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**Evolution of WTO Agriculture Modalities:
Survival of the Financially Fattest**

by

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Contents

ABSTRACT	1
ACKNOWLEDGEMENTS	2
I. INTRODUCTION	3
II. DOMESTIC SUPPORT	7
1. OTDS	...	...	...	10
2. Total AMS	...	...	...	13
3. Product- Specific AMS	...	...	...	14
4. De minimis	...	...	...	16
5. Blue Box	...	...	...	16
6. Cotton	...	...	...	21
7. Green Box Support	...	...	...	22
III. MARKET ACCESS	...	...	...	26
1. Tiered Reduction Formula	...	...	...	28
2. Sensitive Products	...	...	...	33
3. Tariff Escalation	...	...	...	37
4. Tariff Simplification	...	...	...	39
5. Tariff Quotas	...	...	...	40
6. Special Agricultural Safeguards (SSG)	...	...	...	41
7. Special Products	...	...	...	42
8. Special Safeguard Mechanism	...	...	...	44
IV. EXPORT SUBSIDIES	...	...	...	54
V. WHAT COULD HAVE LEAD TO THE UN- BALANCED PROGRESS IN NEGOTIATIONS	55
VI. CONCLUSIONS AND SUGGESTIONS	60
VII. REFERENCES	65

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Abstract

This paper has critically evaluated various agriculture modalities submitted under WTO's Doha Work Programme. It analyses how negotiating options in respect of different elements of the three pillars of agriculture negotiations in the WTO - domestic support, market access and export competition - have evolved in the Doha Round. The findings of this study suggest that many of the provisions that would require liberalization of agriculture trade by the developed countries and reduce distortions have, over time, progressively become less onerous. On the other hand, provisions that may benefit developing countries have become complex with stringent conditions. The overall trajectory of agriculture negotiations suggests that the final outcome may be significantly unbalanced.

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I. INTRODUCTION

Of all the issues being negotiated under the ongoing Doha Work Programme of the World Trade Organisation (WTO), none would have deeper implications for millions of poor around the world than the negotiations on agriculture. Agricultural development represents a convergence of the main objectives of economic policy in developing countries: growth, stability and poverty alleviation. As trade can interact with these objectives in complex ways, agriculture negotiations could crucially determine the extent of policy flexibility available to developing countries to pursue these goals in a manner consistent with WTO obligations. Doha Round also raised the expectation that a significant reduction in trade distorting subsidies would be achieved in the negotiations. These hopes seem to be belied.

At the WTO, agriculture negotiations are being held in Special Sessions of the Committee on Agriculture, in which all WTO Members are entitled to participate. These negotiations seek to reach a consensus on Modalities that would provide the framework of rules for determining further specific commitments by the WTO Members, and their rights, in the three pillars of negotiations (market access, domestic support

and export competition). As a step in the direction of arriving at agreed Modalities, from February 2003 onwards, the Chairman of the Special Sessions has submitted different and progressively detailed versions of Draft Modalities. The Draft Modalities are based on "the work carried out during the series of formal and informal Special Sessions of the Committee on Agriculture and related inter-sessional and technical consultations conducted in accordance with the mandate provided by Ministers at Doha". Chairpersons have been mandated by the Trade Negotiating Committee to "reflect consensus, or where this is not possible, different positions on issues".²

In respect of each negotiating element Draft Modalities seek to identify the option which has a general consensus among WTO Members. In respect of elements which did not enjoy consensus, Draft Modalities provide various negotiating options which, at that juncture did not represent convergence, but enjoyed support from a significant number of countries. In general, successive versions of Draft Modalities show narrowing of options on many negotiating elements and a consensus on others. As convergence of positions is only provisional till all elements are settled, it is also possible that an element, which previously enjoyed consensus, may subsequently become contested by different countries. Further, these are not texts that have been pre-negotiated by WTO members. Instead, these documents have been prepared by the Chairperson under his own responsibility for evolving a consensus on the negotiating issues. These documents do not create any new rights or obligations for the Member countries. Commitments enshrined

² WTO document TN/C/1 dated 4th February, 2002.

in the Modalities would be implemented after a decision is taken by WTO Members to do so.

This study analyses how negotiating options in respect of different elements of the three pillars of agriculture negotiations in the WTO - domestic support, market access and export competition - have evolved in successive negotiating texts of the Chairperson. In particular, it seeks to assess whether the commitments that developed countries would be required to undertake have been progressively diluted and made less onerous in successive negotiating texts. On the other hand, it also examines whether provisions favouring developing countries have progressively become stringent and complex with multiple conditionalities.

This paper critically evaluates various agriculture modalities submitted under the Doha Work Programme. Nine versions of Draft Modalities have been submitted till February 2011, viz. TN/AG/W/1 dated 17 February 2003 (February 2003 text), TN/AG/W/1 Rev.1 dated 18 March 2003 (March 2003 text), TN/AG/W/2 dated 2 June 2006 (June 2006 text), TN/AG/W/3 dated 12 July 2006 (July 2006 text), TN/AG/W/4 dated 1 August 2007 (August 2007 text), TN/AG/W/4/Rev.1 dated 8 February 2008 (February 2008 text), TN/AG/W/4/Rev.2 dated 19 May 2008 (May 2008 text), TN/AG/W/4/Rev.3 dated 10 July 2008 (July 2008 text) and TN/AG/W/4/Rev.4 dated 6 December 2008 (December 2008 text). In addition, the study also examines the report of the Chairperson TN/AG/26 dated 21 April 2011, from the perspective of changes proposed in the December 2008 text. As a caveat, this study does not undertake an assessment of

likely impact of obligations that might arise if the Draft Modalities are adopted by WTO members.

The study is organised as follows. Section II discusses progress in respect of Domestic Support. It covers negotiating elements such as Overall Trade Distorting Domestic Support, Total Aggregate Measure of Support, Product-specific AMS, de minimis, Blue Box support, specific disciplines on cotton and Green Box support. Section III examines some issues related to market access including the tiered reduction formula, Sensitive Products, tariff escalation, tariff simplification, Tariff Rate Quotas, Special Safeguard Measures, Special Products and Special Safeguard Mechanism. Section IV examines a limited number of issues related to export competition, generally called export subsidies.

In the light of the trend in negotiations highlighted in the preceding sections, it becomes important to identify possible reasons for the unbalanced progress. Basing the analysis on the introductory notes/ letters of the Chairperson for the various texts, Section V seeks to identify possible reasons for the unbalanced progress in Draft Modalities. Section VI brings the different strands of analysis together, concludes the paper and suggests what can still be done by developing countries to reverse this unbalanced trend.

II. DOMESTIC SUPPORT

Agreement on Agriculture (AoA), negotiated during the Uruguay Round, aspired to establish “a fair and equitable market oriented agriculture trading system”. AoA took a systematic and calibrated approach towards domestic support provided to agriculture. Countries were permitted to provide domestic support up to a de minimis level of the value of agriculture production.³ It was presumed that de minimis subsidies would have minimal impact on production decision of farmers and would not create significant trade distortions. Accordingly, de minimis subsidies were exempt from reduction commitments.

Certain domestic support measures, which were considered to distort trade or had an impact on production, were identified and subjected to reduction commitments. These support measures are technically called the Aggregate Measure of Support (AMS), and are measured mainly in terms of the difference between the domestic price and international price. These measures are popularly called Amber Box subsidies. Under the AoA, the AMS was to be reduced by 13.3 percent for developing countries and 20 percent for developed countries over an implementation period of six year for developed countries and ten years for developing countries.

AoA exempted three specific categories of domestic support measures from reduction commitments. First, input subsidies

³ In case of the developed countries, product specific support is 5 percent of production of that product, plus, in case of non-product specific support, 5 percent of total agricultural production (10 percent for each category in case of the developing countries) .

provided by developing countries to low-income or resource-poor farmers were exempt from reduction commitments. Second, countries could provide production-limiting subsidies, popularly called Blue Box subsidies, without any ceiling. Third, certain categories of domestic subsidies were presumed to have no or at most minimal impact on trade and production. These subsidies, commonly referred to as Green Box subsidies, were exempt from reduction commitments. Green Box subsidies include subsidies provided for general services, research and development, disaster relief, income insurance, decoupled income support, environment protection, food aid etc.

The Doha Ministerial Declaration committed itself to undertake comprehensive negotiations aimed at substantial reductions in trade-distorting domestic support as well as to provide special and differential treatment to the developing and least developing countries. The relevant extract from the Doha Ministerial Declaration is as follows:

Para13 (Doha Declaration, Document no. WT/MIN (01)/Dec/1): We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to

comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.

The Doha mandate was further amplified in Annex 2 of General Council Decision of 1 August 2004 (WT/L/579 dated 2 August 2004). Reduction in domestic support was envisaged at three levels. First, overall trade-distorting support (OTDS) comprising AMS, de minimis support and Blue Box subsidy was required to be reduced; second, disciplines were envisaged for **separately** reducing AMS, de minimis and Blue Box subsidy; and third, in order to prevent concentration of domestic support in a few products, product-specific caps were contemplated in respect of AMS and Blue Box support. In addition, the criteria for Green Box subsidies, as specified in Annex II of AoA was mandated to be reviewed and clarified so as to ensure that these subsidies have no, or at most minimal, trade-distorting effects or effects on production.

During the course of negotiations, the extent of cuts in different constituent elements of OTDS that have emerged in the Draft Modalities represent a general movement towards the lowest level of ambition among different alternatives that were considered. Furthermore, lowering of ambition on reduction in domestic support was accompanied with enhanced flexibilities for developed countries. In respect of Green Box support the proposed changes include many loopholes which could undermine the objective of ensuring that these measures have no, or minimal, effects on production and trade. These are discussed in detail in subsequent sub-sections.

1 .OTDS

Overall trade distorting domestic support (OTDS) has been specified as the sum of the following three elements: (i) the Aggregate Measurement of Support (AMS), i.e., “amber box” subsidy, (ii) the de minimis support which, in case of the developed countries, for product specific support is 5 percent of production of that product, plus, in case of non-product specific support, 5 percent of total agricultural production (10 percent in case of the developing countries for each) and (iii) the support under Article 6.5 of Agreement on Agriculture, i.e., “Blue Box” subsidy. All these, taken together, will be “substantially” reduced. As shown in Table 1, the option for OTDS reduction for developed countries as specified in December 2008 text generally represents the middle path between the range of options considered in earlier versions of Draft Modalities from August 2007 text and onwards.

Table 1: Tiered Formula for OTDS reduction for developed countries

Base OTDS band (bn. \$)	TN/AG/W/3 (July 2006 text)		TN/AG/W/4 (August 2007 text)		TN/AG/W/4 Rev.4 (December 2008 text)	
	Options for cuts	Implementation period	Options for cuts	Implementation period	Options for cuts	Implementation period
>60	70-80	First installment : minimum 20 percent and for others []	[75] [85]	First installment : minimum 20 percent and the remaining reduction in equal installment to the end of the implementation period	80	Six steps over five years: Reduce by 1/3- on first day of implementation and remaining in five equal steps
10-60	53-75	First installment : minimum 20 percent and for others []	[66] [73]	First installment : minimum 20 percent and the remaining reduction in equal installment to the end of the implementation period	70	Six steps over five years: Reduce by 1/3- on first day of implementation and remaining in five equal steps

Base OTDS band (bn. \$)	TN/AG/W/3 (July 2006 text)		TN/AG/W/4 (August 2007 text)		TN/AG/W/4/ Rev.4 (December 2008 text)	
	Options for cuts	Implementation period	Options for cuts	Implementation period	Options for cuts	Implementation period
<10	70-80	First installment : minimum 20 percent and for others []	[75] [85]	First installment : minimum 20 percent and the remaining reduction in equal installment to the end of the implementation period	55	Six steps over five years: Reduce by 1/4* on first day of implementation and remaining in five equal steps

Source: Various Agriculture Modalities texts

2. Total AMS

In the initial version of Draft Modalities - July 2006 text - the option of reducing Final Bound AMS in the top tier by 70-83 per cent was considered. This implied a minimum reduction of 70 per cent and maximum of 83 per cent in the top tier. In some of the subsequent versions of the Draft Modalities (August 2007 text and onwards) the level of ambition was scaled back to that option which would entail the least reduction - 70 per cent. Table 2 compares the various options for reduction in AMS in some of the modalities texts. As EC is the only WTO Member in the top band of AMS, it will be required to make lower cuts in Total AMS, than what would have been the case if 83 per cent had been agreed to. Consequently, EC's Final Bound AMS would be reduced from approximately EUR 60 bn. to EUR 18 bn. This ceiling is significantly higher than the limit of EUR 11 bn. that would have been applicable on the basis of 83 per cent cut.

Table 2: Tiered Formula for Total Final Bound AMS Reduction for Developed Countries

Total AMS (bn. \$)	TN/AG/W/3 (July 2006 text)	TN/AG/W/4 (August 2007 text)	TN/AG/W/4/Rev.4 (December 2008 text)
	Option for Reduction	Option for Reduction	Option for Reduction
>40	70-83	[70]	70
15-40	60-70	[60]	60
<15	37-60	[45]	45

Source: Based on various Agriculture Modalities texts

The trend in declining level of ambition for reducing Final Bound AMS in the top tier was mirrored in the second tier of AMS as well. While a cut in the range of 60- 70 per cent was contemplated in July 2006 text, the obligation in some of the subsequent versions of Draft Modalities (August 2007 text and onwards) would require a reduction of 60 per cent. As the United States is the only country in the second band, with lowering of ambition in the negotiations, it would be required to make lower cuts in Total AMS. As a result, its Final Bound AMS would be reduced from \$ 19 bn. to \$ 7.6 bn, which is higher than \$ 5.7 bn that would have been applicable on the basis of 70 per cent cut.

3 . Product-Specific AMS

In order to prevent concentration of the AMS in a few products, WTO Members are negotiating caps on product-specific AMS. July 2006 text specified that the product-specific AMS limits shall be the average applied levels of support provided during the base period. The following two options for the base period were indicated: 1995 - 2000 and 1999 - 2001. Subsequently, August 2007 text indicated that convergence had been achieved on 1995-2000 as the base period. However, this text included an almost agreed text for a carve-out for the United States from the generally applicable methodology for determining product-specific AMS limits. The carve-out would require the United States to first calculate the average amount of product-specific total AMS during 1995 - 2000 (\$ 10.4 bn.). In the second step, this amount (\$ 10.4 bn.) would be distributed among different products, depending on their historical share in the average product-specific AMS during 1995- 2004 (as shown in column C of table 3). Products that historically benefited from higher product-specific AMS share during 1995-2004, would

have higher product-specific cap. This carve-out, which was not even included as a negotiating option in July 2006 text, found mention as an almost agreed text in August 2007 text.

As a result of the carve-out, product-specific AMS limits for the US would be significantly higher for cotton (42 per cent), rice (77 per cent), dairy (2 per cent) and sugar (5 per cent) than would have been the case if product-specific AMS limits were to be determined using the generally applicable methodology. Details are provided in Table 3. This would also result in concentrating product-specific AMS in a few products and would undermine the basic objective of product-specific AMS caps. It is a sad irony that instead of reducing cotton subsidies "ambitiously", the carve-out would instead allow the United States to increase product-specific AMS to cotton.

Table 3: Product specific AMS caps for the US

Product (A)	Average PS AMS 1995- 2000 (mn. \$) (B)	Proportionate share of the product in average PS AMS in 1995-2004 (C)	PS AMS cap based on proportionate distribution (mn \$)(C x 10401) (D)
Corn	1,140	0.106	1,106
Cotton	800	0.109	1,136
Dairy	4,682	0.460	4,780
Rice	176	0.030	313
Soybeans	1,289	0.108	1,123
Sugar	1,075	0.108	1,126
Other products	1,236	0.078	817
Total	10,401	1.000	10,401

Source: Based on US notifications on Domestic Support

4. De minimis

As the negotiations have progressed, the level of ambition for reducing de minimis entitlement has got progressively lowered. In July 2006 text, two options for reducing de minimis were considered – 80 per cent or 50 per cent cut. In some of the subsequent versions of the Draft Modalities i.e. February 2008 text onwards, the level of higher cut was reduced to 60 per cent. Finally in paragraph 30 of December 2008 text, it has been specified that de minimis will be reduced by no less than 50 per cent. This is yet another example wherein among a range of negotiating options, that option appears to have been agreed which will require the least amount of reduction in domestic support through cuts in de minimis.

5. Blue Box

Blue Box is covered by Article 6.5 of the AoA. It is a direct payment to producers based on area/yield and not subject to reduction in the AoA. It has largely been used by the European Union. Although the Doha Declaration mandated “substantial reductions in trade-distorting domestic support”, progress in negotiations suggests that special windows have been created which would expand the scope of coverage of developed countries' subsidies under the Blue Box. This would undermine reduction in other elements of OTDS and is in sharp contrast to the demand from many developing countries⁴ that the Blue Box be eliminated.

⁴ G 20 submission WT/MIN(03)/W/6 dated 4 September 2003

Progress in the negotiations have resulted in (i) expansion in the criteria for classifying farm support under Blue Box; (ii) removal of some of the requirements that could have strengthened disciplines on Blue Box; and (iii) provided considerable flexibility to developed countries for moderating the generally applicable disciplines on product-specific Blue Box limits. These are discussed below.

- a. On the plea that Blue Box is less distorting than Amber Box domestic support, some of the developed countries made a persistent demand for expanding the scope of coverage of subsidies in Blue Box beyond the present criteria under which only production-limiting support qualifies under Blue Box category. As a result, General Council's Decision of 1 August 2004 expanded the criteria to include in Blue Box direct payments that do not require production. This goes against the basic mandate of the Doha Declaration, which required “substantial reductions in trade-distorting domestic support”. Furthermore, the Doha mandate does not provide any basis for expanding the criteria to determine eligibility of subsidies in various categories of trade distorting support.

The expanded Blue Box will help the United States to shift its Counter-cyclical payments from Amber Box to the Blue Box.

- b. The general rule for determining product-specific Blue Box cap was specified in paragraph 69 of July 2006 text. Product-specific Blue Box cap was envisaged to be the average value of support provided during the base period. However, there was no consensus regarding the base period. As the negotiations progressed agreement seems to have emerged

regarding the base period. In paragraph 40 of December 2008 text, it has been stated that the product-specific Blue Box cap should be the average value of support provided to an individual product during the 1995-2000 period. This would require dividing the total support provided during 1995-2000 by the total number of years - 6. However, the subsequent paragraph of the Draft Modalities provides an important flexibility to developed countries which did not provide Blue Box support for the entirety of 1995-2000. The Member concerned shall use the average value of support for the years notified within that period, provided that there are at least three consecutive notified years within that period. Under the flexibility provided to developed countries, the denominator would be less than 6 for some products, resulting in a higher product-specific cap. As a result of this flexibility, EC's product specific cap for rice would more than double, as it would increase from Euro 41 mn. to Euro 89 mn. Similarly, Japan's entitlement for Blue Box support on rice would increase from Yen 39 bn. to Yen 78 bn. It is a matter of concern that this significant flexibility, which would essentially benefit developed countries, was included in February 2008 text, and onwards, despite not finding a mention in earlier version of Draft Modalities.

- c. During the course of the negotiations, on the plea that it placed more than 40 per cent of its trade distorting support in the Blue Box, Norway sought an exceptional treatment. The exceptional treatment in terms of lower reduction in Blue Box was mentioned as a negotiating option in July 2006 text. However, Norway has obtained an additional flexibility that was not envisaged in July 2006 text. On the first day of the implementation period, developed countries would be

required to reduce their Blue Box support to 2.5 per cent of the average value of domestic production. However, Norway would get an additional two years for implementing its Blue Box reduction. This flexibility was not even a negotiating option in July 2006 text, but was included subsequently (paragraph 39 of December 2008 text).

- d. An important discipline contemplated in July 2006 text was that countries using production-limiting Blue Box support would need to mandatorily demonstrate that production of individual products which benefited from Blue Box support has not increased during the period in which the application of Blue Box payments was decided. Although this obligation did not enjoy consensus, it would have helped test whether Blue Box support indeed was less distorting than Amber Box. However, this important obligation was dropped in February 2008 text and onwards. This would permit developed countries to provide Blue Box support even if it is accompanied with an increase in production of the product to which support has been provided.
- e. With the objective of preventing concentration of Blue Box support (not requiring production) in a few products, one of the negotiating options included in July 2006 text considered a “double trigger approach” which would have required the product-specific Blue Box cap to simultaneously remain within the following two ceilings: (i) not to exceed a specified percentage of overall Blue Box cap and (ii) not to exceed a specified value of production of the concerned product. However, this important obligation was not included in the subsequent versions of Draft Modalities from February 2008 text and onwards. Use of the double trigger would have

prevented Blue Box product specific caps being inflated due to high historical level of these subsidies.

- f. Paragraph 69 of July 2006 text provided the option of determining the cap in respect of the Blue Box support under the new criteria - direct payments not requiring production - on the basis of differential between prices actually received as compared to a benchmark price. An additional discipline requiring the benchmark price using a historical or specified reference period was contemplated. Furthermore, July 2006 text sought to provide a restriction that the Blue Box support under the expanded criteria shall not compensate more than a specified percentage of differential in prices. The specified percentage was to be subsequently negotiated. Another negotiation option in July 2006 text required the value of Blue Box support under the expanded criteria not to exceed a specified per cent of the following: (i) the value of overall Blue Box cap; and (ii) value of production of the product concerned in a period to be negotiated.

However, in subsequent versions of Draft Modalities i.e. August 2007 text, and onwards, the basis for determining product-specific limits for Blue Box support under new criteria got changed. Many of the restrictions contemplated in July 2006 text were diluted. In December 2008 text, it has been provided that for the United States product specific Blue Box limits shall be either 110 per cent or 120 per cent of the average product-specific amounts that would result from applying proportionately the maximum permissible expenditure under 2002 Farm Bill for specific products at an individual level to the overall Blue Box limit of 2.5 per cent of

agriculture production during 1995 - 2000. An important consequence of the methodology for determining product-specific caps for Blue Box support is that some of the restrictions contemplated in July 2006 text, such as not exceeding a specified per cent of overall Blue Box cap and a specified per cent of the value of production of the product concerned, will not be applicable to the United States.

6. Cotton

Prior to the Cancun Ministerial Conference, the adverse impact on certain African countries of domestic support and export subsidies provided by the United States to cotton emerged as a key issue requiring urgent action. In order to correct the asymmetries resulting from the subsidies of certain WTO Members that seriously distort trade in cotton, four countries - Benin, Burkina Faso, Mali, and Chad - submitted to the WTO, in April 2003, a sectoral initiative in favour of cotton (document TN/AG/GEN/4 of 16 May 2003). This was followed by General Council's Decision of 1 August 2004, which recognised the importance of cotton for some countries, particularly LDCs, and mandated that the issue be resolved "ambitiously, expeditiously and specifically" within the agriculture negotiations. In the Hong Kong Ministerial Declaration it was agreed that trade distorting domestic subsidies for cotton production would be reduced more ambitiously than under whatever general formula is agreed and that it would be implemented over a shorter period of time than generally applicable. Countries also committed to give priority to this issue in the negotiations. Overall, as shown below, the progress achieved so far cannot be described to be "ambitious and expeditious".

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- a. Despite the strong commitment of WTO Members to resolve the issue of cotton subsidies expeditiously and ambitiously, progress achieved so far, can at best, be described as being tardy and perhaps marked with lowering of ambition. In July 2006 text, one of the negotiating options contemplated elimination of AMS for cotton. However, in subsequent versions of the Draft Modalities i.e. February 2008 text onwards, the ambition was scaled down and only option included in the text would require reduction, **and not elimination**, of cotton subsidies.
 - b. One of the negotiating options contained in July 2006 text was that the ceiling on Blue Box subsidies for cotton would be one-third of the amount that would be otherwise determined through the double-trigger.⁵ However, subsequent versions of the Draft Modalities from February 2008 text onwards have excluded the requirement of double trigger, resulting in higher product-specific Blue Box limits.

7. Green Box Support

Given the experience of distortions in agricultural trade and considerable evidence from research that Green Box support does significantly distort trade and enhance production, the Doha Work Programme presented a unique opportunity to realign the provisions of AoA. Paragraph 16 in Annex A of the

⁵ Double trigger approach sought to limit the product-specific Blue Box support by requiring that it should not exceed (i) a specified per cent (to be negotiated) of the value of overall Blue Box cap; and (ii) a specified per cent (to be negotiated) of the value of production of the product concerned.

General Council Decision of 1 August 2004, provides the mandate for negotiations in this area. This paragraph, inter alia, provides for Green Box criteria “being reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production”. As far as strengthening disciplines on Green Box is concerned, progress in negotiations has been characterized by a decline in the level of ambition, accompanied by escape clauses which could undermine whatever strengthening of disciplines might otherwise be achieved. Instead of strengthening disciplines for reducing the possibility of Green Box support distorting trade and having significant impact on production, some of the proposed amendments would increase the possibility of these distortions. These are discussed below.

- a. In order to address a key concern that Green Box support has a positive impact on production through wealth effect, one of the negotiating options in July 2006 text would have required eligibility for receiving Green Box decoupled support being determined by criteria of low levels of income, landholding and production. This could have been effective in limiting the amount of Green Box support provided by developed countries. However, subsequent versions of the Draft Modalities - August 2007 text and onwards - dropped these criteria. This foreclosed the option of strengthening disciplines on Green Box subsidies provided by the developed countries. This would result in maintaining a loophole for continued large scale subsidisation of developed countries' farmers. Instead of strengthening disciplines for reducing the possibility of Green Box support distorting trade and having significant impact on

production, the proposed amendments would increase the possibility of these distortions.

- b. Some of the proposed amendments, prima facie, appear to strengthen disciplines, but in reality provide multiple loopholes which would undermine the objective of “ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production”. In respect of Decoupled Income support (paragraph 6), Structural Adjustment assistance provided through investment aids (paragraph 11), payments under regional assistance programmes (paragraph 13) while the requirement of fixed and unchanging historical base period has been introduced in February 2008 text onwards, any strengthening of disciplines could be undermined due to various loopholes in the Draft Modalities, two of which are discussed below:
- o Transfer of entitlements to existing decoupled income support between producers or landowners shall not be precluded. As a result, an eligible producer or landowner may transfer his entitlement of decoupled income support to either an ineligible, or to an eligible, producer. Consequently, some producers may obtain more than their entitled amount of decoupled income support. This could result in concentrating subsidies in a few farmers, and consequently in the products cultivated by them.
 - o An exceptional update is not precluded, provided that producer expectations and production decisions are unaffected, in particular due to ensuring that any

updated base period is not only a significant number of years in the past. This implies that the base period for calculating the amount of decoupled income support can be changed in future. Very fact that producers would know about the possibility of an exceptional update in the future, they would have an incentive to produce more. To that extent, any exceptional update is likely to affect producer expectations and production decisions.

III. MARKET ACCESS

It has been agreed that tariff reduction will be undertaken in accordance with a tiered reduction formula with the objective of “substantial overall tariff reduction and substantial trade expansion”. Products with higher bound tariffs will take higher cut. Further, in respect of tropical products and in order to address the problem of tariff escalation, developed countries will be required to undertake cuts higher than that required under the formula. On the other hand certain flexibilities have been agreed to, which would allow countries to take cuts lower than the applicable formula cuts on certain products. These flexibilities include treatment for Sensitive Products and Special Products (SP). While the former flexibility has been sought by developing countries (but will be available to all countries), the latter will be available only to developing countries. In respect of Sensitive Products substantial improvement in market access will be achieved through modulating tariff reductions and increasing tariff rate quotas (TRQ).

Developing countries, in consideration of their need of rural development, food security and livelihood security, may designate some products as Special Products (SP). SPs will have more flexible treatment in tariff reduction. The criteria for selection as SP and the flexible treatment for such products are being specified further in the negotiations. It has been also agreed that developing countries will have the right to use Special Safeguard Mechanism (SSM) based on import quantities and price triggers. SSM will be an important instrument to protect farm livelihoods against import surges and cheap imports of agricultural products.

In addition to the issues indicated above, agriculture market access negotiations include other elements such as Tariff Escalation, Tariff Simplification, Tariff Rate Quotas and Special Safeguards (SSG). Tariff Escalation refers to tariff policies in many countries whereby tariffs increase with the degree of processing of the products. This acts as a barrier against exports of value-added processed agricultural products.

WTO Members have bound tariffs on agriculture products using a variety of formulations. *Ad valorem* duties are charged as a specified per cent of the value of the imports. Non- *ad valorem* duties⁶ are charged on different basis. WTO Secretariat has estimated that 7,977 agricultural tariff lines are bound in non-*ad valorem* (NAV) terms by a total of 34 Members⁷. These lines account for approximately 20 per cent of all the final bound agricultural tariff lines listed in those Members' Schedules. According to some WTO Members, NAV tariffs have been "a form of disguised protectionism in agricultural trade". During the on-going trade negotiations, WTO Members are seeking ways of strengthening disciplines on NAV tariffs, including through the process of simplifying the complex tariffs and binding them in *ad valorem* basis or in terms of specific duties.

⁶ Four types of non-*ad valorem* duties include specific duties- specific units of currency are levied per unit of quantity; compound duties- a duty comprising an *ad valorem* duty to which a specific duty is either added or subtracted; mixed duties- a conditional choice between an *ad valorem* duty and a specific duty, subject to an upper and/or a lower limit; and other formulations (residual category) - duties are determined by complex technical factors. For example, the percentage content of the agricultural component (sugar, milk, alcohol content, etc.) determines the amount of the duty.

⁷ WTO Document TN/AG/S/11 dated 15 November 2004

AoA provides flexibility to WTO members to restrict imports of agricultural products by imposing special safeguards. The special safeguards (SSG) are in addition to the general safeguard measures covered by Article XIX of GATT 1994 and the Agreement on Safeguards. A compilation by the WTO Secretariat shows that the total number of tariff lines in respect of which WTO Members could invoke SSG is 6,156 tariff lines⁸. Under the AoA 39 WTO Members have the right to take recourse to SSG. During the on-going negotiations WTO Members are seeking to reduce or phase out SSG.

Two distinct trends can be discerned in market access negotiations. First, the negotiations have progressively made the flexibilities for developing countries more restrictive through imposition of stricter conditions. This would make it more difficult for developing countries to protect farm livelihoods through recourse to the flexibilities. In contrast, many of the obligations on developed countries have progressively become less stringent, which would help in shielding farmers in developed countries from import competition. This raises serious doubts on whether the negotiations on market access will result in a fair and balanced outcome for developing countries. These are discussed in the subsequent sub-sections.

1. Tiered Reduction Formula

In respect of tariff reductions according to the tiered reduction formula, the negotiations appear to have progressed along the middle path. As shown in the Table 4, the extent of tariff cuts in different bands for the developed countries as appearing

⁸ WTO document TN/AG/S/12 dated 20th December, 2004

in December 2008 text, represent the average of the range of tariff cuts considered in August 2007 text. However, as will be discussed in subsequent sub-sections, progress in negotiations on other aspects of market access has not been even-handed.

Table 4: Progress in tariff reduction formula for Developed and Developing Countries

Tariff Band	Tariff cut considered under Draft Modalities TN/AG/W/4	Tariff cut under Draft Modalities TN/AG/W/4/ Rev.4
Developed Countries		
0 – 20%	48-52%	50%
20- 50%	55-60%	57%
50-75%	62-65%	64%
>75%	66-73 %	70%
Developing Countries		
0-30	32.00-34.67	33.33
30-80	36.67-40.00	38.00
80-130	41.33-43.33	42.67
>130	44.00-48.67	46.67

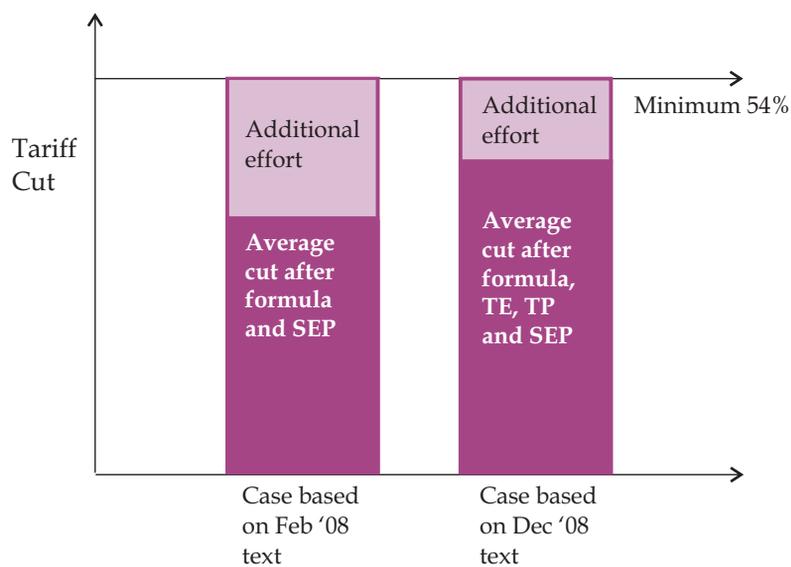
Source: Based on various Agriculture Modalities texts

- a. It has been agreed that developed countries will be required to undertake at least a 54 per cent average cut on final bound tariffs. Additional effort in terms of deeper tariff cuts will need to be made in case the average cut is below 54 per cent. Draft Modalities provide different grounds for, and the extent of, tariff cuts. These include tiered formula cuts, treatment for Sensitive Products, additional cuts on account of tariff escalation and tropical products etc. Tariff cuts on

Sensitive Products would be lower than the cut resulting from application of the formula cut. On the other hand, additional tariff cuts on account of tariff escalation and tropical products would be deeper than the cut resulting from application of the formula cut. Including additional cut on account tariff escalation and tropical products would raise the overall average tariff cut, while excluding these grounds of tariff cut would lower the average. Therefore the choice of the grounds for tariff cut becomes crucial in determining the overall average tariff cut.

February 2008 text provided for determining the overall average tariff cut based on the tiered formula cut and

Figure 1
Minimum Average Tariff Reduction for Developed Countries



Source: Based on various Agriculture Modalities texts

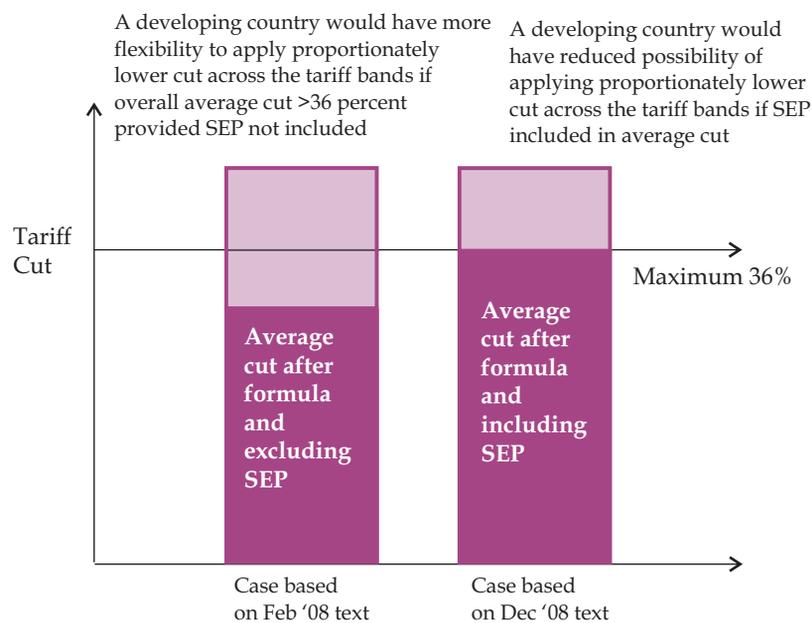
treatment of Sensitive Products. However, under paragraph 62 of December 2008 text, the minimum average cut will be calculated by including cuts undertaken after applying tiered formula, treatment of tariffs for Sensitive Products, and additional cuts relating to tariff escalation and tropical products. Inclusion of additional tariff cut on account of tariff escalation and tropical products would raise the overall average cut.

The extent to which additional tariff cuts on account of tariff escalation and tropical products contribute to, and raise, the overall average tariff cuts, this would commensurately reduce the “additional effort” required by developed countries to achieve the 54 per cent threshold of minimum tariff cut. As shown in Figure 1, inclusion of additional cuts on account of tariff escalation and tropical products, as required under paragraph 62 of December 2008, would make it relatively easier to reach the threshold of average minimum cut, than would be the case if these additional cuts are excluded from the calculation of average cuts.

- b. It has been agreed that developing countries will be required to undertake a maximum average cut of 36 per cent, using the tiered formula, including the treatment for Sensitive Products. A developing country would have the flexibility to apply proportionately lower cuts across the tariff bands, if the overall average cut exceeds 36 per cent. February 2008 text provided for determining the overall average tariff cut for developing countries based on the tiered formula cut. However, paragraph 64 of December 2008 text provides for a maximum cut of 36 per cent to be undertaken by developing countries using the tiered formula, including the treatment for Sensitive Products.

Sensitive Products would have a cut lower than the otherwise applicable formula cut. Including cuts on account of Sensitive Products while calculating the average cut would result in lower average cuts, than would be the case if cuts on Sensitive Products are excluded. Based on the tiered formula cut, a developing country might make an overall average tariff cut in excess of 36 per cent. However, as shown in Figure 2, the overall average tariff cut would get reduced, and might even fall below 36 per cent, if cuts on account of Sensitive Products are taken into consideration. Clearly, December 2008 text has undermined the flexibility for developing countries by reducing the possibility of these countries to apply proportionately lower tariff cuts if the overall average cut exceeds 36 per cent.

Figure 2
Maximum Average Tariff reduction for the Developing Countries



Source: Based on various Agriculture Modalities texts

2. Sensitive Products

- a. Developed countries have been the demandeurs of Sensitive Products. It has been agreed that developed and developing country Members will have a right to designate some products as "Sensitive Products". In August 2007 text two options regarding the extent up to which tariff lines could be designated as Sensitive Products- 4 per cent or 6 per cent- were considered. December 2008 text indicates that convergence has been achieved around the former option of 4 per cent. These products will undergo lower tariff reduction by deviating from the generally applicable formula cuts, but developed countries would be required to provide new access opportunities through expansion of tariff quota on these products. The extent of deviation from the formula cuts is linked to the extent of expansion of tariff quota - higher the deviation from the formula cut, more would be the expansion required in the tariff quota - as shown in Table 5.

As shown in Table 5, during the course of negotiations, the extent of expansion in tariff quotas has got reduced. In February 2008 text, two options for the extent of tariff quota expansion were considered. Where the maximum deviation of two-thirds is used, quota expansion to the extent of 4 per cent or 6 per cent of domestic consumption would have been required. Where the minimum deviation of one-thirds is used, quota expansion of 3 per cent or 5 per cent was considered. However, in December 2008 text, in both the cases of deviation, the option requiring lower extent of quota expansion has been agreed to. This would make the requirement of developed countries providing new access opportunities through quota expansion less onerous.

Table: 5 Tariff Quota Expansion for Sensitive Products

Deviations from tariff reduction formula	TN/ AG/W/4/REV.1 (February 2008 text)		TN/ AG/W/4/REV.4 (December 2008 text)			
	New Access Opportunities as % of domestic consumption	New Access Opportunities if existing TRQ > 10% of domestic consumption	New Access Opportunities if existing TRQ > 30% of domestic consumption	New Access Opportunities as % of domestic consumption	New Access Opportunities if existing TRQ > 10% of domestic consumption	New Access Opportunities if existing TRQ > 30% of domestic consumption
1/3	[3] [5]	[2.5] [3.5]	[2] [3]	3	2.5	2
1/2	[3.5] [5.5]	[3] [4]	[2.5] [3.5]	3.5	3	2.5
2/3	[4] [6]	-	-	4	3.5	3

Source: Various Agricultural Modalities texts

-
- b. Where a developed country has more than 30 per cent of its tariff lines in the top band, it can designate an additional 2 per cent of tariff lines, beyond the otherwise applicable limit, as Sensitive Products. In order to benefit from this flexibility, the developed country would be required to provide an additional quota expansion. Two options for the additional quota expansion - 0.5 per cent or 1 per cent - were considered in February 2008 text. However, in December 2008 text, lower of the two options has been indicated as the agreed text. Here again, additional expansion of tariff quotas to a comparatively lower extent would result in the developed countries providing less new market access opportunities.
- c. Where the existing bound tariff quota volume already represents 10 per cent or more of domestic consumption, the obligation to expand tariff quota volumes may be reduced by 0.5 per cent of domestic consumption. In February 2008 text, this flexibility was restricted to one-third and one-half deviations and was not available for two-thirds deviation. However, paragraph 77 of December 2008 text permits this flexibility to developed countries for all the three situations of deviation from tariff cuts – one-third, one-half and two-third. Extending the flexibility to all the three situations of deviation from formula cuts would allow developed countries to provide less new market access opportunities.
- d. Where the existing bound tariff quota volume already represents 30 per cent or more of domestic consumption, the obligation to expand tariff quota volumes may be reduced by 1 per cent of domestic consumption. In February 2008 text, this flexibility was restricted to one-third and one-half

deviations and was not available for two-thirds deviation. However, paragraph 77 of December 2008 permits this flexibility to developed countries for all the three situations of deviation from tariff cuts – one-third, one-half and two-third. Extending the flexibility to all the three situations of deviation from formula cuts would allow developed countries to provide less new market access opportunities.

- e. The obligation to expand quotas for Sensitive Products will be implemented in a gradual manner. February 2008 text would have required a minimum expansion of 1 per cent of the total additional domestic consumption at the beginning of the implementation period for all the three types of deviations. Thereafter, each additional one percent of domestic consumption was required to be implemented at the end of each twelve-month period. However, paragraph 82 of December 2008 text specifies that the first instalment of tariff quota expansion on the first day of implementation period shall be a minimum of one quarter of the total additional domestic consumption, with the remaining three-quarters of the quota expansion to be implemented in three steps at the expiry of each subsequent 12-month period. It is important to note that the quota expansions need not be in equal steps and could in fact be backloaded. This implies that on the first day of implementation, tariff quota expansion shall be less than 1 per cent for one-third and one-half deviations.

Assuming that quota expansion would be undertaken in three equal steps after the first instalment, Table 6 compares the cumulative quota expansion during the implementation period under February 2008 text and December 2008. It

would be clear from the table that December 2008 text would offer developed countries more flexibility in scheduling the tariff quota expansion by providing lower new access opportunities during the implementation period and also longer duration of implementation period. This would be applicable for all cases where the total quota expansion at the end of the implementation period is less than 4 per cent of domestic consumption.

Table 6 : Quota expansion and Implementation period

1/3 Deviation				
	Quota expansion at beginning of Implementation period (in %)	Cumulative quota expansion at beginning of 2nd year (in %)	Cumulative quota expansion at beginning of 3rd year (in %)	Cumulative quota expansion at beginning of 4th year (in %)
Feb 2008 text	1	2	3	
Dec 2008 text	0.75	1.5	2.25	3
1/2 Deviation				
Feb 2008 text	1	2	3	3.5
Dec 2008 text	0.875	1.75	2.625	3.5

3. Tariff Escalation

- a. With a view to addressing the issue of tariff escalation, it has been agreed that certain identified processed agricultural products will take cuts deeper than what would otherwise apply to the band to which the processed product belongs.

During the course of the negotiations, among the various negotiating options, the extent of additional cut that would be required, has been progressively reduced. In February 2008 text, one of the options considered was to undertake the cut on the processed product as applicable to the highest band. In other words, irrespective of the tariff band in which the processed product falls, it would take the cut applicable to the highest band. This would have implied a cut by developed countries in the range of 66 per cent – 73 per cent for all identified processed products, irrespective of the tariff band in which the products fall.

However, paragraph 86 of latest version of the December 2008 text specifies that the processed product shall take the cut applicable to the next highest band. This would imply a lower cut than what would have otherwise been required on the basis of February 2008 text. To illustrate, if a processed product falls in the tariff band of 50 per cent – 75 per cent, it would undergo a tariff cut of 64 per cent. If the negotiating option included in February 2008 text were to be applied, such a processed product would have taken 70 per cent cut.

- b. In respect of processed products in the top band, February 2008 text considered two options - 1.3 times the applicable formula cut or the applicable formula cut increased by 6 per cent points. Clearly the former option would have implied a deeper tariff cut of around 90 per cent on processed products, while the latter would imply a cut of 76 per cent. However, paragraph 86 of December 2008 text indicates that the option of a 6 per cent additional cut has been agreed. Needless to state that the negotiating option chosen would result in

developed countries making lower cut on account of tariff escalation for processed products falling in the top band.

4. Tariff Simplification

- a. The extent to which non-ad valorem tariffs will be converted and bound as ad valorem tariffs is being negotiated. One of the negotiating options specified in July 2006 text was that all bound duties in agriculture shall be expressed as simple ad valorem duties. This was reiterated in August 2007 text. This obligation has been considerably diluted in December 2008 text, wherein one of the options included in paragraph 104 requires expressing at least 90 per cent of the tariff lines as simple ad valorem tariffs. However, even this diluted requirement is subject to terms and conditions of the methodology specified in Annex N of December 2008 text. If this methodology results in less than 90 per cent of the tariff lines being simplified, there will be no obligation to achieve the target specified in paragraph 104. It is apprehended that the methodology specified in Annex N would result in less than 90 per cent of tariff lines being expressed in ad valorem terms. This would represent a backsliding from the potential obligation to convert all agriculture tariffs on ad valorem basis.
- b. One of the options contained in February 2008 text would have required at least 90 per cent of all agriculture tariffs to be expressed on ad valorem basis. This was applicable to all developed countries, without any exception. In footnote 17 December 2008 text, a carve out has been provided for EC. As an exception to the generally applicable requirement of expressing at least 90 per cent of the tariff lines in simple ad

valorem terms, EC would be required to meet this obligation only in respect of 85 per cent of the tariff lines.

- c. As the negotiations have progressed, simplification of compound tariffs and mixed tariffs appears to have receded into the background. In February 2008 text, there was a specific obligation to convert these tariffs into simple ad valorem tariffs or specific tariffs at the end of the first year of implementation. In December 2008 text there is no specific requirement to convert these tariffs into more simplified forms, if the option of mandatory simplification of all non-ad valorem tariffs is not agreed to.
- d. Another aspect in which the trend in negotiations provides greater comfort to developed countries relates to the time frame in which obligations relating to tariff simplification will be implemented. From February 2008 text it can be inferred that tariff simplification would generally be effected on the first day of the implementation period and in respect of certain WTO members by no later than the end of the second year of the implementation period. However, December 2008 text appears to be silent on when the obligation for tariff simplification will be completed. In other words it could be completed at the end of the implementation period. This would provide developed countries more time than what would have otherwise been available under February 2008 text for simplifying non ad valorem tariffs.

5. Tariff Quotas

- a. During the initial phase of the negotiations the possibility of developed countries providing market access through

eliminating bound in-quota tariffs was an option in February 2008 text. However, the extent of market access to be provided by developed countries through liberalising TRQs will now be more restricted, as paragraph 109 in December 2008 text provides for 50 per cent reduction of bound in-quota tariffs, or to a threshold of 10 per cent, and not their elimination.

- b. With a view to enhancing quota utilization, an option in February 2008 text provided for a mandatory and effective re-allocation mechanism for less than fully utilized licences held by private operators. However, December 2008 text does away with mandatory re-allocation of unutilised licences. This could reduce the possibility of quotas being filled, thereby shielding the farmers and other domestic producers in developed countries from import competition.

6. Special Agricultural Safeguards (SSG)

Progress in negotiations would permit developed countries to retain a larger number of tariff lines, and for a longer period, on which SSG can be applied, than would otherwise have been the case if one of the options included in an earlier version of the Draft Modalities had been accepted.

- a. Various options for phasing out or reducing the number of tariff lines on which Special Agricultural Safeguards (SSG) can be applied by developed countries are under consideration in the negotiations. One of the options in February 2008 text provided for SSG expiring for developed countries on the first day of the implementation period. However, December 2008 text would allow developed

countries to retain 1 per cent of eligible tariffs lines for applying SSG. This flexibility would be available for seven years, after which the SSG would be fully eliminated.

- b. Further, the transition period for phasing out the residual SSG lines has increased from 4 years, an option in February 2008 text, to 7 years in December 2008 text.

7. Special Products

General Council Decision of 1 August 2004 specified that the developing countries would have the flexibility to designate an appropriate number of products as Special Products, based on the criteria of food security, livelihood security and rural development needs. The criteria and treatment of these products was required to be further specified during the negotiations. Subsequently, in the Hong Kong Ministerial Declaration the requirement of SPs being guided by indicators based on the criteria was introduced. Negotiations are aimed at deciding the percentage of tariff lines or the number of products which could be self-designated as SPs and the tariff treatment. As the negotiations have progressed, upper limit on the number of SPs has got reduced and the tariff treatment has become less flexible.

In July 2006 text, two negotiating options for the number of tariff lines which could be designated as Special Products were specified- at least 20 per cent tariff lines or up to 5 tariff lines. Further, one of the negotiating options would have required the flexible tariff treatment for Special Products to be limited until the end of the implementation period. It is clear that these negotiating options did not command any degree of consensus, as in August 2007 text, the Chairperson stated that while Special

Products is clearly a fundamental element of the modalities, “it is simply not yet developed well enough to go to precise text without that being either meaningless through the number of square brackets that would have to be inserted, or being an artificial construct with no underlying consensus in the Membership.”⁹ Consequently, in this version of Draft Modalities, no numbers were indicated as negotiating options for designating Special Products. Therefore, using February 2008 text onwards, progress in negotiations on Special Products is analysed in the following sub-sections.

- a. February 2008 text provided for two options for the maximum entitlement for self-designation as Special Products -12 per cent or 20 per cent of tariff lines. In July 2008 text, the range in which the entitlement would lie was reduced to 10-18 per cent. In December 2008 text the maximum entitlement has been pegged at 12 per cent, which is more towards the lower side in the range of options provided in earlier texts of Draft Modalities. This would reduce the number of products / tariff lines that can be designated as SPs by developing countries, compared to what would have otherwise have been available, had the maximum limit of 18 / 20 per cent been agreed to. As a result, developing countries would be able to designate fewer products as SPs.
- b. February 2008 text provided two options for the number of tariff lines being eligible for no cuts. Under one option, 8 per cent of tariff lines would not undergo any cuts. The other option proposed by some countries was that no tariff line

⁹ WTO Document TN/AG/W/4 dated 1 August 2007 (paragraph 91)

should be excluded from tariff cuts. However, in July 2008 text, the option of no tariff lines taking any cuts was dropped, but the overall number was reduced from 8 per cent to 6 per cent. The entitlement for number of SPs not being required to take any tariff cuts was further reduced to 5 per cent in December 2008 text. This would reduce the coverage and effectiveness of SPs by exposing the extra 3 per cent of tariff lines to tariff reduction.

- c. During the initial stages of the negotiations there appears to have been no discussion on any obligation relating to an overall average cut for the SPs. For the first time, May 2008 text contemplated an average tariff cut of 15 per cent. However, the average cut was to be calculated in respect of residual SPs which take a cut (after excluding SPs with no cuts). Based on December 2008 text, developing countries will have an obligation to take an overall average cut of 11 per cent on SPs. Calculating the overall average cut by including tariffs with zero cut would mean that tariffs on other SPs would have to “compensate” by remaining higher than otherwise (to meet the average cut). This would translate into an average cut of 19 per cent on SPs which take a cut, thereby requiring the developing countries to provide an additional market access in respect of SPs, compared to the situation of 15 per cent average cuts envisaged earlier. This is another example of how flexibilities of developing countries have been progressively curtailed through the different versions of Draft Modalities.

8. Special Safeguard Mechanism

Agreement on Agriculture provides flexibility to WTO

members to restrict imports of agricultural products by imposing special safeguards. The initial conditions for a WTO member to apply SSG against a product include the following: tariffication¹⁰ has been done in respect of the product; and a symbol “SSG” has been marked by the Member against the particular product in its Uruguay Round schedule of commitments. As it was mostly developed countries which had maintained non-tariff measures prior to AoA they obtained the right to apply SSG. As a result many developing countries could not take recourse to SSG, even though they might be adversely affected by import surges or cheap imports.

During the course of negotiations G33 strongly took up the issue of all developing countries having the flexibility to control import surges and cheap imports through a Special Safeguard Mechanism (SSM). It was the view of G 33 that SSM should be more effective, flexible, practical and operable than the SSG. In the General Council Decision of 1 August 2004, it was agreed that an SSM would be established for use by developing countries. This was slightly amplified in the Hong Kong Ministerial Declaration, wherein it was stated that developing countries will have the right to “have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined”. It was also recognized that “the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture”.

¹⁰ Tariffication refers to the requirement under AoA to convert non-tariff measures to tariff equivalents.

While there appears to be a broad consensus on the general architecture of the SSM, flexibility for imposing volume-based SSM is sought to be severely constricted. This is being attempted in a piecemeal and incremental manner by making a distinction between “below bound rate SSM” (pre- Doha bound rates are not exceeded after application of additional duty on account of SSM) and “above bound rate SSM” (pre- Doha bound rates are exceeded after application of additional duty on account of SSM); seeking to impose onerous conditions on the trigger for “above bound rate SSM” and making the remedy less effective; and finally seeking to extend the obligations relating to “above bound rate SSM” to “below bound rate SSM” situations. The remedies remain extremely restrictive as the proposed low level of extra duty under SSM will in many cases not be operationally effective to address the problem of import surges or declining import prices. Therefore the objective of SSM – to protect food security and farm livelihoods by effectively addressing the problem of import surge and price decline – may not be met. Progress in the negotiations, in respect of different elements of SSM, is discussed in the subsequent sub-sections.

- a. Number of products on which SSM can be simultaneously applied: Number of products on which SSM can be simultaneously applied in any given twelve-month period has remained a deeply divisive issue. While February 2008 text suggested two options in this regard- 3 or 8 products- this was viewed by many developing countries as being too restrictive. Consequently, in July 2008 text, the overall cap on the number of products on which SSM can be applied in any twelve-month period was removed. However, this was accompanied with a more restrictive condition that not more

than 2-6 products can exceed the pre-Doha bound tariffs in any given period. This change would mainly impact products which do not undergo any significant tariff reduction and are designated as Special Products. These products would be particularly vulnerable to changes in import volume and declining import prices. A cap of 2-6 products on which SSM can be applied while exceeding pre-Doha bound tariffs, will severely restrict the flexibility of many developing countries to protect their vulnerable products.

- b. Trigger for volume-based SSM : An important issue being negotiated by WTO members is the threshold of import surge which can trigger volume-based SSM. It has been implicitly recognized that higher the import surge, higher will be the additional duty on account of SSM. In February 2008 text, two options for the threshold of import surge which could trigger volume-based SSM were considered viz. 5% or 30% import surge. The lowest threshold of import surge required for triggering a volume based SSM has subsequently increased to 10 per cent, as provided in July 2008 text. While this represents a considerable improvement over the threshold of 30%, nevertheless volume-based SSM cannot be triggered for import surges between 5 per cent to 10 per cent.

Progress in negotiations has been accompanied with increasing complexity in determining triggers for successive application of volume-based SSM. February 2008 text provided for calculating the volume trigger on the basis of a rolling average of imports in the preceding three year period. This methodology was relevant even in those cases in which

SSM was applied during the base period. However, the methodology was made onerous in May 2008 text and onwards, by specifying that initial trigger should be used, if volume triggers get lowered by inclusion of imports during the period of application of volume based SSM.

- c. Data requirement for volume-based SSM: February 2008 text provided for the possibility of including preferential trade while calculating the volume and price triggers. However, subsequent versions of May 2008 text and onwards require the triggers to be based only on MFN trade. This stipulation would make it impractical, if not totally impossible, for most of the developing countries to seek recourse to SSM, as they generally do not record or maintain trade data separately for preferential and MFN trade.
- d. Cross check on volume-based SSM : During the course of the negotiations, a mandatory cross check of import volumes with domestic production and consumption has been introduced which threatens to render volume-based SSM as an inoperable instrument. February 2008 text required the cross check of import volumes with domestic consumption to be confined to those countries with domestic consumption data. Clearly, there was a recognition of the possibility that many developing countries do not record and maintain consumption data at a disaggregated level and hence these countries should not be required to undertake the import volume cross check.

However, May 2008 text and onwards, require a comparison between absolute level of imports and domestic production

and consumption in order to determine whether imports are manifestly negligible. If imports are negligible, then volume-based SSM would not be applied, even if the import triggers are met. The important point to note is that countries which do not maintain sufficiently disaggregated consumption data will be unable to undertake the mandatory cross check with import volume. Consequently, these countries will not be able to seek recourse to volume-based SSM even if import surge exceeds the trigger. This mandatory volume cross check, introduced in May 2008 text, will render volume-based SSM inoperative and would make it impossible for most of the developing countries to protect farm livelihoods even if there are significant surge in imports.

- e. Remedies for volume-based SSM : On comparing the different versions of Draft Modalities, it is clear that the amount of duty that can be imposed on imports in the lowest slab of volume surge has got reduced. One of the options included in May 2008 text provided for an additional duty of 40 percentage points or a duty up to 50 per cent of the current bound tariff. The second option for the remedy mentioned in this text was 20% of current bound tariff or 25 percentage points, whichever is lower. However, in December 2008 text, the additional SSM duty in the lowest slab of import volume surge has been significantly curtailed to 25 percentage points or a duty not exceeding 25 per cent of the current bound tariff. This veers towards the lower side of the two options considered earlier. This would limit the extent of volume-based SSM remedy.

The amount of duty that can be imposed on imports in the highest slab of volume surge has got reduced. One of the

options included in Draft Modalities contained in May 2008 text provided for an additional duty of 60 percentage points or a duty up to 100 per cent of the current bound tariff. The second option would have permitted additional duty on account of SSM to the extent of 30% of current bound tariffs or 30 percentage points. However, in December 2008 the additional SSM duty in the highest slab of import volume surge has been significantly reduced to 50 percentage points or a duty not exceeding 50 per cent of the current bound tariff – an outcome which is closer to lower of the two options. This again would limit the extent of volume-based SSM remedy.

- f. Duration of volume-based SSM remedies : In the context of successive application of volume based measures in February 2008 text, it was specified that no product shall be subject to volume-based SSM for more than two consecutive periods. This implied that volume-based SSM could be applied on the same product with a **gap of one period** between two successive applications on the one hand and the next application of the measure on the other. This requirement of an “off period” was made more onerous in Draft Modalities contained in May 2008 text, and onwards, wherein the requirement of an “off period” equal to the duration of two consecutive periods was introduced. This implies that a **gap of two periods** would be required between two successive applications and the next application of the measure.
- g. Seasonal products : During the course of negotiations, the requirement of limiting the maximum duration for which volume-based SSM can be applied on a seasonal product to 6

months was introduced for the first time in May 2008 text. This would reduce the period of application of volume-based SSM on seasonal products. This limitation was not specified in earlier versions of Draft Modalities.

- h. Above bound rate SSM : The move towards making SSM more restrictive and riddled with complexities becomes clear in Revised Draft Modalities for Agriculture Special Safeguard Mechanism TN/AG/W/7 dated 6 December 2008. This document seeks to specify disciplines for situations in which the remedy would result in pre-Doha bound rates being exceeded. While some of the elements included in this document were discussed in a preliminary form in earlier Draft Modalities, for the first time separate text has been proposed for situations in which SSM might exceed pre-Doha bound rates. It is a matter of concern that many countries are now seeking to extend the disciplines, proposed initially for being applied to limited cases in which pre-Doha bound rates would be exceeded, to all cases of SSM. This would severely curtail the flexibility of developing countries to resort to SSM and limit its effectiveness, particularly in respect of Special Products which do not take tariff cuts. Some of the ways in which this would happen are illustrated below.

On the pretext that repeated application of SSM on the same product in previous years would progressively reduce the threshold for triggering SSM in future years, a prorating methodology has been proposed. While the perceived problem of lowering of trigger threshold may arise in very few cases, an overarching solution like pro-rating is sought to be applied to all cases of successive application of SSM,

including those in which the trigger threshold actually rises. As a result of the prorating methodology, threshold above which SSM can be triggered will increase. Higher the number of months during which SSM was applied in the base period, higher will be the increase in the trigger threshold. Increase in trigger threshold would require import surges well above the otherwise applicable 20% for the SSM to be triggered. The exact surge in imports would depend on the number of months in which SSM was applied in the base period. This would reduce the flexibility to apply SSM in successive years.

Three specific conditions have been proposed in respect of application of volume-based SSM in the context of exceeding pre-Doha bound rates. First, after an SSM has been triggered in a particular year, the maximum duration of application of the measure would be either 8 months or 4 months. Second, the application of SSM can spill-over to the next year, with the maximum period of spill-over being 2/4 months. Third, it has been proposed that the period of application of SSM be followed by a period of non-application equal to the number of months in which SSM was in force. If the attempt of some countries to extend these conditions even to those cases in which pre-Doha bound rates are not exceeded succeeds, it would severely undermine the effectiveness of SSM as an instrument for protecting farm livelihoods from cheap imports or surge in imports.

- i. SSM and normal trade: August 2007 text has sought to introduce the requirement that SSM should not disrupt normal trade. In this document the Chairperson has suggested that SSM should not be applied in a way that is

disruptive to such trade where fluctuations upwards and downwards are the norm. This requirement was not included in the Doha Ministerial Declaration, Hong Kong Ministerial Declaration, General Council Decision of 1 August 2004 or previous versions of Draft Modalities. This new requirement has provided a peg for some countries to seek further stringent conditions for resorting to SSM.

- j. Price-based SSM and normal commercial shipments: In December 2008 Text it was specified that volume-based SSM would be applicable only if the volume of shipment is within the range of normal commercial shipments. This condition was not applicable to price-based SSM. However, in his report TN/AG/26 dated 21 April 2011, on the plea of making corrections in December 2008 Text, the Chairperson has extended the application of the conditionality to include price-based SSM. This would make the application of price-based SSM more onerous.

IV. EXPORT SUBSIDIES

- a. It has been agreed that developed countries shall eliminate their export subsidies by 2013. One of the negotiating options considered in February 2008 text would have required progressive reduction in quantity commitment levels on which export subsidies can be provided during the implementation period. This would have resulted in progressively lower quantities of agricultural products benefiting from export subsidies during the implementation period. However, paragraph 162 (b) December 2008 text provided for a standstill, and not reduction, in quantity commitment levels until the end of the implementation period. By excluding the requirement of reducing the quantity of agricultural exports which can benefit from export subsidies during the implementation period, developed countries would continue to distort agricultural trade. While the developed countries would not have an obligation to reduce the quantity commitment levels during the implementation period, in contrast, developing countries would be required to reduce their quantity commitments during their implementation period.
- b. In respect of disciplines on export credits, export credit guarantees or insurance programmes, July 2006 text envisaged specific rules on interest payment, minimum rate of interest, premiums, risk sharing, foreign exchange risks and loss preventive measures. However, from February 2008 text and onwards, these specific elements were dropped from the scope of rule making. This would provide greater flexibility to developed countries to provide other forms of export support through export credits, credit guarantees etc.

V. WHAT COULD HAVE LEAD TO THE UNBALANCED PROGRESS IN NEGOTIATIONS

Given the trend in negotiations, it is important to explore possible reasons and forces behind the unbalanced progress as represented in different Draft Modalities. This could perhaps help in reversing the trend in negotiations which has been against the interests of developing countries. While this task is best achieved by those who have actively participated in the negotiations from the initial stage, nevertheless, useful pointers can be gleaned from the covering letters accompanying the Draft Modalities and certain developments relevant for the negotiations.

First, the Draft Modalities represent the efforts of the Chairperson based on what he has “heard from Members in the multilateral process”. It can be presumed that the Chairperson has striven to remain fair and objective in his assessment of the state of play of the negotiations. However, the Draft Modalities are his subjective perception regarding convergence, or extent of support, for various negotiating options. While some of the developing countries have been vocal on broad aspects of the negotiating issues, they have been less forceful on technical details. If some of the developing countries fail to make an impact on the Chairperson, it is quite possible that their concerns may not be reflected in the Draft Modalities.

Second, it appears that in respect of some of the issues, the Chairperson might have been unable to correctly gauge the

extent of support enjoyed by some of the options and to reflect it suitably in the Draft Modalities. To illustrate, it is understood that one of the negotiating options regarding the upper ceiling on the number of products which could be designated as Special Products, as indicated in July 2006 text, was proposed by just one WTO Member, a developed country. On the other hand, the negotiating option seeking to strengthen criteria for eligibility for receiving Green Box support, was dropped from August 2007 text, and onwards, although this option continued to be supported by many countries, including G20 (a group of developing countries). These examples suggest that on certain issues the Chairperson included negotiating options that received support from very few countries, but on some other issues he chose not to reflect options despite these enjoying support from a large number of countries.

Third, the Trade Negotiating Committee has clearly mandated that “Chairpersons should reflect consensus, or where this is not possible, different positions on issues”.¹¹ However, the introductory text preceding the Draft Modalities suggests that the Chairperson has deviated from this requirement. To illustrate, in the introductory note of the February 2003 text, it was stated that “Where text is not in square brackets, this does not convey any degree of acceptance”. In May 2008 text, emphasising the utility of having a clean text with a clean option, the Chairperson stated that “it is, in my view, a better way at this point in time to facilitate finalisation of our negotiations”. Further, in December 2008 text, it was stated that “within the text itself there are a number of square brackets that have been deleted. It is clear that on a number of those, there

¹¹ WTO document TN/C/1 dated 4th February, 2002.

cannot be said to be formal agreement.” These examples illustrate how the ground rule of reflecting consensus, or different negotiating options, was repeatedly ignored by the Chairperson. While this might have been done to push countries towards arriving at a consensus, it has certainly tilted the negotiations against the developing countries.

Fourth, while the Chairperson has the onerous responsibility of facilitating the process of evolving consensus on different negotiating issues, by selectively reflecting consensus in the Draft Modalities when in fact there was no consensus, or indicating a negotiating option which had support of very few countries, has worked against the interests of developing countries. Once a negotiating option has been dropped from the Draft Modalities, it creates a misleading impression that there was general opposition, or limited support, for it. This process may have prevented developing countries from actively pursuing the negotiating option of their interest further, even if there was no consensus on the issue. Despite the caveats in the Draft Modalities (“these are not agreed texts and are without prejudice to the positions of participants”), in order to ward off charges of unravelling so-called agreed issues, developing countries might have been somewhat hesitant in strongly pursuing these issues, despite their interests being adversely affected.

Fifth, some of the developing countries can also be faulted for their negotiating strategy. On many issues of vital interest to them, they failed to stop the trend towards making provisions favourable to them increasingly complex. To illustrate, in General Council Decision of 1 August 2004, it was specified that based on the criteria of food security, livelihood security and

rural development, developing countries could designate an appropriate number of products as Special Products. However, a complexity was introduced in the text by requiring that the criteria would be further specified in the negotiations. This provided a peg for further complicating the issue in Hong Kong Ministerial Declaration, which required Special Products to be guided by indicators based on these three criteria. Subsequently, different versions of the Draft Modalities include an illustrative list of indicators. The trend towards these provisions being made increasingly complicated should have been stopped at an early stage of the negotiations. Failure to do so is likely to result in developing countries being saddled with flexibilities that cannot be used effectively.

Sixth, WTO Members have shown considerable deference to the attempts of the United States at expanding the Blue Box for shifting Counter-Cyclical payments. These payments were introduced by the United States by Farm Act 2002 and have been notified by it as non-product specific Amber Box support under the AoA. By shifting Counter-Cyclical payments to the expanded Blue Box, the United States would obtain flexibility of around \$ 4.5 bn in its Amber Box cuts. It has pursued the objective of expanding Blue Box with considerable determination and appears to have achieved its goal without paying any price for it. It would be reasonable to expect that the developed countries would show similar consideration to domestic compulsions of developing countries. However, this has not happened.

Seventh, in the context of reflecting different negotiating options, it is interesting to note that in August 2007 text, the Chairperson has stated that “the negotiating linkages that they

imply are there for all who have eyes to see". Given the overall trend in negotiations highlighted in this paper, the Chairperson's observation appears to point towards mutual accommodation of interests among developed countries. This could explain why commitments that would require tariff or subsidy reduction by the developed countries have progressively become less onerous.

VI. CONCLUSIONS AND SUGGESTIONS

No country can be expected to achieve all its objectives in WTO negotiations. In general, no country can be expected to adhere to its initial negotiating stand during the course of trade negotiations. The process of negotiations involves trade-offs and compromises, with countries conceding ground on certain issues in order to secure gains in other areas.

It could be argued that the final decision on various negotiating options would depend on the overall balance of results, with more stringent obligation in respect of one negotiating element being balanced by less onerous commitment, or greater flexibility, in another. Consequently, it may not be fair to examine how negotiations on each element have progressed in isolation of progress in other elements. While there is some merit in this argument, it becomes a matter of concern if the trend in negotiations in respect of most of the elements suggests outcomes which would be beneficial to developed countries and adverse to the interest of a large number of developing countries. This trend in negotiations is ironic in what is commonly referred to as the Doha Development Agenda.

Based on an analysis of different versions of Draft Modalities it is clear that many of the provisions which would require liberalization of agriculture trade by the developed countries and reduce distortions have progressively become less onerous over time. While the negotiating option for reducing OTDS appears to strike the middle ground between the range of options considered at different stages in the negotiations, the

same cannot be said about other elements of domestic support. While the Total AMS was required to be reduced substantially, the cuts applicable for EC and US have progressed towards the lower side among different negotiating options. In respect of products specific AMS some of the flexibilities, which were not present in the initial version of Draft Modalities, would permit United States to concentrate AMS in a few products. Expanding the scope of coverage of domestic support in Blue Box will undermine the basic mandate of Doha Declaration which required “substantial reductions in trade-distorting domestic support”. In addition some of the restrictions on products specific Blue Box support contemplated in initial versions of Draft Modalities have been subsequently deleted. While an initial version of Draft Modalities required elimination of AMS for Cotton, this was subsequently diluted to requiring reduction of cotton subsidies. As for as Green Box support is concerned, while the Draft Modalities appear *prima facie*, to strengthen disciplines, they also include multiple loopholes which would undermine the objective of “ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production”.

In respect of tariff reductions according to the tiered reduction formula, the negotiations have followed the middle path. However, progress in the negotiations has made it less onerous for the developed countries to undertake the minimum average cut of 54 per cent on final bound rates. In respect of Sensitive Products the progress in negotiations suggests that developed countries would provide lower level of new access opportunities through tariff quota expansion and with longer implementation period, than what was contemplated in some of the options included in earlier versions of Draft Modalities. In

respect of tariff escalation the extent of additional tariff cut that would be required by the developed countries has been progressively reduced. As far as tariff simplification is concerned, an option that was considered in an initial version of Draft Modalities would have required all non-ad valorem tariffs to be simplified and expressed as simple ad-valorem duties. This requirement has been subsequently diluted to 85 per cent for EC and 90 per cent for other developed countries. It is also apprehended that even this benchmark for tariff simplification may get undermined by an additional methodology proposed in December 2008 text.

In respect of Special Products not only has the overall number of products eligible for being designated as SPs declined, but number of SPs which can take no tariff cuts has also been progressively reduced. Further, a requirement of an overall average tariff cut for all SPs has been introduced. The manner of calculating the overall average would imply higher tariff cuts on SPs which take a cut. As far as Special Safeguard Mechanism is concerned, this has been made progressively restrictive and operationally more difficult to implement.

This study clearly highlights that the general trend in agriculture negotiations has been towards making tariff cuts and subsidy reduction less onerous than what was considered during different stages of the negotiations. While provisions that might benefit developing countries have been severely eroded, this has not been matched by progressively making market access commitments, and subsidy reductions, by developed countries more stringent. These two trends suggest a significant lack of overall balance in agriculture negotiations. Such an imbalanced outcome could have serious implications

for the continued relevance of the multilateral trading system, which now stands the risk of being perceived as unresponsive to genuine development aspirations of many developing countries.

Developing countries need to introspect on the reasons which have led to a situation wherein considerable negotiating ground has been lost in respect of provisions in favour of developing countries without obtaining visible and commensurate trade-off from developed countries in areas of domestic support and market access. They need to take some concrete steps to prevent this from happening again in future.

First, developing countries need to ensure that this lop-sided trend does not continue in future texts. As the Draft Modalities are not negotiated texts, changes are possible even at this juncture. Developing countries should not be hesitant in reopening some of the so-called settled issues. Second, developing countries should identify a few core issues of their interest and continue to pursue it vigorously and forcefully, through formal submissions. It may be difficult for the Chairperson and other WTO member countries to ignore formal submissions. An attempt should be made to secure wide support from developing countries for the formal submissions. Third, they also need to identify and vigorously pursue strengthening of disciplines on developed countries' subsidies, particularly Green Box support. Fourth, they need to re-assess their negotiating strategy and make changes to their overall approach on specific issues. Fifth, they need to closely examine some of the negotiating options and assess their impact through comprehensive simulations, before agreeing to any option.

These suggestions should be implemented before the next version of Draft Modalities is submitted by the Chairperson. With issues related to agriculture negotiations being moved to the so-called “Slow Lane”, time may not have completely run out for the developing countries to strive for making the Draft Modalities more balanced.

VII. REFERENCES

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