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DEMYSTIFYING BLUE BOX SUPPORT TO AGRICULTURE UNDER THE WTO: IMPLICATIONS FOR DEVELOPING COUNTRIES

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DEMYSTIFYING BLUE BOX SUPPORT TO AGRICULTURE UNDER THE WTO: IMPLICATIONS FOR DEVELOPING COUNTRIES[1]

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ABSTRACT

Developing members at the WTO are faced with shrinking policy space to support their agricultural sector owing to the restrictive provisions of the Amber Box. Contrastingly, most developed members are able to provide high levels of product-specific support without breaching their commitments, on account of their AMS entitlement. For some of these members, the Blue Box plays a pivotal role in expanding the policy space with respect to domestic support to agricultural products. Though a lot of scholarship has discussed and examined Amber and Green boxes, the Blue Box remains relatively shrouded in mystery. Testimony to this is the fact that although the Blue Box has found use amongst the developed members, no developing Member, except for China in 2016, had ever used the Blue Box to support their producers. Given the impasse in the Doha Round and limited flexibilities available under Amber Box, this paper examines the feasibility and compatibility Blue Box measures with the socio-economic situation of developing members. To this end, the provisions of the Blue Box are demystified based on the Agreement on Agriculture and the practices of members. Further, it traces the genesis of Blue Box and members position on this Box in the agricultural negotiations. Findings of this paper bring to fore the various operational flexibilities available in implementing Blue Box programmes to support agriculture.

Keywords: Domestic support, Blue Box, WTO, agriculture, developing countries, AoA, product-specific support, policy space, subsidies, negotiations

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[1] Views are personal.

SECTION 1: INTRODUCTION

Domestic support to agriculture has undoubtedly been the most sensitive and contentious issue in the Doha Round negotiations. For a long time, developing members have demanded the removal of the inequities and asymmetries existing in the Agreement on Agriculture (**"AoA"**). Under the AoA, developing members are increasingly faced with shrinking policy space to support their agricultural sector (Musselli 2016, Sharma 2016), which is often replete with challenges such as poverty, price fluctuations, food security, inadequate infrastructure etc. Despite these obstacles, this sector plays a vital role in achieving the United Nations' Sustainable Development Goals (**"SDGs"**) of 'eradication of poverty' (Goal 1) and achieving 'zero hunger' and 'doubling agricultural productivity' (Goal 2). To support their producers, the developing members implement various domestic support measures under the AoA. These measures, especially the trade-distorting support such as Amber Box, have been increasingly questioned at various sessions of the Committee on Agriculture (**"CoA"**), with dispute proceedings also being initiated in some cases (WTO 2019a; WTO 2019b).

The asymmetry under the AoA is most clearly discerned in Aggregate Measurement of Support ("**AMS**") entitlements for some selected members. However, most developing members lack this entitlement and therefore can only extend product-specific support up to 10 percent of the value of production **("VoP"**) of a product. The developed members, on the other hand, are not bound by any such limit and have the additional flexibility to concentrate their entire AMS entitlement in a few products (Sharma et al. 2019, WTO 2017). For instance, the US had provided product-specific support as a percentage of the VoP to coffee (189 percent), banana (64 percent) and sugar (64 percent) in 2017, which is exponentially higher than the applicable limit of 10 percent for most of the developing members.

In contrast to the situation of developed members, several studies have found that developing members are facing grave challenges in implementing product-specific support under the Amber Box (Thou et al. 2019). *China-Agricultural Producers* and *India-Sugar and Sugarcane* highlight the increasing challenges faced by developing members at the WTO. Further, Jordan, Turkey, China etc. are facing a policy space deficit under Amber Box as reflected in their notifications.

In this context, it becomes pertinent to mention that trade-distorting product-specific support can be provided only under Amber and Blue boxes. Given the restrictive provisions of the Amber Box and impasse in the Doha Development Round, the only viable option to extend product-specific support remaining is the Blue Box. Under this Box, WTO members can provide support without limits provided they comply with the associated conditions. For a long time, only a few developed members such as the EU, US, Japan, Iceland, and Norway have used this Box to support their producers. It was thought that the provisions of Blue Box are incompatible with the need of the developing members as they needed to stimulate production, rather than limit it (UNCTAD 2003). Therefore, unsurprisingly, developing members have rarely explored the provisions of Article 6.5 to support their producers. It was only in 2016 that China introduced Blue Box measures for corn and in 2017 for cotton.

Given this background, it is pertinent to explore the compatibility of the provisions of the Blue Box in light of the agricultural realities in developing members. Another critical issue that merits examination is whether Blue Box provides flexibilities to these members in implementing support programmes without breaching their commitments under the AoA. Considering these issues, the main objective of the study is to examine the viability and compatibility of Blue Box provisions with the prevailing socio-economic situation of developing members in the context of shrinking policy space under the Amber Box. To this end, the study analyses the provisions of Blue Box and evaluates the practices of members over the years.

This paper is divided into eight sections. The second section explains the methodology. The third section traces the history of the Blue Box and the fourth section details the Blue Box policies that have been utilised by members over time. The fifth section attempts to explore the various issues under Article 6.5 and the sixth section examines the negotiations on the Blue Box. The seventh section explores the viability of Blue Box support for the developing countries, whereas the eighth section concludes the paper.

SECTION 2: METHODOLOGY

The paper undertakes an examination of the provisions of the Blue Box and the practice of WTO members. Through a review of literature, the study traces the genesis of Blue Box under the WTO. By examining the AoA, domestic support notifications and policy documents of selected members, an attempt has been made to analyse the provisions of this Box to highlight various outstanding issues under Article 6.5. The negotiating position of members over the years on this Box has also been examined. Finally, drawing from the practices of members and provisions of the AoA, this study assesses the operational viability of Blue Box measures for developing members. Descriptive statistics have been used in relevant places to strengthen the analysis.

Amongst the three pillars of AoA *viz.* domestic support, export competition and market access, the first is undoubtedly the most contentious and sensitive facet of the Agreement for all members. Articles 6 and 7 of Part IV of the AoA along with Annex 2 and 3, deal with the provisions on domestic support. Based on the nature of the measure and its effect on production and prices, domestic support can be classified as trade-distorting such as Amber Box; and non or minimally trade-distorting support like Green Box. Further, the support is divided into exempted support that includes 'Green Box', Article 6.2, 'Blue Box'; and non-exempted support under 'Amber Box'.

'Green Box' measures such as general services, food aid, direct payments etc. are exempt from reduction commitments as these are presumed to be either not trade-distorting or causing 'at most minimal trade distortion' or 'effect on production'. Available to all members, Green Box measures are not subject to any financial limit. As a special and differential treatment provision, under Article 6.2, developing members are allowed to provide investment subsidies generally available to agriculture, and input subsidies generally available to low income or resource-poor farmers without any financial ceilings.

An 'Amber Box' measure is not inclusively defined under Article 6.1 of the AoA, rather it covers those measures that are not exempted like the Green Box, Blue Box and Article 6.2. The Amber Box comprises product-specific support and non-product specific support. The former includes market price support ("**MPS**") or budgetary outlay and the support scheme is implemented for specific products such as wheat and rice. The latter is available for agricultural products in general, an example of this being input subsidy. All agricultural producers can potentially benefit from non-product specific support. The *de minimis* limit is the minimum permissible trade-distorting support a Member can provide under the Amber Box. This limit for product-specific support is fixed at 5 and 10 percent of the value of production ("**VoP**") for a concerned agricultural product, for developed and developing members respectively. In a situation where the product-specific support or the non-product specific support is below the set *de minimis* level, it is not subject to inclusion in the current AMS calculation.

It is noteworthy that many members did not provide Amber Box support above the *de minimis* level during the base period 1986-88 and therefore, their flexibility to provide future Amber Box support was capped at the applicable *de minimis* level (Sharma 2018). On the other hand, some members had provided Amber Box support above the applicable *de minimis* level and thus secured the AMS entitlement. In other words, these members have the privilege to provide Amber Box support above their applicable *de minimis*. For instance, the bound AMS for EU and US is capped at Euro 72 billion and US$ 19 billion respectively, whereas, for the majority of developing members, this entitlement is zero.

Measures under Article 6.5 of the AoA, also called 'Blue Box' measures, are exempt from reduction commitments, provided they fulfil the pre-requisites laid down in the Article. For any domestic support to be termed as Blue Box, it has to be "direct payments made under production limiting programme" with such payments being based on either "(i) fixed areas and yields; or (ii) up to 85% or less base level of production; or (iii) fixed number of livestock". Unlike the Green Box, Blue Box measures are linked to production. Despite being trade-distorting, these payments are exempt due to their production-limiting nature and are not subject to financial limits. There is considerable ambiguity in the implementation of the provisions on Blue Box as evidenced by the practice of members. These have been elaborated in the subsequent sections.

SECTION 3: HISTORY OF BLUE BOX

The origin of Blue Box can be traced back to the agricultural policies of European Community (**"EC"**) and the US, which were aimed at increasing agricultural production, ensuring remunerative prices for producers, price stabilisation and achieving self-sufficiency (Garzon 2006). Some of the developed Contracting Parties of GATT, including the US and the EC, adopted a plethora of trade-distorting support measures and policy instruments such as MPS and export subsidies (SC 2015, WTO 1995b, WTO 1995c). Due to such measures, not only did these members become self-sufficient, but also net exporters in many agricultural products

(Arovuori & Yrjölä 2015). The exports of surplus production took place at the expense of the world market stability (Ackrill et al. 2008), undermining the interest of farmers across developing countries. As a result of these measures, the producer support estimate (PSE) in OECD members had reached an astounding $300 billion by 1990 (OECD 1991).

In the 1980s, massive support to agriculture by OECD members triggered a demand for the comprehensive reform of the global agricultural system under the Uruguay Round, seeking to establish international trade rules for the sector (Anderson et al. 1999). During this round, the EC overhauled its agricultural policy under the Common Agriculture Policy ("**CAP**") through the 'MacSharry reforms' of 1992. These reforms made significant changes such as the reduction in the guaranteed support prices on cereal and livestock products and introduced direct payments to farmers (Garzon 2006).

On domestic support, the EC wanted to ensure that compensatory payment under the reformed CAP (1992) be exempt from any reduction commitments at the Uruguay Round (Josling & Swinbank, 2011). Compensatory payments were direct payments made to producers of certain products such as cereals, dairy, beef etc. to stabilise their income and recompense them for the reduction of price support and lowered import tariff (Garzon 2006). These payments had set-aside conditions for cereals, under which some portion of land was required to be taken out of production (EC 1993). Moreover, since the payments were linked to current production levels, they did not satisfy the criteria of the "Green Box" subsidies under the Dunkel Draft (1991) of the Uruguay Round. The EC feared that without a carve-out, its trade-distorting support would exceed its bound AMS under the proposed discipline in agriculture negotiations. To avoid being at the receiving end of additional reforms, EC renegotiated the Blair House Accord with the US in 1993, resulting in a new Box creation, called the 'Blue Box' (Stewart 1999). It exempted direct payments under production limiting programs such as compensatory payments from reduction commitments under the proposed Amber Box (Murphy & Suppan 2005).

Other GATT members agreed to the inclusion of the Blue Box in the Final Agreement arising from Uruguay Round negotiations because these payments were perceived as less trade-distorting due to the attached production-limiting conditions (Hooda & Gulati 2007). The Blue Box, thus, was a compromise between the EC and the US which allowed the EC to continue compensatory payments under the 1992 CAP reforms, and the US to exempt deficiency payments.

SECTION 4: BLUE BOX MEASURES OF WTO MEMBERS

Since 1995, only few WTO members namely the EU (including the Slovak Republic and Slovenia), US, Norway, Japan, Iceland and China have used Blue Box to support their farmers (Table 1). This section provides an understanding of the Blue Box measures implemented by the members and examines how the conditions under Article 6.5, including limiting of production, have been implemented.

4.1 EUROPEAN UNION (EU)

Following the MacSharry Reforms of 1992, the EC sought to exempt compensatory payments from the reduction commitments and was successfully able to introduce Blue Box provisions in the AoA compatible with these payments (Josling & Swinbank, 2011). Since 1995, the EU has been consistently providing Blue Box support for many products under various iterations of the CAP. Currently, the EU implements Voluntary Coupled Support ("**VCS**") as a Blue Box programme covering 21 agricultural sectors such as beef, dairy products, sugar beet etc. under CAP 2013 for the years 2015-20 (EC 2017). The support under VCS is granted as direct payments based on fixed area and yield or a fixed number of animals in a targeted region or sector. The eligible area and yield are fixed based on the reference period (2009-2013), and the support rate is also estimated using this period. The actual payment per hectare/animal is lowered if there is an increase in the eligible area/animals. This, along with strict financial outlay for members, ensures that VCS is a production-limiting scheme (WTO 2019d &e). Thus, it can be observed that direct payment under the VCS is based on predetermined variables, rather than explicit conditions of acreage reduction.

Besides VCS, the EU also implements a Blue Box programme for cotton in Bulgaria, Greece, Spain and Portugal on the fixed area and yield basis. The payment is made subject to Member specific statutory bases set for area and yields (EU 2013). There is no explicit acreage reduction condition attached to the programme. However, this payment is reduced if the production exceeds the set base and the reduction in payment is in proportion to the increase in the base area.

Table 1: Trend in Blue Box support among the WTO members

	China	European Union	Iceland	Japan	Norway	USA	Slovenia	Slovak Republic
Year	CNY millions	Million Euro	ISK millions	¥ millions	NKR Millions	US$ millions	Million Euro	SKK million
1995	0.0	20846	1455.1	0.0	7117	7030.0	0.0	42.51
1996	0.0	21521	0.0	0.0	7246	0.0	0.0	36.3
1997	0.0	20443	0.0	0.0	7375	0.0	0.0	43.7
1998	0.0	20504	0.0	50200	7880	0.0	0.0	0
1999	0.0	19792	0.0	92700	7674	0.0	0.0	0
2000	0.0	22223	0.0	92700	7669	0.0	24.6	69
2001	0.0	23726	0.0	91100	7330	0.0	31.1	129
2002	0.0	24727	0.0	86500	7531	0.0	53.7	530
2003	0.0	24782	0.0	68200	7360	0.0	46.4	1119.8
2004	0.0	27237	0.0	67800	7434	0.0	0.0	0.0
2005	0.0	13445	0.0	65300	3915	0.0	0.0	0.0
2006	0.0	5697	0.0	70100	3793	0.0	0.0	0.0
2007	0.0	5166	492.6	42400	3725	0.0	0.0	0.0
2008	0.0	5348	537.5	32400	3982	0.0	0.0	0.0
2009	0.0	5324	542.0	21800	4138	0.0	0.0	0.0
2010	0.0	3142	553.0	306800	4395	0.0	0.0	0.0
2011	0.0	2981	581.0	153300	4469	0.0	0.0	0.0
2012	0.0	2754	610.0	155200	4744	0.0	0.0	0.0
2013	0.0	2664	628.0	155900	4874	0.0	0.0	0.0
2014	0.0	2879	647.0	74700	5109	0.0	0.0	0.0
2015	0.0	4331	655.5	98700	5232	0.0	0.0	0.0
2016	39039	4641	669.9	70800	5238	0.0	0.0	0.0
2017					5508	0.0	0.0	0.0

Source: WTO domestic support notifications of selected members
Note: Slovenia and the Slovak Republic became the members of the European Union

4.2 UNITED STATES OF AMERICA (US)

The US has used the provisions of Article 6.5 only in 1995 for implementing deficiency payments to certain products such as cereals, wheat, rice, sorghum etc. Based on up to 85 percent or less of base-level production, these direct payments were provided on the difference between a set target price and the market price and only farmers who participated in an acreage reduction program were eligible to receive these payments (US 2019). Under the 1996 Farm Bill, these payments were replaced with Price Flexibility Contract (PFC) based on historical areas and yields and were classified as decoupled income support under the Green Box. Although the US has not utilised the Blue Box after 1995, it did try to make changes to the Blue Box to make it compatible with its domestic counter-cyclical payments under Doha Round negotiations (Murphy 2005, Ratna et al. 2011).

4.3 JAPAN

Japan started a Blue Box support programme for rice in 1998. Under this, direct payment contingent on output was paid to the producers as a compensatory payment for loss of income incurred when market prices fell in comparison with the three-year average prices of rice during 1995 to 1997 (WTO 2001, OECD 2000). It was replaced by another Blue Box programme named 'direct payment for rice' in 2010, which was also based on less than 85% of the base level of production **(**WTO 2014). Operationally, this programme comprises two components, i.e. a fixed and variable component. The fixed component is calculated based on the historical gap between the national average cost of production (2002-2008) and farm gate price (2006-2008) (WTO 2014 a-b). On the other hand, the variable component is paid only in the year when current farm gate price falls below a fixed threshold. This threshold has been determined as the average farm gate price for 2006-2008 (WTO 2014c). It can thus be observed that the programme has elements of price support as it shields farmers from losses due to price fluctuations.

Under the programme, the government set the production-limiting conditions in terms of a target level of rice production to avoid overproduction and stabilise the supply-demand and price of rice. Japan has maintained that the payment was only made to farmers who "abided by the target and limited production" (WTO 2019). However, no explicit acreage reduction condition has been mentioned for this programme under Japan's domestic support notifications. This programme was phased out after payment to rice produced in 2017.

4.4 NORWAY

Like the EU and Japan, Norway has been consistently using the provisions of Blue Box to provide support for multiple products such as milk, meat, beef. Over the years, it has provided Blue Box support under all the sub-headings of Article 6.5 *viz.* fixed areas and yields; or (ii) up to 85% or less base level of production; or (iii) fixed number of livestock. Since 2014, Norway has been implementing the 'Quality Incentive Support Programme for Beef'. The payments under this programme are direct and based on '85 per cent or less of the base level of production' during 2010-12 and are made on per kg basis of beef meeting the required quality standards (WTO 2015). The base level of production was 59.4 million kg, and the maximum quantity of beef eligible for support was 50.49 million kg. However, no production-limiting feature requiring reduction of beef production can be discerned from Norway's domestic support notification for the programme.

In January 2019, Norway introduced a new Blue Box programme for milk, the "Support to Small and Medium Size Dairy Farms" under which payments are made on '85 percent or less of the base level of production', with this base being set at levels during 2015-2017 (WTO 2019f). Under the scheme, a fixed amount per cow is paid to farms, increasing till the 23rd cow. After the 23rd cow, the payments decrease on every additional cow till the 50th cow, exceeding which no payments are made **(**WTO 2019c). However, the scheme is applicable to farms that have more than six cows and not more than 50 cows, therefore establishing farm limits for eligibility under the programme. The decrease in payments after the 23rd cow suggests that incentives reduce, thereby limiting production. It is interesting to note that rather than payments based on milk production during the base period, the programme provides payments to eligible producers based on the number of milk cows.

Besides, Norway also implements structural income support to dairy farmers and regional deficiency payments to milk and meat production (WTO 1999). It also provides headage payments for bovine animals, pigs, goats, hens, horses, rabbits, and sheep (OECD 2016). These payments are made per animal and are regressive, reducing with the increase in the number of animals.

4.5 CHINA

A Blue Box programme for corn called the "Corn producer subsidy" was initiated in 2016 for two years on a fixed area and yield basis. The programme covered three provinces and one region and had 2014 as the base year (WTO 2018). China undertook corn acreage reduction in arid and cold areas and had capped the production that was eligible for support in furtherance of the production-limiting condition of Article 6.5. Production over and above the prescribed ceiling was ineligible for support under the Blue Box programme (Wei 2017).

For cotton, China started 'deepening the target price policy reform of cotton' for 2017-2019, based on 85 percent or less of the base level of production during 2012-2014 (WTO 2018b). However, the programme does not seem to have a mention of any explicit production-limiting condition. The support is computed on the difference between the market price and the target price for cotton. Interestingly, this programme bears resemblance in function to that of a price deficiency payment while also meeting the conditions of Blue Box.

4.6 ICELAND

Iceland had first utilised the provisions of the Blue Box in 1995 to extend support to dairy and sheep farmers based on up to 85 percent or less of the base level of production' with the base year being 1986-88. Direct payments were made under the programme to farmers for the production under individually allocated quotas. The production above the yearly quota was disciplined, however, the modalities for the same remain unclear (WTO 1995). It is also unclear if the programme had production-limiting conditions in place. After 1995, Iceland discontinued this Blue Box support and reclassified its support to sheep meat as decoupled payment under Annex 2 (UNCTAD 2003). The Blue Box payments were restarted in 2006 for dairy and beef based on a fixed number of heads (WTO 2016a). However, there are no domestic support notifications for these new Blue Box programmes, therefore, details regarding base period, production-limiting conditions remain unclear.

From the programmes of the members as mentioned above, it is observed that the production-limiting condition has been implemented differently. Some members such as the US and China had specific acreage reduction conditions for their Blue Box programmes, while others such as

Norway and EU had regressive payments with an increase in production as a condition to limit production.

SECTION 5: DECIPHERING THE ISSUES IN BLUE BOX

By examining Blue Box measures implemented by members over the years, and concerns raised in the CoA, various outstanding issues related to this Box have been deciphered in this section.

5.1 POLICY SPACE DUE TO BLUE BOX

Given the limited flexibility under the Amber Box, some members have utilised the provisions of Article 6.5 to support their producers. In a scenario where the Blue Box would not have been utilised, some members would have stood in breach of their domestic support commitments under the AoA. For instance, the combined support under the Amber and Blue Box for Norway, Iceland and Slovenia were higher than their respective AMS, and it was almost equal to its bound AMS for EU (Table 2). Thus, the role of the Blue Box in expanding the policy space for these members cannot be underestimated.

Table 2: Comparison of support under Amber and Blue Box with Bound AMS

Members	Year	Unit	Bound AMS	Current AMS	Blue Box	Total Amber and Blue	Percentage of Total to Bound AMS
1	2	3	4	5	6	7 = (5+6)	8 = (7/4*100)
EU	2000	Euro million	67159	43654	22223	65877	98
USA	1995	USD million	23083	6214	7030	13244	57
Japan	2010	Yen million	3972900	576900	306800	883700	22
Norway	2003	NRK million	11449	10831	7360	18190	159
Iceland	2016	ISK million	130	127	670	797	612
China	2016	CNY million	0	81357	39039	120396	Not Applicable
Slovak Republic	2000	SK million	10140	7885	69	7954	78
Slovenia	2002	Euro thousand	61846	13605	53690	67296	109

Source: Various WTO Domestic Support Notifications of selected members

Note: 1. The Slovak Republic and Slovenia are Member of EU since 2004.
2. Years are selected based on highest percentage value of total current and Blue Box support to the Bound AMS.

5.2 Simultaneous Application of Blue and Amber Box for Same Product

The provisions of the AoA do not restrict the members from providing support to the same product under both Amber and Blue Box simultaneously. An analysis of practice reveals that many members have used Amber Box along with the Blue Box for the same product for many years. Table 3 shows that the EU, USA, Iceland, and Norway have given product-specific support under both boxes for various years. This may have resulted in some products benefitting greatly from dual support received under the boxes.

Table 3: Concurrent use of Amber and Blue Box for the same product.

Sr. No.	Country	Products	Year (latest)
1	EU	Sugar beet, Seeds, Dairy - milk and milk products, Sheep and goat meat, Tobacco, Beef, Dairy, Sheep and goat meat, Olive Oils, Fruit and vegetables	2016
2	USA	Barley, Oats, Cotton, Rice, Corn, Wheat, Sorghum	1995
3	Iceland	dairy and beef	2013 to 2016
4	Norway	Milk and Beef	2016 and 2017

Source: Various WTO Domestic Support Notifications of selected members

5.3 Production-Limiting Condition: Standalone or Not

Under the Blue Box, direct payment for product-specific support must be made pursuant to a 'production-limiting' programme. However apart from this, the AoA provides no further understanding as to what this condition entails, or what form the production-limiting programme might take. It remains ambiguous if the condition to limit production is a standalone requirement or whether it is implicitly covered under the sub-conditions of fixed area and yield or, a base level of production or, a fixed number of heads, attached with Article 6.5[2]. Some members such as China (for corn) and the US have had explicit production-limiting conditions for Blue Box programmes in the form of acreage reduction (Wei 2017, US 2019). In contrast, the EU initially had held the view that a programme complying with the attached sub-conditions of Article 6.5 also automatically complies with the production-limiting criteria (WTO 2009). By this reasoning, any member implementing a direct payment programme for any product based on sub-conditions of Article 6.5, would comply with the production-limiting

[2] Benitah M. (2019) observes that "to be included in the Blue Box direct payments must satisfy the ***following limiting production*** criteria: (i) such payments are based on fixed area and yields; or (ii) such payments are made on 85 per cent or less of the base level of production; or (iii) livestock payments are made on a fixed number of head."

condition as well. Practises of members such as Norway and China for certain products also bolster this interpretation. These members have been implementing Blue Box programmes for beef and cotton respectively, which are only based on 85 per cent or less of the base level of production, with no explicit production-limiting condition (WTO 2015; WTO 2018b). In sum, the Blue Box practices of members seem to be diverse when it comes to the production-limiting aspect.

5.4 'PRODUCTION-LIMITING' OR 'PRODUCTION REDUCING'

It has been a general assumption that a Blue Box measure is implemented to limit the surplus production (UNCTAD 2003). However, under Article 6.5 members are not required to reduce the area or production for a Blue Box measure, instead, only the payment must be on 'limited' production. The reduction in production is a stricter requirement than limiting production. Moreover, production may be limited without actually being reduced, i.e. maintaining it at consistent levels. Therefore, reduction in production does not seem to be a pre-requisite under this Article, if it is restricted to base levels.

Table 4: Trend in production and area of soybeans in the European Union and France

Year	**European Union**			**France**		
	Area harvested	**Production**	**Yield**	**Area harvested**	**Production**	**Yield**
	Hectare (Ha)	**Ton**	**Ton/Ha**	**Hectare (Ha)**	**Ton**	**Ton/Ha**
2002	400023	1190786	2.98	74747	208533	2.79
2003	470736	967199	2.05	80747	147368	1.83
2004	421882	1181481	2.80	58594	147095	2.51
2005	465798	1308381	2.81	57385	142528	2.48
2006	548307	1385336	2.53	45263	122995	2.72
2007	389028	853787	2.19	32551	84603	2.60
2008	269429	758552	2.82	21771	63106	2.90
2009	346027	958028	2.77	43746	109842	2.51
2010	429119	1223610	2.85	50939	140059	2.75
2011	448626	1243208	2.77	41571	122521	2.95
2012	432073	962043	2.23	37367	103935	2.78
2013	468463	1224251	2.61	42999	110072	2.56
2014	575640	1859126	3.23	75789	227262	3.00
2015	884687	2363657	2.67	122529	336830	2.75
2016	827307	2473742	2.99	136370	338864	2.48
2017	891051	2667769	2.99	141000	412000	2.92

Source: Food and Agriculture Organisation (FAO) accessed on 24th October 2019

Contrary to the general perception, Blue Box measures may have a stimulating impact on production (Josling et al. 1996). They do not ensure that actual area or production will reduce, or even remain at the same level. For instance, under CAP 2013, the soybean production at the EU level has seen an upward trend (Table 4). The sectoral support to soybean is covered under protein crops and is applied by 16 EU members at the regional level. For France, both the area harvested, and yield has seen exponential growth during the period of implementation of the CAP, when compared to its set ceiling of 49,736 hectares and 2.75 of yield respectively (EU 2017). Thus, as is evident from the case of France, the production under a Blue Box programme can increase rather than being limited.

Interestingly, in the Draft Modalities of 2006, it had been proposed that members using Blue Box would need to demonstrate that the production of individual products under it had not increased (WTO 2006). Although this proposed obligation failed to get consensus and was subsequently dropped from the 2008 text, it would have helped to test whether the Blue Box support was indeed less distorting than Amber Box (Das & Sharma 2011).

5.5 UPDATING THE BASE PERIOD

Article 6.5 does not impose any restriction on updating the base period for a Blue Box measure. However, such updation of the base period during the tenure of a Blue Box programme may not be permissible under Article 6.5. This is because updating base periods may serve as a possible incentive for farmers to increase production for securing higher payments since these payments would be linked to past performance. Updating base periods would also allow members to increase the coverage and entitlement under the programme. However, it has been observed that members have updated these periods by instituting new Blue Box measures, replacing the old ones. For instance, Japan seems to have updated the base period to support the rice farmers by implementing a new Blue Box programme ‘Direct payment to rice’, as discerned from its WTO notifications (WTO 2001a; WTO 2014).

5.6 QUANTITY ELIGIBLE FOR BLUE BOX SUPPORT

Article 6.5 prescribes that payment for a covered product may be made based on either fixed area and yield; or up to 85 percent of base-level production; or livestock payments on a fixed number of head. However, a situation is possible wherein actual area or production, or livestock exceeds the prescribed limit or base. What happens in such a situation is not envisaged by the AoA. In a stricter interpretation, the excess quantity would most likely not be entitled to support under a Blue Box programme, and only the quantity that was fixed would receive payments. However, this interpretation of eligible quantity for Blue Box support may vary, as found in practice by some members. It may happen that excess quantity remains eligible, but the payment rate is reduced proportionally, as found dairy and milk payments of Norway (WTO 2019).

5.7 Level of implementation: National, regional, or individual farm level

A Blue Box programme may be implemented at the national, regional or farm level since the AoA does not set any criteria for the same. members have adopted different implementation level according to their prevailing socio-economic situation. For instance, Norway has set limits at national for its Blue Box programmes concerning dairy and beef. On the other hand, China implemented at the regional level for its corn producers, whereas for cotton, it is on a national level. To support its producers, Iceland had individually allocated quotas that applied at the farm level (WTO 1995).

5.8 Type of support mechanism

The AoA is silent about the 'type' of support mechanism to be used under Article 6.5 except that it must be a direct payment under a production-limiting programme. This opens the possibility of members using mechanisms that are suited to their socio-economic conditionalities. Members have been found to use various support mechanism for implementing Blue Box measures. The EU has provided direct payment based on fixed area and yield to support cover products under its 'VCS'. Japan, USA, Norway, and China have used support mechanism similar to price deficiency payments for supporting various products. Table 5 shows the sub-criteria used by various members to provide Blue Box support.

Table 5: Classification of Blue Box measures of members under Article 6.5

Member	Article 6.5 criteria		
	(i) Fixed area and yields	(ii) 85 percent or less base level of production	(iii) Fixed number of livestock
European Union	✓		✓
United States		✓	
Japan		✓	
Norway	✓	✓	✓
China	✓	✓	
Iceland		✓	✓

Source: Domestic Support Notifications (DS:1) of selected members

5.9 Blue Box measures: Transitory?

Blue Box measures have repeatedly been touted as transitory measures that facilitate a shift from trade-distorting Amber Box subsidies and are necessary for reforming agriculture. However, many members have made continued use of this Box to extend domestic support and over the years, many new members have also joined this bandwagon. Table 6 gives a snapshot of the use of the Blue Box by members over the years.

Table 6: Implementation of Blue Box measures by WTO members

Members	Year
EU	1995-2016
USA	1995
Japan	1998-2016
Norway	1995-2017
Iceland	1995; 2006-2016
China	2016
Slovak Republic	1995-1997; 2000-2003
Slovenia	2000-2003

Source: Domestic support notifications of WTO members

Note: The Slovak Republic and Slovenia are members of the EU since 2004.

Unlike the restrictive provisions of the Amber Box, from provisions of Blue Box and the practices of members, it is evident that Article 6.5 may provide a member with the much-needed flexibilities to support their farmers, provided attached sub-conditions are satisfied.

Section 6: Tracing Blue Box in Agriculture Negotiations

Since the Doha Round Declaration in 2001, many proposals have been submitted to discipline the domestic support in general, and Blue Box in particular. However, given the divergent views and interests of members, no consensus was achieved.

Opponents of the Blue Box claim that it gives unlimited policy space to provide trade-distorting support to agriculture, resulting in an increase in production and shifting of support from Amber to Blue Box. Thereby, it provided a window to evade reforms their domestic support measure (Murphy and Suppan 2005). Further, it was also argued that Blue Box was a temporary measure to shift support from Amber Box to Green Box, and that time had come to eliminate or prescribe limits to this Box[3]. Cairns Group[4] (2000, 2002), Canada[5] (2000, 2002), Jordan[6] (2001, 2002), Mexico[7] (2001), India[8] (2001, 2002), China[9] (2002), US[10] (2002), Philippines[11] (2002), Dominican Republic[12] (2002), Kyrgyz Republic[13] (2002) called for either limiting, reducing or eliminating Blue Box support in future agriculture negotiations in order to discipline domestic support.

On the other hand, proponents argue that payments under this Box are less trade-distorting due to production limiting conditions attached to Article 6.5. Norway[14] (2001) demanded that Blue Box should be maintained to address the non-trade concerns (NTC) such as rural development, food security, environment etc. Other members such as the EC[15] (2000, 2003), Japan[16] (2000, 2002), Korea[17] (2001) and Poland[18] (2001) claimed that Blue Box is less trade-distorting than Amber Box and indispensable in facilitating the shift from Amber to Green Box. On the issue of Blue Box being a temporary measure, it was maintained that Article 6.5 was a permanent provision of the AoA and nothing in the article suggested that it was temporary.

Based on various proposals and consultation with the members, the General Council adopted a decision known as the 'July Framework' for establishing modalities in agriculture in 2004[19]. On Blue Box, the Framework provided for its capping, as well as, modification of its definition. This Framework provided for the Overall Trade Distorting Support (OTDS) limit, which covered the expenditure under the Bound Total AMS, Blue Box and the permitted *de minimis*. Further, Blue Box was capped at 5 percent of member's average total VoP during a historical period. These proposed disciplines were further refined in the agricultural modalities under which overall Blue Box expenditure was capped at 2.5 percent of the member's average total value of agricultural production during 1995-2000[20]. The 'July Framework' also addressed the

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3 See Chairman's Report, Document No. JOB(02)/133
4 See Cairns Group Proposal, Document No. G/AG/NG/W/35 and JOB(02)/132
5 See Canada's Proposal, Document No. G/AG/NG/W/92 and JOB(02)/131
6 See Jordan's Proposal, Document No. G/AG/NG/W/140 and JOB(02)/178
7 See Mexico's Proposal, Document No. G/AG/NG/W/138
8 See India's Proposal, Document No. G/AG/NG/W/102 and JOB(02)/175
9 See Japan's Proposal, Document No. JOB(02)/104
10 See US Proposal, Document No. JOB(02)/122
11 See Philippines Proposal, Document No. JOB(02)/111/Rev.1
12 See Proposal by the Dominican Republic and others, Document No. JOB(02)/174
13 See Proposal by Kyrgyz Republic, Document No. JOB(02)/179
14 See Norway's Proposal, Document No. G/AG/NG/W/101
15 See the EC's Proposal, Document No. G/AG/NG/W/90 and JOB(03)/12
16 See Japan's Proposal, Document No. G/AG/NG/W/91 and JOB(02)/164
17 See Korea's Proposal, Document No. G/AG/NG/W/98
18 See Poland's Proposal, Document No. G/AG/NG/W/103
19 See General Council's Decision, Document No. WT/L/579
20 See G-20's Proposal, Document No. JOB(07)/71

issue of updating the base period or base production under the Blue Box by making these payments contingent on fixed and unchanging variables. Further, these modalities introduced product-specific Blue Box limits[21].

Surprisingly, the Framework broadened the definition of Blue Box to accommodate the specific interests of the US (Hart & Beghin 2015, Das & Sharma 2011) by making direct payments not requiring production also eligible for Blue Box. Under the Farm Act 2002, the US had introduced counter-cyclical payments (CCPs) to protect its farmers from price fluctuations and categorised it as Green Box. However, the Appellate Body upholding the Panel's finding in *US-Upland Cotton* observed that CCPs did not satisfy the criteria of decoupled income support under Annex 2 of the AoA, and thus were Amber Box support (WTO 2005). In the backdrop of Doha negotiations on domestic support, especially on Amber Box, the US feared that it would cross its AMS limit owing to CCP payments (Murphy and Suppan 2005) and sought a carve-out to classify the CCP as Blue Box. However, since the CCPs did not require production to receive the payments, they were incompatible with the provisions of Article 6.5 as they existed. Actual production, unlike the Green Box, is a requisite for Blue Box payments (Josling et al. 1996). This new and broadened definition of Article 6.5 under the Framework was against the spirit of Doha Development Round ("**DDR**"), which sought to achieve a substantial reduction in trade-distorting support.

The DDR witnessed a stalemate due to the divergent views of members on various elements of the agriculture negotiations. Post the Bali Ministerial Conference in 2013, members submitted various proposals on domestic support. Before the 11th Ministerial Conference in Buenos Aries (2017), some proposals explicitly demanded the capping or elimination of Blue Box support. ACP[22] proposed the capping of Amber and Blue Box support at the *de minimis* level given under Article 6.4 of the AoA. Similarly, in 2017, Brazil and others[23], Argentina[24], Mexico[25], Philippines[26] and Russia[27] demanded the capping or substantial reduction in Blue Box support. On the other hand, proposals by G-10[28], Japan[29], India and China did not touch provisions of Blue Box and called the members to focus on existing AMS entitlement and *de minimis* limit

21 See GC Decision, Document Nos. WTO TN/AG/W/4 and Revisions (1-4)
22 See ACP's Proposal, Document No. JOB/AG/112
23 See Brazil's Proposal, Document No. JOB/AG/99
24 See Argentina's Proposal, Document No. JOB/AG/120
25 See Mexico's Proposal, Document No. JOB/AG/124
26 See Philippines' Proposal, Document No. JOB/AG/127
27 See Russia's Proposal, Document No. JOB/AG/132
28 See G-10 Proposal, Document No. JOB/AG/103
29 See Japan's Proposal, Document No. JOB/AG/104

as a starting point for negotiating new disciplines on domestic support. However, even after 19 years of negotiations since the Doha declaration, there remains a bleak chance to reach a consensus in the near future. Owing to China's recent Blue Box measures, there has been a renewed debate regarding Article 6.5, as reflected from the questions raised in recent sessions of the Committee on Agriculture (CoA). Interestingly, the EU, which had arguably been the most vocal advocate and user of the Blue Box, recently expressed its intent to move from Blue Box to Amber Box support citing red-tapism and corruption in payments as issues (WTO 2019g).

SECTION 7: SHRINKING POLICY SPACE FOR DEVELOPING MEMBERS AND BLUE BOX SUPPORT

The substantive WTO rules, in general, are tilted in favour of the developed members against the interest of developing members (Lamy 2006, Joseph 2011). The AoA was primarily structured to accommodate the vested interests of the industrialised countries, ignoring the need of developing members to promote and support their agriculture (Wolf 2005). The AMS entitlement for most developed members remains a prime example of this bias.

In contrast, for developing members, the policy space to provide Amber Box support is constrained by the *de minimis* limit. Further, many developing members provide product-specific support in the form of MPS. Under the AoA, MPS is covered by Amber Box and is calculated by multiplying the difference between the applied administered price ("**AAP**") and the fixed external reference price ("**FERP**") with the eligible production. The FERP is based on the export or import price of product concerned during the base period, i.e. 1986-88. Without factoring inflation, the gap between AAP and FERP tends to increase over time, ultimately resulting in exaggerated support levels, without capturing the realities of developing members. Due to the outdated FERP and lack of AMS entitlement, the policy space for many developing members has considerably shrunk.

The systemic issue of shrinking policy space faced by the developing members has become a matter of grave concern. members such as China, India, Pakistan, and Indonesia etc. now face a space crunch for implementing policies due to the restrictive provisions of the AoA (Sharma 2016; Thou *et al.* 2019). A review of domestic support notifications of members such as Jordan, Turkey, China shows that they have also breached their respective AMS limit in some notification years.

Given these constraints and impasse in agricultural negotiations, developing members may explore Article 6.5 to support their agriculture sector. China's use of Blue Box compliant policies for corn and cotton is noteworthy as it is the first developing member to utilise this Box to extend product-specific support. By tweaking the programmes for cotton and corn, China has set an example for developing members to make use of this otherwise unutilised Box which has long been used exclusively by the developed members.

Unlike the Amber Box, members can provide product-specific trade-distorting support under Blue Box without any prescribed financial limits. However, members must be mindful that agricultural subsidies are subject to the disciplines of the Agreement on Subsidies and Countervailing Measures (ASCM). Further, the AoA does not restrict members from simultaneously using Blue and Amber Box measures for the same product. Additionally, members may provide product-specific support to its farmers based on either fixed area and yield, or up to 85 percent of base production, or fixed head. Depending on the existing agricultural situation, developing members have an array of options under which they may initiate Blue Box measures. For instance, a developing member may implement an EU-like policy based on fixed area and yield; or price deficiency payments based on output, similar to those implemented by the US and Japan; or on a fixed head basis like Norway and EU. In contrast to MPS, where a fixed base period must be maintained for the FERP, Article 6.5 does not restrict members from updating their base periods. Further, Blue Box measures can be implemented at the individual farm, regional or national levels. Given these flexibilities under the Article, developing members may find it useful to frame Blue Box measures compatible with their extant socio-economic conditions and requirements.

Traditionally, MPS measures find more acceptability amongst the developing members because they do not require the significant financial commitment and administrative capabilities that are otherwise involved in implementing price deficiency payments. However, for the reasons detailed above, many developing members face policy space constraints under the Amber Box on account of their MPS programmes. As one of the problems for farmers is steep fluctuation in prices, support based on output might be more relevant for developing members. Since there are no restrictions on the 'type' of programmes under Article 6.5, developing members may implement MPS or deficiency payments by providing direct payments based on up to 85 percent of base production. Till date, no member has initiated an MPS-type Blue Box measure under the AoA. However, members such as China, Japan, Norway and the USA have used Blue Box measures to provide price deficiency payments.

Some important points need to be considered while framing a Blue Box programme. Payments under the MPS-type Blue Box measure must be ‘direct’ in nature. In case the government or any of its agency makes payments to the producers, it may be classified as a ‘direct payment’. Another challenge for developing members in implementing Blue Box measures is that they should be under a ‘production-limiting programme’. Due to this condition, it was believed that Blue Box would not be compatible with the policy objectives of developing members, which are typically aimed at achieving self-sufficiency (UNCTAD 2003). However, as discussed in Section 5, members have interpreted the production-limiting conditions differently. Some members have explicit production-limiting conditions such as acreage reduction while some simply base the measure on the conditions under Article 6.5 (a) (i-iii). Developing members can benefit from the fact that Article 6.5 does not provide any guidance as to how the production-limiting condition can be achieved and thus can adopt methods suitable to them. Though the payment would be limited to fixed quantity, the actual production of a covered product may increase. For instance, in case of payments made based on fixed area and yield, it is practically impossible to keep the yield constant as it may vary with weather conditions, fertiliser use, infrastructure facilities etc. Besides, as has been mentioned in Section 5, the Article does not suggest a reduction in actual production, nonetheless, the payment should be limited as per the conditions laid under the Article.

SECTION 8: CONCLUSION

Blue Box was the result of a compromise between the US and the EC during the Uruguay Round of negotiations to create a carve-out from reduction commitments under the Amber Box. For years, only the developed members have exclusively used the provisions of Article 6.5 to support their producers, and without this Box, some members such as Norway, Iceland and the EU would have breached their AMS commitments. It was widely understood that the measures under this Box are not compatible with the need of the developing members. However, by examining the provisions of Article 6.5 and the practices of members, this study bring to fore the issues and ambiguities in the Blue Box. It shows that members have interpreted

Blue Box provisions with a varying degree of pliancy, as per their needs. Given the operational flexibilities under Article 6.5, as elucidated in this paper, developing members may initiate Blue Box programmes to support their agriculture.

Under the Doha Round, several proposals were floated to discipline the Blue Box support. Developing members have consistently demanded the limiting or elimination of expenditure under Article 6.5. On the other hand, members such as EU, Norway, Japan, and the US have defended this Box for various reasons, including non-trade concerns such as rural development. However, as this paper finds, the negotiating position of some members on this Box has changed over the years. China, which had initially called for the elimination of Blue Box, has now implemented Blue Box programmes for corn and cotton. Contrastingly, the EU, which was the major proponent and user of this Box, has expressed its inclination to move away from Blue Box to Amber Box.

The absence of consensus under the Doha Round has left no option for developing members but to utilise the existing flexibilities under the AoA to support their farmers. An analysis of the Blue Box indicates the flexibilities available to developing members for framing a measure according to their socio-economic conditions. Although no member has initiated MPS-type payments under this Box, no restriction placed by the AoA preventing members from initiating price support programmes, provided the payments are direct and conform to the production-limiting conditions as laid down under Article 6.5. Developing members may explore this otherwise unutilised Box to extend product-specific support to their producers. This will provide developing members considerable policy space to implement their agricultural policies without breaching their prescribed limits.

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