



An Overview Assessment of the Revised WTO Draft Modalities for Agriculture

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INTRODUCTION¹

The revised draft modalities text issued by the Chair of the WTO agricultural negotiating group on February 8, 2008, reflects the considerable incremental progress which has been made in elaborating, clarifying and putting into legal language the first draft of July 2007.² However, there are still a large number of issues which remain open and which will need to be narrowed down further by senior officials before ministers can be asked to resolve the most politically sensitive. The Chair has suggested half a dozen to a dozen issues are about the maximum ministers could be realistically asked to settle.

This paper provides an overview assessment of the implications of the revised modalities text in terms of its ambition and balance as viewed from the perspective of both developed and developing countries, and identifies the key issues that will likely require ministerial decisions. It goes on to examine what additional issues could be added as part of a final deal once there is agreement on modalities and there is an assessment of the ensuing draft schedules. It concludes by venturing some views on the likely trade-offs between agriculture and other parts of the Doha negotiations, particularly the non-agricultural market access (NAMA) negotiations.

This assessment draws from and builds on the complementary detailed analysis which has been undertaken on the implications of the new draft modalities text for four major Doha participants - the US, EU, Brazil and India.³

THE MAIN PARAMETERS OF THE PROSPECTIVE DEAL

Although the key ("headline") numbers have not changed from the first draft and remain as alternative square brackets, the revised modalities nevertheless provide a sharper picture as to what is within reach. In brief, the revised draft modalities envisage: (a) the elimination of all forms of exports subsidies and improved disciplines on export credits, food aid and export state trading enterprises; (b) reductions in overall trade distorting domestic support (OTDS) in the range of 50-85 per cent using a tiered formula, some new (modest) disciplines on commodity specific trade distorting domestic support and green support; and (c) tariff reductions in the range of 48-73 per cent, again using a tiered formula which requires deeper cuts for higher tariffs

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² WTO, Revised Draft Modalities for Agriculture, February 8, 2008

³ Blandford, D., Laborde, Martin (2008). *Implications of the February 2008 WTO Draft Agricultural Modalities for the United States*. ICTSD, IFPRI and IPC, Geneva and Washington DC, forthcoming.
Jean, S. Josling, Laborde, D. Swinbank (2008). *The Consequences for the European Union of the WTO Revised Modalities for Agriculture*, ICTSD, IFPRI and IPC, Geneva and Washington DC, forthcoming.

The above reduction ranges are all for developed countries. The least developed developing countries would not be asked to make any reductions on domestic support and tariffs while other developing countries would make commitments which are at least one-third smaller and implemented over a longer period than for developed countries. This is consistent with the commitment that "special and differential treatment for developing countries shall be an integral part of all elements of the (agricultural) negotiations".⁴

In order to develop consensus on a number of issues, the text provides certain deviations from the general approach. In some cases these "flexibilities" are designed to meet the preoccupations of most participants but in other cases are specifically tailored to meet the concerns of one or only a limited number of countries. This is most evident in the market access and domestic support pillars. Although long considered an inevitable part of the process of developing a multilateral consensus, the numerous flexibilities raise the question whether they have eroded the ambition implied by the general approaches and the balance between the participants and between the three pillars?

One of the contentious issues in the market access negotiations has been the extent to which the flexibilities should be constrained to prevent erosion of the tiered general tariff formula. In a further effort to limit erosion in market access in developed countries, the Chair has introduced the concept of a minimum average tariff cut of [54] per cent for developed countries (and a maximum average cut of [36] per cent for developing countries).⁴

The concern about ambition erosion has resulted in an extraordinarily complex web of checks and balances, which has made it difficult to make a hard assessment of the implications of the market access modalities. This is not surprising given the large number of moving parts - general tariff formula, Sensitive Products, Special Products and two types of special agricultural safeguards, to mention just the most visible issues.

A further concern of many participants is that the approach used for domestic support may not result in reductions in OTDS for the US (and other developed countries), relative to the levels of the most recent years. In addition, some participants are worried that the wide range of flexibilities, which have been introduced to respond to the concerns of a number of developed and developing countries, have made the general approach on domestic support the exception rather than the rule.

AMBITION

The Doha Ministerial Declaration of November, 2001 which provided the terms of reference for the negotiations recognized that, while the Doha results on

⁴ WTO, Doha Ministerial Declaration, November 2001

agriculture should be ambitious, they were part of a continuum of negotiations aimed at the long-term goal of "a fair and market-oriented trading system". In other words no one expected that the Doha Round would result in free trade for agriculture but there was a commitment to "comprehensive negotiations aimed at: substantial improvements in market access; reductions with a view to phasing out, all forms of export subsidies; and substantial reductions in trade distorting support"⁵

In order to assess if these goals can be reached with the revised modalities, the only realistic benchmark of comparison is the Uruguay Round results which marked the first time the multilateral trading system actually reduced support and protection on a comprehensive basis by finally making agriculture subject to operationally effective rules and disciplines.

How then do the prospective Doha results compare to those of the Uruguay Round?

Export Competition

The Uruguay Round reduced export subsidy volumes by 20 per cent and export subsidy expenditures by 36 per cent for developed countries (developing country reductions were one third less). However, there were no new disciplines on food aid or export state trading enterprises while negotiations on export credits were transferred to the OECD (which ultimately failed).

The proposed Doha Round modalities on export assistance represent a quantum improvement over the Uruguay Round results. All export subsidies would be phased-out by 2013 for developed countries, by 2016 for most developing country export subsidies - with the remainder by 2021 (in accordance with Article 9:4 of the Agreement on Agriculture); government financial assistance to export STE's would to be phased-out over the same period as export subsidies; and government export financing would be under specific WTO disciplines, e.g., in most cases a maximum duration of 180 days and a requirement to operate such programs on a self-financing basis.

There have been some useful improvements on food aid disciplines. In particular, the modalities make a distinction between emergency (safe box) and non-emergency situations but differences remain over whether monetization of in-kind food aid shall be prohibited in non-emergency situations. The other major outstanding question in export assistance is whether the export monopoly powers of developed country export STE's would be phased-out. Export monopolies would continue to be permitted for developing countries under certain conditions.

⁵ Doha Ministerial Declaration

It is all too easy to underestimate the significance of finally banning export subsidies in agriculture - something that already occurred for industrial products in the mid-1950s. While it is true that the use of export subsidies has declined significantly since the end of the Uruguay Round, the fact remains that countries with outstanding export subsidy entitlements can and have resumed export subsidies when faced with market downturns. However, the Uruguay Round can take credit for encouraging domestic policy reform, which has now enabled the major users to finally contemplate a ban on export subsidies.

Domestic Support

It is true that the Uruguay Round commitments to reduce trade distorting domestic support by only 20 per cent from the (then) record high levels of the mid-1980's represented more of a generous cap rather than a real reduction for developed countries. Nevertheless, these commitments represented a breakthrough by forcing domestic policy makers to face up to the adverse trade consequences of certain forms of domestic farm policies. The distinction in the WTO between trade distorting (non-green) and non-trade distorting (green) domestic support has encouraged domestic policy reform which is reflected in the willingness of developed countries in the Doha Round negotiations to contemplate reductions of 50-85 per cent.

Although it is possible to discount the prospective Doha Round results by noting that in many, if not all, cases the proposed reductions will not bring total non-green support below current levels (which are low because of generally high world prices), it must be recognized that these new disciplines (together with new market access opportunities) will tend to lock-in recent reforms and encourage the future development of more trade friendly domestic agricultural policies.

Again it is easy to criticize that the attempt to reduce all the elements of non-green trade distorting support (AMS, blue box and de minimis) has resulted in a much greater base for reduction. However, it can be argued that encompassing all three non-green elements into one binding OTDS commitment was well worth the cost of an inflated base number and widening the definition of blue support. Limiting blue support for the first time, bringing all non-green support under discipline, and forcing the sum of the individual non-green components to respect a binding OTDS commitment, all serve to tighten up the relatively weak domestic support provisions of the Uruguay Round.

Certainly the development of product-specific limits on the AMS and the blue box represent a significant improvement over the Uruguay Round, which only required reductions in aggregate AMS. Again this is mainly a cap rather than an absolute reduction, but the crucial point is that the

principle of commodity specific limits has been established for subsequent rounds of WTO negotiations.

Special and differential treatment differs among developing countries. Net food-importing developing countries are not required to undertake reduction commitments in their Base OTDS; neither will developing countries with no Final Bound Total AMS commitments and certain recently acceded Members. The remaining developing countries (with the exception of the least developed which are not required to make reductions) will be subject to a reduction of two-thirds of the corresponding developed country rate. Developing countries will phase their reductions over eight years as opposed to the five-year phase-in period for developed countries. Developing countries that are not required to undertake reduction commitments will only be required to schedule their base OTDS.

It has been estimated⁵ that the result of all the special and differential provisions in the domestic support modalities is that whereas developing countries account for less than 30 per cent of total OTDS before Doha implementation (assuming the upper end of the proposed OTDS cuts) they will account for over 60 per cent of permitted non-green support after Doha implementation. Not surprisingly most of this will be concentrated in the largest developing countries.

In contrast, smaller import sensitive developing countries want trade distorting support from any source to be minimized to the maximum extent possible. These countries are concerned that any country, developed or developing; with large post-Doha OTDS entitlements could distort trade and therefore argue for appropriate market access flexibilities, including effective access to emergency import safeguards.

The question of whether the proposed modalities will equate to an ambitious result in domestic support depends to a large extent on the US. Most observers believe that, in order to achieve a maximal result in agricultural market access, it will be necessary for the developed countries in general, and the US in particular, to accept the higher end of the range of the proposed cuts in OTDS. For better or worse, the final US OTDS number has become the barometer for measuring success in domestic support and a key dependent variable in the market access negotiations. Since all countries will retain the right to provide as much green support as their domestic political process and financial resources permit, and actual outlays of price-linked support are expected to remain generally low for the foreseeable future due to high world commodity prices, it is difficult to dispute the assessment that domestic support cuts below the high end of the proposal would be disappointing, which will have negative implications for the agricultural market access result as well as for the NAMA result.

⁵ Brink, Lars, "WTO Domestic Support in Agriculture: Estimating the Future Constraints", Presentation to the Annual Meeting of the International Agricultural Trade Research Consortium (IATRC), Washington, D.C., January 2008

As regards the balance between developed and developing country interests within the domestic support pillar, it should be noted that developed countries will not be forced to reduce overall domestic support, (because they have the financial resources to shift support from non-green to green), while developing countries will have considerable policy flexibility to increase non-green as well as green support as their economic situation improves.

Some observers worry that as the emerging economies continue to grow, so will their ability to take full advantage of the considerable non-green support entitlements that will have been created by the modalities, as well as the proposed flexibilities for developing countries in the green support definitions. Other observers note, however, that this remains more of a theoretical threat, given the limited resources of most developing countries and that it will still be the developed countries which pose the greatest trade distortion risk for the foreseeable future.

Concerns about insufficient OTDS cuts perpetuating the current distortions by developed countries and creating the possibility of increased distortions from at least some developing countries in the future would likely be moderated by an ambitious outcome on market access and the inclusion of a built-in agenda.⁶

Market Access

The Uruguay Round results on market access were mixed. On the plus side, there was clear progress - most non-tariff barriers were converted to tariffs, all market access was bound and the vast majority of country specific exceptions were eliminated. On the negative side, some country offers did not fully correspond to the letter or the spirit of the modalities, particularly as regards minimum access commitments; tariffication was an art, not a science and, as a consequence, many over quota tariffs after reduction are still prohibitively high. A linear average reduction formula of 36 percent with a minimum cut of 15 per cent meant that most politically sensitive tariffs in developed countries were only cut by the required minimum. To encourage tariffication, a special agricultural safeguard (for tariffied products only) was created which could be triggered quickly, subject to strict conditions and relatively limited remedies.

In contrast, the Doha Round modalities have recognized and addressed many of the Uruguay Round deficiencies, particularly as regards developed countries. The tiered tariff formula approach ensures that for most tariffs the higher the level, the deeper the cut (six equal cuts over five years). However, the draft modalities recognize that in order to reach consensus on cuts of up to 73 per

⁶ It is also worth flagging that to the extent OTDS entitlements are more fully utilized, the greater the likelihood that import sensitive countries and other exporters will try and argue that such support is stimulating production and/or exports of the subsidizing country to such an extent as to constitute serious prejudice or nullification and impairment.

cent in the highest tier, it is necessary to provide flexibilities for the most sensitive products. They also recognize that if the value of the general tariff formula is not to be substantially degraded, it is necessary to limit the number of sensitive tariff lines to the minimum negotiable [4-6 per cent].

The principle that the greater the deviation from the general tariff formula, the greater the obligation to provide additional (low duty) in-quota access helps to ensure that there are significant new access opportunities created even if full advantage is taken of the flexibility to deviate by two-thirds of the corresponding tariff formula reduction (provision is also made for deviations of one-half and one-third). For example, if the maximum deviation is taken, the highest sensitive tariffs would be reduced by a minimum cut of 24 per cent assuming the corresponding formula cut was 73 per cent. Import quotas would expand by an amount equivalent to [4] [6] per cent of domestic consumption where existing access is less than 10 per cent of domestic consumption. The tariff quota expansion number would become progressively smaller if existing access was greater than 10 per cent of consumption.

The latest draft modalities reinforce the effort to limit erosion caused by the various flexibilities by proposing an additional protection, that is, the requirement that there be a minimum average tariff reduction of [54 per cent], inclusive of the treatment for Sensitive Products (but not including in-quota tariffs). This is a welcome development and when combined with the other ambition enhancers (a tiered general tariff formula; the obligation to provide expanded low duty tariff quota access on a MFN basis for sensitive products and to increase this further if a country wishes to retain after implementation more than 4 per cent of its tariff lines in excess of 100 per cent) should result in a substantial improvement over the Uruguay Round outcome - provided countries strictly adhere to the modalities or, if they do not, offer fully equivalent compensatory access for the same product.

While the revised modalities have clarified and elaborated a number of useful ambition enhancers there are (in addition to the so-called "headline" numbers) still some troublesome outstanding "technical" issues. For example, whether the maximum number of sensitive tariff designations will be on the basis of the total number of tariff lines or only on the dutiable tariff lines.⁷ Another issue is whether tariff quota expansion should be based on a 6-digit (full designation) or 8-digit (partial designation) tariff line. Yet another open question is the treatment of in-quota tariffs.

⁷ It has been argued that it is inequitable and counter productive to "penalize" those countries which have a relatively large number of duty free tariff lines by expressing the maximum number of sensitive tariffs as a percentage of dutiable, rather than total, tariffs and will encourage such countries to press for the smallest reductions in the general tariff formula.

There are obvious trade-offs within the all tariff or dutiable tariff only debate. If all tariff lines are chosen, the low duty in quota expansion should be at the higher end of the bracketed range. If dutiable tariffs only are used in determining the number of sensitive tariff lines, then countries wishing to retain a larger number of tariff lines than the norm should be required to provide additional low duty in-quota access.

The risk of permitting countries to only designate some of a products composite 8-digit tariff lines as sensitive is that the lack of hard consumption data and the use of arbitrary proxies may result in artificially low quota expansion allocations. The revised modalities recognize this by proposing that some form of a minimum access commitment be established for each 8-digit sensitive tariff line. This would be accompanied by a requirement that countries would be able to see how a partial designation approach would apply in practice before being asked to adopt the modalities. Such safety-net requirements are essential if participants are to be convinced that the partial designation approach will not turn into a major loophole.

Although many in-quota tariffs are generally relatively low when tariff quotas are used, this is not always the case. While many countries favour elimination of in-quota tariffs, others want to subject them to only slightly larger cuts than the corresponding tiered tariff formula reduction for existing tariff quotas and slightly less than the corresponding formula reduction for new Doha Round tariff quota access. Since this is not a make or break issue for most countries, it could be used as a balancing element to help resolve more fundamental differences.

While some exporters would prefer to eliminate the use of sensitive tariff quotas (arguing that they have the same administrative problems as pure quantitative import restrictions) and maximize tariff formula reductions, countries with defensive concerns argue they can accept deeper cuts on the tariff formula products if they can continue to use tariff quotas on the most sensitive. Moreover, most import sensitive countries are willing to "pay" for deviations from formula tariff reductions by providing expanded low duty quota access.

In the Uruguay Round most developing countries were subject to a 24 per cent average tariff reduction over 10 years with a minimum cut of 10 per cent, although several also used the option of offering ceiling tariffs in cases where the tariff line was not previously bound. As in the case of domestic support, the least developed countries did not have to take tariff reduction commitments.

In the revised Doha Round modalities it is proposed that developing countries use a tiered tariff formula reduction one-third smaller than that of developed countries using higher tier breakpoints (130 per cent in the highest tier for developing countries as against 75 per cent in the industrial countries). Small Vulnerable Economies (SVE's) would be entitled to further moderate these cuts,

as would Recently Acceded Members (RAMS). Very recent RAMS and small low-income RAMS would not have to make any tariff cuts. The text lists around 45 small and vulnerable economies, meaning that over half of developing countries that are not least developed would be eligible for smaller tariff reductions. Tariff cuts would be phased-in over eight years. Developing countries would not be required to make more than a maximum average-cut of 36 per cent.

For sensitive products developing countries would be able to designate up to one-third more of tariff lines as compared to developed and would be subject to a tariff quota expansion one-third smaller than that of developed countries. However, domestic consumption would not include self-consumption of subsistence production- recognition of the challenges facing countries with large numbers of subsistence farmers.

Special Agricultural Safeguard (SSG)

As noted previously, the SSG was introduced as a "carrot" to encourage tariffication in the Uruguay Round. Consequently, relatively few developing countries were entitled to its use since prior to the Uruguay Round implementation they had tended to rely on high unbound tariffs rather than non-tariff barriers as the major form of import protection.

Resort to SSG measures have varied widely between countries since the Uruguay Round results began to be implemented in 1995. Although some developed countries have never or only infrequently invoked their right to apply SSG's and regard invocation as a discretionary decision, others have incorporated the provisions into their tariff schedules and the SSG's are automatically applied by the customs authorities if the price or volume thresholds are triggered. In contrast, many developing countries note that they have not been able to invoke their SSG rights because of limited capacity to collect contemporary import data.

The revised modalities provide a clear choice between eliminating developed country SSG's (either at the beginning or at the end of the implementation period) or reducing the number of SSG's to 1.5 per cent of scheduled tariff lines. In addition, the criteria for triggering SSG's have been tightened further. This is a balancing item within the market access negotiations - the greater the ambition, the greater the pressure for the second option to be chosen.

The terms and conditions for developing country SSG's would remain unchanged.

Other Market Access Provisions

Additional market access provisions of general applicability include proposals that: (a) over the implementation period at least 90 per cent of all tariffs be progressively expressed as simple ad valorem tariffs; (b) highly complex matrix tariffs (tariffs on processed products which are linked to the tariff on the constituent primary products) would be converted to ad valorem tariffs no later than the first day of the implementation period; (c) tariff quota administration should be based on the Import Licensing Agreement as well as some additional disciplines; and (d) provisions aimed ensuring that tariff escalation is moderated (not applicable to sensitive products). These provisions are generally not too contentious although there are some remaining square brackets.

EXCEPTIONAL PROVISIONS FOR DEVELOPING COUNTRIES

In the Uruguay Round special and differential treatment mainly took the form of longer implementation periods and reduced reduction commitments in the generally applicable approaches relative to those of the developed countries. This sort of treatment is continued in the proposed Doha Round modalities. However, the draft Doha Round modalities carry the concept of special and differential treatment one step further by also providing two special provisions which are specifically designed for and are only available to developing countries - Special Products and the Special Safeguard Mechanism (SSM).

Agricultural exporters - from developed and developing countries - recognize that these exceptional provisions are necessary flexibilities for those developing countries which have poorly developed agricultural sectors and /or large number of vulnerable subsistence farmers but are nevertheless concerned about their potential erosion effect on market access. In contrast, import sensitive developing countries want to continue they must be able to providing appropriate import protection for valid food security, livelihood security and rural development reasons. It is also argued that invoking countervailing duty rights against subsidized imports is not a viable option for many developing countries given their limited trade remedy infrastructure and therefore their only real option is to use the more easily applied special provisions and flexibilities.

Special Products

Under the revised Doha Round modalities, developing countries would be entitled to self-designate a minimum of 8 percent and up to [12][20] per cent of tariff lines as Special Products based on the criteria of food and livelihood security and rural development. Special Product tariff lines over an agreed minimum would be subject to higher cuts compared to those within the minimum. Special Product designation would allow for reduced tariff reductions relative to the general tariff formula and relative to the treatment for sensitive products.

This provision still has many square brackets and more moving parts than most of the other market access elements but the Chair has made the main trade-offs clear. That is, the greater the number of Special Product tariff lines, the larger the tariff cuts; the smaller the number of Special Products, the smaller the required tariff reduction. In addition, exporters want a minimum tariff reduction to apply to all Special Products while some importers want a percentage ([8] per cent) to be eligible for no cuts.

Some observers argue that when combined with the sensitive product flexibilities, the right to self-designate a minimum number of tariff lines and to be guaranteed a relatively high number of Special Products, developing countries' demands have been sufficiently addressed.

Moreover, there is a consensus that (45) Small Vulnerable Economies (SVE's) may choose to designate as Special as many tariff lines as they want provided they meet the overall average cut of 24 per cent or, alternatively, they may use the moderated tiered tariff formula for SVE's plus the Special Product entitlement.

Special Safeguard Mechanism (SSM)

The proposed SSM (emergency import safeguard) would be available to all developing countries and all products subject to being invoked on no more than [3][8] products (defined to be equivalent to [4][8] tariff lines at the 6-digit level) in any twelve-month period. It could be triggered on a volume or price basis. This compares to the SSG, which was available to all countries but limited to tariff lines that had been tariffed (therefore applicable mainly in developed countries).

It should be recalled that the Uruguay Round SSG provision was heavily circumscribed in that the remedy was limited to one-third of the applicable MFN duty in the year in question for action under the volume triggers and resulted in relatively modest tariff increases in most situations under the price triggers. The concern of exporters in the Doha Round is that the SSM not be triggered too often and that the remedy not permit total tariff protection (applied plus safeguard duty) to exceed the pre-Doha Round binding. In contrast, some importers do not want to have the pre-Doha tariff binding act as a maximum ceiling, mainly on the grounds that this would not provide an effective safeguard when bound rates are low. Moreover, countries do not need SSM's when the applied tariff is low and the bound tariff is high - they already have the right to increase the applied rate up to the binding.

All countries are entitled to use the emergency import safeguard provision under Article XIX of the GATT. The criticism of this provision is that it is difficult to trigger quickly (although action may be taken on a provisional basis in critical circumstances), requires a formal investigation to determine whether "serious" injury has been caused or threatened by increased imports, and requires

compensation if the action (additional tariffs or import quotas) lasts more than three years. However, it can be argued that if tariff bindings are to be regarded as predictable and secure, additional duties should only be permitted in exceptional circumstances.

It should also be noted that there is a more fundamental concern with thresholds that trigger frequently, that is, they increasingly become like the variable import levy and minimum import price systems that were banned in the Uruguay Round. The results of the Chile: Price-band case illustrates the point that even SSG measures which keep the sum of applied and safeguard tariffs within a ceiling binding can be found illegal if the way they are applied is inconsistent with the footnote to Article 4 of the Uruguay Round Agreement on Agriculture. Many developing countries, however, are less concerned with easier thresholds and more concerned with effective remedies when there is a demonstrable abnormal import situation.

The ability to take emergency import action of limited duration has long been recognized as a necessary inducement to persuade import sensitive sectors that trade liberalization is manageable. However, the validity of this argument is stronger when large tariff cuts on high tariffs are involved and gets progressively weaker as tariff cuts become smaller. There is also a better argument for safeguard action when a sensitive product already has a low tariff.

Exporting countries argue that, to the extent import sensitivities in developing countries have already been taken into account in the general formula/Sensitive/Special Product provisions, the SSM should not be too easy to trigger and/or permit the current tariff plus the remedy to exceed the pre-Doha Round tariff binding. They further note that if the import situation is serious enough, recourse to Article XIX remains available.

In response, import sensitive developing countries note that the developed countries argued for SSG's in the Uruguay Round when they were only reducing (inflated) tariff equivalents by 15 per cent. The reason for this belt and braces approach was to convince sceptical domestic constituencies that tariffing import quotas and variable import levies would not result in floods of low priced imports. Similar political management reasoning applies to the situation facing many developing countries in the Doha Round. These countries also note that there was no pre-Uruguay Round tariff cap on remedies when price triggers were used in SSG's (although volume triggered SSG remedies are limited to one-third of the current MFN tariff and the criteria for triggering any post-Doha SSG's has been tightened).

It can be argued that the need for access to SSM's with higher remedies differs between developing countries that have relatively low MFN tariffs and those that have high MFN ceiling bindings. Perhaps one solution would be to permit SSM's to exceed the pre-Doha Round tariff binding by

up to [x] ad valorem percentage points if the bound MFN tariff is [y] per cent or lower (that is, a constrained extension of the remedy treatment suggested for LDC's in paragraph 133 of the Chair's revised text)

There is an implicit trade-off between Special Products and the SSM. The more the Special Product (and the tariff formula and Sensitive Product) provisions are perceived to meet the concerns of the import sensitive developing countries, the less the need for SSM's which have low threshold triggers and remedies which allow the sum of the safeguard duties and the normal tariff to exceed the pre-Doha Round binding. This suggests it would be preferable to pin down the other flexibility numbers before trying to finalize the SSM modalities. However, at some point it will be necessary to recognize that developing countries with relatively low bound tariffs have a stronger argument for allowing safeguard actions to exceed the pre-Doha bindings.

In summary, on paper the proposed market access modalities, if implemented at the higher end of the ranges, could provide a substantial increase in market access opportunities into developed country markets and smaller but still useful improvements in access into many developing country markets. Whether this potential would be fully realized would depend heavily on how closely the initial offers correspond to the letter and spirit of the modalities, particularly those relating to tariff quota expansion.

IMPACTS AND BALANCES AMONG THE THREE PILLARS

Elimination of export subsidies and improved disciplines on food aid, export credits and export STE's affect mainly developed country policies, in particular the EU and the US. Elimination of export subsidies will likely precipitate a domestic policy review of those sectors still relying on price supports and encourage a shift to more market oriented policies and a greater reliance on direct income support. Combined with significant increases in market access, this will likely force countries using production controls to choose between continuing them and losing domestic market share or allowing production to increase and prices to decline, thereby encouraging consumption and possibly permitting exports.

Reductions in tariffs and increases in tariff quota access on a MFN basis are likely to exert greater pressure for domestic policy reform than the caps on OTDS, particularly if world prices continue to remain strong. However, caps on OTDS are in the longer term likely to encourage shifts in support to green programs, which are not subject to limits.

Developed countries will be under pressure to provide adjustment assistance to those sectors experiencing declines in fixed asset values as a result of the Doha Round e.g., land and production quota values.

While import sensitive sectors will face adjustment challenges, both export and import interests will benefit from the upward pressure on world prices as market access opportunities improve and as distortions caused by export subsidies are phased-out, this should have the greatest impacts on the most distorted sectors, e.g., sugar, dairy, rice and cotton.

The most immediate beneficiaries of trade reform will be those developed and developing countries that have not allowed support to be capitalized into fixed assets and already have the domestic production and marketing infrastructure necessary to take advantage of new market opportunities. Other countries will benefit to the extent that domestic agricultural policies are made more compatible with an increasingly open and less distorted agricultural trading system.

While it is understandable why many participants have focussed on the desirability of the deepest possible cuts in OTDS, the fact remains that the greatest impact on trade flows will come from market access improvements in both developed and developing countries which in turn can be expected to encourage shifts away from trade distorting support. This is not an argument for lower OTDS reductions but rather a recognition that the biggest payoff will come from ensuring the highest quality market access result possible.

While equity would suggest equal ambition among the three pillars, the political economy of global agriculture suggests that the revised modalities have struck the right balance by indicating:

(1) It is time to eliminate and not simply reduce export subsidies and, for equity as well as trade distortion reasons, it is time to discipline other forms of export competition;

(2) More comprehensive and deeper cuts in tariffs and greater expansion of tariff quotas are required relative to the Uruguay Round if substantial new access opportunities are to be created and domestic agricultural policy reform encouraged;

(3) A meaningful cap which may be slightly higher than current OTDS is an acceptable result, provided that the results in (1) and (2) are substantial enough to force further domestic policy reform

It must be remembered that much of the dissatisfaction with the US OTDS offer stems from the comparison with current (2007-8) support, which would be considerably larger if world prices were lower. It must also be remembered that one of the few certainties in agriculture is that producers respond to high prices and that sooner or later increased production will result in lower prices. In a similar vein, it is equally sure that applied tariffs will be increased up to the bound rate if there is sufficient political pressure and that SSM's will be applied if imports are blamed for low domestic prices.

DO THE MODALITIES FULLY TAKE INTO ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES AND THE LEAST DEVELOPED?

The Uruguay Round was mainly about developed countries (and a few developing countries) deciding that it was finally time to do something about the production and trade distortions in agricultural trade and to stop pushing agriculture off to one side when the politics of agriculture threatened to block progress on other multilateral negotiating issues.

The Doha Round is about making substantial progress in strengthening the reforms started in the Uruguay Round - a goal fully supported by a much larger number of engaged developing countries. It is also about ensuring that the results "enable developing countries to effectively take account of their development needs, including food security and rural development"⁸ It would be difficult to argue that the revised modalities do not live up to this latter commitment.

Throughout the text there are specific provisions tailored to the needs of a wide variety of developing country groups. For example the least developed countries are not required to reduce tariffs or OTDS and the developed countries are required to provide duty-free and quota-free access for at least 97 per cent of products originating from LDC's by no later than the start of the implementation period. Moreover, in addition to the usual practice of providing lower or no reduction requirements and longer implementation periods, the creation of the Special Product and SSM provisions are an explicit response to the interests and concerns of many developing countries. That said, there are a number of developing countries with major export interests which have argued that in providing special and differential treatment, care should be taken to avoid undermining the trade liberalization ambition of the Doha Round, bearing in mind that the major growth markets of the future are expected to be in the emerging markets of the developing world, rather than the more slowly growing markets of the developed countries.

The special and differential treatment in the revised modalities attempts to strike a balance between the export and import concerns of developing countries. However, if some developed countries believe that the proposed reductions for developing countries are not large enough, the developed countries have the answer in their hands - the developed countries can increase the ambition in the general approaches in order to obtain proportional improvements in the applicable results to developing countries.

A number of observers suggest that we need to draw a distinction between the development and reform agendas of the Doha Round. Reform is about reducing to the maximum negotiable extent all trade distorting support and protection. The

⁸ WTO, Doha Ministerial Declaration, November 2001

development agenda is all about encouraging economic development in developing countries and facilitating their further integration into the multilateral trading system. The challenge is to ensure that the instruments used to achieve these goals are as complementary as possible since the goals themselves should be mutually reinforcing. Trade reform is not a sufficient condition for economic development but the post-WWII experience of the multilateral trading system suggests that it is a necessary condition.

MINISTERIAL DECISIONS

It is evident that most participants believe that the two key issues outstanding in the agricultural negotiations are the OTDS reduction numbers, particularly for the US, and the numbers that will determine the degree of ambition in market access, in particular the sensitive product provisions. Developing countries are adamant that the US OTDS number must go down to at least \$13 billion, the US is equally adamant it must have an ambitious outcome on market access which translates into obtaining the high end of the ranges for the general tariff formula and minimizing the erosion impact of the Sensitive Product, Special Product and special safeguard flexibilities.

Ministers will have been made aware of the various loophole risks and the efforts that have been made to safeguard the integrity of the flexibilities. Many if not most ministers will want to see maximum ambition for their export interests while retaining maximum flexibility to manage the politics of their sensitive sectors. Ministers from developing countries will need to be assured that what is being asked is commensurate with the stage of their economic development and their country's role in the multilateral trading system

Viewed in comparison with the Uruguay Round results, one could argue that a substantial and worthwhile outcome is possible even if some of the headline reduction numbers in the modalities were closer to the bottom end of the range. However, it already appears evident that low end numbers will not be sufficient to generate the requisite political support among some key members who argue that it is easier to manage the politics of a larger multilateral deal than a smaller one.

A major difficulty in reaching ministerial consensus on modalities is knowing that they are an interim and not the final step in the negotiations. The end goal is the tabling of final offers but to reach that point you need to table initial offers based on the modalities

Given the highly complex nature of the market access package, most participants will want to be able to determine fairly precisely what the proposed modalities will mean before they consider whether to endorse them. Moreover, no minister wants to agree on the modalities only to discover later that a wide gap exists between what the modalities imply and

what is actually offered by other participants. When faced with potential political backlash, governments understandably do not want to prematurely show their bottom lines. This suggests that some participants may repeat the Uruguay Round technique of claiming that the modalities represent "a basis" and not "the basis" for preparing initial offers and bottom lines will only be revealed after the initial offers have been assessed. In fact, there is a possibility that ministers will, after providing some informal guidance, ask the Chair to table a final modalities paper on his own responsibility rather than be seen as agreeing to a text that may or may not result in the negotiations concluding in 2008.

There is no doubt that a ministerial discussion in the spring of 2008 will be complicated by the uncertainty surrounding the US ability to obtain Congressional fast track approval. If the modalities are viewed simply as a means of freezing the progress to date, to be used as the starting point for resumption of substantive negotiations in 2010, some ministers will be even more reluctant to expose themselves politically in 2008.

Assuming ministers can be convinced that the negotiations can conclude in 2008, they will need to have, prior to the ministerial meeting, a very clear assessment by their officials of what the proposed modalities will mean for their import sensitive sectors and their export interests. In particular, they will be looking to see if the overall agriculture package can be presented to their constituents as fair and equitable, particularly if some countries are perceived to have had their particular sensitivities "fixed" while others have not. Many ministers will also want assurance that the perceived inequities and deficiencies of the Uruguay Round have been addressed and they will not end up being criticized for making a disproportionate contribution relative to the stage of their economic development. In short, ministers require confidence that these concerns are satisfactorily addressed. Without such confidence, a modalities text may not be finalized.

WHAT OTHER ISSUES NEED TO BE RESOLVED BEFORE THERE IS AGREEMENT ON A FINAL PACKAGE?

Reform Continuation

Given the difficulties in getting agreement to start multilateral trade negotiations and to encourage the development of domestic agricultural policies which are predicated on a progressively more open trade environment, it is highly desirable to replicate the Uruguay Round agreement to resume negotiations on agricultural trade reform by a date certain.

Peace Clause

Whether there is a need to replicate the so-called "peace clause" of the Uruguay Round is less certain. While there may be something to be said for making green support exempt from countervailing duties, giving up the right to claim non-violation nullification and impairment of benefits is a major concession, as would be any suspension of the right to invoke Articles 5 and 6 of the Subsidies Agreement. Certainly any suspension of basic WTO rights should in no case exceed the length of the implementation period for developed countries (five years).

Geographical Indications

Like the Peace Clause, this is an issue of interest to a relatively limited number of participants. However, it is an issue that has been agreed upon for consideration in the Doha Round agricultural negotiations. While there are still wide differences in view as to what should be regarded as an appropriate solution, there is a good argument that, at a minimum, exports from an established geographical region should not be denied access to an export market because some entity outside of the geographical region has already trademarked the name in the importing country.

Aid for Trade

Given that a number of developing countries would not have the production capability or the infrastructure necessary to fully exploit the new market access opportunities arising from the Doha Round results on agriculture, consideration should be given to asking donor countries to make explicit commitments to increase aid for trade in agriculture and give agricultural development priority attention in the administration of their foreign aid programs, particularly as regards the LDC's and the smallest and most vulnerable economies.

Ethanol Subsidies

While ethanol is defined as an agricultural product, ethanol subsidies (usually in the form of tax rebates/credits) are paid to fuel blenders and not producers of the raw material input. Moreover, ethanol subsidies are generally considered part of energy rather than agricultural policy, although they often have substantial implications for the producers of the raw material, as well as producers of other agricultural products.

To bring this issue into the agricultural negotiations in the post-modality stage is probably a case of too much, too late if the negotiations are to conclude in 2008. However, if the Doha Round conclusion is effectively delayed for several years then it might be possible to address this issue in the agricultural negotiations. However there are strong arguments that ethanol subsidies should be addressed as part of a broader negotiation on energy (for example, bio-diesel is not defined as an agricultural product) and this might require a new negotiating mandate.

The Need for an Effective Verification Process

In the Uruguay Round the results of the final offers did not, in some cases, correspond to the modalities, but there was insufficient political will to re-open the prospective results. The verification process did not try to assess whether the unilateral deviations from the modalities had altered the balance within agriculture and between agriculture and the rest of the negotiations. Many countries simply assumed the modalities had been followed in preparing initial offers, while those that did know there were deviations preferred to let sleeping dogs lie

The Doha Round should include a verification process, so that all participants at least know when a concession is not in full conformity with the modalities and what, if any, compensatory adjustments have been made.

TRADE-OFFS BETWEEN AGRICULTURE AND THE REST OF THE DOHA ROUND NEGOTIATIONS

During the Uruguay Round a number of developed countries could arguably regard the agricultural negotiations as largely self-balancing since they had both substantial export interests and import sensitivities - although a few developed countries with little or no agricultural export interests looked to other parts of the negotiation for help with the domestic rationalization for the "concessions" in agriculture. However, there was little doubt that reform of developed country agricultural and trade policies was the main preoccupation and access to developing country markets had a relatively low priority

Amongst the developing countries, most were ambivalent about agricultural trade reform and played a limited role in the negotiations. However, the major developing country exporters were active participants and made it very clear that there would be no deal on the new trade issues, such as services and intellectual property, unless there was a substantial outcome on agriculture. However, at the end of the day, they and all other participants accepted that what had been agreed between the two largest participants was the maximum negotiable on agriculture at that time. It was only after the results of various analyses of the Uruguay Round had been made that participants began to understand that although considerable progress had been made in bringing agriculture under the rule of law and setting the stage for further reform in subsequent negotiations, the progress in providing improved market access opportunities was in fact limited, particularly for the main sensitive products which at the time accounted for over 30 per cent of world agricultural trade.

In the Doha Round negotiations the lessons from the Uruguay Round have helped ensure a much different negotiating dynamic. There are a much larger number of developing countries pressing for a substantial outcome on agriculture while recognizing that although developed countries

continue to be the major source of distortions, a major portion of the future growth in agricultural trade will be on a South/South axis (developed countries also see much of their future export growth in the emerging developing markets). This increased emphasis on agriculture by the developing countries together with the substantial domestic agricultural policy reforms by a number of developed countries, the EU in particular, has enabled negotiators to consider a much greater level of ambition than that possible in the Uruguay Round.

Many developing country participants argue that the tariff cuts being asked of them in NAMA are disproportionate in that they will end-up making deeper cuts than developed countries. In addition, the argument is made that the size of the agricultural deal will need to expand further if developing countries are to consider deeper cuts on industrial tariffs. On the other hand, developed countries, which have limited agricultural export interests, argue that they have to look to ambitious results outside of agriculture (NAMA, Services, Rules) if there is to be a balanced overall outcome.

Putting optics and rhetoric aside, the trade-offs between agriculture and the rest of the negotiations are arguably more implicit than explicit. The best that can be said is that the larger the agricultural package, the greater the probability that the other parts of the negotiation will have more ambitious outcomes. Conversely, it is evident that the smaller the agricultural package, the smaller the potential for other parts of the negotiation. At some point the outcomes risk becoming so small that there will be insufficient critical mass and the negotiations will collapse.

The best recipe, therefore, for the overall negotiations to succeed is for participants to agree to an agricultural outcome at the top end of the ranges proposed in the revised modalities paper, conditional on assurances that this level of ambition will be reflected in the rest of the negotiations. To begin testing this scenario, countries could be asked what they are prepared to do on NAMA (and possibly Services) if the agricultural result was at the top end of the range and what they would offer in other area if the agricultural result was at the bottom end of the ambition range.

To repeat, ministers will need a clear understanding of gains and concessions before they seriously consider endorsing an agricultural modalities text. This means that the modalities will have to be sufficiently fleshed-out in advance of the meeting, as will the so-called "exchange rates" between agriculture and the other major areas of the negotiations. Otherwise, ministers will not be able to decide at the meeting that the political and economic consequences of agreeing to the "headline numbers" are worthwhile. Moreover, unless the Chairs of the key US Congressional oversight committees provide bipartisan assurances that if agreement is reached on modalities, a Doha Round implementing bill will

be "fast-tracked", it is doubtful that other participants will be willing to risk going the extra mile at the ministerial meeting.