

# **Guide to the Agreement on Agriculture:**

**Technicalities and Trade Tricks Explained**

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## Glossary of Trade Terms

**Agreement on Agriculture.** Part of the Uruguay Round agreement covering issues related to agriculture -- e.g., market access, export subsidies, and internal support.

**Aggregate Measure of Support (AMS).** An index that measures the monetary value of the extent of government support to an economic sector. As defined in the Agreement on Agriculture, the AMS includes both direct and indirect government supports to the sector, if they are judged to create distortions in the market. For example, it includes both direct payments to farmers, such as payments to guarantee them a higher than world market price, as well as indirect payments such as taxes on food at the point of sale to consumers that are used to support farm programmes. The AMS is different from another broader concept of agricultural support called the Producer Subsidy Equivalent (PSE) because certain PSE policies are excluded from the AMS, and because of the methodology used to compute direct payments and market price support benefits.

**Amber Box.** A popular expression referring to the set of domestic supports which are considered to be production and trade distorting and are measured by an index termed the Aggregate Measure of Support (AMS).

**Bound Tariff Rates.** Tariff rates resulting from GATT negotiations or accessions that are incorporated as part of a country's schedule of concessions. Bound rates are enforceable under Article II of GATT. If a GATT contracting party raises a tariff above the bound rate, the affected countries have the right to retaliate against an equivalent value of the offending country's exports or receive compensation, usually in the form of reduced tariffs of other products they export to the offending country. However, countries are free at any time to reduce their bound tariffs still further. Bound tariffs can be lowered but not raised.

**Blue Box.** A popular expression to represent the set of provisions in the Agreement on Agriculture that exempts from reduction commitments those program payments received under production limiting programmes -- if they are based on fixed area and yields or a fixed number of head of livestock, or if they are made on 85 per cent or less of base level of production. US' Deficiency payments were exempt under this provision as compliance with acreage reduction programmes was required for eligibility, and payments were made on no more than 85 per cent of established base acreage, and individual farm yields had been fixed since 1996. Blue box policies are contained in Article 6.5 of the Agreement on Agriculture.

**Cairns Group.** A group of nations formed in 1986 at Cairns, Australia. The group seeks the removal of trade barriers and substantial reductions in subsidies affecting agricultural trade. These goals were in response to depressed commodity prices and reduced export earnings stemming from subsidy wars between the US and the EU. The members account for a significant portion of the world's agricultural exports. The group includes major food exporters from both developed and developing countries: Argentina, Australia, Brazil, Canada, Chile, Colombia, Indonesia, Malaysia, New Zealand, the Philippines, South Africa, Thailand, and Uruguay. The Cairns Group was a strong coalition in the Uruguay Round of multilateral trade negotiations.

**Country Schedules.** The official schedules of subsidy commitments and tariff bindings as agreed to under GATT for member countries.

**Decoupled Payments.** These supports paid to producers are not dependent on prices or production levels. In theory, no production is required to receive these payments, though in reality, production continues while payments are made based on some other criteria. In the AoA, decoupled payments are deemed to be non-trade distorting and are allowable under the green box.

**De Minimis Provision.** This provision allows countries to maintain a certain level of AMS. For developed countries this level can be up to 5 per cent of the value of production for individual products (product specific support), and 5 per cent of the value of a country's total agricultural production (non-product specific support). For developing countries, support can be up to 10 per cent. Within the Agreement on Agriculture, however, countries can only provide these levels of support if they are within the 1992 support levels because of the due restraint clause.

**Deficiency Payment.** This was allowed under the blue box since, in the US, compliance with acreage reduction programmes was required for eligibility. It is a direct government payment made to US farmers who participated in wheat, feed grain, rice, or cotton programmes prior to 1996. Deficiency payments bridged the gap between a the national average market price and a politically determined target price to support farm incomes which were set by the US Department of Agriculture (USDA). The total payment to a farmer was equal to the payment rate, multiplied by a farm's eligible payment acreage and the programme yield established for the particular farm. Deficiency payment programmes in the US were eliminated in the 1996 Farm Act and have since been replaced by another subsidy programme, the production flexibility contract payment.

**Dispute Settlement Body (DSB).** The General Council of the WTO, composed of representatives of all member countries, convenes as the Dispute Settlement Body to administer rules and procedures agreed to in various agreements. The DSB has authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions or other obligations under the various agreements.

**Due Restraint Provision.** The UR Agreement on Agriculture provision that sets a 9-year period during which domestic support policies and export subsidy arrangements are exempt from GATT challenges.

**EU (European Union).** Established by the Treaty of Rome in 1957 and known previously as the European Economic Community and the Common Market. Originally composed of six European nations, it has expanded to 15. The EU attempts to unify and integrate member economies by establishing a customs union and common economic policies, including the Common Agricultural Policy. Member nations are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The European Commission, the secretariat of the EU, represents the 15 member countries at the WTO where the group speaks as a block.

**Export Subsidies.** Special incentives, such as cash payments, extended by governments to encourage increased foreign sales; often used when a nation's domestic price for a good is artificially raised above world market prices.

**Final Act.** Formally called the "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations," the Final Act is the legal document containing the texts of all provisions agreed upon during the UR. The signing and adoption of the Final Act initiated the transition from the GATT to the WTO.

**Food Aid Convention (FAC).** First negotiated in 1967 and administered by the Secretariat of the International Grains Council, the Food Aid Convention administrators audit food aid donor members to verify that they have complied with their FAC commitments. According to the 1995 Convention, these commitments range from 2.5 million tons of wheat equivalents for the United States, to 20,000 tons for the smallest FAC donor member. Current FAC members are the US, the 15 members of the European Union, Canada, Japan, Australia, Switzerland, Norway, and Argentina. The FAC itself does not deliver international food aid or co-ordinate the food aid programmes of its members. At the WTO Singapore Ministerial Conference in 1996, it was agreed that the food aid component of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food Importing-Developing Countries be forwarded to the Food Aid Convention for consideration.

**Formula-based Tariff Reductions.** A method of negotiating tariff reductions using an agreed-upon formula applied to tariff rates (with limited exceptions being granted for very sensitive items) by all contracting parties.

**GATT (*General Agreement on Tariffs and Trade*).** An agreement originally negotiated in Geneva, Switzerland in 1947 among 23 countries, including the US, to increase international trade by reducing tariffs and other trade barriers. The agreement provides a code of conduct for international commerce and a framework for periodic multilateral negotiations on trade liberalization and expansion.

**Green Box.** A colloquial term that describes domestic support policies that are not subject to reduction commitments under the Agreement on Agriculture. These policies are **said** to affect trade minimally, and include support such as research, extension, food security stocks, disaster payments, and structural adjustment programmes.

**Market Access.** The extent to which a country permits imports. A variety of tariff and nontariff trade barriers can be used to limit the entry of foreign products, thereby reducing market access.

**Most-favored-nation (MFN) Status.** An agreement between countries to extend the same trading privileges to each other that they extend to any other country. The MFN rule is a founding principle of the WTO. Under a most-favored-nation agreement, for example, a country will extend to another country the lowest tariff rates it applies to any third country. A country is under no obligation to extend MFN treatment to another country, unless they are both members of the WTO, or unless MFN is specified in an agreement between them. The WTO allows some exceptions to the rule, for instance to allow developed countries to extend more favourable trading terms to least developed countries.

**Non-tariff Barriers.** Regulations used by governments to restrict imports from, and exports to, other countries, including embargoes, import quotas, and technical barriers to trade. These include health and environmental standards.

**Notification Process.** The annual process by which member countries report to the WTO information on commitments, changes in policies, and other related matters as required by the various agreements.

**OECD (*Organization for Economic Cooperation and Development*).** An organization founded in 1961 to promote economic growth, employment, a rising standard of living, and financial stability; to assist the economic expansion of member and nonmember developing countries; and to expand world trade. The member countries are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the US.

**Peace Clause.** See *Due Restraint Provision*.

**Producer Subsidy Equivalent (PSE).** A broadly defined aggregate measure of support to agriculture that combines into one total value aggregate, all the transfers which arise from the different instruments of agricultural support, both trade and supposedly non-trade distorting. In the US, these include direct payments to producers financed by budgetary outlays, such as deficiency payments, budgetary outlays for certain other programmes assumed to provide benefits to agriculture (such as research and inspection and environmental programmes) and the estimated value of revenue transfers from consumers to producers as a result of policies that distort market prices. The PSE seeks to reflect the full range of economic distortions arising from agricultural policies.

**Production Control.** Any government program or policy intended to limit production. In agriculture these have included acreage allotments, acreage reduction, set-asides, and diverted acreage.

**Production Flexibility Contract Payments (PFCP).** Direct payments to US farmers for contract crops through 2002 under the US 1996 Farm Act. Payments for each crop are allocated each fiscal year based on fixed percentage shares specified in the act. The percentages were based on the Congressional Budget Office's March 1995 forecast of what deficiency payments would have been for 1996 to 2002 under the 1990 farm legislation. PFCPs were initially higher than deficiency payments paid to farmers. However, they have been set on a descending scale, heading for zero payments by 2002.

**Sanitary and Phytosanitary (SPS) Measures.** Technical barriers designed for the protection of human health or the control of animal and plant pests and diseases.

**Special Safeguard provisions.** Provisions within the UR Agreement on Agriculture designed to protect the products that were subject to tariffication (as a result of implementation of the Agreement) from surges in imports or large price declines.

**Special Treatment Clause.** A clause in the UR Agreement on Agriculture that gives countries the option of foregoing tariffication on some commodities and instead requires minimum imports above the minimum access commitments of 3-5 percent of consumption. This clause was added to temporarily placate Japan and South Korea by providing protection for their rice sectors. In the case of Japan, for instance, the minimum import requirements for rice are at 4 percent of consumption in 1995, rising to 8 percent in 2000.

**Tariff.** A tax imposed on imported products by a government which consumers have to pay. A tariff may be either a fixed charge per unit of product imported (specific tariff) or a fixed percentage of value (ad valorem tariff). Tariffs are generally imposed when governments do not want imported products to compete with locally made ones. Tariffs are also sometimes used to tax exports, in order to generate revenue, or to keep certain products available on the domestic market.

**Tariff Escalation.** When import duties are higher on semi-processed products than on raw materials, and higher still on finished products. This escalation serves to keep the global market open for raw materials but ensures that the countries producing higher-end processed products are insulated from competition. Effectively, this entrenches developing countries in the position whereby they remain exporters of cheap raw products since their processed products, if any, are barred from entering the global market.

**Tariff Peaks.** High tariffs (far above the average tariffs of a country) used to shelter some 'sensitive' industries or products, such as textiles, leather goods, and food products.

**Tariff-rate Quota.** Quantitative limit (quota) on imported goods, above which a higher tariff rate is applied. A lower tariff rate applies to any imports below the quota amount.

**Tariffication.** The process of converting nontariff trade barriers to bound tariffs. This is done under the UR agreement in order to improve the transparency of existing agricultural trade barriers and facilitate their proposed reduction.

**Trade Liberalization.** A term which describes the complete or partial elimination of government policies or subsidies that restrict trade. The removal of trade-distorting policies may be done by one country (unilaterally) or by many (multilaterally).

**UR (Uruguay Round) Agreement.** The Uruguay Round of multilateral trade negotiations, conducted under the auspices of the GATT, is a trade agreement designed to open world markets. The Agreement on Agriculture is one of the 29 individual legal texts included in the

Final Act under an umbrella agreement establishing the WTO. The negotiation began at Punta del Este, Uruguay in September 1986 and concluded in Marrakesh, Morocco in April 1994.

***World Trade Organization (WTO)***. Established on January 1, 1995 as a result of the Uruguay Round, the WTO replaces GATT as the legal and institutional foundation of the multilateral trading system of member countries. It provides the principal contractual obligations determining how governments frame and implement domestic trade legislation and regulations. And it is the platform on which trade relations among countries evolve through collective debate, negotiation, and adjudication.

# 1. Introduction

The Agreement on Agriculture (AoA) is one of the most significant agreements negotiated in the Uruguay Round. As with the other Uruguay Round Agreements, it came into effect in 1995 under the new World Trade Organisation (WTO) regime.

The AoA regulates the liberalisation of agricultural products. Liberalising agricultural trade is of interest to huge segments of the world population because agriculture is the means of livelihood for many in the North and South. Particularly in the developing South, the structure of agricultural production to a large degree determines whether, and to what extent, people have access to the food they need. Large numbers depend on subsistence farming and also on cash crop farming for their livelihoods. Net-food-importing countries, especially lower income resource poor countries are very vulnerable to world food price fluctuations and to the competing imported products from the North making their way into their borders.

According to the Washington administration and to WTO proponents, food security means adequate and 'cheap' food supplies at the global level. Countries produce what they have a 'comparative advantage' in, that is, their markets should be structured such that they export what they can produce more cheaply than others. Agricultural production should therefore be geared towards the export market. This is a radical change from the system of subsistence farming most developing countries have practised.

Along these lines, the US sold the need for the inclusion of agriculture in the GATT to the developing countries. The AoA on the surface looks as if it is about opening up markets, cutting domestic supports which are trade distorting, and crucially, about cuts in supports which enable countries to dump their products overseas (that is, the sale of products below their cost of production). Since the North has traditionally provided huge subsidies to their farmers, developing countries at first envisaged that the AoA would lead to significant cuts in these subsidies hence providing a more level platform for equal competition in the market.

However, as it turns out, the AoA does not significantly reduce Northern protections, but in many instances, legitimises them. The OECD countries in 1997 alone, provided supports to their farmers to the tune of US\$280 billion. Subsidised products from the North, competing in the same markets with products from developing countries, are destroying the viability and livelihoods of farmers in the developing world. Even the small farmers in the North are being pushed out as they find themselves in competition with the big agri-businesses which governments are supporting.

These transnational corporations control inputs, have industrialised production, have established large-scale contract farming in developed and developing countries and are the main players in the processing and marketing of food. In short, they are the prime beneficiaries of the system of globalised food trade the GATT / WTO, as well as its sister organisations, the IMF and World Bank, are institutionalising. Food production is becoming a business monopolised by a few.

The South is losing its ability to produce its own food. As developing country markets are being pried open by trade regulations, small farmers are losing their source of livelihoods due to unfair competition. The bigger farms which survive produce for the export market -- coffee, tea, sugar, cut flowers, cultivation of prawns etc. No longer is food production responsive to local needs. It is a reality now that countries may be exporting food even as their own people are starving.

This system of agriculture therefore only feeds the rich. It is assumed that countries and people will always have money to buy the food supplies they require. Contrary to this, many developing countries do not have the needed foreign exchange even if the food they require may be reasonably priced. Food imports rather than local production instead implies the importation of

unemployment and its social consequences. It also means that countries have to borrow money in order to be able to eat. The effects on the environment are also detrimental due to intensive farming methods, monocropping, the heavy usage of chemicals and transgenic plant varieties and the erosion of biodiversity, not to mention the long-distance transportation of foods at every stage of production.

*Real* food security raises questions such as who has access to the land, who produces, who makes the decisions, who will eat, and whether or not the food produced is culturally appropriate. Ultimately, *real* food security can only come about through food self-sufficiency, locally, nationally or regionally. Hauling agricultural produce from one corner of the earth to another may sometimes be inevitable, but should be the exception rather than the rule. This does not mean autarchy or isolationism, but self-reliance, sovereignty, environmental resource sustainability, employment, and importantly, adequate access to food for all.

As stipulated in the text of the AoA, the Agreement must be reviewed a year prior to the end of the implementation period in 2000. In view of this, many non-governmental and public interest groups have demonstrated strong sentiments against the destruction wrought by opening their markets in the context of unfair competition allowed by the WTO.

This guide to the AoA intends to support interested organisations and individuals in voicing their concerns in their campaigns as the AoA review approaches. It flashes out the basic provisions of the Agreement and looks at the 'tricks' used by the developed countries, primarily the EU and the US, to side-step their commitments in the implementation of the Agreement so as to maintain their agricultural trade barriers and the expansion of their markets.

## 2. Background to the Agreement

### Why Agriculture Was Brought into GATT

Prior to the Uruguay Round, agriculture was de facto outside GATT discipline, mainly because the United States had sought in the 1950's a waiver from Article XI of the GATT, which prohibited quantitative restrictions on imports. With the US threatening to leave GATT unless it was allowed to maintain protective mechanisms for sugar, dairy products, and other agricultural commodities, Washington was given a "non-time-limited waiver" on agricultural products. This led to GATT's lax enforcement of Article XI on other agricultural producers for fear of being accused of having double standards.

The US and other agricultural powers not only ignored Article XI but they also exploited Article XVI, which exempted agricultural products from GATT's ban on subsidies. One effect of these moves was the transformation of the EU from being a net food importer into a net food exporter in the 1970's. By the beginning of the Uruguay Round in the mid-eighties, the EU's Common Agricultural Policy (CAP) had developed into what experts Michael Trebilcock and Robert Howse described as "a complex web of price and sales guarantees, subsidies, and other support measures that largely insulated farmers' incomes from market forces."

With domestic prices set considerably above world prices and no controls on production, European farmers expanded production. The mounting surpluses could only be disposed off through exports, sparking competition with the previously dominant subsidized US farmers for third-country markets. The competition between the agricultural superpowers turned fierce with the US losing its position as the leading agriculture exporter to the EU in the 1970s, and US farm exports dropping from US\$44 billion to US\$26 billion.

However, it was not so much their subsidized farmers that suffered. Since over 80 per cent of agricultural support was in the form of market price supports, these large scale supports easily led to the lowering of international prices. As both the US and EU were large net exporters of agricultural products, the effect of their protectionist policies were borne by the rest of the world. The victims were largely third country farmers, such as the small-scale cattle growers of West Africa and South Africa who were driven to ruin by low-priced EU exports of subsidized beef.

With state subsidies mounting to support the bitter competition for third country markets, the EU and the US gradually came to realize that continuing along the same path could only lead to a no-win situation for both. The cost of supporting agriculture in the developed world amounted to US\$300 billion per annum in the 1980s.

By the late eighties, close to 80 per cent of the EU's budget was going to support agricultural programmes. At the start of the Uruguay Round in 1986, US was subsidising its producers to the tune of US\$88 billion. The US had inaugurated a whole new set of expensive programmes, for example, the Export Enhancement Program, to win back markets such as the North African wheat market from the EU.

This mutual realization of the need for rules of engagement in the struggle for third country markets is what led to the EU and the US to press for inclusion of agriculture in the Uruguay Round. Rather than seriously advancing a mechanism to promote free trade, the two superpowers resorted to the rhetoric of free trade to regulate a condition of monopolistic competition, with each seeking advantage at the margins.

The manner in which the Agreement came into being lends support to this interpretation. The final Agreement was essentially the Blair House Accord, which was negotiated only between the US and the EU in November 1992. At that time, a trade war was brewing between the US and EU over a dispute on oilseeds. The Blair House meeting was a last ditch attempt to avoid this. Both sides managed to resolve the oilseeds disputes as well as outstanding issues in the

agriculture negotiations. The Accord was then promptly re-labeled the GATT Agriculture Agreement and tossed to other GATT members for endorsement.

### **'Creative' Implementation**

Following the Accord, countries had to smoothen out their country schedules and implementation details in accordance with the 'Modalities' paper which provided the formulae on how tariffs and reductions were to be calculated. Surprisingly, there was little supervision in the process. Countries 'creatively' interpreted the agreed guidelines and in many cases, developed countries found innovative ways to circumvent any significant liberalisation commitments in order to protect their interests.

### **3. The Bones of the Agreement: Technical Details**

#### **Structure of the Agreement**

The Agreement on Agriculture is made up of the following parts:

- 1) The text of the Agreement itself, comprising 25-pages of articles and annexes covering three major sections -- market-access, domestic support and export subsidy.
- 2) Country Schedules where each country had to calculate their suggested commitments on such matters as tariff rates and export subsidy constraints.
- 3) The 'Modalities' section which specifies both the reduction percentages and the calculation methods, as well as technical details regarding the commitments to be undertaken.

Parts 1 and 2 are legally binding documents. The Modalities paper is not. Therefore, aspects which are not fully reflected in the schedules of individual countries but which are described in the Modalities document cannot be used as the basis for dispute settlement proceedings.

#### **Period of Implementation and Review**

The implementation period of the Agreement is from 1 January 1995 to 31 December 2000, or 6 years for developed countries. Developing countries were given 10 years to undertake reduction commitments.

Countries agreed in the Agreement to continue the process of reductions of support and protection beyond the implementation time-frame. Hence, a review process will take place by the end of 1999, one year before the end of the implementation period for developed countries.

#### **Key Provisions of the Agreement on Agriculture**

The main provisions of the Agreement on Agriculture fall into the following 3 categories:

- market access
- export competition and
- domestic support.

Table 1 gives a summary of these provisions. The provisions are either price-related (reductions in monetary outlay by governments or cuts in tariffs), or quantity-related (reductions in the volume of goods either allowed into a country or reduced in terms of subsidies provided).

#### **Developing and Least Developed Countries**

Reduction rates for developing countries are two-thirds those for developed countries, and stretch over 10 years instead of 6. Least developed countries have to bind their tariffs and provide minimum access quotas for imports but are exempt from any reduction commitments.

**Table 1: Main Provisions of the Agreement on Agriculture**

Type of rule	Market Access (Base: 1986-8)	Export Subsidy (Base: 1986-90)	Domestic Support (Base: 1986-8)
Price	<p>Tariffication of non-tariff barriers for all countries</p> <p><i>Developed countries:</i> Reduction of all tariffs by 36% on average, and minimum of 15% per tariff line.</p> <p><i>Developing countries:</i> Reduction of tariffs by 24% on average, and minimum of 10% per tariff line</p>	<p><i>Developed countries:</i> Reduction of outlays on export subsidies by 36%</p> <p><i>Developing countries:</i> Reduction by 24%</p>	<p><i>Developed countries:</i> Reduction of total AMS by 20% except for 'green box' measures</p> <p><i>Developing countries:</i> Reduction by 13.3%</p>
Quantity	<p><i>Developed countries:</i> Minimum access commitments: 3% of domestic consumption growing to 5% by 2000</p> <p><i>Developing countries:</i> Minimum access: 1% rising to 4% in 2004</p> <p>Current access maintained by all countries</p>	<p><i>Developed countries:</i> Reduction of subsidized exports by 21%</p> <p><i>Developing countries:</i> Reduction of subsidized exports by 14%</p>	
Other	Safeguard provisions	Due Restraint clause	

### 3.1. Market Access

Market access is the extent to which a country allows the importation of foreign products. Countries have traditionally used both tariffs and non-tariff measures (such as quotas and variable levies) to regulate imports of agricultural goods. The market access provisions aim to regulate and lower protectionist barriers to trade.

The provisions relating to market access have to do with

- a) tariffs, and
- b) minimum and current access volumes / quotas.

#### Tariffs

- All existing tariffs are to be bound, that is, fixed. Countries can only reduce bound tariffs when complying with the AoA tariff reduction commitments. Bound tariffs cannot be increased.
- All non-tariff barriers (border measures other than simple customs duties) must be converted to tariffs. This is usually termed 'tariffication'. The tariffs should work out to be equivalent to the barriers that were in place in the base reference period of 1986-88.
- All tariffs must be reduced over a period of six years by an average of 36 per cent for developed countries. Reductions are 24 per cent for developing countries over 10 years.

This is an unweighted average. That is, some items can be reduced more than others as long as the aggregate works out to the required 36 or 24 per cent. However, each tariff line must be reduced by at least 15 per cent for developed countries, and 10 per cent for developing countries. The reductions are to take place in equal annual steps.

- There are two exceptions to tariffication:
  - When circumstances allow for countries to use the Special Safeguard Provisions (SSG)
  - Those countries which are covered by the Special Treatment Clause with regard to specific commodities. (These are elaborated upon later.)

#### Minimum and Current Access Quotas / Volumes

The relevant provisions on current and minimum access are contained in the Modalities section of the Agreement and are therefore legally binding only if they had been translated into specific commitments detailed in the country schedules. The only mention in the text of the Agreement to market access provisions refers to 'other market access commitments as specified' in the Schedules.

- In products where there are no significant imports, developed countries must provide minimum access opportunities for these products at the rate of 3 per cent of 1986-88 domestic consumption. This 3 per cent access was to commence in 1995 and rise to 5 per cent by 2000. For developing countries, it is 1 per cent rising to 4 per cent by the tenth year in 2004.

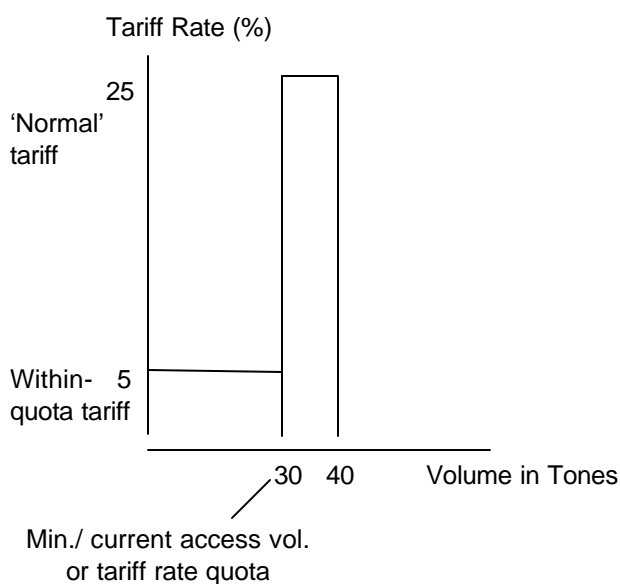
It is important to note that this provision on minimum access does not require a country actually to import a given volume, but rather to establish an access 'opportunity'. Within-quota tariffs are to be low or minimal, but no general formula was agreed as to what that meant in quantitative terms. Whether or not real access actually exists is open to differing interpretations.

- For items that had been newly tariffied, and where current access opportunities have become less favourable than those in the base period, tariff rate quotas must be established at quantities imported in 1986-88.
- If the volume of access at the time of implementation in 1995 had already exceeded the minimum access commitment (3 per cent of 1986-88 consumption), the 1995 volume had to be maintained and increased.
- In general, countries have created current and minimum access opportunities by allowing imports of specified quantities at a second tariff lower than the usual tariff rate. This lower tariff is often referred to as the 'within-quota tariff'. The quantity of goods imported at this lower tariff rate is sometimes termed the 'tariff-rate quota'. See Figure 1.

However, this is not a rule. A country may not have provided a second lower tariff rate because it considered that minimum access opportunity would be available at the 'normal' tariff rate.

- Tariff-rate quotas resulting from minimum access commitments are to be allocated on a most-favoured nation (MFN) basis, that is, it should be equally available to all countries.

**Figure 1: Illustration of a 'normal tariff', a 'within-quota tariff', and the minimum or current access quota.**



## Exceptions to Tariffication

### *Special Safeguard Provision*

The Special Safeguard Provision was designed to protect domestic markets from disruption as a result of import surges or abnormally low world prices. It allows additional duties to be imposed to control these disruptions.

- The Special Safeguard Provision (SSG) can be invoked for commodities which have been subject to tariffication. They only apply to imports over the tariff-quota volumes. It allows countries to impose additional duties in the event of a surge of imports in terms of volume

(quantity-triggered), or a low price based on already established trigger levels (price-triggered). Only one of these can be invoked at any one time.

- When the SSG is invoked, the additional duty may not exceed one-third of the 'normal' customs duty in effect for the commodity. Also, the additional duty can only be maintained till the end of the year in which it was introduced.

There is some uncertainty regarding the operation of the SSG as some countries did not specify their reference prices in their schedules.

### ***Special Treatment Clause or 'Rice Clause'***

This clause allows for the postponement of tariffication and was included at the end of the negotiations on the insistence of Japan and South Korea to allow for some level of protection of their staple product (rice).

- The Special Treatment Clause comes in two forms -- for developed and developing countries. For developed countries, it allows tariffication to be postponed until at least the end of the implementation period (2000). For developing countries, tariffication can be postponed for 10 years, until 2004.
- In return, developed countries must grant minimum access of 4 per cent of the base period domestic consumption in the first year of implementation (1995), rising to 8 per cent by 2000. Developing countries must give access of 1 per cent, rising to 4 per cent also by 2000.
- Where countries wanted to make use of this Special Treatment clause, they had to declare it in their schedules.

Only 4 countries chose to make use of this clause, hence the use of this provision is limited. Japan (developed country clause), Korea and the Philippines (developing country clauses) applied this provision to rice. Israel (developing country clause) applied it to sheep and goat meat, cheese and milk powder.

Conditions countries had to satisfy before qualifying for special treatment:

- 1) Imports of the product in the base period must be less than 3 per cent of domestic consumption
  - 2) Export subsidies must not have been provided in the base period
  - 3) The commodity concerned must be the predominant staple in the traditional diet.
- If Special treatment is to be continued after the implementation period of the current agreement, then 'additional and acceptable' concessions must be granted and these concessions will be determined by negotiation.

Should further negotiation not take place, there will be full tariffication while maintaining the existing access, which by then will have become 8 per cent and 4 per cent for developed and developing countries respectively.

The tariff applied will then be the tariff equivalent of the 1986-88 base period reduced by at least 15 per cent (as stipulated in the market access provisions).

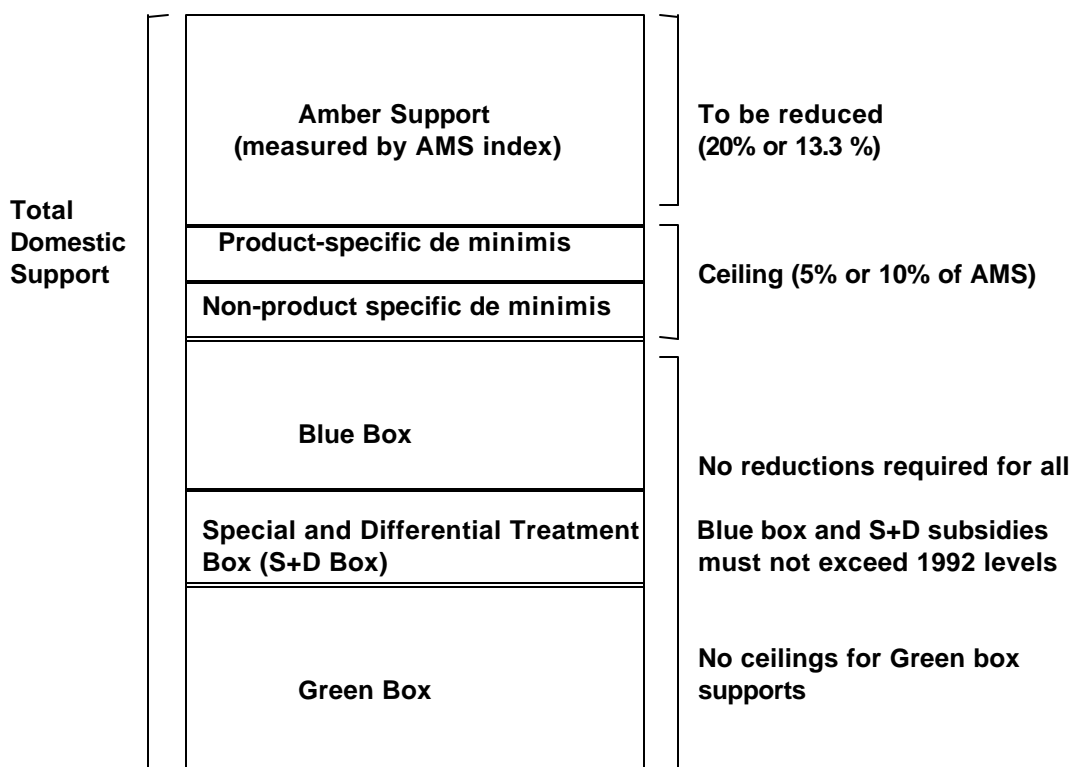
## 3.2. Domestic Support

Domestic support is the annual monetary support given by the government to agricultural producers either for the production of specific agricultural products, or in more general forms such as in infrastructure and research.

The AoA classifies supports into several categories -- those that are acceptable because they are minimally trade distorting, and those that not acceptable as they are obviously trade distorting; those that have ceiling levels and those which do not have ceiling levels (as illustrated in Figure 2).

- **'Green box'** supports are deemed to be minimally trade distorting. They are acceptable within the AoA and are not subject to reduction commitments.
- **'Blue box'** supports are a special category created to house the EU's and US' production limiting programmes. These include EU's land-set aside programmes and the US' deficiency payments. They too are not subject to reductions.
- **'Amber box'** supports are deemed to be trade distorting and are subject to reduction commitments. These supports are measured by the Aggregate Measure of Support (AMS) index.
- **De minimis clause** supports allow countries to maintain a certain level of AMS. These come in two forms, product specific de minimis-related support and non-product specific de minimis support.
- **Special and differential treatment** allow developing country governments to provide input and investment subsidies.

**Figure 2: Categories of AoA Domestic Support**



## Categories of Support in the Agreement on Agriculture

Support levels to be reduced:

### **Amber Box: Subsidies measured by the Aggregate Measure of Support (AMS)**

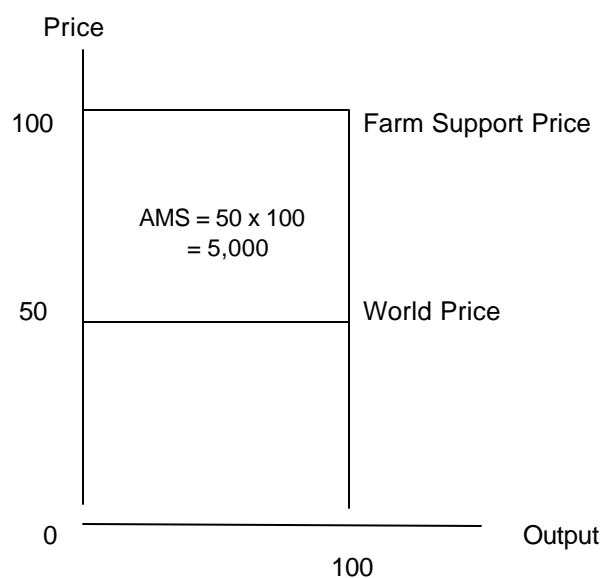
- The supports which are considered to be production and trade distorting and are together measured by an index termed the Aggregate Measure of Support (AMS). Three elements are included in the AMS calculations:
  - ◇ market price support (to be calculated on the basis of the gap between the world market price and the domestic administered price multiplied by the quantity of production eligible to receive that administered price).
  - ◇ non-exempt direct payments
  - ◇ other subsidies not exempted from reduction commitment.

Of these, it is the market price support measures which make up the bulk of the AMS. See Figure 3 below.

AMS support for individual commodities must exceed 5 per cent of the value of production before the support is deemed part of the AMS (otherwise it is considered as *de minimis* support allowable under the AoA, see below).

- The AoA stipulates that current levels of AMS should not exceed the Base AMS levels, calculated on the 1986-88 average levels of support.
- Countries have to reduce their support levels by 20 per cent from the Base AMS in equal installments over 6 years for developed countries, and by 13.3 per cent over 10 years for developing countries. If the Base AMS for 1986 is higher than the average of 1986-88, countries were allowed to use the 1986 level.

**Figure 3: Diagrammatic Representation of the Aggregate Measure of Support**



*Supports which have a ceiling level:*

***Product Specific De Minimis-related Support /  
Non-product Specific De Minimis Support***

- The *de minimis* clause allows countries to maintain a certain level of AMS. For developed countries this level can be up to 5 per cent of the value of production for individual products (product specific support), and 5 per cent of the value of a country's total agricultural production (non-product specific support). For developing countries, support of up to 10 per cent is allowed.

*Supports which have 1992 ceiling levels but are exempted from reduction commitments:*

***Blue Box: Direct Payments under Production-limiting Programmes***

The popularly termed 'blue box' was created in the final negotiations of the AoA by the US and EU to specially allow both the US and the EU to maintain their payments provided to their farmers under production-limiting programmes.

- The direct payments legitimate under the blue box comes in several forms:
  - ◇ payments based on fixed areas and yields
  - ◇ payments made on 85 per cent or less of the base level of production
  - ◇ livestock payments made on a fixed number of head  
(In the beef sector, compensatory payments are made on the basis of a maximum stocking rate per hectare. Additional premier is paid when the stocking rate is less than 1.4 livestock units per hectare. This is to encourage more extensive production methods.)
- While these payments are not subject to reductions, they must abide by the Due Restraint clause which states that support payments for a particular commodity cannot exceed the amount granted in 1992. If the 1992 level is exceeded, commodity specific subsidies will lose the protection of Due Restraint under Article 13 (see below), so that the country can be challenged by another WTO member under other relevant GATT provisions and the WTO Agreement on Subsidies.

The blue box was especially important for the EU as it meant that the EU did not have to radically change its CAP policies which were politically very sensitive in the EU countries. Payments under the EU's production limiting programmes were provided by the EU's Common Agricultural Policy (CAP) for cereals and other arable crops to reduce the EU's agricultural output and therefore raise prices. Blue box payments amount to tens of billions for the EU.

US's deficiency payments were also exempted from reductions under this blue box category since compliance with acreage reduction programmes was required for eligibility. Payments were made on no more than 85 per cent of established base acreage, and individual farm yields had been fixed since 1986. Deficiency payments bridged the gap between a the national average market price and a politically determined target price to support farm incomes which were set by the US Department of Agriculture (USDA). For example, if the target price was \$16 a bushel, and the market price was \$12, farmers were awarded \$4 by the USDA.

However, the US 1996 Farm Act (FAIR) completely replaced deficiency payments with production flexibility contract payments (which fall under the Green box). US government supports are therefore no longer covered under the blue box.

Though this provision was obviously tailored to the needs of the EU and US, it is general and can be invoked by any country. This form of support though is not an option developing countries would consider as most are dealing with land and financial constraints.

### ***Special and Differential Treatment Support***

The AoA allows special and differential treatment to be given to developing countries in two areas. Developing-country governments can provide

- 1) investment subsidies (i.e., easier access to credit)
- 2) input subsidies generally available to low-income or resource poor producers.

Governments may also provide support to producers to encourage diversification from the growing of illicit narcotic crops.

Note that while these subsidies are allowed, they operate under the due restraint clause so that subsidy amounts cannot exceed 1992 levels. As with the blue box supports, if the 1992 level is exceeded, commodity specific subsidies will lose the protection of due restraint under Article 13 (see below) and the country can be challenged by another WTO member under other relevant GATT provisions and the WTO Agreement on Subsidies.

*Supports which are exempt from reduction and have no ceilings:*

### ***Green Box: Minimally or Non-trade Distorting Policies***

This is a colloquial term which commonly refers to a long list of domestic support measures which are considered (in some cases speciously) to have none, or only minimally trade-distorting effects. Two criteria are given for green box supports.

- Supports must be paid out of the government budget and not levied from consumers
- Supports must not have the effects of providing a price support to the producers.

Countries have a lot of freedom in providing green box subsidies as there are no restrictions on subsidy amounts. The 'due restraint' clause does not stipulate a ceiling level for green box policies, as it does for blue box and special and differential treatment supports.

Green box policies are summarised in Table 2 below.

**Table 2: Domestic support policies exempted from reduction commitments**

Description	Characteristics
1. General Policies which have no or minimal production or trade distortion effects	Should not involve transfers from consumers or provide price support to producers.
2. Government service programmes <ul style="list-style-type: none"> <li>• research</li> <li>• pest and disease control</li> <li>• training services</li> <li>• extension and advisory services</li> <li>• inspection services</li> <li>• marketing and promotion services</li> <li>• infrastructure services</li> <li>• infrastructural works associated with environmental programmes</li> </ul>	
3. Public stockholding for food security	Should be predetermined targets. Sales and purchases to

purposes	be at current market prices.
4. Domestic food aid	Direct provision of food or the means to buy food. Purchases by government to be at current market prices.
5. Direct payments to producers	As under 1 above
6. Decoupled income support	Eligibility to be determined by reference to income or status for a fixed base period unrelated to type or volume of production, factors of production or price other than in the base period. No production required to receive payment.
7. Income insurance and safety net programmes	<ul style="list-style-type: none"> <li>• Income loss at least 30 per cent of gross income</li> <li>• Compensation for less than 70 per cent of actual loss</li> <li>• Related solely to income</li> <li>• Cumulated with disaster payments should not exceed 100 per cent of the loss</li> </ul>
8. Natural disasters	<ul style="list-style-type: none"> <li>• Only in respect of losses in income, livestock, land or other production factors and should not exceed replacement costs. Should not specify future production.</li> <li>• Cumulated with (7) above, should not exceed 100 per cent of the loss.</li> </ul>
<i>Structural adjustment assistance:</i>	
9. -- Producer retirement	Total and permanent
10. -- Resource retirement	<ul style="list-style-type: none"> <li>• Land for a minimum of 3 years, livestock, permanent withdrawal</li> <li>• No alternatives are specified</li> <li>• Payments unrelated to production, prices or factors of production.</li> </ul>
11. Investment aids	<ul style="list-style-type: none"> <li>• Restructuring or reprivatization</li> <li>• Non-commodity specific</li> </ul>
12. Environmental programmes	<ul style="list-style-type: none"> <li>• Related to fulfillment of specific conditions including production methods or inputs under government programmes. Payment limited to increased costs or income loss due to compliance with the programme</li> </ul>
13. Regional assistance programmes	<ul style="list-style-type: none"> <li>• Producers must be in disadvantaged regions</li> <li>• Compensate for loss of income or extra costs in undertaking production</li> </ul>

*The Uruguay Round: A Preliminary Evaluation of the Impacts of the Agreement on Agriculture in the OECD Countries, OECD 1995.*

The most controversial of these green box measures are those payments which make up 'decoupled income support'. US direct payments in terms of 'production flexibility contracts' fall under this category. They replaced the blue box deficiency payments. They are considered decoupled because the link between price and production level is broken.

Production flexibility contract payments (PFCPs) were introduced in the 1996 Farm Act for contract crops from 1996 - 2002. PFCPs are financed by the Congressional budget and have essentially been predetermined for the entire period of 1996-2002. Independent of production,

market prices, changes in input prices, inflation or exchange rates, PFCPs have been allocated based on the March 1995 forecast of what deficiency payments would have been for 1996 to 2002 under the 1990 farm legislation. PFCPs in 1997 totaled \$6.4 billion. However, unlike deficiency payments, PFCPs have been put on a descending scale, so that by the end of the seven years of implementation, US farmers would receive nil payment. By 2003, however, a new farm bill will be in place. It is anyone's guess what forms of decoupled payments, if any, will be legislated then.

## **Due Restraint or Peace Clause**

The Due Restraint Clause or 'Peace Clause' of Article 13 sets a 9-year period (up to 31 December 2003) during which

- 1) Annex 2 or Green Box subsidies;
- 2) Article 6, paragraph 5 or Blue Box subsidies, De Minimis supports, and Special and Differential Treatment Supports (paragraph 2 of Article 6); and
- 3) Export subsidies

are protected from GATT challenges. A decision would have to be made by WTO members whether the clause continues beyond 2003.

The amount of protection this clause provides varies slightly between the different types of subsidies. It is greatest for Annex 2 subsidies, which are completely protected from countervailing duties. Blue Box subsidies and export subsidies are exempt from countervailing duties unless there is proof of injury or threat. Furthermore, due restraint must be shown in initiating any countervailing duties.

This clause should be discontinued since it allows developed countries to use their upper hand in providing subsidies to increase their agricultural production for export. This in effect amounts to dumping, which the Due Restraint clause protects them against.

An additional problem is that to establish dumping, the onus is on the importer to prove injury. This process must be simplified for developing countries. Currently, the technical and financial costs involved prohibit developing countries from taking action.

## **Producer Subsidy Equivalents (PSEs) Vs AMS**

In AoA literature, the AMS is often defined in relation to the PSE. The PSE is a measure of support used by the OECD. It measures both trade distorting and non-trade distorting subsidies. It therefore includes most forms of monetary transfers to agricultural producers from domestic consumers and taxpayers as a result of agricultural policies. While the bulk of the PSE would be transfers due to market price support policies which are the most trade and production distorting, it will also include the other forms of payments such as direct and decoupled payments, or general services.

In sum, the PSE measures the transfers which arise from the many different instruments of agricultural policies and it seeks to reflect the full range of economic distortions arising from these policies.

Its coverage is hence broader than the AMS. The AMS only measures the transfers which are defined within the AoA as more than minimally trade distorting. Also, it includes only domestic policies, unlike the PSE. For instance, the AMS does not include supports related to trade policies, such as the export subsidies which are part of the PSE. In the US, the export enhancement programme valued at US\$1.7 billion in the 1986-88 PSE is excluded from AMS calculations. Such trade policies are subject to their own separate restrictions in the AoA.

The difference between the PSE and the AMS is best shown in concrete numbers. The AMS for US agriculture in 1995 was US\$6.2 billion (after subtracting US\$ 7.03 billion in deficiency payments and US\$1.3 billion accounted for as de-minimis support) while its PSE was valued at US\$19 billion. In 1997, US' PSE rose to an estimated US\$22.8 billion.

The PSE, includes many, but not all green box policies. In 1995, US outlays amounted to US\$46 billion for green box supports. The bulk of the green box policies not counted as part of the PSE are related to domestic food programme outlays, for example, food stamps etc.

### 3.3. Export Subsidy

#### Some Background Information

A central issue in the agricultural negotiations of the Uruguay Round was the reduction in export subsidies. It took the EU a long time in the negotiations to finally agree to disciplines in this area. While the provisions still carry water, many analysts have concluded that in the short to medium term, disciplines here will hurt the Northern governments more than those in market access and domestic supports.

However, disciplines in export subsidy also mean the continued legitimisation and existence of dumping. Export subsidies allow countries to export goods on the world market at prices lower than those in their domestic markets. Such practices are prohibited for industrial goods, as they are considered as dumping. Because it is in the interest of the US and EU (they are the two largest users of export subsidies), the AoA does not mention dumping, but instead euphemistically terms it 'export subsidy' and 'export competition'. Developing countries rarely have the luxury to provide such supports.

Export subsidies cause other exporters to face stiffer competition as the prices of their goods are driven down. Therefore countries which can afford to subsidise exports take markets away from more efficient, low cost producers. World prices are lowered, price instability in the world market increases. Most detrimental is that unequal competition destroys the agricultural sector in developing countries. The Cairns Group of agricultural exports has therefore been lobbying hard for the elimination of these subsidies in the coming negotiations.

The EU resorts to export subsidies due to high internal price supports. Historically, the EU has relied on subsidies to export grain. Grain prices were maintained above world levels through government intervention purchases and protection from imports. This has generated a surplus of grain in the EU. As a result, the EU has offered export subsidies to reduce the surplus domestic supplies. Most grain exports have been subsidised and government expenditure on export subsidies are often rather large.

The US, too, has always provided export subsidies in response to those received by their EU competitors. During the late 1980s, the US and the EU were engaged in a 'subsidy war', where both countries would target subsidized wheat exports to the same markets, driving each other's export subsidies higher and higher.

Today, the US continues to heavily subsidise its exports. These programmes essentially help agribusinesses by reducing the costs of selling on the international market and by transferring the risks from the exporting companies to the government and taxpayers.

In fact, the 1996 Farm Act (FAIR) has preserved and even enhanced export subsidy programmes. For both wheat and dairy exports, the US Secretary of Agriculture has been directed to implement 'maximum volume and funding levels consistent with GATT Uruguay Round commitments to develop markets throughout the world' (DiGiacomo, IATP 1998). Domestically, the objective of export subsidies has been publicised as an instrument to stabilise prices and farm incomes by maximising export sales opportunities. The reality is that such pay-outs are a subsidy for exporters, particularly the agribusinesses, but do little to alleviate market price volatility for farmers.

As DiGiacomo sums, these export subsidy initiatives are part of the US federal government's 1996 stated export strategy to 'Increase the value of United States agricultural exports each year at a faster rate than the rate of increase in the overall world export trade in agricultural products'.

## Export Subsidy Provisions

The AoA stipulates that

- Export subsidies must be reduced by 21 per cent in volume terms and by 36 per cent in monetary terms over 6 years for developed countries. Developing countries must reduce their subsidised volumes by 14 per cent and their outlay by 24 per cent over a 9 year period.
- The base period of 1986-1990 was chosen. Where exports were higher in the early 1990s, countries could choose to begin their reductions from the average 1991-1992 export subsidy levels (front-loading provision). Nevertheless, the final volumes and outlay had to be 21 percent and 36 per cent lower than the 1986-1990 values.

(This adjustment was made to appease the EU in the final stages of the negotiations in order to accommodate their large stocks of wheat and beef. However, it also allows significantly larger quantities of subsidised exports throughout the implementation period for US' wheat, rice, vegetable oils and eggs, Australia's dairy products and Canada's wheat and butter. The expected corrections in trade distortions would therefore be less during the first years of the implementation period.)

- Some flexibility in the reductions was provided to cope with year-to-year market fluctuations during years 2 to 5 of the implementation period by allowing countries to exceed their commitments. However, when this happens, subsidy levels must be reduced in the following year and the total cumulative value of subsidies provided and the volumes subsidised over the entire implementation period cannot exceed the totals that would have resulted from full compliance with subsidy schedules. In the final year of implementation, they must be reduced by 21 per cent in volume and 36 per cent in monetary terms of the 1986-90 base levels for developed countries, and 14 per cent and 24 per cent for developing countries.
- The types of export subsidies to be disciplined include the following:
  - ◊ Direct subsidies, including payments in kind, contingent on export performance
  - ◊ Sale by government or their agencies of non-commercial stocks at prices below domestic market prices
  - ◊ Payments financed by virtue of governmental action such as a levy, whether or not there is a charge on the public account
  - ◊ Subsidies to reduce marketing costs of exports (other than promotion and advisory services)
  - ◊ Internal transport subsidies for exports which are more favourable than for domestic shipments
  - ◊ Subsidies on agricultural commodities for incorporation in exported products.
- Reduction commitments were made for product groups rather than for each commodity. The Modalities established a list of 22 product groups.
- No export subsidies can be introduced if they were not provided for in the base period, and no increases in export subsidies must take place from those in the base period. That is, all export subsidies are prohibited with the exception of those indicated in the countries' Schedules.
- The Due Restraint provision protects countries' implementation of the export subsidy provision from challenge for 9 years.
- There was no clear ruling on export credit and the bringing over of unused credit to the following years. This issue has been the cause of some controversy with the EU wanting to roll over its export credits and the US holding the position that such action is not in the spirit of the Agreement.

## 3.4. Sanitary and Phytosanitary Standards

### Some Background Information

All countries maintain measures to ensure that food is safe for consumers and to prevent the spread of pests or diseases among animals and plants. These sanitary (human and animal health) and phytosanitary (plant health) measures take many forms, for example, requiring products to come from disease-free areas, inspection of imported products, specific treatment or processing of products, setting maximum allowable levels of pesticide residues etc.

The Agreement on Agriculture and the Agreement on Sanitary and Phytosanitary Measures are closely linked. Though they are separate agreements, the AoA endorses the SPS Agreement, stating that the Agreement on SPS Measures should be given effect by all Members (Article 14).

One major point of controversy since the advent of the Sanitary and Phytosanitary Standards Agreement (SPS) in the Uruguay Round is the enforcement of mandatory food standards. Where before, countries had the freedom to establish their own voluntary food safety standards or follow international codes, the SPS, however, has made it mandatory for countries to abide by the food safety standards of the Codex Alimentarius Commission.

### What is Codex and What is the Problem?

Codex Alimentarius, also Latin for 'food code' is a joint UN/WHO organisation set up in 1962 to 'create a set of international standards to guide the world's food industry and to protect the health of consumers'. It includes limits on additives, chemicals, pesticides and other food contaminants. Under the SPS, the once voluntary guidelines are now mandatory as they serve as terms of reference in trade disputes. An example is the US case against the EU's ban on beef hormones. US considered the EU's preference for beef free of hormones to be a barrier to trade. The WTO supported the US position.

At Codex meetings, representatives of transnational corporations (TNCs) such as Nestle, Monsanto, United Brands and Coca-Cola outnumber the representatives of many countries. All standards and decisions at Codex are based on science. To put up a case as to whether or not a certain standard should be abided by in one's country, scientific evidence must be provided. Small countries lack the scientific requirements to make a case, should they choose to, while the transnational companies are of course the best equipped in this area. Developing countries therefore become vulnerable to the dictates of the TNCs and the richer countries.

As one critic comments, Codex has come up with new standards for fisheries, called the Hazardous Analysis Critical Control Process. The text on this is 400 pages long. How can small-scale fisher folk know how to comply with these standards?

Developing countries therefore now find that because they have lacked the capacity to participate in Codex during the voluntary phase of standard-setting, they are now suffering the consequences. They have proposed that Codex revise its processes so that no standards can be adopted unless a certain number of their delegations are present and voting. It is doubtful if this will materialise. Even then, countries would have to abide by the existing codes totaling 28 volumes!

It is small wonder that developing country governments are muttering that Codex is an encroachment of their sovereignty, while extending the powers of the corporations. Standards are set either very stringently, or are lax, depending on the trade interests of these corporations.

## **Provisions of the Agreement on Sanitary and Phytosanitary Measures**

The main provisions of the Agreement on the Application of Sanitary and Phytosanitary Standards (SPS) include the following:

- Countries importing products are permitted to take measures - based on scientific principles - to safeguard human, animal and plant life.
- Principle of harmonisation - National SPS protection is to be grounded on internationally agreed standards. Stricter measures may be introduced if a member determines that existing international regulations do not achieve an appropriate level of SPS protection. When a member uses internationally accepted standards, it is safe from challenge by its trading partners.

The international institutions specifically mentioned are the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.

- Principle of transparency - Members must ensure that changes to SPS regulations are made known promptly, provide inquiry points for documents and answers to questions, and allow producers in exporting countries sufficient time to adapt.
- Special and differential treatment - Developing countries are allowed to request longer timeframes for compliance with the agreement and are encouraged to participate in relevant institutions.

A Committee on SPS has been set up to provide a regular forum for consultations and provide firmer guidelines on implementation.

When there are disagreements, the general procedures on consultations and dispute settlement for the GATT apply.

## 3.5. Other Details

### Committee on Agriculture

The Agreement stipulated the setting up of a Committee on Agriculture. Its main task is to review the implementation of the Agreement. Matters relevant to the implementation of the Agreement can be discussed in the Committee. However, disputes among Members are to be brought to the dispute settlement body of the WTO.

### Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-importing Developing Countries, or Marrakesh Decision

A Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-importing Developing Countries, sometimes known as the Marrakesh Decision, was passed in conjunction with the Agreement on Agriculture. This initiative rose out of the concerns expressed by net food-importing developing countries (NFIDC). NFIDCs feared that the AoA would bring much higher food import bills, price instabilities and a lower availability of food aid.

Should the AoA adversely affect the NFIDCs and least developed countries, the Decision commits developed countries to provide assistance to them in the following ways:

- Financial assistance to offset higher world prices and enable them to maintain normal imports of food
- Adequate levels of food aid
- Financial and technical assistance to improve agricultural productivity and infrastructure
- Favourable treatment in relation to agricultural export credits

Unfortunately, developed countries have since shown little interest and no commitment in following-up on the Decision, despite the fact that world cereal prices more than doubled in 1995/6. At that time, donor countries argued that the price hike did not come about as a result of the implementation of the AoA.

Indeed, the only progress made regarding the Decision was at the Singapore WTO Ministerial Conference in 1996, where it was recommended that the food aid component of the Decision be forwarded to the Food Aid Committee for consideration within the context of the renegotiation of the Food Aid Convention (see glossary for explanation on Food Aid Convention).

### State Trading Enterprises

#### *Background*

State trading enterprises (STEs) are governmental or non-governmental agencies which handle a country's domestic procurement or exports. Through their purchases, STE importers enable governments to ensure that their people have access to reasonably-priced food supplies, especially in basic items. They sometimes do this by controlling or restricting trade and access to the domestic market. STE exporters, such as the Canadian Wheat Board, a marketing board, stabilises and supports farm prices as well as encourages trade expansion.

Agricultural STE's have, for decades, been important players in world trade. The GATT recognises STEs as legitimate participants in international trade, while establishing guidelines on their behaviour.

GATT 1947 guidelines require STEs to conduct their export or import trading activities according to the principle of nondiscriminatory treatment and 'in accordance' with commercial considerations. Nondiscriminatory treatment requires WTO member countries to extend the same trading privileges to all member countries.

### ***Agreement on Agriculture and STEs***

Interest in STEs arose in the light of the AoA's disciplines on protectionism. Members were concerned that some may use STEs to circumvent their reduction commitments. This is easily possible because of the lack of transparency in the pricing and operational activities of agricultural STEs.

The AoA therefore recognises the role of STEs in controlling access to import markets and explicitly prohibits countries from reverting to non-tariff restrictions, including 'non-tariff measures maintained through state trading enterprises'.

In the 1999 review of the AoA, the US intends to rein in tighter disciplines on STEs. Their logic is that AoA disciplines, such as market access commitments have little meaning when parastatal organisations regulate total demand. It is therefore difficult to determine whether purchases are being restricted, or if there is a genuine lack of demand.

US' main target of their discontent is again the EU, which has intervention agencies which manipulate markets but do not directly engage in trade. The EU has failed to include such agencies in its notifications. This has also been a sticky point between the Cairns group and the US. Several Cairns members rely quite heavily on STEs. The US has also attacked many STEs of developing countries. Very tight regulation of STEs as the US wants will certainly have detrimental effects on the food security of developing countries since STEs in these countries play a big role in managing food supplies.

## **4. The Tricks of the Trade: Creative Implementation by Developed Countries to Maintain Barriers**

Many 'tricks' were employed in the implementation of the AoA especially by the North to protect the vulnerable sectors of their agricultural industries.

In itself, the AoA already legitimises Northern protectionism, for example, by legalising supposedly non-trade distorting direct payments of the EU and US to their farmers, even as these payments run into the tens of billions. However, if the other articles of the Agreement had been implemented in a straightforward and purely objective manner, there may have been some opportunities for the South to take advantage of more open markets in the North.

These opportunities were largely eliminated by the maintenance of barriers by the EU and US when translating the provisions into practice. Instead of barriers being brought down, these were maintained or even increased under the guise of trade liberalisation.

### **4.1. Market Access**

#### **Dirty Tariffication: Converting non-tariff barriers to high tariff rates**

The term 'dirty tariffication' is widely used even within governmental circles to describe the process by which governments exhibited a tendency to get away with as high initial tariffs as possible. The actual tariff equivalents of the base period countries came up with, work out to be extremely trade prohibitive.

For some products, the tariffs have been set in the range of 250 per cent to 390 per cent. On average, the EU has set them at about 60 per cent above the actual tariff equivalents of the CAP in the base period, while the US set their tariff equivalents at about 45 per cent above the non-tariff barrier estimates.

When compared to the non-tariff barriers of the 1990s, it shows an even greater level of protectionism. According to an ESCAP (1996) study, the EU final bindings for the year 2000 are almost two-thirds above the actual tariff equivalent for 1989-1993. For the US, they are more than three-quarters higher.

Therefore, while supposedly opening up barriers, tariffication in effect increased the protection of the EU's and US' domestic markets by significant amounts.

#### **Selective Tariff Reductions: Keeping tariffs high on sensitive products and reducing tariffs on less sensitive products**

The required unweighted average of 36 per cent tariff reductions with the only constraint being a 15 per cent cut on each tariff left countries with much freedom to decide how to allocate their tariff reductions. In many cases, developed countries which have traditionally protected their markets on sensitive products used the freedom offered to maintain their trade barriers. How did they do this?

Countries tended to reduce low tariffs by significant amounts, while reducing only slightly, the existing high tariffs if the product was of trade importance. For example, countries could reduce tariffs on 3 items with initial tariffs of several hundred per cent by only 15 per cent each, and still

meet the overall 36 per cent unweighted average by eliminating (or reducing by 100 per cent) a 4 per cent initial tariff on a 4th product.

Table 3 below shows that this took place to some extent. Tariff reductions were higher for products which had lower initial tariffs.

	Common Wheat		White Sugar		Beef Carcasses		Butter	
	Initial tariff (%)	reduction (%)	Initial tariff (%)	reduction (%)	Initial tariff (%)	reduction (%)	Initial tariff (%)	reduction (%)
Australia	0	-	31.7	50	0	-	4.6	78
Canada	90	15	10.7	15	37.9	30	351.4	15
EC	142.3	36	207.1	20	96.9	36	235.3	36
Hungary	50	36	80	15	112	36	159	36
Korea	10	82	94.6	10	44.5	10	99	10
Japan	422.9	15	326.7	15	93	46	97.7	15
New Zealand	0	-	0	-	0	-	10	36
Poland	143.2	36	120	20	162	36	160	36
Switzerland	477.6	15	159.9	15	139.7	15	862.2	15
USA	6	55	134.7	15	31.1	15	116.7	15

*Agriculture in the GATT, Josling, Tangermann and Warley 1996, p. 187.*

This practice allowed governments to reduce tariffs on products which did not affect their economy (e.g., products they did not produce themselves), while keeping up tariffs on key products. Since it was practiced by the North, the resultant dispersion of tariffs brought about significant protection to value-added processed goods.

This trend has contributed to the tariff escalation taking place since the end of the Uruguay Round. Tariffs on semi-processed and finished products are higher than those on raw materials. The situation locks developing countries out of the market on processed products, forcing them to continue exporting and exploiting their cheap raw materials.

### **Allotting Tariff-Rate Quotas to Less Sensitive Products**

According to the Modalities, minimum access opportunities were to be established in a relatively disaggregated product level. However, this was not always followed through. Great creativity was employed in the implementation of this provision.

For example, the EU calculated the quota quantity required under the minimum access commitments for the whole aggregate of 'meat' comprising 18 product groups. With the total access opportunity, they then allocated this quantity to individual types of meat in a more disaggregate level. The resulting tariff quota for each individual product then became the legally binding commitment.

In the process, the EU chose those types of meat where additional imports would hurt least. These were sometimes qualities of meat not much produced in the EU, or meat categories for which the EU already had preferential import conditions with, for example, the Central European countries.

### **Manipulating Trigger Prices to Sanction Use of the Special Safeguard Provision**

Trigger prices were even manipulated with so that countries could more easily qualify to use the Special Safeguard Provision and hence impose additional duties over the bound tariff rates.

In the Modalities, it is specified that the trigger price chosen should be very similar to that of the external price countries were supposed to use for tariffication.

However, the EU, for example, appended a list of trigger prices they intended to use. Prices in this list are generally much higher than the external prices the EU used for tariffication. These prices would allow the EU to use the special safeguard provision often, and hence diminish further the intended implications of tariffication.

## **4.2. Domestic Support**

The domestic support provisions seem to legitimise the types of subsidies provided by the developed countries, while placing ceilings and reduction commitments on those subsidies developing countries tend to provide.

Furthermore, the developed countries have an added 'advantage' as they have traditionally provided high subsidies and are only called upon to reduce them. Developing countries, on the other hand, have not traditionally provided subsidies (or only in minimal amounts), and are not permitted to introduce or increase their subsidies beyond the de minimis 10% level.

### **Production-limiting programmes ARE production and trade distorting**

Production limiting programmes, that is, EU's area and headage payments are definitely trade and production distorting. US and EU negotiators were stretching semantics by categorising these payments as 'decoupled' from production. In fact, production is definitely required in order to be eligible for payment. Without these payments amounting to tens of billions, EU farmers would find agriculture scarcely profitable.

### **The Current and Base AMS Number Game**

The AoA stipulates that direct payments under production-limiting programmes are to be excluded from Current AMS calculations, although they were included in the calculations for the Base AMS. This essentially makes a mockery of the US' and EU's AMS reduction commitments.

The US is required to reduce its total AMS from the base period level of US\$23.9 billion, to a final bound level of US\$19.1 billion at the end of the implementation year. Deficiency payments accounted for almost US\$10 billion during the base period. That is, this US\$10 billion was included in the Base AMS. However, since production limiting direct payments are exempted from reduction in the AoA, they are excluded from Current AMS calculations. The result is a drop in the Current AMS of such a magnitude that the US does not need to make further changes in policy in order to meet its AMS reduction commitment. In fact, assistance delivered through other forms can even be increased without affecting US' commitments.

Similarly, the exemption of the EU's area compensation and headage payments from the EU's Current AMS calculation has a magical effect on the Current AMS figures. The EU's Base AMS includes the old system of supporting cereal growers and livestock producers. Under the new 1992 CAP, similar supports are offered to these producers, but the area compensation and headage programmes are excluded from the Current AMS. The 'credit' earned in the cereals and livestock sectors can be used to avoid cutbacks elsewhere.

Therefore, from the outset, the US and EU needed no real change or reduction in their domestic support subsidies to fulfill their AMS reduction commitments.

### **Shifting Supports within a Broad Aggregate**

By stipulating that the AMS reductions are not product specific, but sector wide, measured in terms of 'Total AMS', countries have been able to shift support among different products. It is therefore easy for developed countries to maintain their protectionist supports in sensitive sectors.

In the case of the EU, the AMS commitment is being fulfilled by changing the composition of assistance to the cereals and oilseeds sectors, while assistance is maintained or increased relative to the base period for some other commodities such as sugar, beef and fruit and vegetables (as long as they are within 1992 support levels).

### **Legitimising subsidies provided by developed countries while placing limits on those provided by developing countries**

A large number of domestic subsidies classified under the 'green box' are exempted from reduction commitments based on the premise that they are apparently trade-neutral. On examination, these policies such as structural adjustment assistance for 'the retirement of producers and resources' and payments for various crop insurance schemes are subsidies which are often used by developed countries. Many are direct payments and are trade distorting. Developing countries cannot afford to provide these forms of supports to their producers.

On the other hand the form of subsidies developing countries do provide, such as input and investment subsidies given to low income farmers, have a ceiling level on them. The Due Restraint clause states that these subsidies cannot exceed 1992 levels.

It is only fair that the forms of subsidies developing countries give their producers are granted immunity similar to immunity accorded to the subsidies used by developed countries.

The provisions on domestic support are unlikely to have much effect in terms of curbing the large subsidies provided by Northern governments.

An OECD report on the AoA (1995) concludes that the AMS commitments will not bring about much change to the level of supports in the OECD countries. Annual transfers to agricultural producers as measured by the broader PSE index remain high. Support mechanisms and instruments including border measures have effectively been maintained in many OECD countries.

### **4.3. Export Subsidy**

The AoA does not stipulate exact policy instruments in this area, but only the outcome of policies. How a country manages to reduce its export subsidies would depend on their chosen domestic policies. Hence the policies countries implement may or may not be in line with the 'free trade' spirit of the Agreement. As will be illustrated below, there are several ways the developed countries can circumvent real cuts in supports but still in principle comply with their commitments.

Countries can make real cuts to the volume of export subsidies by reducing the levels of price supports until export availability does not exceed the allowed 80% or 86.7%. Even better, countries can eliminate price supports entirely.

## **Increasing Supply Controls**

In countries where supply controls are already in place, it may have been easier for governments to merely tighten up on the supply restrictions. Such measures would, however, be more trade distorting, but would achieve the necessary results.

## **Juggling between Support Instruments**

Countries can also easily modify the form of their supports, especially as there is sufficient 'water' in the AMS provisions requiring only aggregate reductions. Countries can substitute their export subsidies to output-related deficiency payments (allowed in the blue box).

The US in its 1996 Farm Act, for example, has retargeted funds previously dedicated to export subsidies to market promotion. It has now expanded its Export Credit Guarantee Programmes, whereby commercial credit is extended to finance US agricultural export sales to low or middle-income countries. Some US\$5.5 billion has been channeled for use here. An additional US\$1 billion has also been granted over the seven-year implementation of the Farm Act to provide export credit to 'emerging markets'. These programmes are miraculously covered under the Green box and are allowable without limits under the AoA (DiGiacomo IATP 1998).

## **Shifting Supports within an Aggregate**

As with the other provisions, export commitments are expressed in terms of aggregates within certain product groupings. Countries are able to maintain barriers by concentrating their export subsidies on a few key products most important to the country.

## **Conclusion**

The effect of the commitments by developed countries to reduce tariffs, domestic subsidies and export subsidies have been minimal in the AoA. It is clear that even at the end of the implementation period in 2000, market access barriers, domestic supports and export subsidies will remain high. Hence the agricultural markets of developed countries will still be inaccessible. At the same time, GATT-legal high rates of supports in the North will undermine developing countries' ability to compete in the same markets.