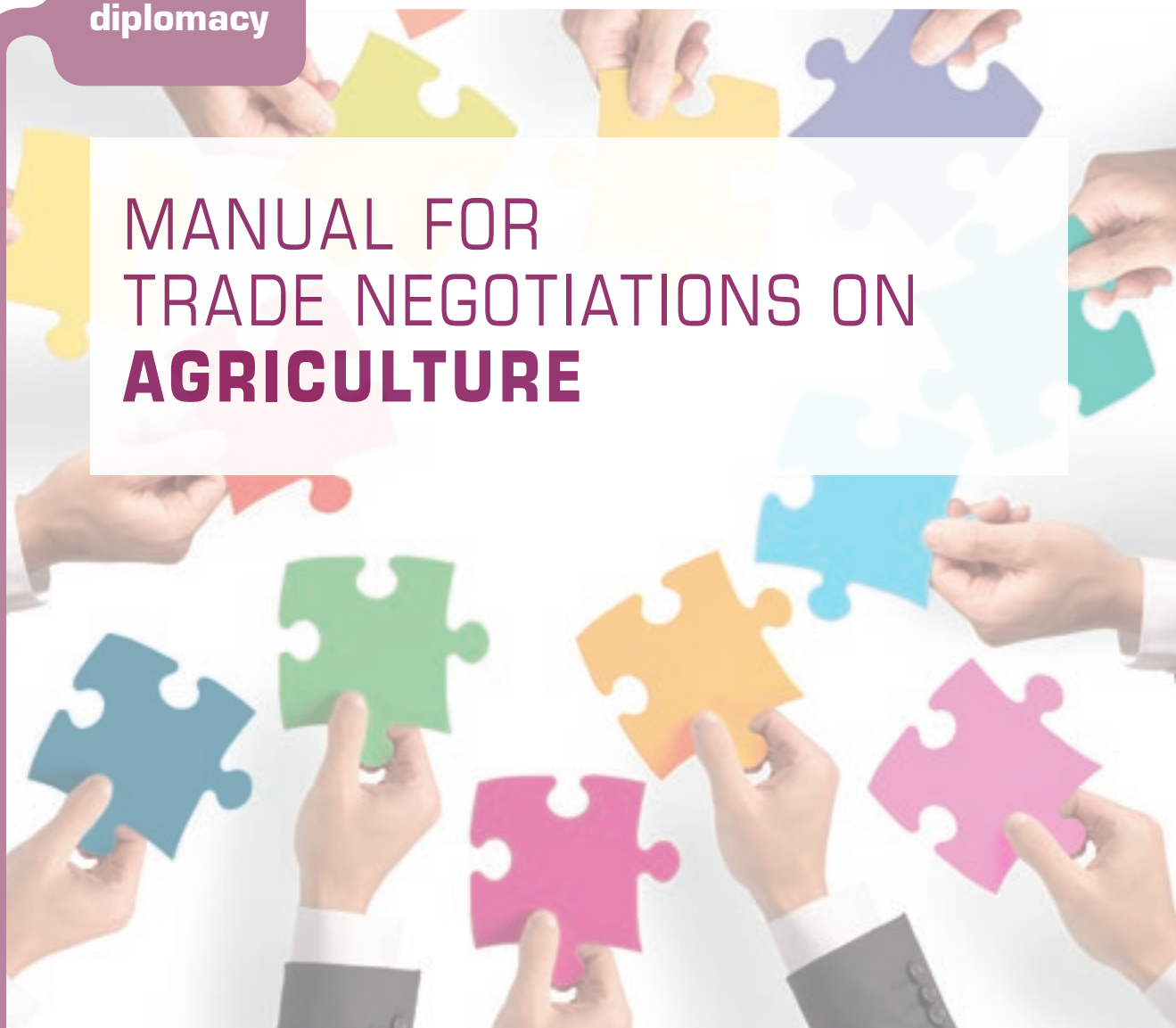
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ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific Group of States
AMS	aggregate measurement of support
AoA	Agreement on Agriculture
CAP	Common Agricultural Policy
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
LDC	least developed country
MFN	most favoured nation
NTB	non-tariff barrier
NTM	non-tariff measure
SDT	special and differential treatment
SPS	Sanitary and Phytosanitary Agreement
SSG	special agricultural safeguard
SSM	special safeguard mechanism
STE	state trading enterprise
TBT	technical barriers to trade
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TRQs	tariff rate quotas
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

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PREFACE

Agriculture is both an important and sensitive sector in many countries. Negotiations on liberalizing trade in agriculture concern numerous issues and therefore are complex.

This manual provides an overview of the pattern of agricultural trade, salient features of the WTO Agreement on Agriculture (AoA), implementation of commitments and status of current negotiations in various areas. Three key pillars of trade in agriculture, namely market access, domestic support and export competition, are discussed with an emphasis on the impact of potential policy changes on development. Moreover, it also covers cross-cutting issues, such as special and differential treatment (SDT) for developing and least developed countries, state trading, cotton initiative and non-trade concerns. The manual also gives some examples of trade disputes relating to the AoA and potential avenues to achieving progress in the on-going negotiations on agriculture.

The manual is structured as follows. Following introduction, Part I explores importance of agriculture sector and pattern of agricultural trade in developing world; Part II outlines the main features of the AoA and other related rules governing trade in agriculture and Part III gives an overview of the current trade negotiations on agriculture. The rationale for subjecting market access, domestic support and export subsidies to General Agreement on Tariffs and Trade (GATT) disciplines, agriculture in the context of regional trade agreements, settled disputes in agricultural trade and the negotiating groups active in the Doha Round are given in four appendices.



INTRODUCTION



Agriculture is a sensitive sector in both developed and developing countries. It is a politically sensitive subject as farm lobbies yield considerable clout in various governments, both in developed and developing countries. In some developing countries it is economically sensitive as well, as livelihoods of a high share of the population depends on the agriculture. Some people say agriculture “is different” and cannot just be traded as any other good since it is the basis for survival. Moreover, agriculture is multifunctional, *i.e.* it is not just about producing food but has linkages with other issues such as livelihood security, rural development and landscape, to the point of tourism.

For much of the period since World War II, agricultural trade has effectively been excluded from multilateral trade rules, initially as the sector was granted a series of waivers from commitments under the General Agreement on Tariffs and Trade (GATT), the forerunner of the WTO. During this period, high levels of border protection and trade-distorting support for agriculture became widespread in several high-income nations, including the United States of America, Canada, the European Communities (now the European Union), Japan, Norway, and Switzerland. During the 1986-94 Uruguay Round of the GATT, trade negotiators agreed to include agriculture under multilateral trade rules and to set limits on trade distorting support and tariffs. They also agreed to convert non-tariff measures at the border into tariffs, in a process dubbed “tariffication” by trade officials.

Agricultural exporting countries in the Cairns Group, led by Australia but including several Latin American countries and Canada, were instrumental in pushing for these new rules. A second group of countries, led by Egypt and known as the group of Net Food-Importing Developing Countries (NFIDCs), sought to minimise the potential impact of expected increases in food prices following liberalisation under the Uruguay Round. A third group of countries, known as the “Like Minded Group” and including India, Jamaica and Zimbabwe, sought to guarantee “special and differential treatment” (SDT) for developing countries. Trade tensions between the United States and the European Union, both of whom were subsidising agriculture heavily during the 1980s, was also an important factor leading the negotiating outcome.

The Agreement on Agriculture (AoA) of the World Trade Organization (WTO), which resulted from the Uruguay Round negotiations, came into force in 1995. It represents a significant step towards reforming agricultural trade and making it fairer and more competitive. The Agreement committed members to the continuation of the reform process through further negotiations and address the subsidies and high trade barriers that distort agricultural trade. The overall aim is to establish a “fair and market oriented agricultural trading system” that will increase market access and improve the livelihoods of farmers around the world. The WTO Committee on Agriculture oversees implementation of the Agreement.

In 2000, negotiations began with a view to building on the Uruguay Round outcome. Two years later, these talks were incorporated into the Doha Round of trade talks, a package of negotiations, which were intended to be completed as a “single undertaking”. In agriculture, talks aimed at “substantial improvements in market access; phasing out all forms of export subsidies; and substantial reductions in trade-distorting domestic support”. SDT for developing countries was made an “integral part” of all elements of the agricultural negotiations.

From early on it was recognized that progress on trade negotiations on agriculture would be a key element for successful completion of the Doha Round. Indeed, other negotiation groups, such as the non-agricultural market access negotiations, often wait for results in the agriculture negotiations, for example to determine the level of ambition. Significant trade distortions remain, even after many years of the implementation of AoA. Many countries are looking for an ambitious progress that improves market access for their agricultural exports. At the same time, they are keen to have more flexibility to protect specific industries that they consider important for food safety, livelihood security and rural development. Achieving the appropriate balance between ambition and flexibility is not less than a challenge.

Negotiations were first suspended in July 2006 because WTO Members could not agree on how to address the most controversial issues in agriculture. These negotiations were resumed later on several occasions; however, deadlock on progress still remains. The reason is that issues in the negotiations on agriculture are numerous and complex.



**IMPORTANCE OF
AGRICULTURE
AND PATTERN OF
AGRICULTURAL TRADE**



This part examines the role of agricultural sector in the developing world, its contribution to the gross domestic product (GDP) and employment. It also identifies the major trends in international agricultural trade in order to contextualize the evolving participation of developing countries in the world trade.

1. Importance of agriculture in developing world

Agriculture plays an important role in low- and middle-income economies. According to the World Bank,¹ it accounts for around 70 per cent of employment and more than 16 per cent of GDP of least developed countries (LDCs). In middle-income countries, its contribution to employment is 27 per cent, while for high-income countries it is only 4 per cent. Seventy-four per cent of the population of LDCs and 54 per cent of middle-income countries live in rural areas. Furthermore, around 95 per cent of all farmers and two-thirds of the world's poor live in rural areas in developing countries. However, agriculture's contribution to the GDP and employment declines with the level of development.

In addition, agricultural goods are important not only for the income side but also for the expenditure side. In general, the poor country or household, spend the higher share of expenditure on food. This makes food prices relatively more important for poor households than for the rich. In certain regions, a large share of the population is undernourished. The Food and Agriculture Organization of the United Nations² estimates that about 815 million people of the 7.6 billion people in the world, or 10.7 per cent, were suffering from chronic undernourishment in 2016. Almost all the hungry people live in lower-middle-income countries. There are also 11 million people undernourished in developed countries. The United Nations International Children's Emergency Fund finds that more than half of deaths in children aged under 5 can be attributed to malnutrition.³

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

In the course of development, agricultural productivity has increased and the share of employment and output in agriculture has slightly decreased. In high-income countries, employment in agriculture accounts for only four per cent and the contribution to GDP is only two per cent. Globally, agricultural production contributes some 4 per cent of the gross national product, a share that has been declining over the past few decades (*e.g.* in 1970 it was more than 10 per cent).⁴ Because of the importance of agriculture in developing countries and the comparative advantage that many of them have in the production of agricultural goods, this sector could be an engine of economic growth, especially in poor developing countries.

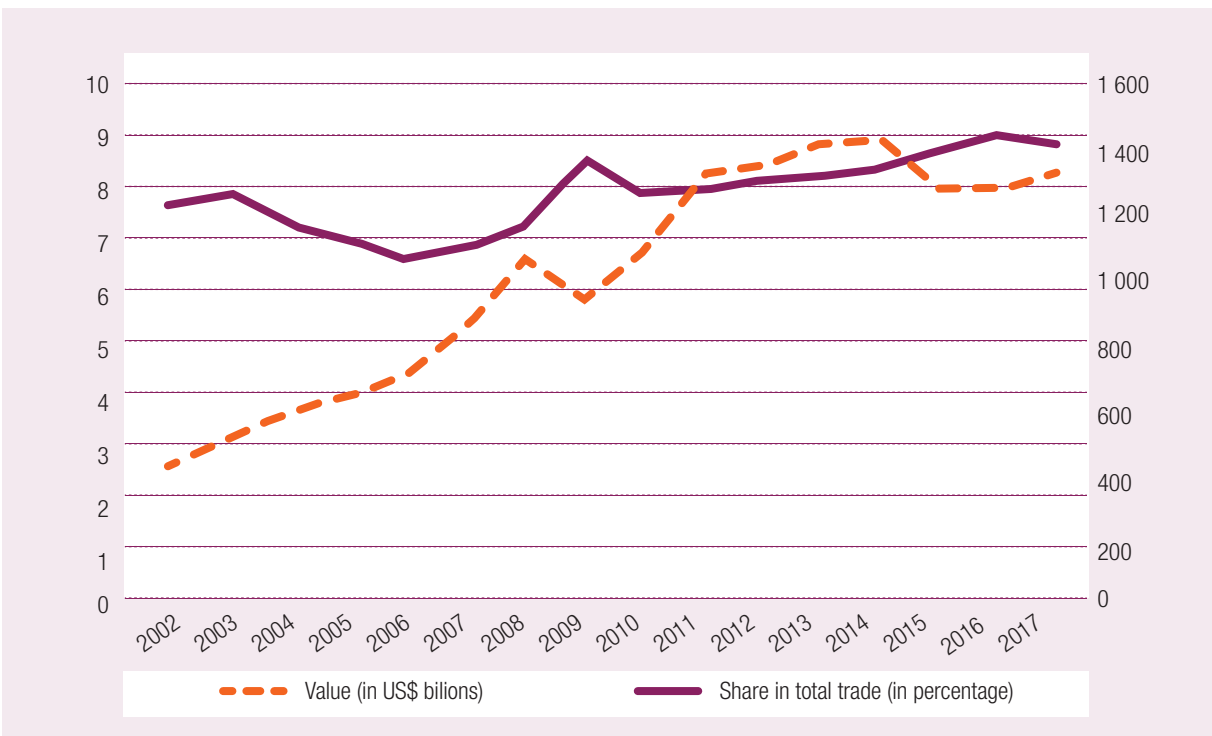
Moreover, keeping in view the challenges of globalization and the Sustainable Development Goals (SDGs), it is important to focus on this sector's international trading regime. Food security, for example, underpins the achievements of all other SDGs. Primarily, it is targeted under SDG 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture. In turn, the fulfilment of a population's food, and nutritional needs, as well as advancements in sustainable agriculture, provide for conducive conditions to improve health, mental and labour capacity, sustainability of cities and urbanisation. This further emphasises the need to strengthen efforts in liberalising trade in this sector.

2. Patterns of agricultural trade from the developing countries' perspective

The value of agricultural trade has tripled in the last 15 years *i.e.*, from US\$0.5 billion in 2002 to around US\$150 billion in 2017. But its share in the overall global trade has remained low. In 2002, agricultural trade accounted for 7.6 per cent of world merchandise trade. By 2016, it increased to 9 per cent (Figure 1).

Although trade in agricultural products is relatively small component of world trade, it follows the pattern of global trade: it also experienced a drop during the recession in 2009 and later in 2015-2016. As Figure 2 shows, the increase in value of trade in agriculture has been strong compared with that for industrial goods. However, both product groups have experienced a drop since 2014.

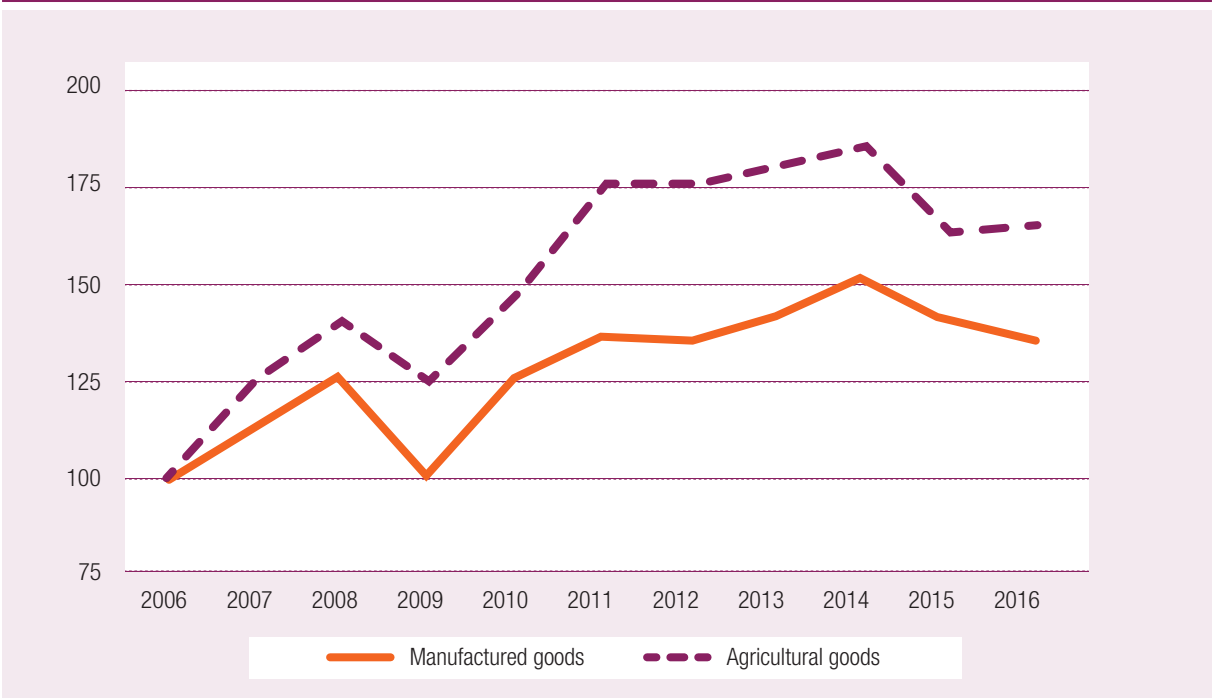
Figure 1. Trade in agricultural products, 2002–2017



Source: World Integrated Trade Solutions (WITS).

Notes: The chart shows the share of agricultural exports in total world exports (on left side vertical axis) and the total value of agricultural exports (on right side vertical axis) over time.

Figure 2. World merchandise trade by major product group, 2006–2016 (2006 = 100)



Source: Based on World Trade Statistical Review, 2017.

As a group, developing countries account for 40 per cent of global agricultural trade, a share that has gradually increased over time (Figure 3), except for some fluctuations during 2013 and 2014.

Over time, the structure of agricultural trade has also changed (see Figure 4). The proportion of processed food items has increased while that of unprocessed has remained stagnant. This pattern holds for all country groups, irrespective of income levels.

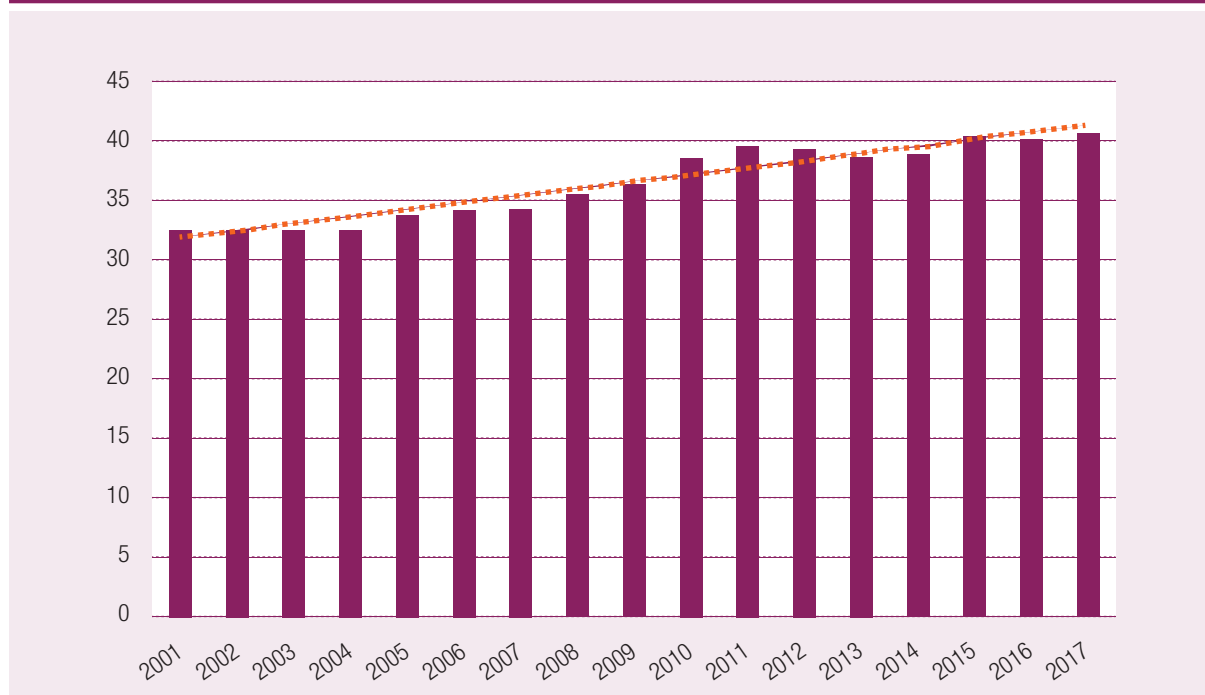
Most of the growth in agricultural trade comes from an increase in trade in processed agricultural products. Although growth rates have increased in both product types, the growth rates for processed goods are higher than for unprocessed goods. A shift towards more processed agricultural products means there is greater specialization in the value-adding process. In general, countries with a lower share of processed agriculture products tend to be low-income while those with higher share of processed food are mostly high- and middle-income countries.⁵ Figure 4 shows the share of processed and unprocessed agricultural goods in low income, middle income and high-income countries.

The share of developing countries in the world food trade has increased exponentially from 2006 onwards but has recently become steady, most likely due to growth of range of non-tariff measures.⁶ Developing countries have gradually become large importers of agricultural products as well. In 2015, these countries absorbed 35 per cent of agro-trade imports and produced a similar fraction of exports.

While developed countries still dominate world food exports, despite a declining share from 66 per cent in 2001 to 56 per cent in 2017, developing countries' participation has been uneven (Figure 5). The share of developing Asian economies has increased from 16 per cent to 22 per cent between 2001 and 2017. The share of developing countries in America and Africa has seen a marginal increase in this period. The same is seen in LDCs, whose exports share in the world food exports increased marginally from 1.15 per cent to 1.54 per cent in the corresponding period.

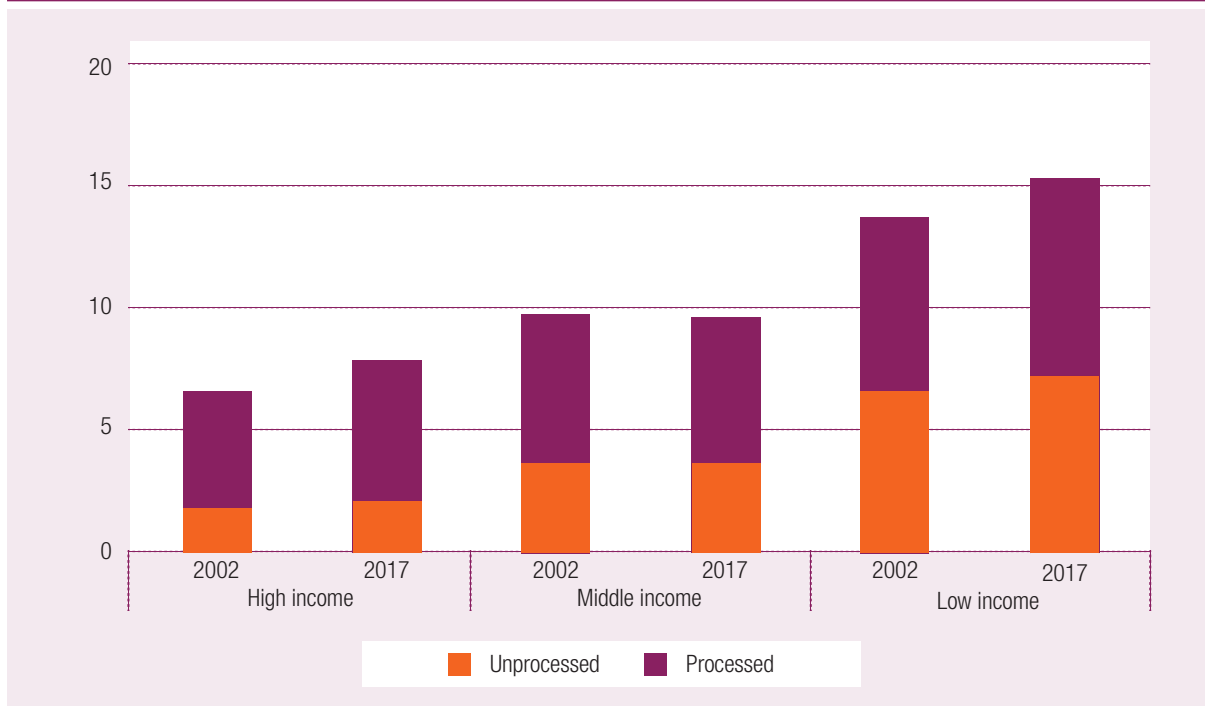
Intra-developing country (South-South) food trade is rising from 15 per cent in 1995 to more than 25 per cent in 2015, whereas the volume of North-South food trade has gradually dropped. In the meantime, South-North and North-North trade has also experienced a substantial decline (Figure 6).

Figure 3. Share of developing country agricultural exports in world food exports, 2001–2017 (in percentage)



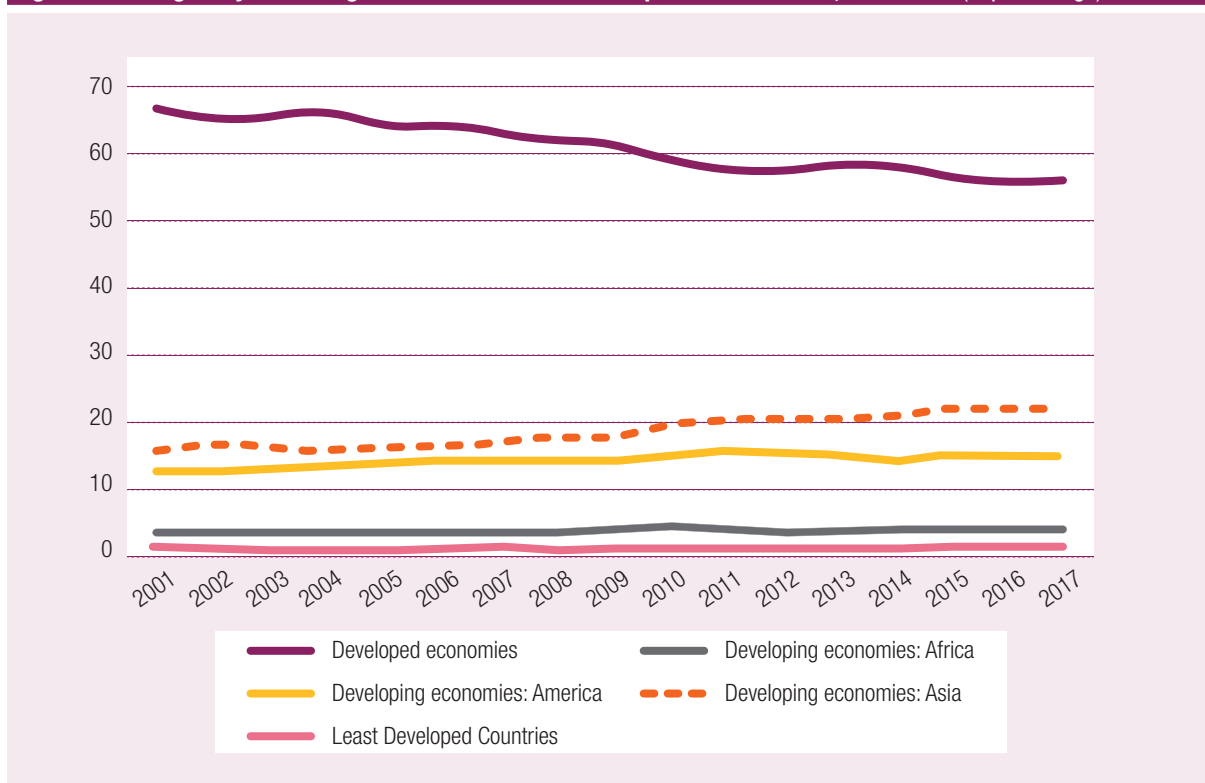
Source: UNCTAD Calculation based on UN Comtrade.

Figure 4. Share of processed and unprocessed agricultural exports, 2002–2017 (in percentage)



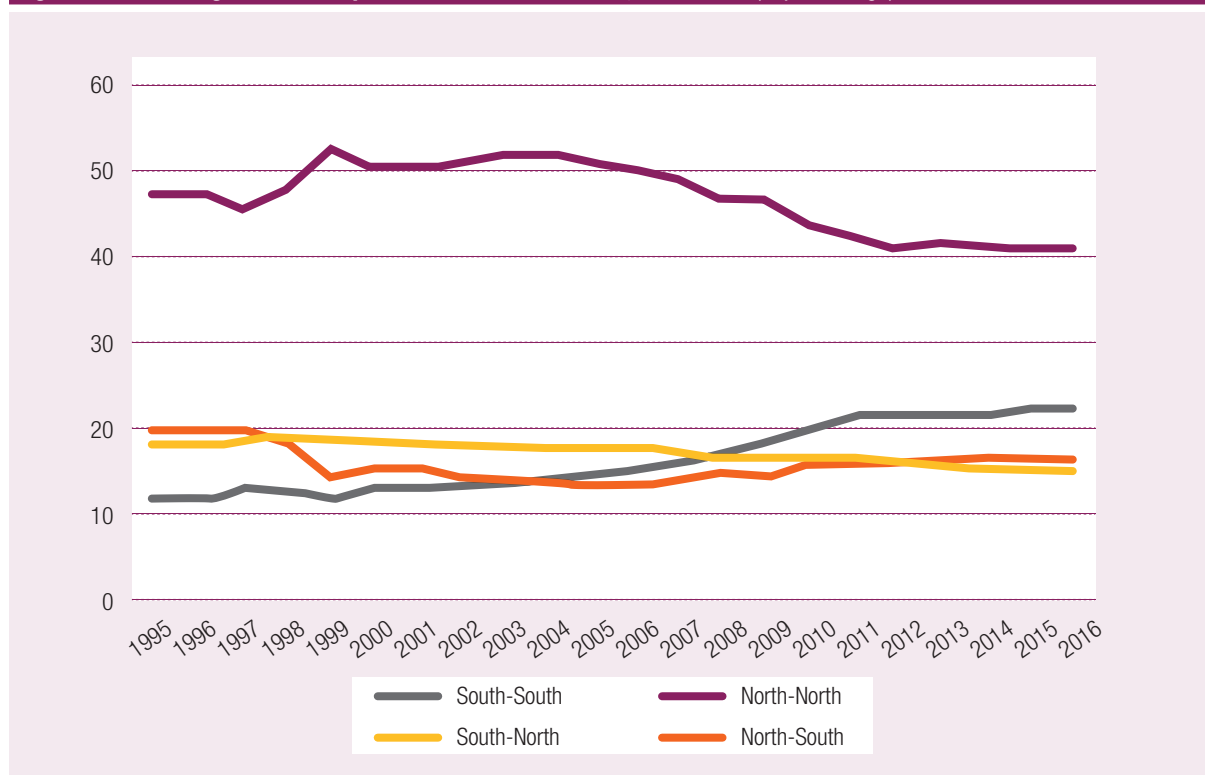
Source: WTO Symposium on Agricultural Trade, 2018.

Figure 5. Heterogeneity across regions in the share of world exports of food items, 2001–2017 (in percentage)



Source: UNCTADStat.

Note: Share is computed as a percentage of total world exports of all food items.

Figure 6. Shares of global food exports in different directions, 1995–2016 (in percentage)

Source: WTO Symposium on agricultural trade, 2018.

Note: All food items included (SITC 0 + 1 + 22 + 4).

One concern is the concentration of exports on a narrow range of products, mostly primary commodities. This is very high for LDCs, where the weighted average of the share of the leading three export products in total merchandise exports amounts to 76 per cent.⁷ The lack of diversification is a concern because it leaves countries exposed to the risk of commodity price fluctuations.

In terms of impediments to trade, there are market access barriers and distortions from measures such as subsidies. In addition, some developing countries face barriers in both developed and other developing countries while some developing countries have preferential access in their export destinations. The WTO has set rules for agriculture trade as well as a direction for continued reforms through negotiations in this sector where there remains much to negotiate.



RULES FOR TRADE IN AGRICULTURE



This Part provides an overview of the WTO Agreement on Agriculture (AoA) provisions, *i.e.* market access, domestic support, export subsidies and other related areas. It also provides an overview of other agreements, such as Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT), that affects trade in agriculture as well.

1. WTO Agreement on Agriculture provisions

The Agreement on Agriculture came into force on 1 January 1995. The implementation period envisaged in the Agreement was six years for developed countries and 10 years for developing countries, starting from 1995. Implementation of the commitments is reviewed by the WTO Committee on Agriculture, which usually meets four times a year. The long-term objective, as agreed during the Uruguay Round and repeated in the preamble of the AoA, was to establish a fair and market-oriented agricultural trading system and to improve predictability and security for importing and exporting countries.

One of the measures for achieving these objectives is through the tariffication of trade barriers, which is the translation of non-trade barriers into tariffs. It also resulted in the reduction of protection and subsidies, the consideration of so-called non-trade concerns like food security and environmental issues. Another feature was Special and Differential Treatment (SDT) for developing countries, which means that developing countries had longer implementation periods and lower reduction commitments.

The purpose of the Agreement, then, is to curb the policies that have, on a global level, created distortion in agricultural production and trade. These policies can be divided into the following three categories, commonly called the “three pillars of agriculture”: **market access restrictions, domestic support**

and **export competition** (see Table 1). Each of these categories of policy making are dealt with in turn by different Articles and Annexes within the Agreement, and are referred to in the text as:

- Market Access: Article 4;
- Domestic Support Commitments: Article 6; and
- Export Subsidy Commitments: Article 9.

A detailed rationale for subjecting these three pillars of AoA to GATT principles is discussed in Appendix 1 to this manual.

As regards market access, the agreement determines the tariffication process, the tariff reduction commitments, minimum access to all agricultural markets, and a special safeguard provision that protects tariffed markets from import surges.

As far as domestic support is concerned, support measures are categorized, and reduction commitments specified. Restricting domestic policies was an important change in the tradition of GATT, an institution that had focused exclusively on tariffs.

For export subsidies, the agreement also specifies the disciplines and the reduction commitments.

In addition to the three pillars, the SDT for least developed and developing countries and relations to other agreements, such as the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries, were determined in the Agreement.

The Agreement on Agriculture covers not only basic products such as wheat, milk and live animals, but also processed goods such as bread, butter, chocolate and sausages. It is also applicable on trade in wines, spirits, tobacco products and fibres such as cotton, wool and silk. However, fish and fish products

Table 1. The three pillars

Market access	Domestic support	Export subsidies
<ul style="list-style-type: none"> • Tariffication • Tariff reduction • Minimum access • Special safeguards 	<ul style="list-style-type: none"> • Aggregate measurement of support reduction • Green Box • <i>De Minimis</i> 	<ul style="list-style-type: none"> • Reduction in subsidies • Prohibition of new subsidies

Source: AoA.

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

2. Country schedules

Although the Agreement lays out the basic rules and definitions regarding policy making, it does not include specific quantitative commitments on a country by country and commodity by commodity basis. These quantitative commitments were a major objective of the Uruguay Round negotiations, and are stipulated in the country schedules, that each signatory to the Agreement has been required to submit.

The **country schedules** comprise a statement by each member government, on a commodity basis, of their position on each of the issues concerned – tariffs and non-tariff barriers (NTBs), domestic support and export subsidies – prior to the implementation of the provisions of the Agreement, together with an outline of how the provisions will be achieved. The rules governing how the country schedules should be created were laid out in a document entitled the Modalities for the Establishment of Specific Binding Commitments Under the Reform Programme, generally referred to as the Modalities.

Having presented the country schedules, a period of time was demarcated during which any member could question and seek to change the content of any other member's schedules. This period was described as the verification process. Once the verification process was complete, the schedules were submitted to the GATT (least-developed countries were given an additional year to do this, their deadline being extended to April 1995), and from that time on they became legally binding. At the same point in time the Modalities ceased to be legally binding, and any irregularities concerning the manner in which the country schedules were drawn up could no longer be challenged with reference to the Modalities.

The country schedules are an essential part of the Agreement, and the text makes frequent reference to the **commitments** made within them: for example, to reduce tariffs on particular commodities by a given amount over the required time period. Once the commitments have been made, there is a legal obligation on the part of member governments to implement them. The commitments made in the country schedules are to be made over what is known as the **implementation period**. For most, though

not all commitments, this period is defined in the AoA as a six-year period beginning in 1995, for developed countries, and a ten-year period, commencing at the same time, for developing countries.

The following sub-section discusses the main elements of the three categories of policy tools described above, in terms of the technical requirements placed on governments.

2.1. Market access

Market access provisions are an important element of the Agreement. The provisions and commitments defined by the Agreement and the country schedules regarding market access can be roughly divided into the following three areas: tariffication and tariff reduction, minimum market access and tariff rate quotas.

Tariffication and tariff reduction

Tariffication, or the replacement of NTBs by tariffs, is an important part of agriculture's inclusion within the framework of the GATT. It brings agricultural trade policy into line with the GATT principle of transparency, and potentially eliminates some of the distortionary effects that NTBs have on trade. The Agreement has the following provisions:

- It requires countries to convert their existing NTBs into tariff equivalents. These tariff equivalents are established for the *base period* (1986-1988) and are entered in the Country Schedules as the base rate of tariff;
- Developing countries have the choice of offering tariff bindings instead of establishing tariff equivalents. In practice, a small number of developing countries opted for this procedure; and
- It discourages future use of NTBs, subject to certain exemptions. These exemptions are defined under the *Special Treatment* provision that allows countries to claim exemption from tariffication commitments for certain sensitive products.

In cases where there were no non-tariff barriers (NTBs) at the start of the Uruguay Round, the value of the baseline tariff was taken to be either the customs duty that was prevailing at the beginning of September 1986 (the start of the Uruguay Round), or where this was lower than an existing tariff binding/commitment, the value of the latter. The importance of the starting

point or base-period tariff cannot be overemphasised, since, having established the value of the base period tariff through the tariffication of NTBs, countries are committed to reducing these as follows:

- For developed countries: by an unweighted average of 36 per cent, and subject to a minimum reduction of 15 per cent in each tariff line over a six-year implementation period;
- For developing countries: the commitments are 24 per cent and 10 per cent, respectively, and the implementation period extends to ten years; and
- For least-developed countries: there are no reduction commitments.

These potential reductions were stipulated in the Modalities, whilst the resulting tariff rates for each commodity, and therefore the minimum reductions to which they must be subject, are stated in the legally binding country schedules. At the end of the implementation period all tariffs are bound at the final level, and in future may not, except under specific circumstances, be raised above these levels.

There are some exemptions to this rule. The special safeguards provisions enable a country to apply additional tariffs to certain specified commodities, where import prices are particularly low, or where there is a sudden surge in imports.

Minimum Access

Market access provisions are designed to encourage the development of trade, and to ensure existing export markets are maintained. Thus, where there is little existing trade (taking the base period average as the benchmark), or where existing levels of imports are not maintained, importing countries are required to allow stipulated quantities of imports at a reduced rate of tariff. Thus, the market access provisions stipulate the following:

- Countries were, in the first instance, required to maintain current levels of access, for each individual product, where the current level is based upon the volume of imports during the base period (1986–1988); and
- Where the current level of imports was negligible, a minimum access was established at not less than 3 per cent of domestic consumption during the base period. This minimum level was to rise to 5 per cent by the year 2000 in the case of

developed countries, and by 2004 in the case of developing countries.

These market access provisions do not apply when the commodity in question is a traditional staple of a developing country. Provided that certain conditions are met, a different set of provisions apply which give governments greater flexibility regarding what are described as sensitive commodities.

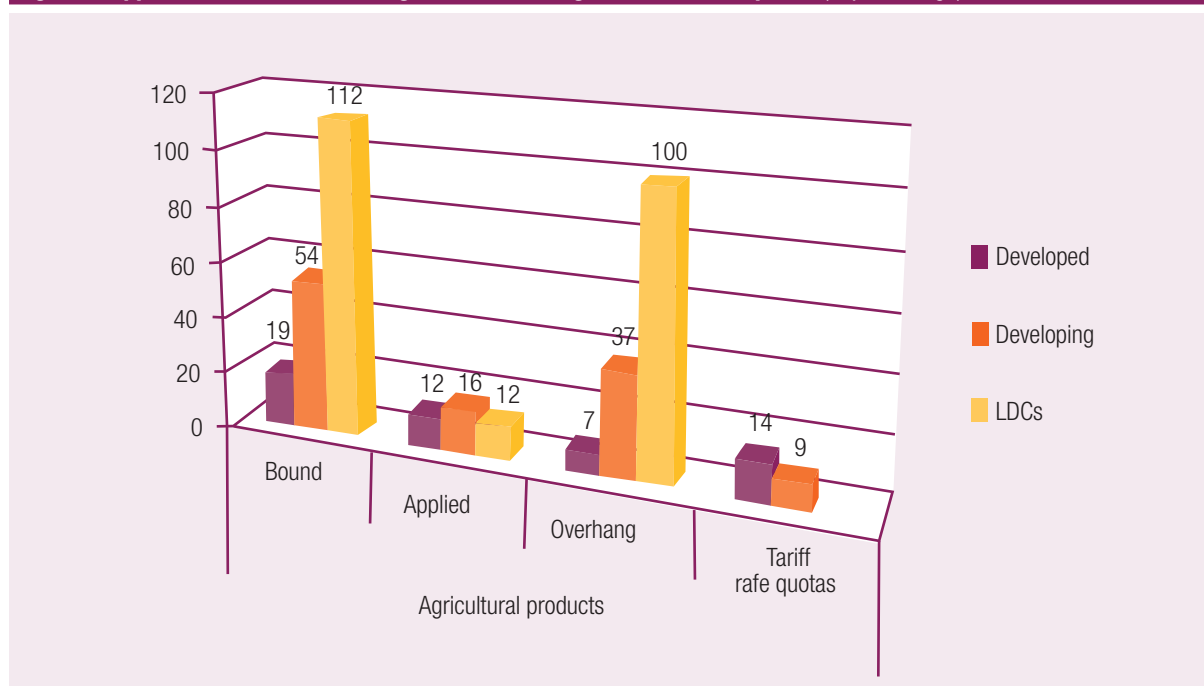
Developments in market access since the implementation of the Agreement on Agriculture

Market access barriers have declined since the implementation of the Uruguay Round. Countries' applied most favoured nation (MFN) tariffs at the WTO have fallen from an average of 24.6 per cent in 2001 to 18.7 per cent in 2010 (Bureau and Jean 2013).⁸ Meanwhile, applied duties (including preferential tariffs) have dropped from 15.8 to 13.8 per cent. Tariff cuts have been particularly steep in developing countries: in this group of countries the maximum permitted tariffs fell from 31.1 to 23.2 per cent over the same period, while applied preferential tariffs fell to 19.8 per cent.

Figure 7 compares final WTO bound tariffs averages with currently applied tariffs averages on agricultural products of developed, developing and LDCs.

While average applied tariffs are relatively not very different across these three groups of countries at 12 per cent, 16 per cent and 12 per cent respectively, the gap between their bound average tariffs is quite high with 19 per cent, 54 per cent and 112 per cent for developed, developing and LDCs respectively. The difference between bound and applied average tariff (also known as overhang) is therefore much greater for LDCs and developing countries than for developed countries as shown in figure 7. The overhang for these 3 groups of countries is respectively 100 per cent, 37 per cent and 7 per cent.

These averages, however, disguise the persistence of unusually high "tariff peaks" in a small number of tariff lines, as well as "tariff escalation", or the imposition of progressively higher tariff rates on value-added products. For example, Japan's maximum applied MFN tariff on dairy products is set at 558 per cent, while in the United States the maximum applied MFN tariff in the beverages and tobacco product group is as high as 350 per cent.⁹ The proliferation of preferential trade deals in recent years reflects the emphasis that many

Figure 7. Applied and bound trade weighted tariff average and tariff rate quotas (in percentage)

Source: UNCTAD (2014). Discussion paper. TDB 61, 22 September 2014. Available at https://unctad.org/meetings/en/Contribution/tdb61_c03_UNCTAD.pdf.

Note: Tariff rate quota is measured in term of share of national tariff lines with a tariff rate quota.

countries have placed on pursuing market access goals through bilateral and regional negotiations.¹⁰ Appendix 2 to this manual provides a brief overview of regional trade agreements.

Nonetheless, although there is evidence to suggest that the impact of preferential trade agreements is growing, unilateral liberalisation appears to have also been an important factor behind the evolution of policy frameworks governing agricultural markets. Bureau *et al.* (2017)¹¹ find that regional trade agreements contributed just 0.5 percentage points to the 6.5 percentage point change in global applied tariff protection in agriculture between 2001 and 2013, although their importance has increased since 2010. The authors conclude that unilateral tariff cuts have been relatively more significant, although they note that these may take place for a variety of different types of reasons.

By comparison, highest bound tariff averages are found in similar sectors as for applied tariff averages (sugar, dairy and meat) in developed countries but also in other sectors that have relatively low applied tariff average such as Harmonized System (HS) chapter 10-cereals and chapter 11-products of the milling

industry with bound tariff averages of 76 per cent and 41 per cent respectively. For developing countries, the highest bound tariff averages affect chapter 15-animal or vegetable fats and oils (84 per cent), chapter 24-tobacco (83 per cent), chapter 10-cereals (76 per cent) and chapter 22-beverages and spirits (75 per cent). In LDCs, bound tariff averages are much higher than those of developed and developing across all chapters, ranging from a minimum bound tariff average of 54 per cent for chapter 16-preparations of meat or fish to a maximum bound tariff average of 146 per cent for chapter 07-edible vegetables.

In comparison with non-agricultural goods, tariffs on agriculture are much higher.

Table 2 presents the European Union's bound and MFN applied rates as well as trade weighted applied tariff averages. The figures show that despite the tariff reductions agreed at the Uruguay Round, there remains a considerable degree of protection in agricultural products.

Tariff rate quotas

Members have encountered some problems with the implementation of the tariff quotas commitments.

Table 2. European Union bound and most-favoured nation applied rates (in percentage)

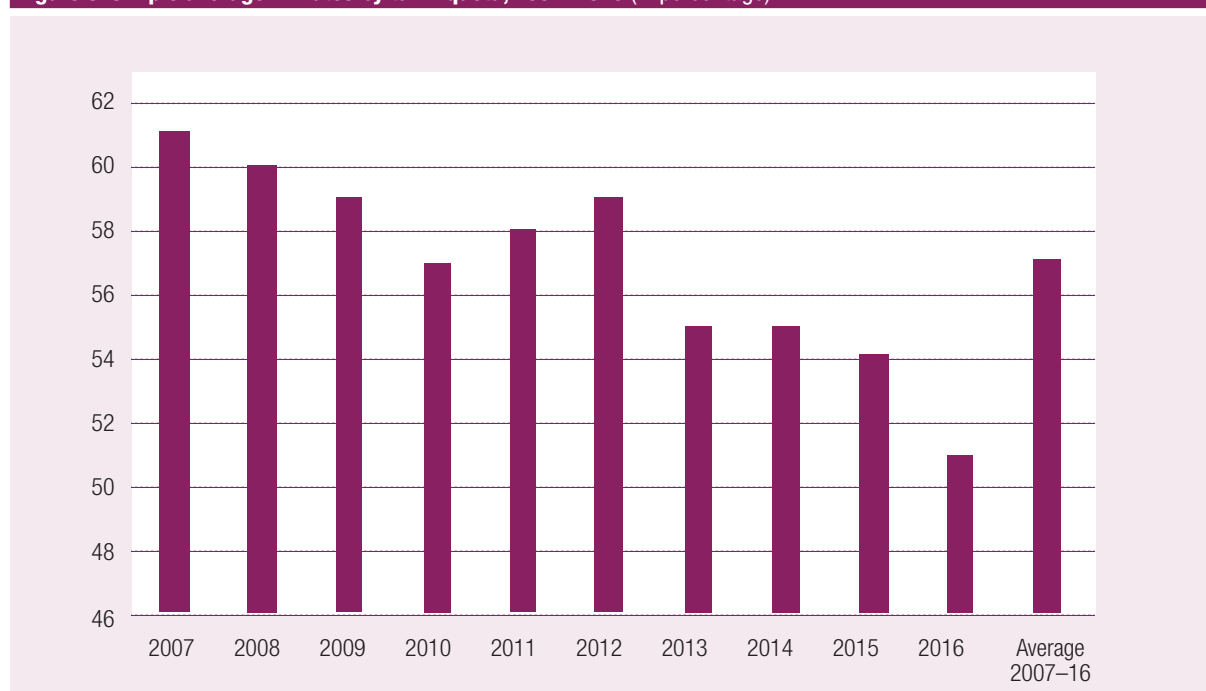
Summary	Year	Total	Agriculture	Non-agriculture
Simple average final bound	2017	5.0	11.8	3.9
Simple average most-favoured nation applied	2017	5.1	10.8	4.2
Trade weighted average	2016	3.2	8.7	2.8
Imports in US\$ billions	2016	1 710.3	120.1	1 590.2

Source: World Tariff Profile 2018 (European Union).

The main spheres of contention have been the administration methods of such tariff quotas and the level of quota fill.¹² The principal allocation methods are “applied tariffs”, “first come, first served”, “licenses on demand”, “auctioning”, “historical importers”, “imports undertaken by state trading entities”, “producer groups or associations” and some “other” mixed or not clearly specified methods. The majority of the tariff rate quotas (TRQs) have been administered by “applied rates” (where imports of the products concerned are allowed into the country in unlimited quantities at the in-quota tariff rate or below (49 per cent), “licences on demand” (24 per cent) and “first come, first served” (10 per

cent). Some countries have additional conditions in connection with principal administration methods such as domestic purchase requirements or past trading performance.

In the first 12 years of implementation of the Uruguay Round, there was a simple average fill rate of over 60 per cent, a percentage that has been decreasing in following years and reached a low of 51 per cent in 2016 (see Figure 8). Minimization of the trade-distorting implications of TRQs would require the use of transparent and impartial methods for the allocation of import licenses. However, questions of whether

Figure 8. Simple average fill rates by tariff quota, 2007–2016 (in percentage)

Source: WTO Committee on Agriculture: Tariff Quota Administration Methods and Fill Rates 2007–2016.

a certain method is transparent enough and non-discriminatory are still debated.

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

2.2. Domestic support commitments

Article 6 of the WTO Agreement on Agriculture allows countries to provide domestic support so long as it does not exceed a previously agreed "bound" limit. For many countries that have historically provided this kind of support, the limit is the ceiling on their Aggregate Measure of Support (AMS), including support that is conditional on agricultural outputs and inputs, or market price support. These types of payments are dubbed 'Amber Box' by the trade negotiators (see Table 3).

For evaluating the level of support that is provided to the agricultural sector, the Agreement refers to four different measures of support. These are summarised in Box 1.

In order to limit the trade distortions caused by domestic agricultural support policies, the Agreement introduces commitments intended to curb these policies. These commitments on domestic support are aimed largely at developed countries, where levels of

domestic agricultural support have risen to extremely high levels in recent decades. This constraint on policy design is to be achieved by:

- Quantifying all domestic support deemed by the Agreement to have a distortionary effect on trade, *i.e.* the creation of what is known as the AMS; and
- Progressively reducing these quantitative measures.

For developing countries, where agricultural support policies are deemed to be an essential part of a country's overall development, the obligations are generally less demanding.

In WTO terminology, domestic support is classified by "boxes" according to their effect on production and trade: Green (permitted) and Amber (slow down, *i.e.* be reduced). There is a 'Blue Box' for subsidies that are tied to programmes that limit production. There is no 'Red Box', although domestic support exceeding the reduction commitment levels in the 'Amber Box' is prohibited. There are also exemptions for developing countries (sometimes called an 'SDT Box').

The 'Green Box'

'Green Box' support is considered to be minimally trade-distorting under WTO rules. It covers general services payments, such as research and extension services; domestic food aid; and various direct payments to producers, including those made under environmental programmes.

'Green Box' policies include a variety of direct payment schemes, that subsidise farmers' incomes in a manner that is deemed not to influence production decisions. They also include assistance provided through:

- Producer retirement programmes;
- Resource (*e.g.* land) retirement programmes;

Table 3. Domestic support provisions in the Agreement on Agriculture

Provision	Relevant article of the Agreement on Agriculture
Amber Box	Article 6.1 and in members schedule
<i>De Minimis</i>	Article 6.4
Blue Box	Article 6.5
Green Box	Annex 2
Development programmes	Article 6.2

Source: AoA.

Box 1. The aggregate measurement of support

The Aggregate Measurement of Support (AMS) quantifies, in *monetary terms*, certain aspects of the support provided by agricultural policies. The AMS calculation includes all domestic support policies that are considered to have a significant effect on the volume of production, both at the product level, and at the level of the agricultural sector as a whole. Market price support, except the one that is achieved through border controls alone, is a major component of the AMS calculation.

The AMS is calculated by first deriving the levels of support for each commodity, plus a similar calculation for non-commodity-specific support. Each of these is then summed to provide the aggregate measure. Apart from those policies which are included in the calculation, a large number of policies are excluded. Whether or not these have, in reality, a significant effect on production is, in some cases open to interpretation. These policies are categorised as follows:

- Those policies which do have a substantial impact on the patterns and flow of trade, and therefore are included in the AMS calculation, are classified in what is called the 'Amber Box';
- Policies that are not deemed to have a major effect on production and trade are placed in the 'Green Box'; and
- Policies that fall into neither of these categories, but are, perhaps, somewhere in between, are known as 'Blue Box' policies. These are also exempted from the AMS calculation.

- Environmental protection programmes;
- Regional assistance programmes;
- Certain types of investment aid; and
- General services that provide for research, training and extension; marketing information; certain types of rural infrastructure.

Figure 9 shows the 'Green Box' expenditures of major WTO members.

From the point of view of developing countries, exemptions relating to **food security, domestic food aid** and the **environment** are of particular interest.

The 'Blue Box'

A few economies, such as the European Union and Japan, provide production-limiting payments, known as 'Blue Box' payments, which are allowed without limits at the WTO.

Most of the exemptions to AMS commitments are policies placed in the 'Green Box'. However, 'Blue Box' are additional policies that gain exemption as a result of the accord reached at Blair House during the Uruguay Round. The most notable of these are the compensatory payments and land set-aside programme of the European Union's Common Agricultural Policy, and the United States' deficiency payments scheme (see Figure 10). Such direct

payments under production-limiting programmes are exempted from AMS reduction if:

- Such payments are based on fixed area and yields; or
- Such payments are made on 85 per cent or less of the base level of production; or
- Livestock payments are made on a fixed number of heads.

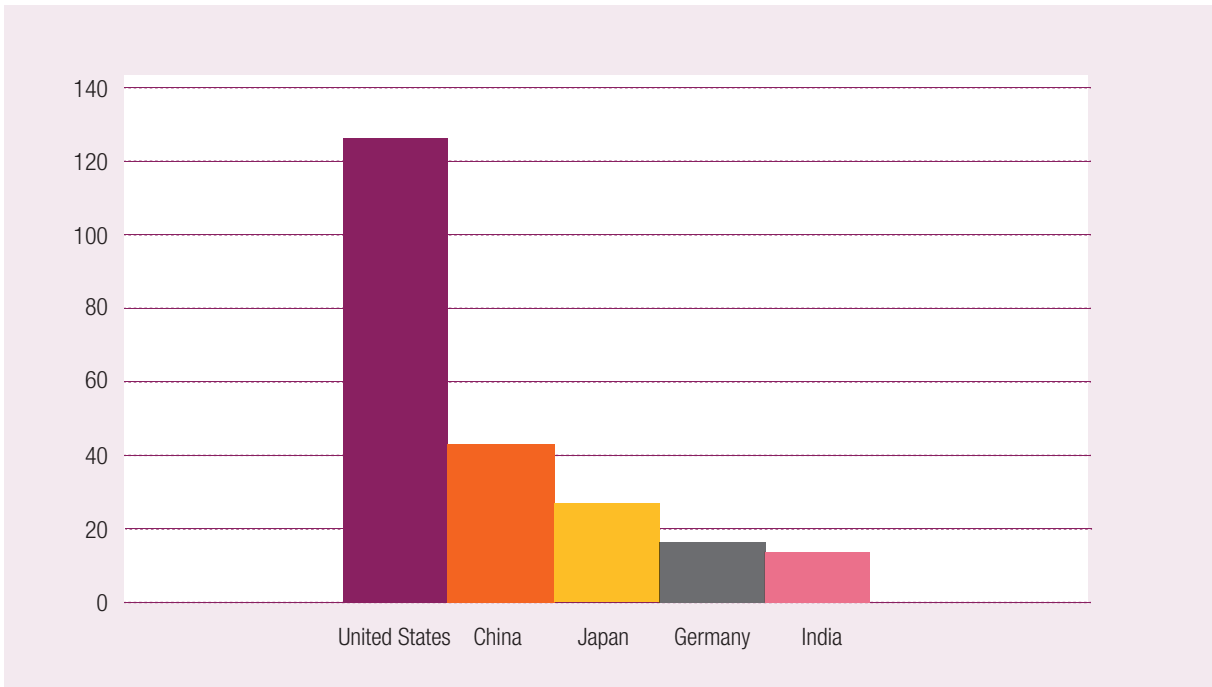
Development Programme

Certain development programmes make up a third category of exempted domestic support measures. They include investment and input subsidies that are provided, without limit, by developing countries to low-income or resource-poor producers. There is no definition of "low-income" or "resource-poor".

'De minimis' Exemptions

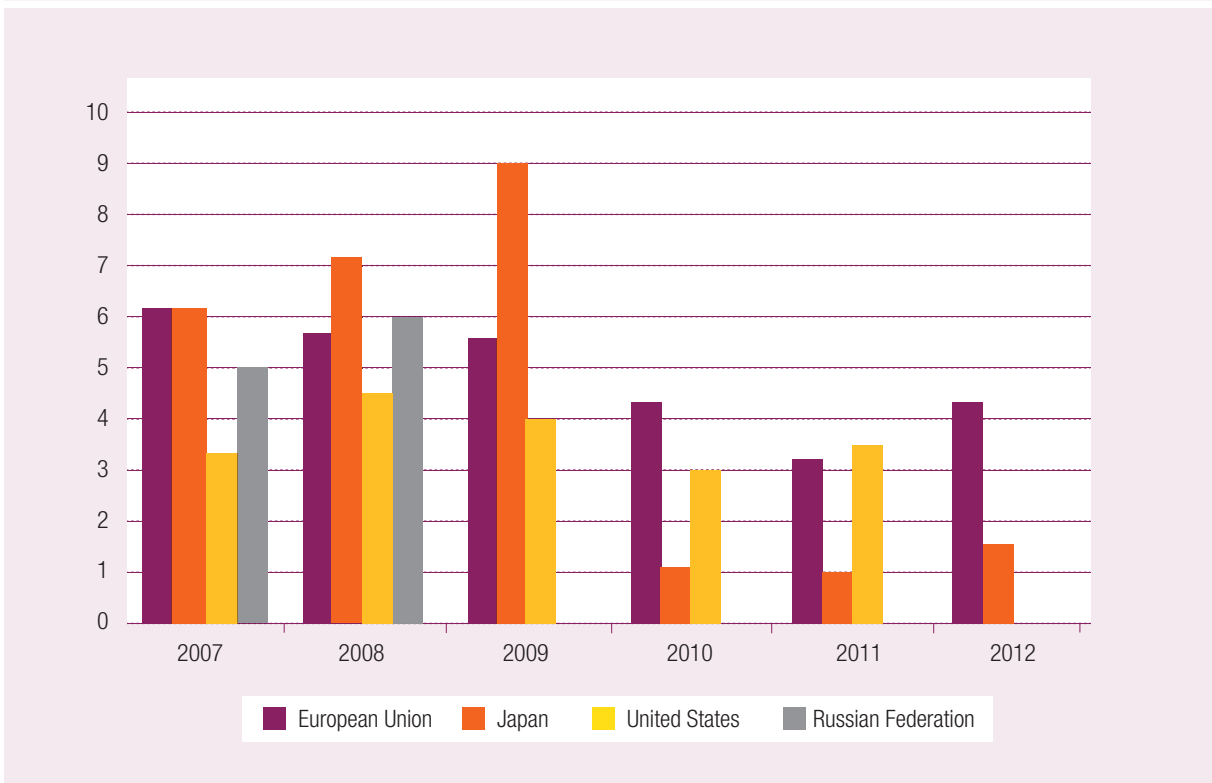
All countries are allowed to provide this type of trade-distorting support up to a minimum threshold, known as "*de minimis*" at the WTO (Box 2). For developed countries, this is defined as five per cent of the value of production for product-specific support, and another 5 per cent of the value of production for non-product-specific support. Most developing countries are allowed to provide twice as much *de minimis* support as developed countries, China, however, accepted

Figure 9. 'Green Box' expenditures for countries with the highest expenditures, 2016 (in US\$ billions)



Source: United States Department of Agriculture (calculations from WTO notifications).

Figure 10. Notified 'Blue Box' payments, 2007–2012 (in US\$ billions)



Source: UNCTAD calculations based on WTO notifications.

Box 2. Calculations of “de minimis” exemption from the aggregate measurement of support

Aggregate measurement of support (AMS) calculations are carried out for each commodity and for non-specific support. The ‘*de minimis*’ exemption allows any support for a particular commodity (or non-specific support) to be excluded from the total AMS calculation if that support is not greater than a given threshold level. Thus, an additional exemption is contained in the provisions of the Agreement, in the following circumstances:

- Where the value of total domestic support for a particular commodity is not greater than 5 per cent (10 per cent for developing countries) of the total value of production of that product, then that support need not be included in the calculation of the Current Total AMS, which means that it will not have to be reduced.
- The same arrangement applies for non-product specific support. That is, provided that its value does not exceed 5 per cent (10 per cent for developing countries) of the value of total agricultural production, then, it too may be excluded from the AMS commitments.

a lower threshold of 8.5 per cent for both product-specific and non-product specific support during its negotiations to become a member of the WTO.

The domestic support commitments are defined in the Modalities as requiring a 20 per cent (13.3 per cent for developing countries) reduction in the base total AMS, to take place in equal annual instalments over the implementation period. The base total AMS is defined as the value of total AMS during the base period (1986–1988). The implementation period started in 1995 and lasts six years for developed countries and 10 years for developing countries. The resultant domestic support reduction commitments are included in the country schedules. To ensure that annual reduction commitments are being complied with, current total AMS values are established in each year of the implementation period.

Figure 11 shows the composition of domestic support for selected countries, since 2011.

2.3. Export subsidy and export competition

The subsidised export of agricultural surpluses has been a major source of international trade disputes, and the distortions that it has created on world markets, in terms of price and general market instability have been substantial. It is partly for this reason that the decision reached on export subsidies is seen by many to be the most important element of the Agreement, and likely to have the most immediate and direct impact on world markets. Although agriculture does still receive special treatment in the area of

export subsidies, in that, unlike in the trade of other commodities, export subsidies are still permitted, the Agreement did introduce constraints on such policies, where previously there were none. The essence of the Agreement with regard to export subsidies is as follows:

- Export subsidies, measured in terms of both the **volume of subsidised exports**, and in terms of the budgetary **expenditure on subsidies**, have been capped at *base period* levels; and
- Countries are now committed to reducing export subsidies for many different agricultural commodities, which are grouped for the calculation of export subsidies (Table 4).

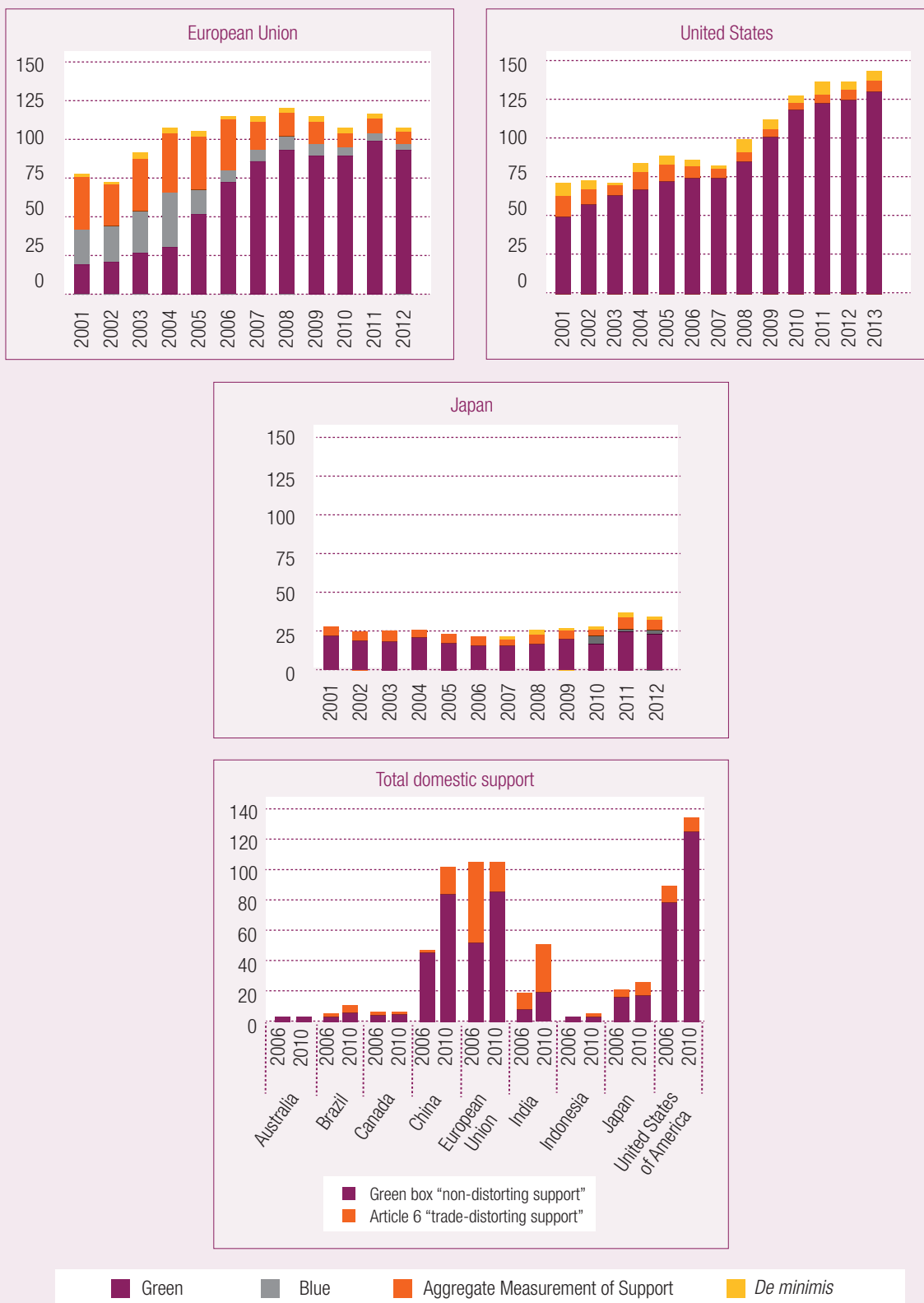
The schedule for implementing cuts appear in the country schedules. These specify:

- The base period level of subsidy for each affected commodity;
- The bound level for 1995; and
- The level to which the subsidy will be reduced to by the end of the implementation period.

These commitments are given for both the value of subsidy expenditures (expressed in US\$) and in the volume of subsidised exports (in tons).

- Developed countries are committed to reducing the volume of subsidised exports by 21 per cent and the expenditure on subsidies by 36 per cent, both over a six-year implementation period (1995–2000); and

Figure 11. Composition of domestic support for selected countries, since 2001 (in US\$ billions)



Source: WTO notifications, FAO Stat.

Table 4. Commodity grouping for export-subsidy commitments

#	Commodity	#	Commodity
1	Wheat & Wheat Flour	12	Bovine meat
2	Coarse grains	13	Pig meat
3	Rice	14	Poultry meat
4	Oilseeds	15	Sheep meat
5	Vegetable Oils	16	Live animals
6	Oilcakes	17	Eggs
7	Sugar	18	Wine
8	Butter and butter oil	19	Fruit
9	Skimmed milk powder	20	Vegetables
10	Cheese	21	Tobacco
11	Other milk products	22	Cotton

Source: WTO.

- For developing countries, the reduction commitments are 14 per cent and 24 per cent for volume and expenditure respectively, whilst the implementation period (1995–2004) lasts ten years rather than six.

The base period for the purpose of the export subsidy commitments is different from the 1986–1988 base period relating to commitments on market access and domestic support. For export subsidies the base period is generally taken to be the period 1986–1990. However, an exception to this was negotiated between the United States and the European Communities (now European Union), under what was called the “front loading” accord reached in December 1993, just before the conclusion of the Round.

According to this accord, the starting level of export subsidy reduction commitments could be located at the level of subsidies prevailing in 1991–1992, providing that the level of subsidies at this time exceeded those in the base period and that by the end of the six-year implementation period, the cuts still brought subsidies down to the level that would prevail had the base period level been used as a starting point. The reason behind this permission for exception is that in some cases export subsidies had continued to increase substantially following the 1986–1990 base period, and it was felt that a sudden cut to the base period level would have been too demanding. Therefore, the Agreement had required a

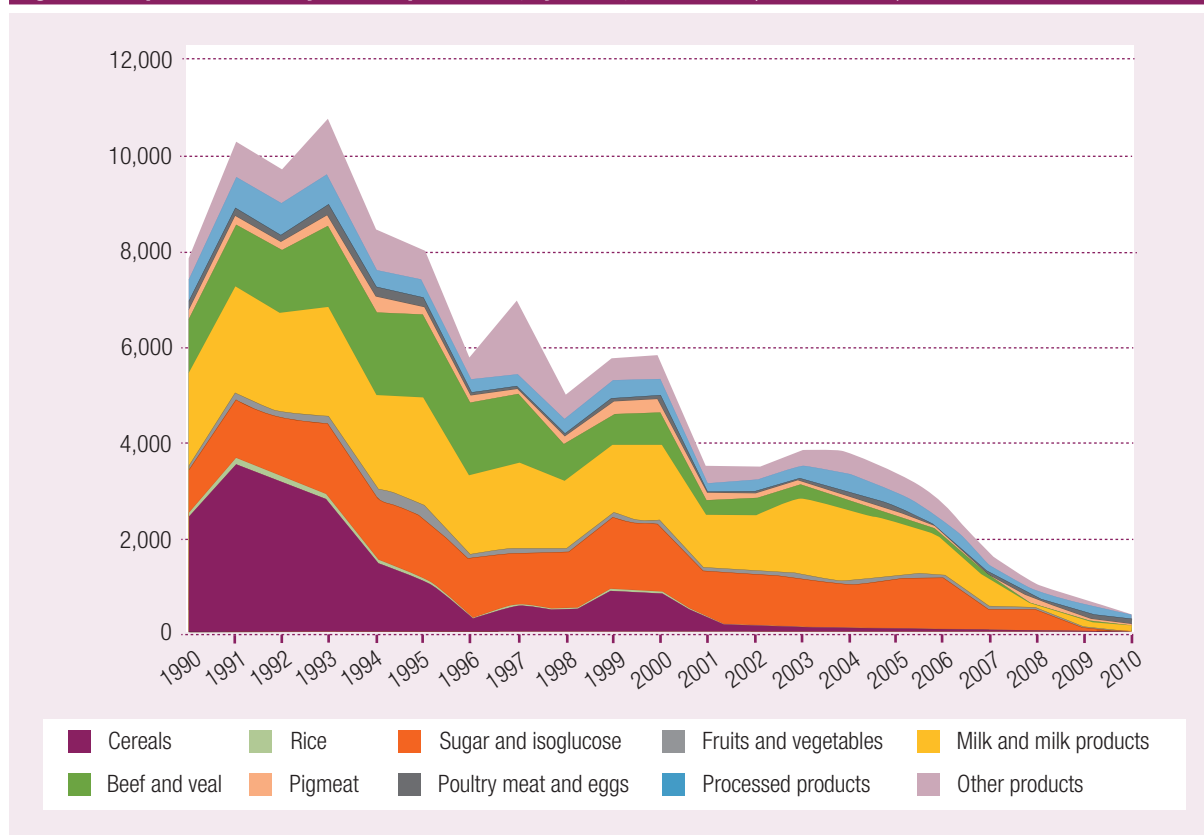
cut in such a way that while the overall cut in export subsidies, under these arrangements, would have to be larger, the impact of the reduction at the beginning of the implementation period is minimised.

Since most of the export subsidies are provided by developed countries from the Northern hemisphere, the bulk of subsidies apply to temperate products. Almost 70 per cent go for dairy products and 40 per cent for meat. Producers of cereals, incorporated products and sugar also receive a considerable amount. Beef, which is of interest to some developing countries, represents almost 65 per cent of all meat subsidies (see Figure 12).

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

Food Aid

Food aid increases total world consumption but can also displace commercial exports. A distinction between the two is necessary. If the food aid displaces other exports and is used to dispose of surplus, it has the same trade-distorting effect as a cash export subsidy. Studies¹³ have shown that a proportion of the food aid that is currently provided

Figure 12. Export subsidies by the European Union, by Sector, 1990–2010 (in EUR millions)

Source: OECD.

is supply-driven rather than demand-driven and is used as a disposal tool. Food aid may replace local production, and some products such as vegetable oil that are provided as food aid can be produced by developing countries. Since food aid does assist in reducing hunger in emergencies, alternative methods of assistance such as cash aid have to be introduced. A ministerial decision relating to food aid was adopted at Marrakech which concluded the Uruguay Round.

State Trading Enterprises

State Trading Enterprises (STEs) are State organizations that exert monopoly or near monopoly power over the purchases and sales of a country's agricultural products. Activities of STEs were not specifically disciplined in the AoA. Article XVII of the GATT states that STEs must operate in accordance with commercial considerations and in a non-discriminatory manner. Exporting State-owned companies, marketing boards or similar enterprises could be a means of subsidizing exports. STEs or similar enterprises may:

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

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

Export Credits

Export credits are insurance, guarantee or finance arrangements offered by an exporter or by a private or public financial institution in the exporting countries

to domestic exporters or foreign buyers of goods or commodities. In sectors such as airline, shipping, and telecommunication equipment, export credits have almost become unavoidable as potential buyers shop around for the good and the most favourable financial terms. However, when such export credits are given at interest rates considerably less than market rates, generally, they come under the purview of export subsidies, a category prohibited by the Agreement on Subsidies and Countervailing Measures Agreement.

Export credits are, by and large, contrary to the principle of free trade, as they are considered to upset the level playing field for the domestic producers of the importing country by giving an unfair advantage to the goods of the exporting country. The extent of this unfair advantage increases when a developed country provides such credits to buyers of a developing country as it becomes difficult for sellers of the developing country to compete against the foreign sellers backed with such credits.

3. Other provisions in the Agreement on Agriculture

This section provides an overview of other provisions that are part of in the Agreement on Agriculture.

3.1. Peace Clause

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

3.2. Dispute Settlement

In addition, the Agreement on Agriculture specifies that in the case of a dispute involving provisions of the AoA, the general WTO dispute settlement procedures shall apply (Article 19 of the AoA). Earlier, several WTO disputes on agricultural products have addressed issues related to the SPS Agreement. More recently, WTO dispute settlement has seen 81 cases directly related to the AoA. Some of these disputes have been settled (see Appendix 3 to this manual) while others are in the stage of consultation.

3.3. Food safety

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

3.4. Tropical products

The Preamble of the AoA refers to the fullest liberalization of trade in tropical agricultural products. The issues are the meaning of "fullest liberalization" and the selection of products to be covered. Would this include sensitive products such as rice, sugar and bananas? Several developing countries including the developing Cairns Group members put forward this idea, while others oppose it and claim that long-standing preferences must be considered.

3.5. Non-trade concerns

Most countries accept that agriculture is not only about producing food but also has other functions, including these non-trade objectives. The question is whether distorting subsidies are needed in order to help agriculture perform these other functions. The AoA provides significant scope for governments to pursue important "non-trade" concerns such as food security, the environment, structural adjustment, rural development, poverty alleviation, and so on. Article 20 of the Agreement says the negotiations have to take non-trade concerns into account.

4. Related World Trade Organization Agreements on trade in agriculture

It is not only the Agreement on Agriculture that determines the rules for trade in agricultural goods. In principle, all WTO agreements and understandings on trade in goods apply to agriculture, for example the GATT 1994 and WTO agreements on matters such as customs valuation, import licensing procedures

or pre-shipment inspections. Whenever there is a conflict, however, the provisions of the AoA prevail.

The following three other agreements specifically impact on trade in agricultural goods.

(1) Marrakech decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries

This Decision recognizes that these countries may experience difficulties in obtaining food from external sources on reasonable terms and conditions during the world agricultural reform programme. The mechanisms are designed to ensure that the Uruguay Round Agreement does not adversely affect these countries, focusing on the availability of food aid and export credits in favour of LDCs and net food importing developing countries, as well as resources from international financial institutions to avoid short-term difficulties.

However, there has been some criticism that it has not been adequately implemented. In December 2000, the WTO General Council instructed the Committee on Agriculture to examine problems facing food importing developing countries. The Committee's recommendations regarding implementation-related issues were approved by the WTO Fourth Ministerial Conference in November 2001 at Doha Ministerial Conference with respect to:

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

(2) The Agreement on Trade-Related Aspects of Intellectual Property Rights

The Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement protects new ideas, trade secrets, trademarks and geographical indications. The agreement impacts on trade in agricultural goods. For example, geographical indication, which is a term used to describe both the origin and characteristics of a product, typically apply to wine but also to other goods such as cheese and meat. Examples include "Champagne", "Cognac", "Edam", "Mozzarella" and numerous others. Thus, geographical indication

provisions in the TRIPs have implications for agricultural market access. Another example is patent. New plant varieties can be patented and thus protected by the TRIPs agreement.

(3) Sanitary and Phytosanitary and Technical Barriers to Trade Agreements

While the focus of the GATT was on reducing ordinary customs duties ("tariffs"), the attention has now broadened to include the NTMs. A key development in this respect was the entry into force of the WTO Agreements on the application of SPS and TBT measures. The SPS Agreement sets out rules for the application of measures for food safety and requirements for animal and plant life and health and recognizes the right of governments to adopt and enforce measures necessary to protect human, animal or plant life or health. The TBT Agreement covers all types of industrial and agricultural products with respect to three types of measures: technical regulations, conformity assessment procedures and standards. It intends to help governments achieve a balance between legitimate regulatory policy objectives and the respect for the key disciplines of multilateral trade rules.

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

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

Sanitary and Phytosanitary measures are deemed to be necessary if they are based on international standards such as the Codex Alimentarius Commission (food safety) or if they are based on scientific risk assessment. The choice of measures should be consistent in the sense that WTO members must avoid unjustifiable differences in the level of health protection related to different situations and should be not more trade restrictive than necessary.

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

Non-tariff measures in agri-food markets such as SPS and TBT are policy measures, other than ordinary customs tariffs, that can affect international trade by changing quantities traded or prices, or both. Governments use NTMs to address public concerns. For example, they are used to protect human, animal and plant health. They are also used to regulate the technical characteristics of products, such as labelling

and marketing standards, traceability of material, and the related conformity assessment and certification. Sanitary and phytosanitary-related NTMs are more prominent for animal products, fruits and vegetables, and fats and oils, while TBT-related measures play a more important role when it comes to processed food.

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

The background of the page features a photograph of several hands holding up various colorful puzzle pieces. The pieces are in shades of yellow, green, blue, orange, and pink. The hands are positioned around the pieces, suggesting a collaborative effort to assemble a larger picture. The overall scene is bright and positive, symbolizing teamwork and problem-solving.

CURRENT TRADE NEGOTIATIONS ON AGRICULTURE

The agricultural negotiations are part of what is referred to as the WTO's 'built-in agenda'. In other words, these negotiations were already mandated in the Uruguay Round Agreements. Article 20 of the AoA says agriculture negotiations should restart in 2000. In November 2001, the agriculture talks became part of the "single undertaking" in the Doha Round of trade negotiations. This Part discusses the mandate of trade negotiations and the developments of negotiations since 2001.

1. Mandate of trade negotiations

The Agreement on Agriculture incorporated in Article 20 the mandate to continue the reform process to achieve "the long-term objective of substantial progressive reductions in support and protection". This mandate was reaffirmed in the Doha Ministerial Declaration in 2001 and enforced within the Single Undertaking in which virtually all linked negotiations were supposed to end by January 2005. Because several deadlines were missed, negotiations are still going on.

Box 3. Doha mandate

- Substantial improvements in market access;
- Reductions of, with a view to phasing out, all forms of export subsidies;
- Substantial reductions in trade-distorting domestic support;
- SDT provisions as an integral part of all elements of the negotiations;
- The commitment to consider non-trade concerns; and the need to establish modalities.

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

improving food security and rural development. In addition, geographical indications are discussed under TRIPS but also in the agriculture negotiations.

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

2. Phases of trade negotiations

Figure 13 summarizes the timeline of action in trade negotiations on agriculture.

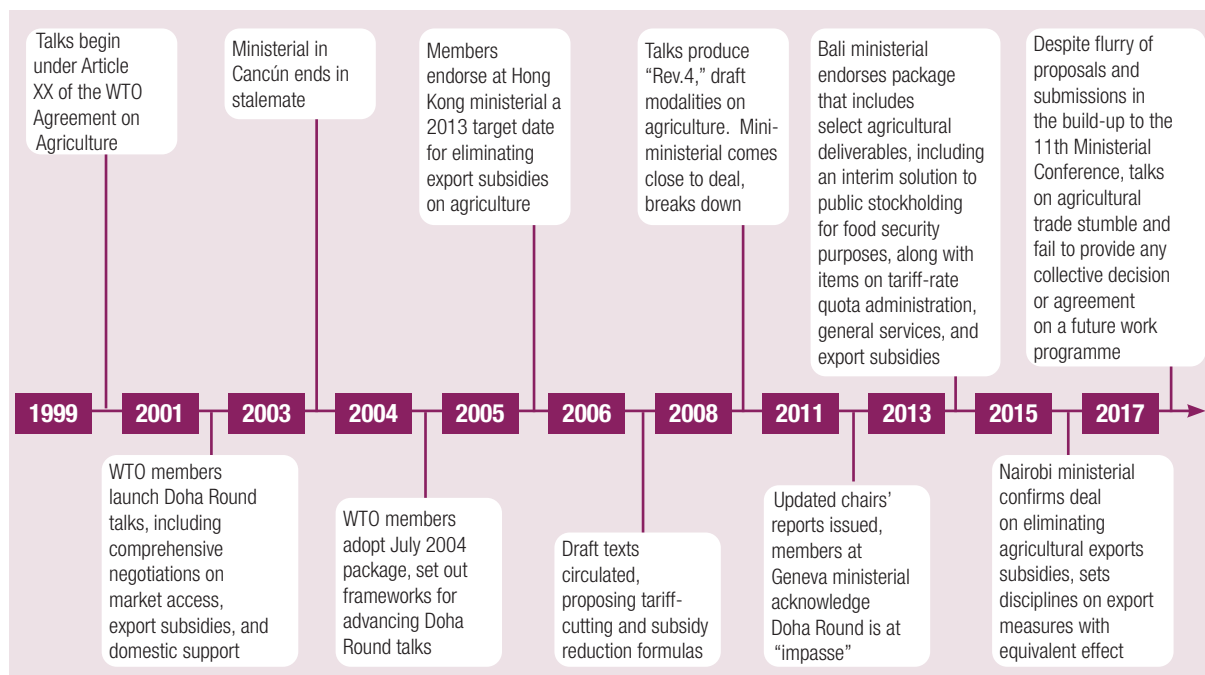
2.1. Cancún Ministerial Conference 2003

Although the Doha talks were originally intended to lead to agreement on a framework for cuts in tariffs and subsidies – or "modalities" – by 2003, with talks concluded two years later, negotiators missed these and other deadlines. At the same time, a group of developing countries known as the

Modalities: Mechanisms for further commitments.

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

G20 and including China, India, Brazil, and South Africa rejected a joint United States–European Union negotiating proposal that they argued was unacceptable. While the United States and European Union were among countries pushing for increased market access, especially in fast-growing markets such as China and India, many of their trading partners sought steep reductions in trade-distorting support as a precondition for cutting tariffs on farm goods. Meanwhile, the G33 group, including China, India, and Indonesia as well as numerous smaller countries in Africa and the Caribbean, sought increased flexibility for developing countries, both in the form of exemptions from average tariff cuts and through a new special safeguard mechanism (SSM) that they would be able to use in the event of sudden import surges or price depressions. Japan, Switzerland, and other countries in the G10 group also sought to maintain flexibility to provide trade-distorting domestic support and high tariffs on farm goods.

Figure 13. Timeline of action on multilateral trade negotiations in agriculture

Source: ICTSD, Policy Brief September 2018.

2.2. The Framework Agreement of July 2004

Framework: Roadmap for establishing negotiating modalities in agriculture.

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

This Framework Agreement brought the negotiations back on track and set out roadmaps and key benchmarks for the conduct of agricultural negotiations; however, details of formulas, targets and criteria were

not specified and therefore the "modalities" were left for further negotiations. At Hong Kong (China) in December 2005, WTO Ministers agreed on some additional issues but, again, there was no agreement on the most controversial aspects.

Although Cancún ended with no consensus outcome, the Hong Kong conference in 2005 did see ministers agree to a joint declaration that provided the contours for further intensive talks around successive draft negotiating texts, leading up to a "mini-ministerial" conference in Geneva in July 2008. This however ended in stalemate when the United States and "emerging" countries such as India and China were unable to agree on the extent to which a special safeguard mechanism should be allowed to breach pre-Doha tariff ceilings—alongside other critical

questions such as cuts to tariffs on manufactured goods.¹⁴

2.3. The Draft Agriculture Text of 2006

Doha Round negotiations were expected to conclude with a single undertaking in December 2006 among 149 WTO Members. A draft agriculture text was circulated in 2006 (hereinafter referred to as "Draft Agriculture Text"). This and later revisions contain proposed formulas for cutting tariffs and subsidies, along with various new provisions that would be included in the future agreement on agriculture. In July 2006, however, negotiations were suspended mainly as a result of differences among major trading partners. Multilateral talks have been continuing intermittently despite the fact that there has been little or no evidence that the impasse has been settled.¹⁵ Much of 2007 and 2008 saw intensive negotiations, and numerous working papers were developed.

2.4. Fourth revision of the Draft Agriculture Text in 2008

In July 2008, a group of ministers went to Geneva to try to negotiate a breakthrough on key issues. The consultations continued from September 2008. Drawing on over a year of negotiations, on 6 December

2008 the chair of the agriculture negotiations issued a fourth revision of the draft negotiating text (often called “Rev.4”) to capture the progress and highlight the remaining gaps.

2.5. Bali Ministerial Conference 2013

The Bali Ministerial Conference 2013 revitalised trade negotiations in agriculture. At the 2013 Ministerial Conference in Bali, Indonesia, ministers agreed on a package of issues, including four decisions on agriculture:

- An agreement to negotiate a permanent solution to public stockholding for food security purposes, and to refrain from challenging breaches of domestic support commitments resulting from developing countries’ public stockholding programmes for food security provided certain conditions are met;
- A call for more transparency in tariff (or tariff-rate) quota administration – whereby quantities inside a quota are charged lower import duty rates – and for governments not to create trade barriers by how they distribute quotas among importers;
- An expansion of the list of “General Services” – to include spending on land use, land reform, water management, and other poverty-reduction programmes – that qualify for Green Box support (*i.e.* domestic support that is allowed without limits because it does not distort trade, or at most causes minimal distortion); and
- A declaration to reduce all forms of export subsidies and to enhance transparency and monitoring.

Ministers also agreed to enhance transparency and monitoring in the trading of cotton in recognition of the importance of this sector to developing countries and to work towards the reform of global trade in cotton.

2.6. Nairobi Ministerial Conference 2015

At the Nairobi Ministerial Conference in December 2015, WTO members made significant achievements in agriculture negotiations. They adopted a decision to eliminate agricultural export subsidies and to set disciplines on export measures with equivalent effect. Under this decision, export subsidies would be eliminated by developed countries immediately, except for a handful of agriculture products, while developing countries have longer periods to do so. By eliminating export subsidies, WTO members delivered a key target of the Sustainable Development Goal on

Zero Hunger. It will help to level the playing field for farmers around the world, particularly those in poor countries, which cannot compete with rich countries that artificially boost their exports through subsidies.

The Nairobi deal also included language on **export credits**, credit guarantees, and insurance, which was noticeably less constraining than the rules proposed under earlier draft texts submitted as part of the Doha Round of trade negotiations. The agreement nonetheless had the effect of “locking in” the prevailing practice in the United States of providing 18-month maximum repayment periods for export financing, preventing future backsliding.

On international food aid, the Nairobi deal established new rules which sought to ensure emergency aid is available but does not function as a disguised export subsidy. These could help ensure governments maintain more effective food aid practices despite falling prices.

The Nairobi outcome included the least specificity in the area of exporting agricultural **state trading enterprises**, where governments agreed to generic language requiring countries not to use these bodies to circumvent export subsidy disciplines.

WTO members also agreed to engage constructively in finding a permanent solution to developing countries’ use of **public stockholding** programmes for food security purposes. Ministers also agreed to continue negotiations on a special safeguard mechanism that would allow developing countries to temporarily raise tariffs on agriculture products in cases of import surges or price falls.

The Nairobi Ministerial Decision on **Cotton** contained provisions on improving market access for least-developed countries, reforming domestic support and eliminating export subsidies. It also underlined the importance of effective assistance to support the cotton sector in developing countries. In Nairobi, ministers declared “there remains a strong commitment of all members to advance negotiations on the remaining Doha issues. This includes advancing work in all three pillars of agriculture, namely domestic support, market access and export competition”.

The above decisions in the 2015 Nairobi Ministerial Conference are considered as the most important reform of international trade rules in agriculture since the WTO was established. In 2016 and 2017 WTO

members looked at way forward in agriculture talks and the discussion on domestic subsidies remained a priority in farm talks. Negotiators exchanged views on issues for potential outcomes and urged to step up efforts to secure a farm trade deal at MC11 in Buenos Aires in December 2017.

2.7. Recent negotiations

Several proposals have been tabled since 2015 (see Annex 2 to this manual), with Paraguay and Peru tabling a proposal in May 2017 to simplify and then reduce market access barriers in a two-step process. This would see countries firstly convert complex tariffs into simple ad valorem tariffs, expressed as a percentage of product value rather than per unit of volume or weight. They would then take steps to reduce tariff peaks, tariff escalation and lower bound in-quota tariffs, as well as establishing a formula for further tariff reduction – all of which would be subject to negotiations among WTO members. Dozens of new negotiating proposals and submissions have been tabled in the area of domestic support. WTO members have discussed whether to cap overall trade-distorting support, and if so, how to define new limits in this area. Furthermore, some countries have also suggested that tighter disciplines are needed to prevent subsidies from being concentrated on a small number of products. The Republic of Korea, the European Union, the United States and Japan are among WTO members concentrating support on products such as rice, dairy, maize, wheat, pork, and beef. Distortions affecting specific farm goods may have a particular impact on LDCs, for example, in export markets such as cotton, sugar, and certain fruit, vegetables and nuts; in food staples such as rice, maize, and other coarse grains; and in import-competing sectors such as poultry.

On state trading enterprises, Canada, Chile and Switzerland submitted a proposal on continuation of talks in this area.

Despite this engagement, the Eleventh WTO Ministerial Conference held in Buenos Aires in December 2017 ended without ministers providing clear direction for talks on agriculture. There were no advances even on those issues, which were considered within reach such as on domestic subsidies, a “permanent solution” on public food stocks and for a special safeguard mechanism. Meanwhile, changing trade flows and supply chains are reshaping markets for food and

agriculture, along with preferential trade deals and national policy decisions. Together, these factors are likely to establish the contours of future negotiations on agriculture at the WTO.

In 2018, WTO negotiators reopened talks on export competition and export restrictions and endorsed a joint initiative to enhance economic potential of cotton by-products. They also debated Chair’s proposed work plan for farm talks and discussed way forward. Under the proposal, seven sub-plenary working groups were launched to try out a new model for advancing the negotiations. Members also continued thematic discussions on domestic support and public stockholding for food security purposes.

A joint negotiating submission from Paraguay and Uruguay in July 2018 identifies several outstanding issues in the market access area and presents questions that members would need to address. Similarly, a submission by the United States circulated in the same month examined “tariff implementation issues”, reviewing data on tariffs (such as high and complex tariffs), and related market access issues such as tariff rate quotas, the special agricultural safeguard, and preferential and free trade agreements.

Achieving progress in the agriculture negotiations would require taking account of the options that have been put forward to date, while also adapting creative solutions to the changing policy environment, including new and emerging challenges such as climate change.

On market access, achieving progress in this area could conceivably explore options for building on market access commitments that countries have made in the context of preferential trade deals and examining whether these could form the basis of further commitments at the multilateral level, perhaps in the context of a broader package of measures. Conceivably, these could take the form of temporary, timebound commitments in line with the “confidence-building measures”.

Regarding export competition, WTO members could ensure that ongoing talks contribute to achieving further progress by reviewing areas which were only partially addressed by the Nairobi outcome, and then establishing a roadmap with a timetable for addressing outstanding issues. This would need to be complementary to parallel efforts to implement Nairobi

commitments, including through the submission of amended schedules of commitments at the WTO.

Options for addressing the concentration of support could include capping product-specific support as a fixed monetary value; setting a floating limit (*e.g.* as a share of the value of production); and phasing in cuts to maximum permitted support levels over an agreed period. By prioritising action on trade distortions that adversely affect LDCs, and in particular on support affecting products of importance to this group of countries, WTO members could ensure that progress in this area contributes to broader sustainable development objectives.

Addressing different views of what would constitute a fair and reasonable outcome of negotiations on agricultural domestic support remains particularly important to unblocking progress in the talks in the Doha Round. Countries vary significantly in the types of support they provide to their farmers, their objectives for doing so, and the distortionary impact of the policies they have implemented. The extent to which they are constrained by existing WTO rules and the degree to which they affect global markets also varies significantly.

3. Negotiations on related areas

This Section provides a succinct view of four other negotiation areas that were identified in May 2018 by the chair of special session of the WTO Committee on Agriculture. It identifies options for achieving progress on each of these areas: cotton, SDT, public stockholding and export restrictions.

3.1. Sectoral initiative in favour of cotton

Cotton has long been a key development issue at the WTO, not least because of the disproportionate significance of cotton exports to several African

economies, and in particular to the West African C4 group (Benin, Burkina Faso, Chad, and Mali). In 2003, the C4 countries submitted at WTO a joint proposal on “Poverty Reduction: Sectoral Initiative in Favour of Cotton”. The countries asked for the elimination of domestic support and export subsidies on cotton and for financial compensation while subsidies were being phased out. The African cotton producers suffer from very low cotton prices and the resultant export earning losses. There are several reasons for this, such as competition from other materials but also support to production in several countries, mainly provided by the United States.

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

At the WTO’s Hong Kong Ministerial Conference in 2005, Members reaffirmed their commitment to “an explicit decision on cotton within the agriculture negotiations and through the Sub-Committee on

Box 4. Significance of cotton initiative

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

Source: FAO

Cotton ambitiously, expeditiously and specifically”, with outcomes on export subsidies, market access, and domestic support. Subsequently, United States domestic support programmes for cotton were partially reformed in the 2014 Farm Bill following a successful Brazilian legal challenge at the WTO. Washington has also argued that any progress on cotton programmes should be part of broader talks on agricultural trade and should involve other major economies such as China.

While an agreement on cotton formed part of the 2015 Nairobi ministerial package, this included only weak commitments on improving market access for LDCs, by stipulating that duty-free, quota free access for these countries need not go beyond existing preferential schemes. The package did not include any binding outcome on domestic support for cotton, although it did commit developed countries immediately to end cotton export subsidies and developing countries to phase these measures out by the beginning of 2017.

In order to achieve progress, negotiators could pursue a self-standing outcome on trade-distorting support for cotton as a priority deliverable, building on other efforts to fast-track talks on support measures that have disproportionate adverse effects on LDCs (as discussed above). Budgetary projections and baselines for spending on cotton programmes, such as those produced for domestic purposes by the United States Congressional Budgetary Office, could help inform talks by providing a policy-relevant reference point for negotiators. Recent farm policy reforms in major economies such as China could also help galvanise progress.¹⁶

3.2. Public stockholding

Several developing countries continue to seek negotiated outcomes on how current WTO farm subsidy rules affect their ability to procure food for public stocks, with the G33 coalition arguing for greater flexibility in this area. WTO members have agreed to pursue a “permanent solution” to the problems, following an initial agreement at the Bali Ministerial Conference in 2013 to refrain from initiating trade disputes in this area on condition that countries provide more detailed information about their programmes and respect a few other criteria. However, some developing and developed countries argue that any long-term agreement should not allow procurement for public food stockholding programmes

to distort trade or to undermine food security in other countries. While the G33 has favoured exempting domestic support for public stockholding programmes from any WTO ceiling, exporting countries have tabled several proposals based on the Bali outcome but with modifications to: programme coverage; beneficiary countries; linkages to the share of farm output, level of applied tariffs, or export share of the goods concerned; reporting and notification requirements; and anti-circumvention and safeguard requirements.

An analysis¹⁷ suggests that procurement prices for wheat and rice largely tracked international market prices up to 2012, thus limiting their potential trade-distorting effects. It also shows that countries vary considerably in how they procure, hold, and release stocks. This study found that about half of the countries examined import a significant amount of their stocks, especially African countries. However, as world prices have fallen since their peaks in 2011, high administered prices may potentially create distortions and push prices even lower.

With self-consumption by small farmers representing a significant share of farm production in many countries, the methodology for determining market price support at the WTO might need to be revisited.¹⁸ Annex 3, paragraph 8 of the AoA requires this to be calculated using the gap between a fixed external reference price and the applied administered price: this is then multiplied by the quantity of production eligible to receive the applied administered price. However, if countries are unwilling to engage on a more far-reaching reassessment of how agricultural domestic support is calculated, they may need to pursue pragmatic solutions to the challenges that have been identified in this area – such as not requiring procurement to count towards WTO ceilings when administered prices fall below international market prices, or by discounting procurement that represents only a small share of national farm output. More transparent data on how public stockholding schemes function could also help other countries better understand how these programmes work and assess their practical impacts. Josling (2014)¹⁹ suggests fast-tracking Annex M from the draft Doha texts that were tabled in 2008 as one option for achieving progress in this area.

3.3. Special and differential treatment

A fundamental principle of GATT and later WTO is to treat all Members equally, as illustrated by the MFN and

national treatment clauses. Nonetheless, an important factor in expanding membership to include developing countries is the provision of SDT to developing countries, which have less stringent obligations when it comes to reform. The Uruguay Round AoA exempts LDCs from all reduction commitments, *i.e.* they do not have to cut bound tariffs, reduce domestic support or export subsidies. The question arises as to whether LDCs are free to use domestic support and / or export subsidy measures without limits.

The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries recognizes that these countries may experience negative effects in terms of food availability from external sources on reasonable terms and conditions during the reform programme. While there have been several provisions in the area of SDT, these have not always been effective in improving trading conditions for developing countries. The number of beneficiaries was small. Three possibilities exist:

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

There exist examples for all three problems. While the SDT provisions enshrined in the Agreement on Agriculture appear to have been effectively implemented based on the notifications, implementation issues such as tariff escalation, box-shifting and food aid used as a disposal tool, to name only one issue for each pillar, sometimes make it difficult for developing countries to benefit from the multilateral trading rules. Furthermore, even if market access conditions have been improved, availing it often remains difficult due to SPS measures, rules of origin and market structure in importing countries.

Many developing countries see in the rules an imbalance against themselves. The current rules allow for example for 97 per cent of allowable Amber Box support to be provided by Organisation for Economic Co-operation and Development countries or for tariffs in many developed countries that stand at several hundred per cent for some sensitive products. This amount is higher than what developing countries can impose on their sensitive products. Certain areas in the present Agreement on Agriculture, as well as many

of the new areas under consideration, will require additional special provisions for developing countries to address these issues.

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

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

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

Further key terms used in the negotiations on SDT are:

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

other developing countries suggest a more narrow use of the term ‘Development Box’, comprising all SDT measures for developing countries in the area of domestic support.

Most of these initial ideas are not reflected in the Framework Agreement of July 2004 or Hong Kong Ministerial Declaration. However, many SDT provisions mentioned above are part of the agreements entered into force thus far.

- **“Development needs”:** The Doha Ministerial Declaration provided qualitative conditions for SDT – that SDT should (i) be “operationally effective” and (ii) meet “development needs”. Developing countries suggest that their needs are food security, rural development, poverty alleviation and product diversification. The measures required to meet these needs remain to be agreed upon.
- The **“one-size-fits-all”** approach: Current SDT provisions are geared to all developing countries alike (except for LDCs which receive their own SDT and to a certain extent net food-importing developing countries. Some developing countries claim that the best approach to SDT provisions for developing countries would be to meet country-specific agricultural and development concerns. This would mean that the degree of SDT treatment would depend on a country’s agricultural production and trade capacity. This approach is also favoured by major developed countries. Negotiations focused on special provisions for “small and vulnerable countries”. The Framework Agreement of July 2004 and the Hong Kong Ministerial Declaration reconfirm SDT as an integral part of the Agreement on Agriculture.

3.4. Special Safeguard Mechanism

Several developing countries have argued in favour of establishing a special safeguard mechanism (SSM), which developing countries alone would be able to use to protect domestic producers from a sudden surge in import volumes or fall in prices.

At the 2015 Nairobi Ministerial Conference, WTO members adopted a decision to negotiate a SSM for developing countries in dedicated sessions of the Agriculture Committee. Under this decision, the General Council will regularly review the committee’s progress. The SSM would allow developing countries

to temporarily increase tariffs on agriculture products in cases of import surges or price declines.

This is distinct from the Special Agricultural Safeguard that is provided for in Article 5 of the Agreement on Agriculture and is available to 34 members that undertook reforms to convert all non-tariff measures into tariffs (“tariffication”) in the Uruguay Round.

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

Analysis by Morrison and Mermigkas (2014)²⁰ identifies a drop in the incidence of volume surges and a significant decline in the incidence of price depressions (to zero in most commodity groups for 2004–2011) although the authors note these trends do not reflect a decline in overall import volumes over the period they analysed.

As a consequence of the negotiating dynamic in this area, talks on a new SSM have been affected by a lack of engagement, with successive proposals being tabled by the G33, but no recent proposals by agricultural exporting countries. The slow progress is a matter of concern from a sustainable development perspective, as climate change could increase both the frequency and intensity of extreme weather events, and associated volatility on markets for food and farm goods.

Clarifying views on the objectives of a new SSM could help WTO members to achieve progress in this area by contributing to moving the debate forward. If the instrument is intended to help producers cope with adjustment to trade liberalisation, it may make sense to include a volume safeguard, and allow countries to apply temporary safeguard duties to non-subsidising countries. Conversely, if the aim is to establish a countervailing mechanism, it would be important to ensure the SSM was not limited by existing ceilings on tariffs at the WTO, and to ensure that preferential trade is also covered by the new mechanism. Finally, if the goal is to provide countries with additional tools to address price volatility, it would be important to

ensure that existing tariff ceilings could be exceeded, that safeguards could be applied to non-subsidising countries, and that preferential trade is also covered.

3.5. Export restrictions

In the Agreement on Agriculture there are several constraints and reduction commitments for policies limiting agricultural imports but the use of policies for limiting agricultural exports was very weakly regulated. In fact, at the time it was difficult to conceive of any good reasons why a country would intervene to restrict its agricultural exports when the prices were declining in real terms. When the downward trend halted and prices started to rise slowly, some of the importers pointed to the need to introduce more stringent WTO rules for export restrictions, but it was not until the severe food price spike of 2007/2008 that the issue gained visibility in the arena of multilateral negotiations.

The Agreement on Agriculture requires that countries imposing export restrictions have to take into account possible negative effects on importing countries concerning food security. The food price spikes of 2007–2008 and 2011–2012 renewed attention to the challenges faced by net food-importing developing countries and other low-income countries in procuring food on global markets during episodes of unusually high and volatile prices. The imposition of export prohibitions, restrictions, and similar measures in large food-exporting countries were among the factors considered to have exacerbated the impact of these price spikes, with measures affecting rice being particularly significant in 2007–2008, and those affecting wheat and grains being important in 2011–2012.

Anania (2013)²¹ considers the implications for food security of various types of export prohibitions and restrictions and identifies a spectrum of possible options that countries could pursue to address food

security concerns in this area. These range, at one extreme, from limited action to ensure that export restrictions were not applied to the procurement of humanitarian food aid, through to, at the other, full symmetry for import and export restrictions under WTO rules. Other options include efforts to clarify and agree on an interpretation of ambiguous terms related to export restrictions in WTO agreements; examine ways to limit the impact of export restrictions on food security (rather than negotiating new disciplines); modifying WTO rules to ensure that NFDCs and LDCs were exempt from any export restrictions imposed; and establishing stricter disciplines for both export restrictions and export taxes at the global trade body.

In 2016 and 2017, Singapore advanced proposals for increased transparency on agricultural export restrictions, following separate earlier negotiating submissions tabled by the group of net food importing developing countries in April 2011, and by the LDCs in November 2015. The latter two proposals would have had the effect of exempting these country groups from export restrictions imposed by other WTO members.

Achieving progress in this area could involve establishing a roadmap for future work, as well as taking steps to agree on “low-hanging fruit” on ensuring that export restrictions are not imposed on humanitarian food aid purchases.

3.6 Summary of key questions, issues, options or approaches for future negotiations

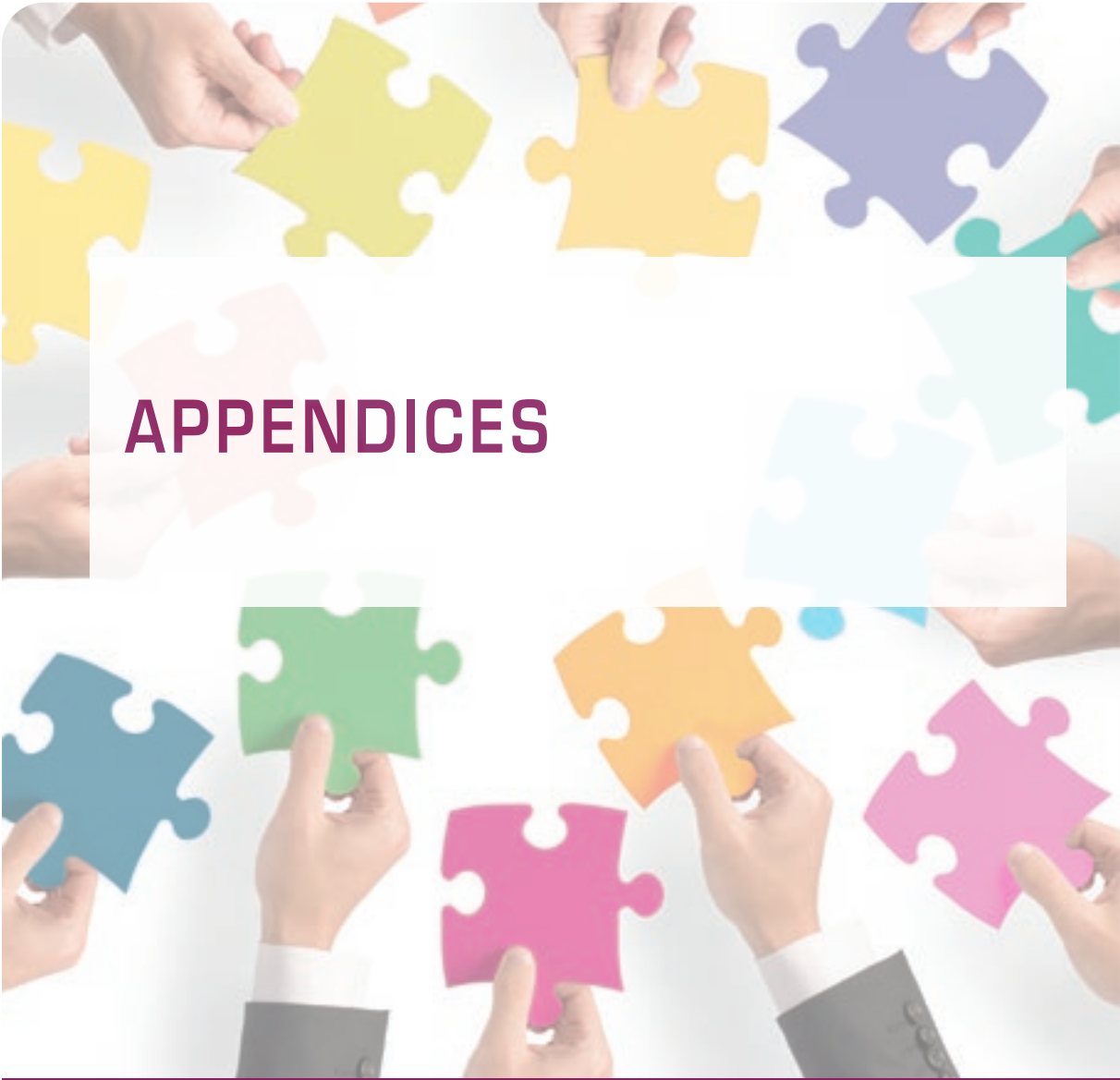
Table 5 demonstrates the key questions to be asked about the various subjects in the agricultural negotiations, explains the issues to be resolved and suggests options or approaches for future negotiations.

Table 5. Key questions, issues, options or approaches for future negotiations

Key questions	Issues to be resolved	Options or approaches
Domestic support		
1. What type of support should be disciplined?	<ul style="list-style-type: none"> Types of support to be exempt from any cap or cuts, <i>e.g.</i> due to their importance in delivering public goods, or their relevance for low-income, resource-poor producers. Groups of countries to be exempt from certain types of reduction commitments. 	<p>A. Use some or all existing categories, <i>e.g.</i> AMS, <i>de minimis</i>, 'Blue Box', art. 6.2, 'Green Box'.</p> <p>B. Establish an overall cap on the most trade-distorting support.</p> <p>C. Eliminate AMS entitlements</p> <p>D. A combination of elements of the above.</p>
2. How should support that is disciplined be treated?	<ul style="list-style-type: none"> Level at which support should be capped. Percentage by which ceilings on support should be cut, and time period for doing so. Whether support provided to products by major exporters should be subject to more rigorous requirements, and if so how these might be defined. 	<p>A. Cap support as a fixed monetary value.</p> <p>B. Cap support as a floating limit, <i>e.g.</i> tied to value of production.</p> <p>C. Phase in cuts to maximum permitted support levels over an agreed period.</p>
3. How can members address the concentration of support on specific products?	<ul style="list-style-type: none"> How countries might balance requirements under an overall cap with disciplines on product-specific support. How WTO members can establish more rigorous requirements on trade-distorting support on products of importance to LDCs. 	<p>A. Set a product-specific ceiling, either as a fixed limit or as a share of the value of production.</p> <p>B. Set a product-specific ceiling as a share of total trade-distorting support provided.</p> <p>C. Set a product-specific ceiling as a percentage of total trade-distorting support allowed under a new cap.</p>
Public stockholding		
1. What type of permanent solution should countries pursue?	<ul style="list-style-type: none"> How an agreement in this area can provide adequate legal certainty to WTO members. How countries can ensure that the permanent solution does not undermine the integrity of WTO disciplines on agricultural domestic support. Extent to which a permanent solution could be based on the Bali outcome. 	<p>A. Exemption of support provided under public stockholding programmes from WTO farm subsidy rules.</p> <p>B. Agreement not to use the WTO dispute settlement process to challenge compliance of support provided under public stockholding programmes.</p>
2. What type of support should be covered by the permanent solution?	<ul style="list-style-type: none"> Whether special provision should be made for LDCs or other country groups. What criteria to be used: when administered prices are below international market prices; when only small quantities are procured; when subsistence production represents a part of the volume of "eligible production". How a permanent solution can make provision for new programmes. 	<p>A. All support provided under public stockholding programmes.</p> <p>B. Support made available for certain products, under certain programmes, by certain groups of countries or characterised by its significance, <i>e.g.</i> as a share of the value of production.</p>

Table 5. Key questions, issues, options or approaches for future negotiations (cont.)

Key questions	Issues to be resolved	Options or approaches
3. What types of additional requirements ought to be respected by countries that provide this support?	<ul style="list-style-type: none"> • Whether beneficiary countries should have to inform the WTO they have breached or risk breaching domestic support ceilings. • Whether countries need to provide advance notification of support programmes. 	<p>A. Notification and transparency requirements.</p> <p>B. Anti-circumvention and safeguard requirements.</p> <p>C. Consultation requirements.</p>
Market access		
1. How can patterns of tariff protection be addressed?	<ul style="list-style-type: none"> • Per centage of cuts which should be applied to different levels of tariffs, and implementation period for doing so. • Products or country groups which might be subject to exemptions or gentler commitments. 	<p>A. Simplify complex tariffs so they are expressed as ad valorem equivalents.</p> <p>B. Set a tariff cutting formula which cuts all tariffs equally.</p> <p>C. Impose steeper tariff cuts on higher tariffs using a tiered formula.</p> <p>D. Set a tariff ceiling to limit tariff peaks.</p> <p>E. Set a formula that prevents progressively higher tariffs being applied to value-added products (tariff escalation).</p>
2. How should market access barriers in the form of quotas be addressed?	<ul style="list-style-type: none"> • Percentage by which quotas should be expanded. • Level to which in-quota tariffs should be reduced. 	<p>A. Existing TRQs are expanded.</p> <p>B. In-quota tariff rates are lowered.</p>
3. What provisions should be made for the use of the SSG?	<ul style="list-style-type: none"> • SSG product coverage and remedies that can be applied during the implementation period if the SSG is to be phased out. 	<p>A. Maintain the SSG as at present.</p> <p>B. Eliminate the SSG immediately.</p> <p>C. Phase out the SSG over an agreed period.</p>
Special safeguard mechanisms		
1. What constitutes an import surge or price depression?	<ul style="list-style-type: none"> • How “normal trade growth” can be preserved. • Whether preferential trade should be included in calculation of the import surge or price depression. • Whether safeguards should be conditional on coexistence of a volume surge and price depression. 	<p>A. Extent to which price depressions or import surges exceed average levels.</p> <p>B. Duration of reference period used to determine average import price or volume levels.</p>



APPENDICES



APPENDIX 1

RATIONALE OF KEY PILLARS OF AGREEMENT ON AGRICULTURE

This appendix provides rationale for subjecting the three key pillars of AoA *i.e.* market access, domestic support and export subsidies to GATT disciplines.

Market access restrictions: Protecting producers from international competition

The deployment of market price support policies can involve considerable cost, both to the taxpayer and to consumers, as in Europe and Japan, for example, where the agricultural support policies place a particularly heavy burden on the consumer. The maintenance of a positive price differential between the domestic market price and the world market price of farm commodities forces domestic consumers to pay higher prices for food commodities than they would in a more liberal marketing environment.

For an exporting, or potentially importing country to maintain support to domestic producers through market price support, some corresponding measures to restrict market access are necessary. These are import restrictions that limit foreign producers' access to the domestic market and deny consumers access to agricultural commodities at the lower world market price. Restrictions on market access typically take the form of:

- tariffs;
- variable levies;
- import quotas; and
- other non-tariff-barriers.

The latter include, for example, complicated, time-consuming bureaucracy and restrictive licensing procedures, all of which can serve as an effective impediment to trade. Some non-tariff-barriers (NTBs), such as import quotas and variable levies, are particularly distortionary, in that they isolate domestic producers from the effects of world prices and therefore magnify instability on international market.

Domestic support policies: Their effect on production and trade

Domestic support policies include a variety of measures aimed at raising the income of producers and sustaining the profitability of domestic farming. Support may be provided in the form of direct payments, where there is a direct transfer of (usually) government money to producers. It may be given through policies that intervene in the market, in order to raise the price of farm output, or reduce the price of the inputs. Or it may result from public provision of services aimed specifically at agricultural producers.

The policies that have the most distortionary effect on trade are those that provide farmers in the major producing regions of the world with a strong incentive to produce substantially more of a particular commodity than they would do without such policies. Income support policies that supplement a farmer's income through direct payments, to provide him or her with a guaranteed minimum income, do not generally have this effect, especially in the short run.

The following policies frequently **do** have a distortionary effect.

Market price support: this is support which raises the domestic market price above the world market price so that producers receive more for their output than they would under free-market conditions. It may be brought about through:

- government intervention in the domestic market;
- border controls that restrict the level of imports;
- a combination of the two.

Government intervention in the domestic market usually involves the government purchase of farm production in order to maintain a minimum guaranteed price. Thus, when the market price starts to fall below a certain threshold the government or its agencies step in and buy the product at the minimum guaranteed price.

On their own, **border controls** are only likely to be effective in providing market price support if the country is a net importer, of more than marginal quantities, of the commodity in question. In the case of an export tax, of course, governments intervene at the border in order to acquire tax revenue. If the commodity is also consumed domestically, this could depress the domestic price by reducing the volume of exports.

Agricultural policy is usually characterised by a **combination** of both government intervention of the type described and border controls, since to use either of these interventions in isolation would be likely to lead to a leakage of support to those for whom it was not intended.

It is important to remember that discussion of market price support in the Agreement, refers only to support prices that are *administratively set by government*; it does not include price support that is achieved through import barriers alone.

Some governments make **deficiency payments:** These are direct payments to farmers, made in order to close the gap between a low market price and a guaranteed minimum price, as set and administered by the government. As with market price support, these payments ensure that the producer's revenue per unit of production is higher than would be the case without government intervention. For, a given administered price, this form of support places less of a burden on domestic consumers.

Others administer **input subsidies.** These may be implemented in a variety of ways, all of which have the essential effect of reducing the unit cost faced by producers in their use of farm inputs. They allow farmers to produce more with a given amount of financial resources than would be the case without such subsidies.

In developed countries, the above policies have had a dramatic effect on the volumes of domestic agricultural production, and in the European Communities (later the European Union) and the United States, for example, they have helped generate large agricultural surpluses. It is often argued that the increased volume of domestic production substitutes for imports in domestic markets, while the concomitant, and frequently subsidised, exports create 'unfair' competition for producers elsewhere.

Domestic support in the European Communities (now the European Union)

In the mid-1970s the European Communities was a net importer of cereals, producing about 120 million tonnes of cereals each year, with net imports of approximately 15 million tonnes. By the early 1990s, the market price support policies of the Common Agricultural Policy (CAP) had helped push production up to 165 million tonnes per annum, turning the European Communities into a net exporter of cereals producing an annual export surplus of 25 million tonnes. At the same time, the European Communities became a major importer of grain substitutes. Policy incentives to raise the volume of production, such as those provided by the CAP, have clearly had a major impact on international agricultural trade.

Export subsidies: Disposing of surpluses on the world market

As has already been suggested, policies that provide substantial support to domestic producers frequently result in the production of large domestic surpluses. For example, in many developed countries where the response in demand as a result of price and income changes is small, *i.e.* demand is price or income inelastic, the volume of a commodity produced by domestic farmers in response to price support, quickly outweighs the volume purchased by domestic consumers. The problem then is how to dispose of such surpluses.

Where the domestic price of the commodity is higher than the world price of the commodity, the sale of surpluses on the world market can only occur at a loss unless the exporter is provided with a subsidy. Such export subsidies have been typical of the path chosen by governments in their efforts to dispose of domestic surpluses. It is these subsidies that have facilitated the sale of large European Community (now European Union) and United States surpluses on the world market, causing the international prices of many agricultural commodities to be depressed and accentuating world price instability.

APPENDIX 2

TRENDS AND MAIN FEATURES OF NEGOTIATIONS ON AGRICULTURE IN REGIONAL TRADE AGREEMENTS

All regional trade agreements contain specific provisions related to agriculture, as required by the GATT-WTO Article XXIV. But considering the sensitivity of agricultural sector, almost all of them provide ample flexibilities. Overall considerably less liberalization has taken place in RTAs with respect to agricultural products than with industrial products. The following is a summary of trends and main features of agricultural trade in regional trade agreements.

Market Access: RTAs usually includes tariff reductions, expanding tariff-rate quotas (TRQs) and improving coordination and transparency. In addition to tariffs, non-tariff measures can pose barriers to market access for agri-food products. Recent RTAs, such as the Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA), impose rules on the application of non-tariff measures, mainly by strengthening communication and coordination between members in this area.

Exports Prohibition and Restrictions: RTAs typically recognize WTO rights and obligations concerning export prohibition and restrictions, and allow members to temporarily apply these measures to prevent or relieve critical food shortages. However, in some RTAs (e.g. Mexico-Bolivia RTA and Mexico-Colombia RTA), the rules go beyond those contained in WTO agreements, with specific criteria for the use of export constraints (such as the types of products that can be subject to restrictions) and timeframes for notifying other members of the upcoming measure. Also, other RTAs (e.g. the Chile-European Free Trade Association (EFTA) RTA or Mexico-Japan RTA) go even further by prohibiting export restrictions, without any exceptions being mentioned. Some RTAs allow for a temporary tariff increase or a suspension of any further tariff reduction under special circumstances (e.g. when an import volume threshold is crossed) as permitted under the Agricultural Safeguard provisions.

Domestic Support: Normally, RTAs do not include provisions on domestic support to agriculture, as limiting it would benefit all trading partners and not just RTA members.

Agricultural Safeguards: Agricultural safeguards, which allow for a temporary tariff increase or a suspension of any further tariff reduction under special circumstances (e.g. when an import volume threshold is crossed) are sometimes included in RTAs. For instance, a study^{*} found that out of 33 RTAs analysed in the Americas, 36 per cent contained special provisions on safeguards for agricultural products. In the instances when RTAs do cover agricultural safeguards, they do not usually go beyond WTO requirements, except for provisions to limit product coverage, shorter duration of measures in particular cases, and modalities for triggering the agricultural safeguards.

SPS and TBT Measures: Typically, RTA provisions related to the use of both sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) are coherent with the corresponding multilateral agreements. A total of 77 per cent and 74 per cent of RTAs signed since 2001 reaffirm the principles of the TBT and SPS agreements, respectively, while over 60 per cent go beyond these provisions.

* Shearer, M., Almeida, J. S., & Gutierrez, C. M. Jr., (2009). The Treatment of Agriculture in Regional Trade Agreements in the Americas. Inter-American Development Bank.

APPENDIX 3

THREE SETTLED DISPUTES ON AGRICULTURAL TRADE

1. Indonesia – Importation of chicken meat and chicken products (DS484)

This dispute concerns imports of chicken meat and chicken products into Indonesia, which have effectively dropped to almost zero since 2006 (chicken cuts), and 2009 (whole chicken). Brazil made claims against two categories of measures:

- i. General (unwritten) prohibition resulting from the combined operation of several different trade-restrictive measures (constitutive elements); and
- ii. Six individual trade-restrictive measures pertaining to the following:
 - a. The non-inclusion of certain chicken products in the list of products that may be imported;
 - b. The limitation of imports of chicken meat and chicken products to certain intended uses;
 - c. Indonesia's alleged undue delay in the approval of veterinary health certificates for chicken products from Brazil;
 - d. Certain aspects of Indonesia's import licensing regime;
 - e. Surveillance and implementation of halal slaughtering and labelling requirements for imported chicken meat and chicken products established by different Indonesian regulations; and
 - f. Restrictions on the transportation of imported products by requiring direct transportation from the country of origin to the entry points in Indonesia.

Four of the six individual trade-restrictive measures (from (a) to (d) above) were also constitutive elements of the alleged (unwritten) general prohibition.

The two main legal instruments underlying the measures at issue were revoked and replaced twice during the panel proceedings. Brazil requested the Panel to examine the measures as identified in its Panel request and as enacted through the second and third sets of legal instruments. Indonesia claimed that through the third set of legal instruments three of the measures have expired. The Panel reviewed the measures as described in Brazil's first written submission (second set of legal instruments) and considered the third set of legal instruments, both to (1) assess the issue of expiry, and (2) review the new provisions under Brazil's claims, jurisdiction permitting.

Brazil developed claims pursuant to Articles III:4 and XI of the GATT 1994, Article 4.2 of the Agreement on Agriculture, Article 3.2 of the Agreement on Import Licensing Procedures, and Article 8 and Annex C(1)(a) of the SPS Agreement. Indonesia invoked defences under Article XX of the GATT 1994, relating to food safety and the enforcement of halal requirements and of consumer protection.

The Panel reviewed the claims against each of the six individual trade restrictive measures and then examined those against the alleged (unwritten) general prohibition and found that the non-inclusion of certain chicken products in the list of products that could be imported into Indonesia, qualified as a 'legal ban' and was inconsistent with Article XI of the GATT 1994. Furthermore, the Panel in weighing and balancing all factors of the "necessity test" under Article XX(d) of the GATT 1994 found that this measure was not justified under Article XX of the GATT 1994. The Panel also found that the measure did not cease to exist by virtue of the enactment of the third set of legal instruments and continues to apply in the same manner. The Panel applied judicial economy to Brazil's claim under Article 4.2 of the Agreement on Agriculture.

With respect to the limitation of imports of chicken meat and chicken products to certain intended uses, the Panel found that this measure operates as a restriction on imports within the meaning of Article XI of the GATT 1994 and is not justified under Article XX of the GATT 1994. Further, the Panel found that the measure had not ceased to exist with the enactment of the third set of legal instruments, as the allowed uses were still limited. In assessing the consistency of this measure, as enacted through the third set of legal instruments, the Panel commenced its analysis with Article III:4 of the GATT 1994, in light of the existence of an equivalent domestic measure. The Panel bifurcated its analysis in accordance with the two components of the measure as enacted through the third set of legal instruments, *i.e.* the requirement that chicken be sold in places with cold storage facilities and the provisions concerning the measure's enforcement. The Panel did not find the cold storage requirement to be inconsistent with Article III:4 of the GATT 1994. However, the Panel found that the enforcement provisions are inconsistent with Article III:4 of the GATT 1994 because these provisions resulted in a competitive disadvantage for imported products. The Panel also found that Indonesia did not make a *prima facie* case to justify the breach of Article III:4, and thus found the enforcement provisions to be not justified under Article XX(b) of the GATT 1994. Given its findings under Article III:4 of the GATT 1994, the Panel applied judicial economy and did not analyse the measure as enacted through the third set of legal instruments under Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture.

Brazil challenged certain aspects of Indonesia's import licensing regime as being inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture on one hand and Article 3.2 of the Import Licensing Agreement, on the other hand.

- a. Application windows and the validity periods: The Panel found that the single measure consisting of the application windows and the validity periods, as enacted through the second set of legal instruments, was inconsistent with Article XI:1 of the GATT 1994 and not justified under Article XX(d) of the GATT 1994. In analysing the measure, as enacted through the third set of legal instruments, the Panel found that the application windows and the validity periods, as a single measure, had expired. However, in evaluating the new validity period, as enacted through the third set of legal instruments, the Panel found that Brazil had failed to make a *prima facie* case.
- b. Fixed licence terms: The Panel found that the fixed licence terms, in respect of the limitation on the ports of entry and the quantity of imported products, as enacted through the second set of legal instruments, were inconsistent with Article XI:1 of the GATT 1994 and not justified under Article XX(d) of the GATT 1994. In respect of this measure as enacted through the third set of legal instruments the Panel found that the fixed licence terms continued to apply in the same manner as in second set of legal instruments and therefore, its prior findings on Article XI and XX(d) of the GATT 1994, continued to be applicable in this respect.
- c. Discretionary import licensing: Lastly, with respect to Brazil's claim on discretionary import licensing, the Panel found that Brazil failed to make a *prima facie* case in relation to one of the alleged discretionary aspects of Indonesia's import licensing regime and found that it lacked jurisdiction to analyse the other two allegedly discretionary aspects of Indonesia's import licensing regime.

The Panel exercised judicial economy and did not address the claims under Article 4.2 of the Agreement on Agriculture and Article 3.2 of the Import Licensing Agreement.

On Brazil's claim that there was an undue delay in the approval of the veterinary health certificate, the Panel noted that a Member may not delay the completion of an SPS approval procedure based on an outstanding non-SPS information from an applicant. The Panel found that since Indonesia was holding up the approval process due to non-submission of information relating to halal assurances (non SPS information) by Brazil, it had caused undue delay in the approval of the veterinary health certificate, inconsistent with Article 8 and Annex C(1)(a) of the SPS Agreement.

With respect to the measure concerning surveillance and implementation of halal slaughtering and labelling requirements for imported chicken meat and chicken products established by different Indonesian regulations, the Panel found that Brazil had failed to demonstrate less favourable treatment between fresh domestic chicken and frozen imported chicken, within the meaning of Article III:4 of the GATT 1994.

With respect to the transportation requirement, the Panel found that Brazil had failed to demonstrate how the measure constituted a violation of Article XI of the GATT 1994 or Article 4.2 of the Agreement on Agriculture. The Panel concluded that, read together with other provisions in the relevant Indonesian laws and regulations, the impugned provision allows transit (including transshipment).

The Panel found that Brazil had not demonstrated the existence of alleged (unwritten) general prohibition. Based on the evidence submitted by Brazil, the Panel concluded that Brazil had not sufficiently demonstrated that there is a link between a policy objective of self-sufficiency, as alleged by Brazil and the specific trade-restrictive measures taken by Indonesia or future implementation of such a policy objective through adoption of trade restrictive measures.

2. Peru – Additional import duties on agricultural products (DS457)

This dispute concerns the additional duties imposed by Peru on imports of certain agricultural products (dairy products, corn, rice and sugar). These duties are determined using a mechanism known as the Price Range System (PRS), which operates on the basis of: (i) a range constituted by a floor price and a ceiling price, which reflect international prices over the last 60 months; and (ii) a reference price published every two weeks, reflecting the average international market price for each product concerned. An additional duty is applied if the reference price of the affected product is lower than the floor price. Conversely, if the reference price exceeds the ceiling price, the applicable tariff is reduced.

Guatemala argued that Peru's additional duties are: (i) variable import levies, minimum import prices, or at least border measures similar to variable import levies or minimum import prices, and thus, should have been converted into ordinary customs duties under Article 4.2 of the Agreement on Agriculture; and (ii) "other duties or charges" different from ordinary customs duties, which had not been registered in Peru's Schedule of Concessions, and are therefore in breach of Article II:1(b) of the GATT 1994. Guatemala raised additional claims under Articles X:1 and X:3(a) of the GATT 1994, regarding the publication and administration of the measure. Guatemala also raised alternative claims under Articles 1, 2, 3, 5, 6 and 7 of the Customs Valuation Agreement.

Peru argued that the additional duties form part of its tariff and are, therefore, ordinary customs duties. Peru also argued that, under the Free Trade Agreement (FTA) signed between Guatemala and Peru in December 2011, Peru was allowed to maintain its PRS. Consequently, the good faith requirement contained in Articles 3.7 and 3.10 of the DSU prevents Guatemala from challenging the PRS in WTO dispute settlement proceedings. Moreover, Peru argued that, by means of the FTA, the parties had modified their reciprocal WTO rights and obligations; accordingly, the FTA, which allows the use of the PRS, should prevail.

The Panel found no evidence that Guatemala brought these proceedings in a manner contrary to its good faith obligations under Articles 3.7 and 3.10 of the Dispute Settlement Understanding. Therefore, the Panel found no reason to refrain from assessing Guatemala's claims.

The Panel also found that, because the FTA has not entered into force, its provisions were not at the time of the panel report binding on the parties. Accordingly, it was not necessary for the Panel to express any opinion on whether the parties may, by means of an FTA, modify between themselves their rights and obligations under the WTO covered agreements.

The Panel found that Peru acted inconsistently with its obligation under Article 4.2 of the Agreement of Agriculture by maintaining measures of the kind that were required to be converted into ordinary customs duties. In particular, the Panel found that the additional duties resulting from the PRS constitute variable import levies or, at least, share sufficient characteristics with variable import levies to be considered border measures similar to variable import levies, within the meaning of footnote 1 to the Agreement on Agriculture.

The Panel also found that the additional duties resulting from the PRS do not constitute minimum import prices, and do not share sufficient characteristics with minimum import prices in order to be considered border measures similar to minimum import prices, within the meaning of footnote 1 to the Agreement on Agriculture.

The Panel found that the additional duties resulting from the PRS cannot be considered ordinary customs duties. In the Panel's view, those duties are "other duties or charges imposed on, or in connection with, importation", within the meaning of the second sentence of Article II:1(b) of the GATT 1994. Peru had not registered any such "other duties or charges" in its Schedule of Concessions. Therefore, by imposing these duties, Peru is acting inconsistently with its obligations under the second sentence of Article II:1(b) of the GATT 1994.

Having decided that the additional duties resulting from the PRS are inconsistent with Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994, the Panel considered it unnecessary to make additional findings under Articles X:1 or X:3(a) of the GATT 1994.

Given that the Panel found that the additional duties resulting from the PRS were not ordinary customs duties, the Panel did not address Guatemala's alternative claims under the Customs Valuation Agreement.

Bearing in mind that Guatemala contested the additional duties resulting from the PRS but not the PRS itself, the Panel did not consider it appropriate to use its discretion under the second sentence of Article 19.1 of the DSU to suggest that the mechanism underlying the calculation of the additional duties be eliminated. Instead, the Panel recommended that Peru be requested to bring its measure into conformity with its WTO obligations.

3. Chile – Price Band System (DS207)

Chile's Price Band System is governed by the Rules on the Importation of Goods, through which the tariff rate for products at issue could be adjusted to international price developments if the price fell below a lower price band or rose beyond an upper price band. On 5 October 2000, Argentina requested consultations with Chile concerning:

- The price band system established by Law 18.525 (as subsequently amended by Law 18.591 and Law 19.546), as well as implementing regulations and complementary and/or amending provisions; and
- The provisional safeguard measures adopted on 19 November 1999 by Decree No. 339 of the Ministry of Economy and the definitive safeguard measures imposed on 20 January 2000 by Decree No. 9 of the Ministry of Economy on the importation of various products, including wheat, wheat flour and edible vegetal oils.

Argentina considered that these measures raised questions concerning the obligations of Chile under various agreements. According to Argentina, the provisions with which the measures relating to the said price band system are inconsistent, include, but are not limited to, the following: Article II of the GATT 1994, and Article 4 of the Agreement on Agriculture. According to Argentina, the provisions with which the safeguard measures are inconsistent, include, but are not limited to, the following: Articles 2, 3, 4, 5, 6 and 12 of the Safeguards Agreement, and Article XIX:1(a) of the GATT 1994.

On 19 January 2001, Argentina requested the establishment of a panel. Further to a second request to establish a panel by Argentina, the DSB established a panel at its meeting of 12 March 2001. Australia, Brazil, Colombia, Costa Rica, the European Communities (later the European Union), Ecuador, El Salvador, Guatemala, Honduras, Japan, Nicaragua, Paraguay, United States of America and Bolivarian Republic of Venezuela reserved their third party rights. On 3 May 2002, the Panel circulated its report to Members and concluded that:

- a. The Chilean PBS is inconsistent with Article 4.2 of the Agreement on Agriculture and Article II: 1(b) of GATT 1994;
- b. As regards the Chilean safeguard measures on wheat, wheat flour and edible vegetable oils:
 - i. Chile has acted inconsistently with Article 3.1 of the Agreement on Safeguards by not making available the relevant minutes of the sessions of the Chilean Distortions Commission (CDC) through an appropriate medium so as to constitute a "published" report;
 - ii. Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 because the CDC failed to demonstrate the existence of unforeseen developments, and Article 3.1 of the Agreement

- on Safeguards because the CDC's report did not set out findings and reasoned conclusions in this respect in its report;
- iii. Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2 and 4 of the Agreement on Safeguards because the CDC failed to demonstrate the likeness or direct competitiveness of the products produced by the domestic industry, and, consequently, failed to identify the domestic industry;
 - iv. Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards because the CDC failed to demonstrate the increase in imports of the products subject to the safeguard measures required by those provisions;
 - v. Chile has acted inconsistently with Article XIX:1(a) of the GATT 1994 and Article 4.1(a), 4.1(b) and 4.2(a) of the Agreement on Safeguards because the CDC did not demonstrate the existence of a threat of serious injury;
 - vi. Chile has acted inconsistently with Articles 2.1 and 4.2(b) of the Agreement on Safeguards because the CDC did not demonstrate a causal link;
 - vii. Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 and Article 5.1 of the Agreement on Safeguards because the CDC did not ensure that the measures were limited to the extent necessary to prevent or remedy injury and facilitate adjustment;
 - viii. Argentina failed to establish that Chile has acted inconsistently with the requirement of Articles 3.1 and 3.2 of the Agreement on Safeguards to conduct an "appropriate investigation" because Argentina allegedly did not have a full opportunity to participate in the investigation and did not have access to any public summary of the confidential information on which the Chilean authorities may have based their determination.

On 24 June 2002, Chile notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel. On 23 September 2002 the report of the Appellate Body was circulated. The Appellate Body:

- a. Found that the Panel acted inconsistently with Article 11 of the DSU by making its finding, in paragraph 7.108 of the Panel Report, that the duties resulting from Chile's price band system are inconsistent with Article II:1(b) of the GATT 1994, on the basis of the second sentence of that provision, which was not before the Panel, and, therefore, reverses this finding;
- b. Decided that the Panel did not err in choosing to examine Argentina's claim under Article 4.2 of the Agreement on Agriculture before examining Argentina's claim under Article II:1(b) of the GATT 1994;
- c. With respect to Article 4.2 of the Agreement on Agriculture:
 - i. Upheld the Panel's finding, in paragraphs 7.47 and 7.65 of the Panel Report, that Chile's price band system is a border measure that is similar to variable import levies and minimum import prices;
 - ii. Reversed the Panel's finding, in paragraphs 7.52 and 7.60 of the Panel Report, that an "ordinary customs duty" is to be understood as "referring to a customs duty which is not applied on the basis of factors of an exogenous nature";
 - iii. Upheld the Panel's finding, in paragraphs 7.102 and 8.1(a) of the Panel Report, that Chile's price band system is inconsistent with Article 4.2 of the Agreement on Agriculture;
- d. Decided, in the light of these findings, that it was not necessary to rule on whether Chile's price band system is consistent with the first sentence of Article II:1(b) of the GATT 1994.

The Appellate Body recommended that the Dispute Settlement Body (DSB) request Chile to bring its price band system, as found, in its and in the Panel Report as modified by its Report, to be inconsistent with the Agreement on Agriculture, into conformity with its obligations under that Agreement.

At the DSB meeting of 11 November 2002, Chile stated that it intended to comply with the recommendations and rulings of the DSB. To that end, Chile was engaged in consultations with Argentina to find a mutually satisfactory solution to the dispute. Chile further stated that it would need a reasonable period of time to bring its measures into conformity with the recommendations and rulings of the DSB. On 6 December 2002, Chile informed the DSB, that to date Chile and Argentina had been unable to agree on the length of the reasonable period of time and thus Chile was requesting that the determination of the reasonable period of time be the subject of binding arbitration in accordance with Article 21.3(c) of the DSU.

On 16 December 2002, Argentina and Chile informed the DSB that they have agreed to postpone the deadline for the binding arbitration which would now be completed no later than 90 days from the appointment of the arbitrator (instead of 90 days from the date of adoption of the rulings and recommendations of the DSB). Also on 16 December 2002, Argentina and Chile requested Mr John Lockhart, Member of the Appellate Body, to act as arbitrator for the purposes of Article 21.3(c) of the DSU. On 17 December 2002, Mr John Lockhart accepted the appointment of arbitrator.

On 17 March 2003, the arbitrator circulated its award. The Arbitrator concluded that the “reasonable period of time” that should be extended to Chile to implement the recommendations and rulings of the DSB in this dispute was 14 months (23 December 2003). At the DSB meeting on 2 October 2003, Chile stated that on 25 September 2003 Law No 19.897 to establish a new price band system had been promulgated replacing Law No 18.525. The new Law would come into force on 16 December 2003: *i.e.* prior to the expiry of the reasonable period of time for compliance. Argentina raised detailed questions concerning the new Law. Chile noted the statement by Argentina and requested that Argentina make its questions available in writing.

At the DSB meeting on 7 November 2003, Chile stated that Law No 19.897 was scheduled to come into force on 16 December 2003: *i.e.* prior to the expiry of the reasonable period of time for compliance, and that, with this new law, Chile had complied with the DSB’s recommendations and rulings. Argentina stated that the new system did not comply fully with the recommendations and rulings of the DSB, as it retained most of the essential features of the previous system; and it was still waiting for the responses to its questions concerning the new price band system. Argentina also stated that, given the close relationship between Chile and Argentina, it was still willing to explore the possibility of reaching a mutually satisfactory solution to this dispute.

At the DSB meeting on 1 December 2003, Chile said that it had already adopted a number of measures to comply with the DSB’s recommendations, as stated previously. Argentina reiterated its view that the measures taken by Chile to comply with the recommendations did not constitute the implementation in this case since the price band system would continue to be maintained. Argentina considered that it would be appropriate for the parties to enter into negotiations on compensation before the expiry of the deadline for implementation. Brazil said that it also considered that the measures taken for compliance by Chile were still not consistent with the provisions of the Agreement on Agriculture.

On 24 December 2003, Argentina and Chile informed the DSB that they had agreed on certain procedures under Articles 21 and 22 of the DSU.

At the DSB meeting on 23 January 2004, Chile and Argentina noted that they had concluded a bilateral agreement regarding the procedures under Articles 21.5 and 22 of the DSU. In this regard, Chile noted that the issue of sequencing between Articles 21.5 and 22 required a multilateral solution since ad hoc agreements only applied to specific disputes. Argentina noted that the parties would shortly enter into consultations regarding the implementation issues.

On 19 May 2004, Argentina requested consultations under Article 21.5 of the DSU. On 29 December 2005, Argentina, considering that the measures adopted by Chile to implement the recommendations and rulings of

the DSB were inconsistent, *inter alia*, with Article 4.2 of the Agreement on Agriculture, the second sentence of Article II:1(b) of the GATT 1994, and hence, Article XVI:4 of the WTO Agreement, requested the establishment of an Article 21.5 compliance panel. At its meeting on 20 January 2006, the DSB agreed to refer the matter raised by Argentina to the original panel. Australia, Colombia, the European Communities (later the European Union) and the United States reserved their third party rights. Subsequently, Brazil, Canada, China, Peru and Thailand reserved their third party rights.

On 4 April 2006, the parties agreed on the composition of the Panel. On 8 June 2006, the Chairman of the Panel informed the DSB that it would not be possible to circulate its report within 90 days after the date of referral to the original panel due to time required for the translation of the submissions. The Panel expects to complete its work by November 2006. On 13 November 2006, the Chairman of the Panel informed the DSB that on 23 October 2006, the Panel had issued its final report to the parties in the dispute. However, due to the time required for the translation of the report into French and Spanish, the Panel would not be able to circulate the report to Members within the 90-day period foreseen in Article 21.5 of the DSU. The Panel indicated that it expected to circulate its report to Members by mid-December 2006, at the latest.

On 8 December 2006, the Article 21.5 panel report was circulated to Members. The Panel found that:

- By continuing to maintain a border measure similar to a variable import levy and to a minimum import price, Chile was acting in a manner inconsistent with Article 4.2 of the Agreement on Agriculture and had failed to implement the recommendations and rulings of the DSB.
- It was unnecessary, for the resolution of the dispute, to make separate findings under Articles II:1(b) of GATT 1994 and XVI:4 of the WTO Agreement.

On 5 February 2007, Chile notified its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the Panel. On 19 February 2007, Argentina notified its decision to appeal to the Appellate Body certain issues of law covered in the panel report and certain legal interpretations developed by the Panel. On 30 March 2007, the Chairman of the Appellate Body informed the DSB that due to the time required for completion and translation of the report, the Appellate Body would not be able to circulate its report within 60 days. It estimated that the report would be circulated no later than 7 May 2007.

On 7 May 2007, the Appellate Body report was circulated to Members. The Appellate Body found:

- That the Panel did not err in its allocation of the burden of proof;
- That the Panel did not err in its interpretation of Article 4.2 and footnote 1 of the Agreement on Agriculture, or in its application of those provisions to the measure at issue, and, therefore (i) upheld the Panel's finding that the measure at issue is a border measure similar to a variable import levy and to a minimum import price within the meaning of footnote 1 to Article 4.2 of the Agreement on Agriculture; and (ii) upheld the Panel's finding that, by maintaining a border measure similar to a variable import levy and to a minimum import price, Chile is acting inconsistently with its obligations under Article 4.2 of the Agreement on Agriculture and has not implemented the recommendations and rulings of the DSB.
- That the Panel did not fail to discharge its duties under Article 11 of the DSU to conduct an objective assessment of the matter before it or under Article 12.7 of the DSU to set out a basic rationale for its findings; and
- In the light of these findings, that because the condition on which Argentina's other appeal is predicated had not been fulfilled, it was not necessary to consider that appeal.

At its meeting on 22 May 2007, the DSB adopted the Article 21.5 Appellate Body report and the panel report, as upheld by the Appellate Body report.

APPENDIX 4

NEGOTIATING GROUPS

The **Cairns Group**: Argentina, Australia, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

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

G20: Argentina, Bolivia (Plurinational State of), Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, United Republic of Tanzania, Thailand, Bolivarian Republic of Venezuela and Zimbabwe.

G10: Bulgaria, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, Republic of Korea, Switzerland and Taiwan Province of China.**

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

These groups are neither mutually exclusive nor exhaustive. Some members are in two or more groups. Members States of the European Union negotiate as a group.

* Referred to as "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)" in the WTO.

ENDNOTES

- ¹ World Bank, World Development Indicators 2017.
- ² FAO *et al.* (2015). The state of food insecurity in the world 2015. Strengthening the enabling environment for food security and nutrition.
- ³ UNICEF (2019). Malnutrition. Available at <https://data.unicef.org/topic/nutrition/malnutrition/>.
- ⁴ World Bank (2019). Sectoral shares of GDP. Available at <https://data.worldbank.org/indicator/nv.agr.totl.zs>.
- ⁵ Glauber, J.W.(2018). Powerpoint presentation at the WTO symposium on 13-14 June, 2018. Available at https://www.wto.org/english/tratop_e/agric_e/symposium_ag_policy_landscape_e/s2_glauber.pdf.
- ⁶ Ibid.
- ⁷ FAO (2016). The State of Agricultural Commodity Markets 2015–16.
- ⁸ The MFN applied rate is the tariff that is actually applied to all countries trading under the WTO's most favoured nation principle, *i.e.* all WTO members who do not benefit from preferential market access rates under bilateral or regional trade deals.
- ⁹ WTO tariff profiles, https://www.wto.org/english/res_e/reser_e/tariff_profiles_e.htm
- ¹⁰ Recent agreements and ongoing negotiations include the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP), renegotiation of the North American Free Trade Agreement (NAFTA), and bilateral and regional deals such as EU-Japan, EU-Mercosur, EU-Canada, EU-New Zealand, EU-Australia, and Australia China..
- ¹¹ Bureau J-C, Guimard H, and Jean S. (2017). "Agricultural Trade Liberalization in the 21st Century: Has it Done the Business?" *CEPII Working Paper* 2017-11-06. CEPII. Paris.
- ¹² WTO (2001). Tariff Quota Administration and Tariff Quota Fill. Background Paper by the Secretariat (Revision). G/AG/NG/S/8/Rev.1.
- ¹³ Jordhus-Lier D, Haug M, & Regmi H (2009). Demand-driven governance: An analysis of the interventions of international aid agencies. Norwegian Institute for Urban and Regional Research. Oslo.
- ¹⁴ Meanwhile, Cairns Group countries pushed for elimination of a separate safeguard, *i.e.* the Special Agricultural Safeguard (SSG) provided for under Article 5 of the WTO Agreement on Agriculture. Because this mechanism could only be used by countries that had undertaken certain commitments in the Uruguay Round, it was unavailable to many developing countries.
- ¹⁵ For an analysis of the suspension see United Nations "International trade and development: Report of the Secretary-General" A/61/272, 18 August 2006.
- ¹⁶ Yu (2017) discusses how China's recent farm policy reforms for cotton and grains could affect trade and markets.
- ¹⁷ Montemayor R (2014). *Public Stockholding for Food Security Purposes: Scenarios and Options for a Permanent Solution*. Geneva: International Centre for Trade and Sustainable Development.
- ¹⁸ Ibid.
- ¹⁹ Josling T (2014). "Transparency and Monitoring in Agricultural Trade: Policy Options for the Post-Bali Agenda." In *Tackling Agriculture in the Post-Bali Context: A Collection of Short Essays*, edited by Meléndez-Ortiz R, Bellmann C, and Hepburn J. Geneva: International Centre for Trade and Sustainable Development.
- ²⁰ Morrison J, and Mermigkas G (2014). "Import Surges and the Special Safeguard Mechanism in a Changing Global Market Context." In *Tackling Agriculture in the Post-Bali Context: A Collection of Short Essays*, edited by Meléndez-Ortiz R, Bellmann C, and Hepburn J. Geneva: International Centre for Trade and Sustainable Development.
- ²¹ Anania G (2013). Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for Promoting Food Security? International Centre for Trade and Sustainable Development. Geneva.



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