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REVISED DRAFT MODALITIES FOR AGRICULTURE

[Comments by Jacques Berthelot (jacques.berthelot4@wanadoo.fr), Solidarité, 8 December 2008]

Summary of comments

This last Revised Draft is not substantially different from the previous ones. It has essentially simplified the options opened to Members by putting single numbers instead of ranges of numbers in square brackets, essentially by reducing more the import protection in the developed countries than in developing countries (DCs) and by cutting more the trade-distorting subsidies in the first than in the second while expanding the possibilities of the green box for all Members. However on the substance there is nothing new:

1) The Draft continues to deceive Members on several issues of domestic supports:

a) The definition of the product-specific (PS) *de minimis* has been changed from its definition in the Article 6.4 of the Agreement on Agriculture (AoA) – claiming at the same time that its new definition is that of the AoA – in order to allow the big Members (US, EU, Japan) to inflate their allowed OTDS (overall trade-distorting domestic support) – which is the addition of 4 allowed components: the Final Bound Total AMS at the end of the Uruguay Round implementation period (which is end December 2000 for the US and end June 2001 for the EU) + allowed PS *de minimis* + allowed NPS (non product-specific) *de minimis* + allowed blue box (BB) –, but this leads to a series of insuperable contradictions. Unfortunately the technicality of the issue does not allow Members to become aware of this sleight of hands.

b) Besides, the huge subsidies to feedstuffs (COPs: cereals, oilseeds cakes and pulses) continue to be denied as being input subsidies to be notified in the PS AMS of animal products (meats, eggs and milk) having consumed them. Yet the US Congressional Research Service has acknowledged that "*program commodities such as corn are feed inputs for livestock*". Therefore, adding the production value of animal products, oilseeds and pulses getting PS AMSs to that of the products already notified with a PS AMS in the 1995-00 base period increases the production value of products with PS AMSs to €201.323 billion so that the average production value of products without a PS AMS shrinks to €21.253 billion and the allowed PSdm to €1.063. And, because €9.743 billion of BB payments to COPs have been transferred to the PS AMSs of animal products having consumed the COPs, the actual EU blue box (BB) has been of only €11.145 billion on average in the base period instead of €20.888 billion. Therefore the allowed OTDS for 1995-00 falls to €90.496 billion (instead of €110.305 billion in Canada's simulations) and cutting it by 80% gives an allowed OTDS at the end of the Doha Round implementation period of only €18.100 billion, instead of €22.061 billion in Canada's simulations. By the same token the US allowed OTDS in the base period falls from $48.224 billion to $42.875 billion.

c) Demanding that DCs should reduce their OTDS and FBTA by two-thirds of that required from developed Members is unfair because most DCs are unable to use green subsidies significantly whereas the developed countries can increase them without limits, given that green subsidies have strictly the same trade-distorting effect as the amber box. Therefore the reduction in DCs' OTDS and FBTA should not exceed the percentage of their OTDS and FBTA in relation to developed countries' total agricultural subsidies of all colours.

d) Capping the product-specific (PS) AMS is a false issue because the main component of the EU AMS is a fake "market price support" (MPS) so that the EU will not be obliged to cut any subsidy because its actual PS subsidies have represented only 11.6% (€5.527 billion) of its total PS AMS of €47.458 billion in the base period 1995-00. Notifying these fake MPS has only blurred the negotiations and misled WTO Members. Indeed capping the PS AMSs would end up allowing the EU and US to increase much their actual amber subsidies instead of

preventing them to rise! The more surprising is that these amber domestic supports continue to be presented as the most trade-distorting ones. What they are distorting is above all the understanding of WTO Members.

However the *actual* figures of the EU and US PS AMSs are totally different from the *notified* figures, once taken into account the huge lies in their notifications. Thus the US *actual* total PS AMS for the 1995-2000 period has been of at least $21.638 billion instead of the notified $10.401 billion. At least because most notified non product-specific (NPS) AMS subsidies are in fact PS subsidies which should have been allocated to PS AMSs.

e) The Blue Box: the conditions for the old BB cannot limit production nor the level of the blue subsidies because the unit payment per tonne or cattle head is not limited. The only means to do it is: a) to impose production quotas and deterrent penalties for any excess, as in the EU common market organisation for dairy; b) to cap the unit payment (per tonne, bushel, cattle head, etc.). The criticisms to the legality of the new BB are even greater: the unit payment is not capped either; the countercyclical payments (CCPs) and the new ACRE program contradict the AoA basic requirement for non trade-distorting subsidies that "*The support in question shall not have the effect of providing price support to producers*"; the ACRE program is also coupled to the current production volume.

The most amazing provision is the incentive to move the AMS support to the BB, which endorses the massive box-shifting made by the EU since 1995 as the bulk of its PS AMSs was a fake market price support not involving any subsidy, which has allowed the EU to reduce sharply its applied PS AMS and to increase its actual BB subsidies. Let us repeat that the most trade-distorting subsidies are the green ones – because they can increase without limits –, followed by the blue ones – because the unit payment is not limited –, followed by the PS AMS subsidies linked to administered prices – because of their fake market price support component –, the least trade-distorting being paradoxically the export subsidies, because they are capped and must decrease over time (and disappear in 2013), at least as long as the importing countries can prevent their import by a high tariff.

f) Cotton domestic subsidies: surprisingly, the average EU cotton AMS has been the same as the US one during this 1995-00 period (€800 million on average), and the formula to reduce it would imply to cut the US cotton AMS by 82.22%, i.e. by $658.6 million, down to $142.4 million and the EU cotton AMS by 84.29%, i.e. by €674.3 million, bringing it down to €125.7 million.

g) The green box (Annex B): most changes to Annex 2 refer to the necessity to better adapt the green box to the supposed needs of DCs, a manoeuver to avoid the core issue of challenging the trade distorted effect of the developed countries' green box. The only function of the new possibilities for DCs to use more green box subsidies – although most DCs cannot afford to grant them – is to build a smokescreen avoiding to question the legitimacy of exempting such subsidies from reduction commitments in developed countries and from being taken into account in their dumping. DCs have all the less problems with the green box that they do not have any problem with the amber box given the leeway of the AoA article 6.2 (input and investments subsidies) and of article 6.4 (*de minimis* of 10% of the agricultural production value), so that almost all DCs with AMS commitments have an applied AMS nil as being below the *de minimis* ceiling.

Therefore Members should revise radically the Annex 2 provisions, beginning by paragraph 1 which sets out the basic principle from which all the other paragraphs are derived. Indeed this principle is unfounded because:
i) green box subsidies imply always transfers from consumers since most taxes end up being paid by consumers;
ii) and they bring a clear price support to producers: all green box subsidies have a clear impact on production and prices: they bring a price support to farmers who can make do with prices lower than the average production cost and to agri-food industries of which they increase the competitiveness. Since these two conditions of Annex 2 paragraph 1 apply to all green subsidies of paragraphs 2 to 13, this is the first reason why they cannot be put in the green box.

2) On market access:
a) Demanding that DCs' tariffs reductions be 2/3 of the developed countries' reductions in each band is totally unfair for the following reasons:

1- The much lower import dependency of the EU and US than of DCs for their basic food staples.
2- The EU agricultural tariffs are much higher than those of DCs and LDCs on the staples constituting the core of the diet: cereals, sugar, meats, dairy, fruits and vegetables. This plays also for the US on dairy and sugar.
3- The developed countries (particularly the EU and US) can minimize the impact of tariff reductions trough many ways: i) their much lower elasticity of demand for food; ii) the large import-substitution effect of domestic subsidies; iii) the lower increase in food demand in the developed countries can be much more easily satisfied by domestic production, given a much higher competitive agriculture; iv) the necessity for most DCs to expand agricultural employment given their fast growing population.
All this justifies totally the necessity of generous provisions for the Special Products and the Special Safeguard Mechanism.

b) The section on tariff simplification is illogical and unfair:
1- It is illogical because non *ad valorem* tariffs are an efficient means to minimize the disturbing impact of the highly fluctuating world prices on domestic farmers.
2- It is unfair because the developed countries have used extensively the more efficient non *ad valorem* tariffs. In the EU the percentage of non *ad valorem* lines is higher in the bands with the highest tariffs: 99 of the 100 lines in the band higher than 90%, 113 of the 115 lines in the band 60%-90%, 227 of the 274 lines in the band 30%-60% but for only 509 of the 1288 lines of the band 0%-30%.
3- Yet this elimination is not a demand of the developed countries but of the most export-oriented G-20 countries (Brazil, Argentine) which favour their offensive interests over the defensive interests of the overwhelming majority of the DCs, because the majority of their agricultural exports are already directed towards Southern countries.
4- Contrary to the conventional wisdom, variable levies are more transparent and predictable for traders than ad valorem tariffs in a context of a high volatility of world prices in dollars and of exchange rates. Although they are forbidden the AoA, the EU has maintained measures equivalent to variable import levies for cereals and fresh fruits and vegetables.

c) The G-33's fight for Special Products is too short to respond to the needs of DCs farmers and of their overall development. In particular the 11th indicator proposed by the G-33 cannot counteract dumping because the AMS is a highly misleading indicator of support given its prevailing fake market price support component and because the old BB has almost disappeared. Therefore the G-33 indicator should include all domestic subsidies going, directly or indirectly, to the exported product, including of the green box, particularly of the Single Payment Scheme which concerns the bulk of the EU domestic subsidies.

d) As the SSM is a substitute to the two procedures of the Anti-dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures ASCM), it should raise tariffs to at least cover the full amount of dumping or/and subsidies to the exported products. The SSM remedy cannot be lower than what is already stated in these agreements, which both allow the same measures to compensate for the full amount of dumping (ADA Article 9.1 and ASCM Article 19.2).

e) LDCs: The provision that they are not required to undertake reductions in bound duties is purely theoretical since the IMF and World Bank, which are closely cooperating with the WTO in its "coherence policy" and which participate as observers in the meetings of the Committee on agriculture, are always expressing their reluctance to import protection, as for instance in the Committee on agriculture of 15-11-04.

And to state that the WTO wants to facilitate LDCs' integration into the multilateral trading system ignores that it is precisely because they are too much integrated that they are so poor, as attested by the ratio of exports+imports of goods and services over 2 GDP in 2006 which shows that the more a country is integrated into world trade, the less it is developed, with the exception of China (the industrial workshop of the world).

f) Cotton market access: the provision to facilitate market access for the DCs cotton to the EU and US goes against their fast declining imports and growing exports.

3) On export competition:

a) The provision to eliminate all dumping is incantatory and cannot prevent a continued huge dumping of US and EU agricultural products as long as there is no agreement to a comprehensive definition of agricultural dumping as exports made at prices below the Member's average total cost of production of each product without all subsidies, including upstream (on investments and inputs, of which feed) and downstream (on processing and marketing) the production level, and whatever the box in which they are classified: amber, blue and green.

b) The Appellate Body's rulings on dumping should be considered as precedents to calculate export subsidies and incorporate them in the Members' Schedules. The Appellate Body rulings of December 2001 and December 2002 in the Dairy products of Canada case as in the US cotton case of March 2005 and the EU sugar case of April 2005 have all judged that domestic subsidies of all colours should be taken into account to assess dumping. Unfortunately the WTO Members do not consider that the Appellate Body rulings have a value of precedents.

c) Cotton exports: as 73.5% of the US cotton was exported in 2005, the elimination of the $253 million of STEP 2 formal export subsidies the 1st August 2006 has represented only 7.1% of the $3.575 billion of subsidies granted to the exported cotton in 2005, against $3.322 billion in domestic subsidies to the exported cotton. The continuation of these unchallenged subsidies is not extraneous to the fact that the world cotton price (Northern Europe A Index), for which the US is price maker (it accounts for 40% of global exports) has collapsed to 46.11 cts/lb on November 3, 2008.

The EU has always claimed to be a fair trader in cotton as one of the largest importers, without import duty and export subsidies. So that it has been able to convince that, contrary to the US, it was the best friend of the C4s' fight in the cotton issue at the WTO. However although the EU production dropped by 26% from 1997 to 2006, imports have fallen by 63% and exports have increased by 88% so that their share of the production has jumped from 37.2% to 94.6%, a higher proportion than for the US although the exported volume is clearly much smaller. Consequently, if EU total direct payments to cotton have risen by 14.4% from 1997 to 2006, payments to the exported cotton have almost trebled! Comparing the $941.6 million of EU subsidies to the $413.1 million value of the 335,000 tonnes exported in 2006 shows that the subsidy has been 128% higher or that the dumping rate has been of 56.1%! These 335,000 of EU cotton exports in 2006 have exceeded Mali's exports (229,000 tonnes) which is the largest exporter of C4 and in West Africa.

d) Export restrictions: it is not fair to prevent them when motivated by the legitimate concern to ensure the priority of the food security of the citizens in case of food prices surges, particularly in DCs, as long as there does not exist a worldwide government which would guarantee such security. In the recent explosion of world food prices, in most cases export restrictions were only adopted after prices had already exploded to levels that put domestic food security at risk. Much more than export restrictions it is the agricultural trade liberalization and the deliberate reduction of stocks, particularly of cereals in the EU and US, but also in DCs under the pressures of the IMF and the World Bank, which have led to the explosion in food prices and to the export restrictions taken by DCs to protect their food security.]

I think we have made progress since July, and the attached text, together with the separate papers, are an attempt to capture that.

Within the text itself there are a number of square brackets that have been deleted. It is clear that on a number of those, there cannot be said to be formal agreement. But, in earlier versions of the drafts where there were no square brackets, there was not always formal agreement either. Everything is conditional in the deepest sense in any case. But the changes made at this time now represent a best estimate of where there is additional good reason to believe there would prove to be consensus if everything was to come together as a modalities package.

Negotiations and discussions that took place during the July meetings have been a strong input in arriving at that estimate, particularly as regards square brackets dropped in the section on domestic support and in certain parts of market access. But in these and in other areas, negotiations and discussion subsequent to July has also generated or confirmed that sense. Indeed a considerable part

of the time devoted to consultations over the last few weeks has been in checking whether things that might have hypothetically worked in July would still work now.

By and large that has been the case, and some other issues have come somewhat closer also since even in July. But, clearly, there is still not formal agreement on any or all of this. Indeed, there is still certain divergence where even the device of square brackets has been dropped, and I have felt it was both instructive and fair to highlight within the text itself a few points where there is still very real divergence (sensitive products being a principal example) or where there is, to say the least, somewhat more heat detectable than on some others (tariff simplification being an example).

Of course, that conditionality remains, as always, paramount. Certain things are manifestly not yet agreed. And, depending on where we end up on these matters, other areas that seem relatively "stable" may well be revisited. That is an undeniable reality in any negotiation. It has been made pretty clear to me in consultations generally, and on a subject like Special Products in particular where Members concerned would, I suspect, be able to go with what is in the text at a pinch. But whether or not that actually happens will be contingent on overall balance – including not just other parts of the agriculture text but elsewhere in the negotiations. And that balance can be decisively affected by where elements that are still not settled end up. The same can be (and has been) said for any issue you choose: domestic support; export competition; etc. But it is still more responsible in the present circumstances, I believe, to describe the glass as (albeit conditionally) half-full rather than half-empty. We are, after all, trying to get to an agreement rather than to find additional reasons why we cannot.

There are other areas where progress has been made since July, but it has not made it to the point where there is a basis to incorporate fully defined wording within the four corners of the text at the moment.

This has been the case with certain elements regarding Sensitive Products, tariff quota creation, non-Sensitive Products with tariffs higher than 100 per cent, tropical and diversification products, preference erosion and the SSM.

While Members have at last been prepared to step (albeit tentatively) outside their comfort zones, they have not been prepared to get as far as a real convergence. As always, one cannot invent consensus where it does not exist. Indeed it is utterly counter-productive to do so because, lacking any real basis in the negotiation, it simply provokes a counter-reaction that sends us back to square one.

But it would have been selling short the progress made to simply have nothing new on the table on these matters. So what has been done in such cases is to provide certain working hypotheses which, if the political will to conclude is genuinely there, could become a platform to get us to closure. I have taken some liberties here as it is, but, hopefully, not to the point of pure invention.

Some of those forms of words are being seen for the first time, albeit that they have not emerged in a vacuum: they are there because they reflect, hopefully, emerging elements of convergence. But even in these areas there is an inevitable unevenness because some things are, unavoidably, somewhat better developed than others.

On Sensitive Products, the text is, on the surface, more clear than in July. That said, the fact remains that there appear to be effectively only two developed Members among the importers that are actually prepared to live with 4 per cent of Sensitive Products despite a seeming view that "4 per cent" was what was a source of quasi-consensus in July. I see no alternative, therefore, but to put that in the text unambiguously. But the reality is that others are not in agreement with that. There is no sign at this point of agreement to bridge that on the table. The best I have been able to do is to outline in a separate document some possibilities of how to "fix" this (if any fix other than applying 4 per cent without limitation will ever fly). But even these ideas are speculative to some extent because no-one has a common view on what uniform "payment" would work for going beyond 4 per cent.

On non-Sensitive Products above 100 per cent, battle-lines remain drawn. The text is accordingly still square-bracketed, albeit with a few minor changes. I do sense that, under the surface, progress is being made but, nothing that is as yet textually in the frame. I have also made a suggestion in the attached working paper, for what it is worth, as another angle of approach.

Because, tariff quota creation is such a sensitive issue, the text retains the two options. But consultations indicate that a strictly limited and transparent way out could be found. Because,

however, transparency is demanded by one side but the other side says it cannot be done, the matter remains moot. But with good will there is at least an emerging structure for getting to closure.

On tropical and diversification products and preference erosion, the text remains the same. I had wanted to record in a separate paper the considerable progress that had been made in July. As of yesterday I had drafted that on the basis that, if everything fell into place – and bananas was key to that – there was a deal there for the taking. And it would have been useful for everyone to see how close we were to that. But I was advised yesterday that, on bananas certain material changes had occurred which, in the view of at least one set of Members, vitiated any assumptions abut what might even be hypothetically possible. I cannot ignore such a strongly held view so, yet again, all we get for the time being is the 10 July text.

It is a pity, in my view, but I cannot intrude on a bilateral negotiations of this intensity. All I would add is that the parties have been working on their bilateral lists as well. Clearly everything else is contingent on satisfaction being found here also. But there are Members that are uncomfortable about not knowing what would appear in importing Members' lists based on the percentages canvassed below. The parties to discussions have developed, I believe, understandings on these matters among themselves to which I, among others, am not privy. If this remains a difficulty among Members I can only continue to urge those involved to consult in good faith with those concerned as soon as possible with a view to alleviating concerns about transparency..

On the SSM, we have made some progress. It is uneven, it is fragile, it has never been consolidated into a single structure. All previous informal efforts have failed. So, this is the first time this particular structure has seen the light of day. It is not, therefore, ready for inclusion in the text *per se* because it is utterly untested. But hopefully it can at least help materially in getting us to that. There appear to remain still subsequent issues to deal with as yet unresolved.

Then there is cotton. Here we have, since July, at least re-established a good dialogue and a sense of trust that had been seriously eroded by events at the end of July. We have also got a robust and common view on the numbers that need to be crunched to get a final decision. That said the fact remains that, textually, I regret that I can only report that neither I nor, as far as I can tell, anyone else involved in the consultations are any wiser today on what the deal will be than we were in July.

I. DOMESTIC SUPPORT

A. OVERALL REDUCTION OF TRADE-DISTORTING DOMESTIC SUPPORT: A TIERED FORMULA

Base level

1. The base level for reductions in Overall Trade-Distorting Domestic Support (hereafter "Base OTDS") shall be the sum of:

(a) the Final Bound Total AMS specified in Part IV of a Member's Schedule; plus

(b) for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively);

[Paragraph 30 below on *de minimis* claims to be in line with the Agreement on Agriculture (AoA) definition on product-specific (PS) *de minimis*: "*The* de minimis *levels referred to in Article 6.4(a) of the Uruguay Round Agreement on Agriculture for developed country Members (i.e. 5 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific* de minimis". This is a lie as the AoA (Article 6.4) states: "*A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce: (a) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year*" (not underlined in the text). In other words, as soon as a product-specific (PS) support reaches 5% of the production value of the product, it loses its allowed PS *de minimis* exemption and gets a PS AMS which is added to the applied total AMS and the production value of that product is added to the production value of all products with PS AMSs.

H. de Gorter and J.D. Cook confirm this interpretation: "*Product-specific* de minimis *ceiling is less than 5 percent of the total value of production because support for some products are over five percent of the value of production and so is included in the AMS*". They show that, for the EU, the permitted PS *de minimis* is of €1.428 billion against $11.900 for the NPS *de minimis* and, for the US, it is of $5.773 billion against $9.621 billion for the NPS *de minimis* (Harry de Gorter and J. Daniel Cook, 2006. *Domestic Support in Agriculture: The Struggle for Meaningful Disciplines*, in "Trade, Doha and Development: a window into the issues", http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport_updated_on12Dec05.pdf). Ivan Roberts confirms that "*Where a commodity's support is counted toward a member's AMS, the country would not be eligible for product specific de minimis exemption for that commodity*" (Ivan Roberts, *WTO Agreement on agriculture. The blue box in the July framework agreement*, ABARE, March 2005, http://abareonlineshop.com/product.asp?prodid=12989).

But this new proposed definition of PS *de minimis* exemption brings new contradictions:

1- If the sum of all the allowed PS *de minimis* is 5% of the value of the whole agricultural production (VOP), at least during the base period, this can only happen if each agricultural product had an allowed PS *de minimis*, even if it had already a PS AMS, i.e. a PS support above *de minimis*.

2- Consequently, if each agricultural product had an allowed PS *de minimis*, if had also a PS AMS at least at this *de minimis* level.

3- If all products had a PS AMS during the base period, the production value of products without a PS AMS was nil. With the present AoA rule – with which paragraph 30 claims to comply – the allowed PS *de minimis* would have been nil also since it is equal to 5% of the production value of products without PS AMSs.

4- This is totally incompatible with the opposite statement that the allowed PS *de minimis* is 5% of the VOP.

The apparent reason why the successive revised drafts on agricultural modalities have proposed to change the rule on PS *de minimis* is that several Members have not been able or willing to notify the production value of each product having a calculated AMS. This has been particularly the case of Japan up to 2004 (last year notified) and of the EU up to 1999-2000 (the production value has only appeared from 2000-01 to 2003-04, the last year notified). That is why paragraph 12 below has introduced the new requirement (not in the preceding Revised Draft of 10 July) that "*The data on value of production shall, for all Members undertaking OTDS reduction commitments, be annexed to these modalities*". This lack of data on the production values of the EU and Japan products notified with PS AMSs explains why the simulations published in May 2006 by Canada on the impact of the EU, US and Japan offers on their Final Bound Total AMS reductions have used 5% of the whole VOP for PS

de minimis. The WTO should have asked them to rectify their notifications by adding the production value of each product, which would not have been difficult for them since Solidarité has done it for the EU (in *Thorough review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, 21 August 2006). We have thus found that the production value of all products notified with a PS AMS has been on average of €122.922 billion in the base period so that the production value of products without PS AMSs has been of €99.655 billion and the allowed PSdm of €4.983 billion. And adding the production value of animal products, oilseeds and pulses getting PS AMSs to that of the products already notified with a PS AMS increase the production value of products with AMSs to €201.323 billion on average in the 1995-00 period so that the average production value of products without a PS AMS shrinks to €21.253 billion and the allowed PSdm, which is 5% of this value, shrinks to €1.063 (see Solidarité, *The EU minimal OTDS in the implementation period*, 18 July 2008).

And, because €9.743 billion of BB payments to cereals, oilseeds and pulses (COPs) have been transferred to the PS AMSs of animal products having consumed the COPs, the actual EU blue box (BB) has been of only €11.145 billion on average in the base period instead of €20.888 billion.

Therefore the EU allowed OTDS for 1995-00 becomes €90.496 billion [67.159 (FBTA) + 11.129 (NPSdm) + 1.063 (PSdm) + 11.145 (BB)] instead of €110.305 billion in Canada's simulations.

By the same token the US production value of products with PS AMSs in the base period 1995-2000 rise from $49.734 billion (production value of the products notified with PS AMSs) to $106.987 billion (once added the production value of $57.075 billion for all meats) so that the production value of products without PS AMSs falls to $87.152 billion and the allowed PSdm in the base period falls to $4.372 billion (Solidarité, *The US allowed OTDS of the base period cannot be cut by more than 52.7%*, 13 July 2008). Therefore the allowed OTDS in the base period falls from $48.224 billion to $42.875 billion.] plus

(c) the higher of average Blue Box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995-2000 base period.

2. For developing country Members, item (b) of paragraph 1 above shall be 20 per cent of the average total value of agricultural production in the 1995-2000 or 1995-2004 period as may be selected by the Member concerned. For developing country Members, the base period for the purposes of item (c) of paragraph 1 above shall be 1995-2000 or 1995-2004 as may be selected by the Member concerned.

Tiered reduction formula

3. The Base OTDS shall be reduced in accordance with the following tiered formula:

(a) where the Base OTDS is greater than US$60 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be 80 per cent;

[With the above proposed definition of PS *de minimis* but without taking into account the EU massive under-notifications to the WTO, the EU allowed OTDS in the base period would be of €90.5 billion instead of €110.3 billion so that, once cut by 80%, the allowed OTDS at the end of the implementation period would be of €18.099 billion instead of €22.305 billion. And, taking into account these under-notifications based on official EU figures, the EU applied OTDS was of €49.6 billion in 2008, exceeding already by €31.5 billion the allowed OTDS at the end of the implementation period.]

(b) where the Base OTDS is greater than US$10 billion and less than or equal to US$60 billion, or the equivalents in the monetary terms in which the binding is expressed, the reduction shall be 70 per cent;

[With the above definition of PS *de minimis* and without taking into account the US massive under-notifications to the WTO, the US allowed OTDS in the base period would be of $42.9 billion instead of $48.2 billion. And, taking into account these under-notifications based on official US figures and without changing the hugely under-notified irrigation subsidies of $269 million, the US applied OTDS was of $21.165 billion in 2007, three times the $7 billion currently circulating.]

(c) where the Base OTDS is less than or equal to US$10 billion, or the equivalent in the monetary terms in which the binding is expressed, the rate of reduction shall be 55 per cent.

4. Developed country Members with high relative levels of Base OTDS in the second tier (i.e. at least 40 per cent of the average total value of agricultural production in the 1995-2000 period) shall

undertake an additional effort. The additional reduction to be undertaken shall be equal to one half of the difference between the reduction rates specified in paragraphs 3(a) and 3(b) above.

Implementation period and staging

5. For developed country Members, the reductions shall be implemented in six steps over five years.

(a) For Members in the first two tiers specified in paragraphs 3(a) and 3(b) above, the Base OTDS shall be reduced by one-third on the first day of implementation. The remaining reductions shall be implemented annually in five equal steps.

(b) For Members in the third tier specified in paragraph 3(c) above, the Base OTDS shall be reduced by 25 per cent on the first day of implementation. The remaining reductions shall be implemented annually in five equal steps.

[But these rules would be useless as long as Members will maintain long overdue notifications (the last EU notification was for 2003-04), in contradiction with the 1995 rule to notify within 4 months after the end of the marketing year. So that the other Members are prevented to prosecute the infringements of the WTO rules.]

Special and differential treatment

6. Developing country Members with no Final Bound Total AMS commitments shall not be required to undertake reduction commitments in their Base OTDS.

7. For developing country Members with Final Bound Total AMS commitments, the applicable reduction in the Base OTDS shall be two-thirds of the relevant rate specified in paragraph 3(c) above.
[This would be totally unfair: see below the comments on the Market access part.]
However, net food-importing developing countries (hereafter "NFIDCs") listed in document G/AG/5/Rev.8 shall not be required to undertake reduction commitments in their Base OTDS.

8. For those developing country Members, the reductions shall be implemented in nine steps over eight years. The Base OTDS shall be reduced by 20 per cent on the first day of implementation. The remaining reductions shall be implemented annually in eight equal steps.

Recently-Acceded Members

9. Saudi Arabia, the Former Yugoslav Republic of Macedonia, Viet Nam and Ukraine, as very recently-acceded Members (hereafter "RAMs") shall not be required to undertake reduction commitments in their Base OTDS. Small low-income RAMs with economies in transition[1] shall not be required to undertake reduction commitments in their Base OTDS. Reduction commitments for other RAMs with Final Bound Total AMS commitments shall be two-thirds of the relevant rate specified in paragraph 3(c) above and shall be implemented in accordance with the provisions in paragraph 8 above.

Other commitments

10. All Members, other than NFIDCs which undertake not to use their entitlement to the Blue Box, and least-developed country Members,[2] shall schedule their Base, Annual and Final Bound OTDS entitlements, as provided above, in monetary terms, in Part IV of their Schedules. Developing country Members that are not required to undertake *reduction commitments* under any of the provisions of these modalities shall only be required to schedule their Base OTDS.

11. For those Members that, under these modalities are subject to *reduction commitments* in their Base OTDS, such commitments shall apply as a minimum overall commitment. Throughout the implementation period and thereafter, each Member shall ensure that the sum of the applied levels of trade-distorting support under each OTDS component does not exceed the Annual and Final Bound OTDS levels specified in Part IV of its Schedule.

12. The Agreement on Agriculture shall be amended in order to provide for these OTDS modalities including amendments to existing Articles, where necessary, to ensure consistency with the above provisions. The data on value of production shall, for all Members undertaking OTDS reduction commitments, be annexed to these modalities. This Scheduled OTDS shall be understood not to have

[1] This shall be applicable to Albania, Armenia, Georgia, Kyrgyz Republic, Moldova and Mongolia.

[2] Cameroon, Congo (Brazzaville), Ghana, Nigeria and Swaziland shall have access also to this provision.

the effect of constraining the access of RAMs to their *de minimis* entitlements under the terms of their accession to the WTO.

B. FINAL BOUND TOTAL AMS: A TIERED FORMULA

Tiered reduction formula

13. The Final Bound Total AMS shall be reduced in accordance with the following tiered formula:

(a) where the Final Bound Total AMS is greater than US$40 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be 70 per cent;

(b) where the Final Bound Total AMS is greater than US$15 billion and less than or equal to US$40 billion, or the equivalents in the monetary terms in which the binding is expressed, the reduction shall be 60 per cent;

(c) where the Final Bound Total AMS is less than or equal to US$15 billion, or the equivalent in the monetary terms in which the binding is expressed, the rate of reduction shall be 45 per cent.

14. Developed country Members with high relative levels of Final Bound Total AMS (i.e. at least 40 per cent of the average total value of agricultural production during the 1995-2000 period) shall undertake an additional effort in the form of a higher cut than would otherwise be applicable for the relevant tier. Where the Member concerned is in the second tier, the additional reduction to be undertaken shall be equal to the difference between the reduction rates specified in paragraphs 13(a) and 13(b) above.

[These provisions are useless as the EU FBTA of €67.2 billion was much lower than the €89 billion in the value of 40% of its agricultural production (VOP) in the base period 1995-00. And the US FBTA of $19.1 billion was even lower than the $77.7 billion representing 40% of its VOP for 1995-00. As the additional reduction rate for the US would be of 7.5% – ending with a total reduction rate of 67.5%, not far from the unchanged 70% reduction rate for the EU – was it necessary to make a distinction between the two tiers to get such a result?]

Where the Member concerned is in the bottom tier, the additional reduction to be undertaken shall be one half of the difference between the reduction rates specified in paragraphs 13(b) and 13(c) above.

Implementation period and staging

15. For developed country Members, reductions in Final Bound Total AMS shall be implemented in six steps over five years. For developed country Members in the top two tiers specified in paragraphs 13(a) and 13(b) above, this shall be implemented by means of a 25 per cent reduction on the first day of implementation, followed by reductions in equal annual instalments over five years. For other developed country Members, the reductions shall be implemented in six equal annual instalments over five years, commencing on the first day of implementation.

[Again these provisions would be useless as long as Members will maintain long overdue notifications (the last EU notification was for 2003-04) so that other Members would not be able to check if they have complied with their reductions commitments. Clearly this is an issue that the WTO Secretariat should monitor and be endorsed with the possibility to use sanctions against defaulting Members.]

Special and differential treatment

16. The reduction in Final Bound Total AMS applicable to developing country Members shall be two-thirds of the reduction applicable for developed country Members under paragraph 13(c) above.

[It is not fair that DCs should cut their FBTA by two-thirds of that required from developed Members whose FBTA is so much larger. Above all because most DCs are unable to use green subsidies significantly whereas the developed countries can increase them without limits, and given that green subsidies have strictly the same trade-distorting effect as the amber box. Therefore the reduction in DCs' FBTA should not exceed the percentage of their FBTA in relation to developed countries' total agricultural subsidies of all colours.]

The reductions in Final Bound Total AMS shall be implemented in nine equal annual instalments over eight years, commencing on the first day of implementation. However, developing country Members with Final Bound Total AMS levels at or below US$ 100 million shall not be required to undertake reductions.

17. NFIDCs listed in document G/AG/5/Rev.8 shall not be required to undertake reduction commitments in their Final Bound Total AMS.

18. The provisions of Article 6.2 of the Agreement on Agriculture shall remain unchanged.

[Which implies that developed country Members cannot avail of these provisions, so that their agricultural investments subsidies and input subsidies, among which feed subsidies, are not exempted from reduction, therefore are in the amber box. The US Congressional Research Service acknowledges clearly this: "*The list of commodities that normally do not receive direct support includes meats, poultry, fruits, vegetables, nuts, hay, and nursery products. Producers of these commodities, however, may be affected by the support programs because intervention in one farm sector can influence production and prices in another. For example, program commodities such as corn are feed inputs for livestock*" (Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, October 25, 2006, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf).

Time is up to recognize that the EU and US have cheated massively on these two issues, the EU having notified in the green box a yearly average of €5.6 billion in agricultural investments aids in the base period (1995-00) and €9.7 billion of feed subsidies in the blue box. Indeed the exemption of the AoA Article 6.5 on the blue box subsidies cannot render useless the previous provision of Article 6.2 on input subsidies. And the US has granted on average $1.7 billion of feed subsidies notified in the green box (the share of the Production Flexibility Contracts going to grains used as feed) during the 1995-2000 period, and its total feed subsidies have been of $4.372 billion. And we must add the EU & US huge under-notified subsidies to irrigation, crop insurances, agricultural loans, grazing fees and tax rebates on agricultural fuel.]

Recently-Acceded Members

19. Saudi Arabia, the Former Yugoslav Republic of Macedonia, Viet Nam and Ukraine, as very recently-acceded Members shall not be required to undertake reduction commitments in their Final Bound Total AMS. Small low-income RAMs with economies in transition shall not be required to undertake reduction commitments in their Final Bound Total AMS.[3] In the case of such Members, investment subsidies which are generally available to agriculture, agricultural input subsidies and interest subsidies to reduce the costs of financing, as well as grants to cover debt repayment, may be excluded from the calculation of the Current Total AMS.[4] The reductions in Final Bound Total AMS for other RAMs with such commitments shall be two-thirds of the rate specified in paragraph 13(c) above and shall be implemented in accordance with paragraph 16 above.

Other

20. Article 18.4 of the Agreement on Agriculture shall continue to apply in order to respond to the situations referred to in that provision. Due consideration shall also be given in the event that a developing country Member faces difficulties in its AMS calculation as a result of extraordinary and sudden increases in food prices relative to the fixed external reference price.

C. PRODUCT-SPECIFIC AMS LIMITS

General

21. Product-specific[5] AMS limits shall be set out in terms of monetary value commitments in Part IV of the Schedule of the Member concerned in accordance with terms and conditions specified in the paragraphs below.

22. The product-specific AMS limits specified in the Schedules of all developed country Members other than the United States shall be the average of the product-specific AMS during the Uruguay Round implementation period (1995-2000) as notified to the Committee on Agriculture. These shall be tabulated by individual product for each Member in an Annex to these modalities.

[Because the main component of the EU AMS is a fake "market price support" (MPS) linked to its administered ("intervention") prices and defined as the eligible production multiplied by the difference between the intervention price and the world reference price of the 1986-88 period, the EU will not be obliged to cut any subsidy because its actual PS subsidies ("non exempt direct payments") have represented only 11.6% or €5.527 billion of its total PS AMS of €47.458 billion in average applied AMS in the base period 1995-00 (see *Repeat a lie a thousand times and it becomes the truth: the EU and US applied OTDS are huge, not paltry*, Solidarité, July 1, 2008). The

[3] This shall be applicable to Moldova which is the only such Member with a Final Bound Total AMS.

[4] This shall be applicable to Albania, Armenia, Georgia, Kyrgyz Republic, Moldova and Mongolia.

[5] "Product-specific" commitments have the same meaning as they are used in the Uruguay Round Agreement on Agriculture.

inconsistency of this fake market price support has been stressed by Merlinda Ingco of the World Bank, FAO and several academics. Notifying these fake MPS has only blurred the negotiations and misled WTO Members. The more surprising is that these amber domestic supports continue to be presented as the most trade-distorting ones. What they are distorting above all is the understanding of WTO Members.

But the actual subsidies of the EU PS AMS were higher than the notified €5.527 billion because some have been exempted by the AoA such as the storage subsidies, which have been on average of €959 million in the base period 1995-2000. Indeed paragraph 8 of Annex 3 on the MPS component of the AMS states: "*Market price support: market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS*". It is all the more unfair to exempt the storage subsidies of developed countries from notification in the AMS that: 1) about 90% of the EU stocked products have been eventually dumped on the world market at very low prices and 2) because the AoA demands that DCs put in their AMS "*the difference between the acquisition price and the external reference price*" of their "*Governmental stockholding programmes for food security purposes*" (footnote 5 to paragraph 3 of AoA Annex 3). However Annex B on the green box proposes to eliminate this unfair rule: "*However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS*".]

23. For the United States only, the product-specific AMS limits specified in their Schedule shall be the resultant of applying proportionately the average product-specific AMS in the 1995-2004 period to the average product-specific total AMS support for the Uruguay Round implementation period (1995-2000) as notified to the Committee on Agriculture. These shall be tabulated by individual product in the Annex to these modalities referred to in the paragraph above.

[1) But there was no significant difference between the average *notified* PS AMS – equal to total AMS since the non product-specific (NPS) AMS was within the NPS *de minimis* – for the 1995-2004 period ($10.204 billion) and the *notified* PS AMS (and total AMS as well) for the 1995-2000 period ($10.401 billion). However the *actual* figures are totally different from the *notified* ones, once taken into account the huge lies in the US notifications: the *actual* total AMS for the 1995-2000 period has been of $21.638 billion (See: *Simulations of the possible cuts in US domestic supports-full text*, table 40, p.36, Solidarité, 21 June 2007). Applying the same rectifications for the 1995-2005 period, whereas the average *notified* PS AMS for corn has been of $1.508 billion, its *actual* average PS AMS has been of $4.660 billion.

2) Furthermore this is a minimum as we have shown that, for the 2002-2005 notified years, most non product-specific (NPS) AMS subsidies (on irrigation, agricultural loans, crop insurances, and rebates on agricultural fuel) are in fact PS subsidies which can be allocated to the various products, hence to their PS AMSs. Thus, against an average notified PS AMS for corn of $1.887 billion from 2002 to 2005, the actual PS AMS for corn has been of $6.171 (J. Berthelot, *The huge lies in the US notification of its agricultural trade-distorting domestic supports from 2002 to 2005*, January 3, 2008).

3) And we could do the same for the EU NPS subsidies which could be distributed among the EU various products so that their PS limits would be much higher.

4) Let us underline here the change made by the 2008 Farm Bill in order to lower its allowed AMS for dairy products, which is mainly a fake MPS (market price support) notified at $4.495 billion on average in the 1995-00 base period on a total dairy AMS of $4.607 billion. Instead of continuing to compute it for the whole milk production, it will be computed for the three main dairy products: butter, nonfat dry milk and cheddar cheese. For the Congressional Research Service, "*Revisions to the U.S. dairy program under the2008 farm bill appear likely to dramatically reduce annual dairy price support as notified to the WTO*" (Randy Schnepf and Charles Hanrahan, *WTO Doha Round: Implications for U.S. Agriculture*, Congressional Research Service, July 24, 2008). David Blandford, David Laborde and Will Martin, among several other experts, have confirmed: "*The application of the revised approach results in a projected notification of $1.9 billion in 2014, compared to $5.5 billion under the previous method. If it were not for this change, we project that the US would exceed its Total AMS binding in*

2014 by roughly $0.2 billion, rather than being $3.4 billion below the binding" (http://ictsd.net/downloads/2008/07/124.pdf).

However, despite the unanimity of US experts, this calculus does not comply with the AoA rules: if you change the rule to compute the future dairy AMS as being the sum of the MPS for butter, cheddar cheese and nonfat dry milk, you have to apply the same calculus for the base period 1986-88. Indeed Article 1 of the AoA states that "*Support provided during any year of the implementation period and thereafter*" must be "*calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule*". And Annex 3 of the AOA states: "*5. The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support*". Therefore as the US has changed the methodology to compute its dairy AMS from 2008 on, it cannot use the FBTA incorporating a dairy MPS calculated on the basis of another methodology.

Therefore, given the levels of support prices and production in the base period 1986-88, the total dairy AMS for the sum of butter, non fat dry milk and Cheddar cheese was of $2,314.16 million instead of the notified $5,409.4 million for 1986-88. It ensues that the total applied AMS for 1986-88 was not of $23.879 billion but of $20.784 billion and that the final bound total AMS (FBTA) in 2000 was not of $19.103 billion (80% of 23.879) but only of $16.627 billion (80% of 20.784). And the allowed FBTA at the end of the implementation period, once cut by 60%, will bring it from $7.641 billion to $6.651 billion in the US notifications for 2008 and beyond.

Consequently, from 2008 on, the allowed OTDS will be only of $40.413 billion in the base period 1995-2000 – 16.627 (FBTA) + 4.372 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) –, instead of $48.224 billion computed by Canada. And cutting it by 70% will bring it to $12.124 billion at the end of the implementation period, significantly lower than the $14.467 billion implied by Pascal Lamy's Draft of 25 July.

5) But capping the PS AMSs and putting them in Part IV of Members' schedules raises the issue that their level would then be almost impossible to challenge, even if we prove after that the bulk of these PS AMSs are fake MPSs not implying any actual subsidy and that their actual subsidy component has been hugely under notified. Capping the PS AMSs would end up allowing the EU and US to increase much their actual amber subsidies instead of preventing them to rise! On the other hand, for the products for which the PS AMS relates only or mainly to actual subsidies, their under notification could end up in the EU and US falling in their own trap if the other Members prosecute them and show that the allegedly blue and green subsidies to which they have transferred a large part of these PS AMSs are in fact amber subsidies, hence in the AMS.

If what worries Members is the actual impact of subsidies on world prices, capping the PS AMS is not the answer for another reason. What should be changed in the new AoA is the definition of dumping which should be defined as exports made at prices below the full production cost of the exporting country without direct and indirect subsidies, i.e. upstream on investments and inputs, including feed grains, and downstream at the processing and marketing stages, and for all types of boxes in which they are classified: amber, blue and green.

Before thinking of capping PS AMSs, what should worry DCs is to eliminate most of the NPS AMS as most of its components are in fact PS subsidies which could be allocated to specific products. This is particularly true for the US which has inflated its NPS AMS as much as it could, as long as it was not challenged at the WTO. Besides, what should also worry DCs is to cap the so-called green box which contains the most trade-distorting subsidies.]

24. Where a Member has, after the base period specified in paragraphs 22 and 23 above, introduced product-specific AMS support above the *de minimis* level provided for under Article 6.4 of the Uruguay Round Agreement on Agriculture, and it did not have product-specific AMS support above the *de minimis* level during the base period, the product-specific AMS limit specified in the Schedule may be the average amount of such product-specific AMS support for the two most recent years prior to the date of adoption of these modalities, for which notifications to the Committee on Agriculture have been made.

25. In cases where the product-specific AMS support for each year during the base period specified in paragraphs 22 and 23 above was below the *de minimis* level provided for under Article 6.4 of the Uruguay Round Agreement on Agriculture and the Member concerned is not in the situation covered by paragraph 24 above, the product-specific AMS limit specified in the Schedule for the product concerned may be that *de minimis* level, expressed in monetary terms. The application of the provisions in this paragraph and paragraphs 21 to 24 shall not require a Member's product specific AMS limit to be lower than the base period *de minimis* level, expressed in monetary terms as set out in this paragraph.

[These paragraphs 24, 25 and 30 lead anew in the inextricable contradictions of the new rule proposed for the allowed PS *de minimis*. These paragraphs claim to comply with the AoA Article 6.4 for which the sum of all the *allowed* PS *de minimis* is equal to 5% of the production value of products without PS AMSs. In other words a given product cannot have at the same time an *applied* PS AMS (necessary higher than the *de minimis* level) and an *allowed* PS *de minimis*: as soon as the *applied* PS AMS exceeds the *de minimis* level, the product is not entitled to a *de minimis* exemption from reduction.

If all products had a PS AMS at least at the PS *de minimis* level during the base period, it is meaningless to write in paragraph 24 "*Where a Member… did not have product-specific AMS support above the de minimis level during the base period*" and even more to write in paragraph 25 "*where the product-specific AMS support for each year was below the* de minimis *level*". Therefore, if all products had a PS AMS during the base period, the production value of products without a PS AMS was nil and there was no PS *de minimis* at all! Which is the opposite of the provision that all products have got an allowed PS *de minimis*. To conclude, this draft on revised modalities has constructed a profound legal contradiction and the best way to go beyond it is to eliminate altogether this loophole *de minimis* concept.]

26. The scheduled product-specific AMS limits shall be implemented in full on the first day of the implementation period. Where the average notified product-specific AMS in the two most recent years for which notifications are available was higher, the limits shall be implemented in three equal annual instalments, with the starting point for implementation being the lower of the average of those two years or 130 per cent of the scheduled limits.

Special and differential treatment

27. Developing country Members shall establish their product-specific AMS limits by choosing one of the following methods, and scheduling all their product-specific AMS commitments in accordance with the method chosen:

(a) the average product-specific AMS during the base period 1995-2000 or 1995-2004 as may be selected by the Member concerned, as notified to the Committee on Agriculture; or

(b) two times the Member's product-specific *de minimis* level provided for under Article 6.4 of the Uruguay Round Agreement on Agriculture during the base periods referred to in sub-paragraph (a) above; or

(c) 20 per cent of the Annual Bound Total AMS in the relevant year during the Doha Round implementation period.

28. Where a developing country Member chooses paragraph 27(a) above as its method for the establishment of product-specific AMS limits that Member shall also have access to the provisions of paragraphs 24 and 25 above.

29. Article 6.3 of the Agreement on Agriculture shall be amended to reflect these modalities.

D. *DE MINIMIS*

Reductions

30. The *de minimis* levels referred to in Article 6.4(a) of the Uruguay Round Agreement on Agriculture for developed country Members (i.e. 5 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific *de minimis* and 5 per cent of the value of a Member's total agricultural production in the case of non-product-specific *de minimis*) shall be reduced by no less than 50 per cent effective on the first day of the implementation period.

[Let us reminds the reader that the Chair lies when he claims that this is the definition of the product-specific *de minimis* in Article 6.4(a) of the AoA, which states instead: "*A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce: (a) product-specific domestic support*

which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year" (not underlined in the text).]
Furthermore, where, in any year of the implementation period, a lower level of *de minimis* support than that resulting from application of that minimum percentage reduction would still be required to ensure that the Annual or Final Bound OTDS commitment for that year is not exceeded, a Member shall undertake such an additional reduction in what would otherwise be its *de minimis* entitlement.

Special and differential treatment

31. For developing country Members with Final Bound Total AMS commitments, the *de minimis* levels referred to in Article 6.4(b) of the Uruguay Round Agreement on Agriculture (i.e. 10 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific *de minimis* and 10 per cent of the value of a Member's total agricultural production in the case of non-product-specific *de minimis*) to which they have access under their existing WTO obligations shall be reduced by at least two-thirds of the reduction rate specified in paragraph 30 above.

[The critics made on the definition of PS *de minimis* for developed countries can also apply to the PS *de minimis* for DCs, with the only difference that 5% of the production value of each product is to be replaced by 10%.]

The timeframe for implementation shall be three years from the first day of implementation. Furthermore, where, in any year of the implementation period, a lower level of *de minimis* support than that resulting from application of that minimum percentage reduction would still be required to ensure that the Annual Bound or Final OTDS commitment for that year is not exceeded, a Member shall undertake such an additional reduction in what would otherwise be their *de minimis* entitlement.

32. Developing country Members with no Final Bound Total AMS commitments; or with such AMS commitments, but that either allocate almost all that support for subsistence and resource-poor producers, or that are NFIDCs listed in document G/AG/5/Rev.8; shall continue to have the same access as under their existing WTO obligations to the limits provided for product-specific and non-product-specific *de minimis* in the current Article 6.4(b) of the Uruguay Round Agreement on Agriculture.

[With still the contradiction – that would be difficult for the Dispute Settlement Body to overcome – that the limits provided "for product-specific… *de minimis* in the current Article 6.4(b) of the Uruguay Round Agreement on Agriculture" are not at all the same as the limits that the present Revised Draft has proposed!]

Recently-Acceded Members

33. Saudi Arabia, the Former Yugoslav Republic of Macedonia, Viet Nam and Ukraine, as very recently-acceded Members shall not be required to undertake reduction commitments in *de minimis*. Small low-income RAMs with economies in transition[6] shall not be required to undertake reduction commitments in *de minimis*. Other RAMs with Final Bound Total AMS commitments and which have existing *de minimis* levels of 5 per cent shall reduce such levels by at least one-third of the reduction rate specified in paragraph 30 above and the timeframe for implementation shall be five years longer.

Other

34. The provisions of Article 6.4 of the Uruguay Round Agreement on Agriculture shall be amended accordingly to conform to these modalities.

[Indeed this is absolutely necessary! But we would have liked to have a proposal for these amendments so as to see how they could overcome the huge contradictions with the other provisions of this revised draft!]

E. BLUE BOX

Basic criteria

35. The value of the following domestic support, provided that it is consistent also with the limits as provided for in the paragraphs below, shall be excluded from a Member's calculation of its Current Total AMS but shall count for purposes of that Member's Blue Box commitments and OTDS:

(a) Direct payments under production-limiting programmes if:

(i) such payments are based on fixed and unchanging areas and yields; or

[6] This shall be applicable to Albania, Armenia, Georgia, Kyrgyz Republic, Moldova and Mongolia.

(ii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production; or
(iii) livestock payments are made on a fixed and unchanging number of head.
[These conditions have not been and cannot limit production and the blue subsidies because the unit payment per tonne or cattle head has not been and is not limited. The only means to do it is: a) to impose production quotas and deterrent penalties for any excess, as in the EU common market organisation for dairy; b) to cap the unit payment (per tonne, bushel, cattle head, etc.).

Besides, as the largest part of EU blue payments in the 1995-2000 period has been granted to grains used as feed, they were input subsidies to be notified in the PS AMS of animal products having consumed them according to the AoA Article 6.2. Thus the average €9.743 billion in BB payments to COPs (cereals, oilseeds and pulses) used as feed have represented 60.3% of the €16.161 billion going to COP in the 1995-2000 period and 46.6% of the whole BB. And, as long as the EU's farmers continue to grow grains fed to animals within the EU, the corresponding part of the allegedly green Single Payment Scheme will remain coupled input subsidies to be notified in the PS AMS of animal products.

Therefore the actual EU BB has been of only €11.145 billion on average in the base period, after transfer of the €9.743 billion in BB payments to COPs to the PS AMSs of animal products.]
Or
(b) Direct payments that do not require production if:
(i) such payments are based on fixed and unchanging bases and yields; or
(ii) livestock payments are made on a fixed and unchanging number of head; and
(iii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production.
[This new BB has been decided in the Framework Agreement of 31 July 2004 to accommodate the US countercyclical payments (CCPs). However the CCPs do not comply with the criteria of this new BB:
1) For the Congressional Research Service (CRS) "*The commodity-decoupled, but price-linked nature of CCP payments suggests that they would likely be notified as non-product specific AMS support under current WTO criteria*" (Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, October 25, 2006, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf), the more so as the preceding "market loss payments", that CCPs have replaced from 2002, had been rightly notified in the NPS AMS. And indeed the CCPs have been notified in the NPS AMS in October 2007 for $2.846 billion on average from 2002 to 2005 so that it would be illogical to notify them differently in the future.
2) The US countercyclical payments and the new ACRE program cannot be notified in the new BB and are in the amber box for the following additional reasons:
1. The new Appellate Body's ruling on cotton of 3 June 2008 has confirmed the preceding ruling of 10 February 2005 "*that the effect of…counter-cyclical payments… is significant price suppression*".
2. CCPs are direct payments "that do not require production" but which are nevertheless paid on the basis of the current prices. But where are the current prices if there is no production?
3. CCPs and the new ACRE program (Average Crop Revenue Election payments, an alternative to usual CCPs) contradict the AoA basic requirement for non trade-distorting subsidies that "*The support in question shall not have the effect of providing price support to producers*" (AoA Annex II, paragraph 1).
4. Now the level of CCPs and ACRE payments is directly linked to the current price level.
5. The ACRE program is coupled twice: to the current price level and to the current production volume.
6. The ACRE payments are not "*based on fixed and unchanging bases and yields*" as required by the new BB.
7. A revenue support is necessarily a production support because any revenue results from a price times a production volume.
8. Like fixed direct payments, the ACRE program does not have a full production flexibility and cannot be in the new BB which refers to "*Direct payments that do not require production*".
9. A significant part of CCPs is granted to feed grains, which are input subsidies to be notified in the amber box for developed countries (AoA Article 6.2).
10. USDA had stressed that farmers expectations generated by CCPs and their risk-reducing effects show their coupled nature (http://www.ers.usda.gov/Features/FarmBill/analysis/counterCyclicalPayments2002act.htm).

11. For Robert L. Thompson, "*The counter-cyclical payments… reduce American farmers' responsiveness to declining prices, but not to increasing prices, amplifying their trade distorting impact*" (Robert L. Thompson, *The US Farm Bill and the Doha Negotiations: On Parallel Tracks or a Collision Course?* International Food & Agricultural Trade Council, Issue Brief, September 2005).
12. If the new BB does not require production, it does not limit its expansion, the more so as, like for the old BB, it does not limit either the unit subsidy (per acre, per tonne, per cattle head, etc.).]

36. Each Member shall specify in its Schedule which of these categories – (a) or (b) – it has selected for the purposes of establishing all its Blue Box commitments in this Round. Any exception to this universal application would be with the agreement of all Members prior to finalization of Schedules. In no circumstances could both domestic support categories be made available for any particular product or products.

37. Any Member that is in a position to move its domestic support from AMS to Blue pursuant to paragraph 43 below, or introduce product-specific Blue Box support pursuant to paragraphs 47 and 50 below subsequent to the conclusion of this negotiation shall have the option to do so on the basis of either criterion above but, once selected and scheduled, this shall be binding.

[Amazing! This is an endorsement of the massive box-shifting made by the EU since 1995 since, as we have already underlined, the bulk of its PS AMSs, linked to administered prices, was a fake market price support not involving any actual subsidy, as explained above in comments to paragraph 22. And this has allowed the EU to reduce sharply its applied PS AMS (and total AMS) and to increase its actual BB subsidies. Let us repeat that the most trade-distorting subsidies are the green ones – because they can increase without limits –, followed by the blue ones – because the unit payment (per tonne or cattle head) is not limited –, followed by the PS AMS subsidies linked to administered prices – because of their fake market price support component –, the least trade-distorting being paradoxically the export subsidies, because they are capped and must decrease over time (however as long as the importing countries can prevent their import by a high tariff).]

Additional criteria

(a) Overall Blue Box limit

38. The maximum value of support that can, under the above criteria of "Blue Box", be provided under Article 6.5 shall not exceed 2.5 per cent of the average total value of agricultural production in the 1995-2000 base period on the basis of notifications to the Committee on Agriculture where they exist. This limit shall be expressed in monetary terms in Part IV of Members' Schedules and shall apply from the first day of the implementation period.

[Which means a maximum average BB of €5.565 billion for the EU and of $4.854 billion for the US. This leaves a good margin of increase to the US as it had only a BB in 1995 ($7.030 billion) so that its average BB in the period has been of $1.172 billion.

However as the EU average notified BB has been of €20.888 billion, i.e. 9.4% of its €222.577 average value of agricultural production (VOP) for the 1995-2000 base period, this seems to be an insuperable challenge. But it is not because, as a result of the CAP (common agricultural policy) reforms since 1992, the actual BB has collapsed to €6.552 billion appropriated in the 2009 budget, i.e. 1.9% only of the €332 billion of EU-27 VOP in 2007 (http://eur-lex.europa.eu/budget/data/P2008_VOL4/EN/nmc-titleN123A5/nmc-chapterN50452281343-265/index.html#N50452281343-265). And we know that the EU Commission wants to transfer most of the remaining BB subsidies to the so-called green boxes of the Single Payment Scheme (SPS) and the Single Area Payment Scheme (SAPS, for the newly acceded EU 12 Members), which will account together for €32.5 billion in 2009.

A second reason why the reduction in the BB is not an insuperable challenge for the EU is that its actual BB was in fact of only €11.145 billion on average in the base period, once transferred to the PS AMS of animal products the average €9.743 billion in BB payments to COPs (cereals, oilseeds and pulses) used as feed. Of course this does not change anything in the applied OTDS since the applied AMS has increased by the same amount.]

39. In cases where a Member has, consistent with the terms of Article 6.5(a) of the Uruguay Round Agreement on Agriculture, placed in the Blue Box an exceptionally large percentage of its trade-distorting support – defined as 40 per cent – during the 1995-2000 base period, the limit for that Member shall, instead, be established by application of a percentage reduction in that average base

period amount. That percentage reduction shall equal the percentage reduction that the Member concerned is to make in its Final Bound Total AMS. This Blue Box limit shall be expressed in monetary terms and bound in Part IV of that Member's Schedule. An implementation period of no more than 2 years may be provided for any such Member in the event that immediate implementation is unduly burdensome.

[Given that, during the 1995-2000 base period, the EU BB has represented 30.0% of its applied trade domestic distorting support (OTDS) of €69.690 billion – sum of the BB (€20.888 billion) + total AMS (€48.242 billion) + PSdm (€35 million) + NPS dm (€525 million) – and given its low level reached in 2008, this section is just a great act. As paragraph 13 above asks that the EU cuts its FBTA by 70% (i.e. from €67.159 billion to €20.147 billion), a 70% cut in the average BB of €20.888 billion for 1995-2000 would bring it to €6.266 billion, a level hardly below the €6.552 billion appropriated for 2009 and which will decrease with the transfer to the SPS of direct payments still in the BB (on sugarbeet, fruits and vegetables, wine etc.), so that there is no need to grant 2 years to implement the cut after the beginning of the implementation period since there would not be any required cut. The more so as this period would hardly begin before 2011 if the Doha Round were to be concluded in 2009, which is doubtful.

However, because the EU has placed illegally in the BB an average of €9.743 billion of feed subsidies which should have been notified in the amber box and because of its other cheatings in its applied PS AMS (J. Berthelot, *Thorough review…*, table 23, p. 19), the actual EU BB of €11.145 billion has represented only 13.4% of its OTDS of €82.994 billion: sum of the BB (€11.145 billion) + total AMS (€63.628 billion) + PSdm (€35 million) + NPS dm (€8.186 billion). In that case cutting the BB by 70% would bring it down to €3.344 billion, which could be more difficult to cope with if some products would not be fully decoupled.]

(b) Product-specific limits

40. For all Members other than the United States, the limit to the value of support that may be provided to specific products as Blue Box entitlements shall be the average value of support provided to those products at an individual product level, consistent with Article 6.5(a) of the Uruguay Round Agreement on Agriculture, during the 1995-2000 period and with notifications to the Committee on Agriculture. These product-specific limits shall be expressed in monetary terms at an individual product level, annexed in that format to these modalities, bound in Part IV of the Schedule of the Member concerned, and shall apply from the first day of the implementation period.

41. In any case where Article 6.5(a) consistent Blue Box support was not provided for the entirety of the 1995-2000 period, the Member concerned shall use the average value of support for the years notified within that period, provided that there are at least three consecutive notified years within that period.

42. For the United States, the limits to the value of support that may be provided to specific products under paragraph 35(b) above shall be [(110) (120)] per cent of the average product-specific amounts that would result from applying proportionately the legislated maximum permissible expenditure under the 2002 Farm Bill for specific products at an individual product level to the overall Blue Box limit of 2.5 per cent of the average total value of agricultural production during the 1995-2000 period. These product-specific limits shall be expressed in monetary terms at an individual product level, annexed in that format to these modalities and shall be bound in Part IV of that Member's Schedule.

[It is funny to see that this Revised draft considers implicitly that the CCPs are product-specific, even if the US has notified them in the NPS AMS. It contradicts also the basic condition for this new BB that it aims at "*direct payments that do not require production*": how could they be product-specific without production?]

43. Blue Box entitlements for specific products may nevertheless exceed the limits determined under paragraphs 40-42 above but only where there is a corresponding and irreversible one-for-one reduction in the product-specific AMS limits for the products concerned

[Once more, we see that the Revised Draft considers the BB as less trade-distorting than the AMS, ignoring that most of the AMS is a fake market price support.]

(except for cotton, where that rate would be two-for-one).

[This last provision does not please the EU which, in the meeting of the special Committee on agriculture of 5 December 2007, has stated that "*These provisions, coupled with Falconer's proposed cuts in amber box support,*

would imply a limit on blue box payments of around 180 million euros a year, well below the subsidies promised by Brussels to cotton farmers in Greece and Spain. The EU therefore proposed that a one to one ratio be applied so that it could meet its 300 million euro spending requirement".]

44. Where this arises in the context of this particular negotiation, full documentation must be provided in support of this "transfer" to ensure that the starting point is verifiably, on the one hand, the product-specific AMS limit that would have been otherwise inscribed in the Schedule through application of the methodology provided above and, on the other, the Blue Box entitlement otherwise inscribed pursuant to application of the methodology set out above.

45. Where this arises as a result of continuation of the reform process after scheduling and during the implementation period, there must be an exact reciprocal reduction in the scheduled product-specific AMS limit for, as the case may be, a new, or an increase in the scheduled, product-specific Blue Box limit.

46. In both such situations, the overall Blue Box limit cannot in any case be exceeded.

47. Notwithstanding the above, where, for a particular product, there is no product-specific entitlement to a Blue Box limit under the provisions above, and no Current AMS support in the base period for that particular product, a product-specific Blue Box limit may still be scheduled but only where the total support for any such products concerned does not exceed 5 per cent of the overall Blue Box limit; there is a maximum for any single product of 2.5 per cent of the overall Blue Box limit; and the overall Blue Box limit is still respected. This is available to developed country Members with direct payments of the kind that meet the terms of paragraph 35(a) above, and is a once-only provision for commitment in this Round of negotiations. The monetary value and the products concerned shall be inscribed in a Member's Schedule.

Special and differential treatment

48. For developing country Members, the maximum permitted value of support referred to in paragraph 38 above shall be 5 per cent of the average total value of agricultural production in the 1995-2000 or the 1995-2004 base period as may be selected by the Member concerned. That limit shall be expressed in monetary terms and bound in Part IV in developing country Members' Schedules. However, in cases where there is a movement from AMS to Blue subsequent to the conclusion of this negotiation, the developing country Member concerned shall have the option of selecting as its base period the most recent five-year period for which data are at that time available. An NFIDC which chooses not to avail itself of its Blue Box entitlement and thereby is not obliged to Schedule its OTDS under paragraph 10 above, shall so indicate by marking "nil" in the appropriate section of Part IV of its Schedule.

49. Where a product accounted both for more than 25 per cent of the average total value of agricultural production and 80 per cent of the average Annual Bound Total AMS during the base period, a developing country Member that chooses to switch its support from AMS to Blue for that product, on a one-for-one and irreversible basis, shall be entitled to do so even if this would otherwise lead to exceeding the overall Blue Box limit provided for in the paragraph above.

50. Where, for a particular product, a developing country Member has no product-specific entitlement to a Blue Box limit for that product under the above provisions, and no Current AMS support in the base period for it, a product-specific Blue Box limit may still be scheduled but only where the total support for the totality of any such products concerned does not exceed 30 per cent of the overall Blue Box limit; there is a maximum for any single product of 10 per cent of the overall Blue Box limit; and the overall Blue Box limit is still respected. For least-developed country Members and for NFIDCs these limits shall be 75 per cent and 25 per cent respectively.

Recently-Acceded Members

51. For RAMs, the maximum value of support referred to in paragraph 38 above shall be 5 per cent of the average total value of agricultural production in the 1995-2000 base period or the 1995-2004 base period as may be selected by the Member concerned. However, in cases where there is a movement from AMS to Blue subsequent to the conclusion of this negotiation, the Member concerned shall have the option of selecting as its base period the most recent five-year period for which data are at that time available.

Other

52. Article 6.5 of the Agreement on Agriculture shall be amended to reflect the above modalities accordingly.

F. GREEN BOX

53. Annex 2 of the Agreement on Agriculture shall be amended as set out in Annex B of this document.

[See comments to this annex B.]

G. COTTON: DOMESTIC SUPPORT

Reductions in support for cotton

54. The development aspects of cotton shall be addressed as provided for in paragraph 12 of the Hong Kong Ministerial Declaration. AMS support for cotton shall be reduced according to the following formula:

$$Rc = Rg + \frac{(100 - Rg) * 100}{3 * Rg}$$

Rc = Specific reduction applicable to cotton as a percentage

Rg = General reduction in AMS as a percentage

55. This shall be applied to the base value of support calculated as the arithmetic average of the amounts notified by Members for cotton in supporting tables DS:4 from 1995 to 2000.

The Blue Box limit applicable to cotton shall amount to one third of the product-specific limit that would otherwise have been the resultant from the methodology generally applicable above.

[As the US notified average cotton AMS has been of $801 million in the base period 1995-2000 and as the US has offered to reduce its allowed total AMS by 60%, the above formula would imply to reduce the applied cotton AMS at the end of the implementation period by 82.22%, i.e. by $658.6 million, down to $142.4 million.

Surprisingly, the average notified EU cotton AMS has been the same as the US one during this 1995-00 period (€800 million on average), at least if we rely on the EU Court of Auditors rather than on the EU notifications to the WTO.

Table 1 – Trade-distorting domestic subsidies to US and EU cotton in the base period 1995-2000

Subsidies in $ million	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	Average
US	de minimis	de minimis	466	935	2,353	1,050	801
EU notifications to the WTO	800.4	772.7	809.4	715.2	623.7	795.0	753
EU actual AMS (Court of Auditors)	747.6	794.7	770	895.9	853.9	735.1	800

Source: Notifications to the WTO and EU Court of Auditors Special Report n° 13/2003 concerning production aid for cotton together with the Commission's replies, 2003/C 298/02), 9 December 2003.

This would imply a reduction rate of the EU cotton AMS of 84.29%, that is by €634.7 million, bringing it down to €118.3 million if we take the EU notifications; or by 674.3 million, bringing it down to €125.7 million if we take the EU Court of Auditors data.]

Implementation

56. The reductions for trade-distorting domestic support on cotton shall be implemented over a period which is one third of the implementation period.

Special and differential treatment

57. Developing country Members with relevant AMS and Blue Box commitments for cotton otherwise applicable under the relevant provisions of this Agreement, including paragraph 27 above, shall provide a rate of reduction for cotton that is two-thirds of that which would be applicable under paragraph 54 above.

58. Developing country Members shall implement their reduction commitments for cotton over a longer time period than for developed country Members.

II. MARKET ACCESS

A. TIERED FORMULA FOR TARIFF REDUCTIONS

Basis for reductions

59. Subject to such other specific provisions as may be made, all final bound tariffs[7] shall be reduced using the tiered formula set out in the paragraphs below.

60. In order to place final bound non-*ad valorem* tariffs in the appropriate band of the tiered formula, Members shall follow the methodology to calculate *ad valorem* equivalents (AVEs), along with associated provisions, set out in Annex A to TN/AG/W/3 of 12 July 2006. All AVEs so calculated shall be listed in an annex to these Modalities.

Tiered formula

61. Developed country Members shall reduce their final bound tariffs in six equal annual instalments over five years in accordance with the following tiered formula:

(a) where the final bound tariff or *ad valorem* equivalent is greater than 0 and less than or equal to 20 per cent, the reduction shall be 50 per cent;

(b) where the final bound tariff or *ad valorem* equivalent is greater than 20 per cent and less than or equal to 50 per cent, the reduction shall be 57 per cent;

(c) where the final bound tariff or *ad valorem* equivalent is greater than 50 per cent and less than or equal to 75 per cent, the reduction shall be 64 per cent; and

(d) where the final bound tariff or *ad valorem* equivalent is greater than 75 per cent, the reduction shall be 70 per cent.

62. The minimum average cut on final bound tariffs that a developed country Member shall be required to undertake[8] is 54 per cent. Should application of the tiered formula treatment above, inclusive of the treatment for Sensitive Products as outlined in Section B below and additional cuts made as provided for elsewhere in these modalities relating to tariff escalation and tropical products result in an overall average cut less than 54 per cent, an additional effort shall be made proportionately across all bands to reach that target.

63. Developing country Members other than those specified in paragraph 65 below shall reduce their final bound tariffs in eleven equal annual instalments over ten years in accordance with the following tiered formula:

(a) where the final bound tariff or *ad valorem* equivalent is greater than 0 and less than or equal to 30 per cent, the reduction shall be 2/3 of the cut for developed country Members in paragraph 61(a) above;

(b) where the final bound tariff or *ad valorem* equivalent is greater than 30 per cent and less than or equal to 80 per cent, the reduction shall be 2/3 of the cut for developed country Members in paragraph 61(b) above;

(c) where the final bound tariff or *ad valorem* equivalent is greater than 80 per cent and less than or equal to 130 per cent, the reduction shall be 2/3 of the cut for developed country Members in paragraph 61(c) above; and

(d) where the final bound tariff or *ad valorem* equivalent is greater than 130 per cent, the reduction shall be 2/3 of the cut for developed country Members in paragraph 61(d) above.

64. The maximum overall average cut on final bound tariffs any developing country Member shall be required to undertake[9] as a result of application of this formula inclusive of the treatment for Sensitive Products as outlined in Section B below is 36 per cent. Should the above formula imply an overall average cut of more than 36 per cent[10], the developing country Member shall have the flexibility to apply lesser reductions applied in a proportionate manner across the bands, to keep within such an average level.

[Demanding that DCs' tariffs reductions be 2/3 of the developed countries' reductions in each band is totally unfair for the following reasons:

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[7] That is, all out-of-quota tariffs specified in Section I-A of Members' Schedules of Concessions. In-quota tariffs shall be subject to commitments under the relevant paragraphs.

[8] i. e. the average of the cuts made.

[9] i. e. the average of the cuts made.

[10] In the case of Venezuela, this ceiling shall be 30 percent.

1) The much lower import dependency of the EU and US than of DCs for their basic food staples: the ratio of imports (in volume) on total domestic uses for 2001 to 2004 is shown in Table 2.

Table 2 – The much lower import dependency of the US and EU than DCs for their staple food: 2001-04

	US	EU-25	DCs	SSA	West Africa
Cereals	1.4%	5.9%	12.6%	19.3%	18.9%
Dairy products	2.7%	2%	10.3%	11.1%	39%
Meats	4.9%	4.2%	5.1%	6.7%	7.4%

Source: FAO

2) The simple average of tariff lines and the imports weighted average of tariff lines do not tell anything about the weight of the tariffs of the most significant products in the average diet. The agricultural tariffs of the developed countries, particularly the EU (not to speak of Japan), are much higher than those of DCs and LDCs on the staples constituting the core of the diet: cereals, sugar, meats, dairy, fruits and vegetables.

In the EU, the average MFN tariff is of 66% for frozen meat (beef, pork, poultry) but 66 tariff lines exceed 100%; it is of 87% for dairy but 41 tariff lines exceed 100%; it is of 50% for cereals and cereals products but 13 lines exceed 100%; it is of 59% for sweeteners but 8 tariff lines exceed 100%[2]. And the share of the food products with the highest tariffs (cereals, sugar, meats, dairy produce, fruits and vegetables) has accounted for 68% of total calories (2,390 calories), 83% of proteins (90 g) and 49% of lipids (70 g) in 2003 (FAO). Given that the tariffs on these products are generally higher than 50%, the EU applied average agricultural tariff weighted on food consumption is much higher than its average applied tariff weighted on actual imports. The more so as there are few preferential tariffs on these basic staples and as the bulk of these products are protected by specific or complex tariffs instead of ad valorem tariffs.

In the US the average MFN tariff on dairy is 43% with 7 lines above 100% and it is of 46% for sugar and sweeteners with 5 lines above 100%.

In West Africa instead the basic staples with the largest imports and the lowest tariffs (cereals and milk powder are taxed at 5% in WAEMU) or low tariffs (poultry meat and sugar taxed at 20% in WAEMU) accounted in 2003 for 59% of total calories per capita and per day and 57% of proteins (33.9 g over 60 g).

3) The developed countries can minimize the impact of tariff reductions trough many ways:
a) The much lower elasticity of demand for food in the developed countries: as shown by USDA (http://www.ers.usda.gov/publications/tb1904/tb1904.pdf)
b) The large import-substitution effect of domestic subsidies in the EU and US: EU direct payments to its cereals, oilseeds and pulses (COPs) have compensated the reduction of their domestic prices by 45% which has improved the competitiveness not only of the EU COPs, thus reducing the volume of imported feedstuffs (cereals substitutes), but also of the animal products fed from them, reducing the imports of meats and dairy products and expanding their exports. The share of domestic subsidies (including of the amber and green boxes) on all subsidies (including export refunds) to the EU exports from 1995-96 to 2001-02 has been of 78% for cereals, 67% for poultry, 62% for pig meat, 38% for dairy and 52% for bovine meat. It is clear that, for products with low tariffs in DCs (as cereals and dry milk in WAEMU, taxed at 5%), such large subsidies to the EU exports have a direct impact on their increased imports. Thus if the import price is reduced by 40% as a result of a reduction in the EU and US export prices and with a price-elasticity of food imports of -0.590 in low-come countries (USDA), this would foster a 23.6% increase in the imported food.

Even if the EU and US green subsidies were challenged as being trade-distorting, they have still the opportunity to increase their "gold box" subsidies, i.e. the non agricultural subsidies such as those on general infrastructures (such as the huge US project to improve the navigability of the Mississipi river).

c) The lower increase in demand in the developed countries than in DCs can be much more easily satisfied by domestic production, despite the tariff reduction resulting from the Doha Round, given the much higher competitiveness of their agriculture.

d) The necessity for most DCs, which will face a huge rise in their population, to expand agricultural employment given their even weaker competitiveness for industrial products and services.

All this justifies totally the necessity of generous provisions on Special Products and the SSM.]

65. Those small, vulnerable economies[11], including those among them which are ceiling binding and homogenously low binding countries, which choose to exercise the option set forth in paragraph 130 below shall be entitled to moderate the cuts specified in paragraph 63 above by a further 10 *ad valorem* percentage points in each band.

Recently-Acceded Members

66. RAMs shall be entitled to moderate the cuts they would otherwise have been required to make under the tiered formula for developing country Members in paragraph 63 by up to 8 *ad valorem* percentage points. All RAMs shall be entitled to exempt their final bound tariffs at or below 10 per cent from reductions in bound tariffs.

67. Saudi Arabia, the Former Yugoslav Republic of Macedonia, Viet Nam, Tonga and Ukraine, as very recently-acceded Members and small low-income RAMs with economies in transition[12], shall not be required to undertake reductions in final bound tariffs.

68. For all other RAMs, to the extent that, in implementing commitments undertaken in acceding to the WTO, there would be actual overlap with commitments to be otherwise undertaken in association with these Modalities, the start of implementation of commitments undertaken in association with these Modalities for such tariff lines shall begin one year after the end of implementation of the accession commitment.

69. The implementation period for RAMs may be prolonged by up to two years after the end of the developing country Members' implementation period.

70. More specific provisions can be found in the relevant sections of this document.

B. SENSITIVE PRODUCTS

Designation

71. Each developed country Member shall have the right to designate up to 4 per cent of tariff lines as "Sensitive Products".* Where such Members have more than 30 per cent of their tariff lines in the top band, they may increase the number of Sensitive Products by two per cent, subject also to the conditions outlined in paragraph 75 below. Where application of this methodology would impose a disproportionate constraint in absolute number of tariff lines because tariff concessions are scheduled at the 6-digit level, the Member concerned may increase its entitlement by that amount also.

* *Japan and Canada have declared themselves not to be in a position to agree to this limitation*

[The EU sensitive products: Jacques Gallezot has analyzed in 2005 the products that the EU could be willing to classify as sensitive, which would be subjected to lower tariff cuts in the tiered formula and he has identified 170 of them, or 7.7% of the EU agricultural tariff lines, a percentage close to the 8% the EU has asked for in the current Doha Round negotiations. The 170 sensitive products accounted for 64.4% of the EU agricultural imports in 2000 and 2001, 56.2% of intra-EU trade and 87% of the collected agricultural tariffs. Whereas the average agricultural tariff is of 22.9%, that on sensitive products is of 52%, of which 69% on meats, 79% on dairy

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[11] The Members concerned are those that meet the criteria set out in paragraph 151 and are listed in Annex I. As is made clear in the Agreed Framework, Small vulnerable economies (SVEs) are not meant to create any sub-category of Members. Bearing that principle in mind, the following Members could also be deemed to be eligible for this treatment, should they choose to avail themselves of it, despite not being members of the SVE Group *per se* given that this treatment could be deemed to be broadly comparably appropriate: Republic of Congo, Côte d'Ivoire and Nigeria (plus other Members that can provide data that show that they meet the criteria in paragraph 147). Additionally, Bolivia shall have access, exceptionally, to treatment equivalent to that provided for in paragraph 142. As an exception, Suriname shall rebind its agricultural tariffs on a line by line basis at the level of the average bound tariff of Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago resulting from these modalities.

[12] This is applicable to Albania, Armenia, Georgia, Kyrgyz Republic, Moldova and Mongolia.

products, 55% on cereals, 117% on sugar and sweeteners, 64% on vegetables and 29% on fruits. All the EU sensitive products do not correspond to the highest tariff bands as the tariff lines with the highest tariffs have already a deterrent effect on imports. Thus 58 sensitive products are in the band of 0 to 30% (4.5% of the tariff lines of that band), 49 are in the band of 30% to 60% (17.9% of the lines), 39 are in the band of 60% to 90% (33.9% of the tariff lines) and 24 in the band higher than 90% (24% of the lines).]

72. Developing country Members shall have the right to designate up to one-third more of tariff lines as "Sensitive Products".

Treatment - tariff cut

73. Members may deviate from the otherwise applicable tiered reduction formula in final bound tariffs on products designated as Sensitive. This deviation may be one-third, one-half or two-thirds of the reduction that would otherwise have been required by the tiered reduction formula. Accordingly all of the tariff lines for a particular product shall take a uniform deviation.

Tariff quota expansion

74. For developed country Members, tariff quotas derived from the provisions in paragraph 71 above and paragraphs 75-77 below shall result in new access opportunities equivalent to no less than 4 per cent of domestic consumption expressed in terms of physical units where the two-thirds deviation is used. Where the one-third deviation is used, the new access opportunities shall be no less than one per cent less than that percentage of domestic consumption. Where the one-half deviation is used, the new access opportunities shall be no less than 0.5 per cent less than that percentage of domestic consumption.[13]

75. Where a Member is entitled to, and chooses to exercise its entitlement to have a higher number of Sensitive Products pursuant to paragraph 71 above, the relevant amounts specified in paragraph 74 shall be maintained for the defined percentage of products applicable to all developed country Members. For the additional 2 per cent available to those Members under paragraph 71, the Member concerned shall have an obligation to ensure that, whichever deviation is selected, an additional 0.5 per cent of domestic consumption beyond what is generally provided for is achieved for those products.

76. If, after application of all its tariff reduction commitments (i.e. including its Sensitive Product deviation entitlements), a developed country Member[14] would still have some of its tariff lines in excess of 100 per cent *ad valorem*, it shall be entitled to retain these only if the tariff lines concerned are confined to those designated as, and are within the numerical limits of, that Member's overall Sensitive Product entitlement and that the Member concerned applies a higher expansion of 0.5 per cent of domestic consumption for those tariff lines concerned. [Certain Members[15] may also do so outside the Sensitive Product entitlement provided that (a) this is for no more than 1 per cent of its tariff lines beyond the Member's sensitive entitlement; and (b) that the Member concerned either provides a further expansion of 0.5 per cent of domestic consumption for all its Sensitive Products or provides that, for any line concerned, the tariff cut is implemented two years faster than would otherwise be required or is increased by an additional ten percentage points *ad valorem*.]

77. Where the existing bound tariff quota volume already represents 10 per cent or more of domestic consumption, the obligations to expand the tariff quota volumes by the percentages of domestic consumption specified in paragraph 74 may be reduced by 0.5% for each deviation. Where the existing bound tariff quota volume represents 30 per cent or more of domestic consumption, the obligations to expand the tariff quota volumes by the percentages of domestic consumption specified in paragraph 74 above may be reduced by 1 per cent for each deviation.

78. For developing country Members using the Sensitive Product deviation entitlements provided for in paragraph 73 above, the tariff quota expansion shall be two thirds of the volume for developed

[13] See Annex C regarding the calculation of these tariff quota expansion commitments under paragraph 74-83.

[14] For a developing country Member the relevant tariff threshold is 150 per cent *ad valorem* and the limit is, consistent with paragraph 72, one-third more than for a developed country Member. In addition, where a developing country Member applies a Special Product entitlement, the tariff threshold shall not apply.

[15] Iceland, Japan, Norway, Switzerland.

country Members. For developing country Members, domestic consumption shall not include self-consumption of subsistence production. Alternatively, developing country Members may choose from one of the three following options for use of their Sensitive Product entitlement by taking a smaller deviation than would otherwise be required under paragraph 63 above at the rate of:

(a) one-third less than the formula cut otherwise applicable for no more than half of their Sensitive Product entitlement implemented over 3 years; or

(b) one-half less than the formula cut otherwise applicable for no more than one-third of their Sensitive Product entitlement implemented over 2 years; or

(c) two-thirds less than the formula cut otherwise applicable for no more than one-quarter of their Sensitive Product entitlement by the end of the first year of implementation.

79. For the remainder of their Sensitive Product tariff lines, a developing country Member may either take the full formula tariff cut, but with an implementation period that is three years longer than would otherwise be required, or apply tariff quota expansion.

80. A Member may also choose to take the full formula cut on all the lines but with an implementation period that is three years longer than would otherwise be required.

81. Where recourse is taken to the provisions above there would be no requirement for tariff quota expansion on the relevant tariff lines except as provided for in paragraph 79 above.

82. Expansion of the tariff quota for a Sensitive Product shall be scheduled and applied *erga omnes* on a most-favoured-nation basis only. The first instalment shall occur on the first day of implementation and be a minimum of one quarter of the total additional domestic consumption. The remaining three-quarters of the total shall be added in three steps at the expiry of each subsequent twelve-month period.

83.

Either:

No tariff line may be declared sensitive and subject to a tariff quota for Sensitive Products unless that tariff line was already subject to a pre-Doha tariff quota.

Or:

Members are entitled to declare sensitive any tariff line, irrespective of whether that tariff line was already subject to a pre-Doha tariff quota.

C. Other Issues

Tariff escalation

84. The tariff escalation formula provided below shall apply to the list of primary and processed products attached in Annex D.[16]

85. In addition to the application of the tiered tariff reduction formula, tariff escalation shall be addressed in the following manner:

86. Instead of taking the cut that would otherwise apply to final bound tariffs in the band to which the processed product belongs (with the exception of the top band), the processed product shall take the cut that would, according to the tiered formula, otherwise be applicable to the tariffs that fall in the next highest band. A processed product in the top band shall be reduced by a cut which is equal to the cut that would otherwise have been applicable according to the tiered formula increased by 6 *ad valorem* points.

87. These supplementary cuts shall be moderated for the products concerned in two circumstances. First, where the absolute difference between the processed and primary product tariffs after application of the normal tariff formula would be 5 *ad valorem* percentage points or less in any given tier except in the case of the bottom tier, no additional tariff escalation adjustment shall be required.

88. Second, the tariff escalation adjustment formula cannot be applied in full where doing so would reduce the tariff for the processed product below that applicable to the primary product. In a situation where this would occur, the rate of reduction for the processed product shall be moderated to

[16] It is understood that conformity with the provisions of the modalities on this matter is without prejudice to whether or not tariff escalation, as a factual matter, does or does not continue to exist.

ensure that the final bound rate of the processed product equates to, but does not reduce below, the final bound rate for the primary product.

89. Tariff escalation treatment shall not apply to any product that is declared as Sensitive. Where the reduction for a tropical product would result in a reduction that is greater than the reduction under the tariff escalation formula, the tropical product reduction shall apply.

90. This modality shall be applied by developed country Members and developing country Members declaring themselves to be in a position to do so.

Commodities

91. In the event that adverse effects of tariff escalation for commodities were not to be eliminated via the tiered formula for reductions in bound duties and such specific measures on tariff escalation as are provided for, Members shall engage with commodity-dependent producing country Members to ensure satisfactory solutions.

92. Consistent with this, the following approach shall be applicable:

(a) commodity-dependent developing country Members, individually or as a group, shall identify and present products of interest to them for purposes of addressing tariff escalation to be adopted as part of the modalities. In doing so, they will indicate the match of products on which tariff escalation should be addressed;

(b) developed countries and those developing country Members declaring themselves to be in a position to do so shall undertake tariff escalation reductions in the identified products;

(c) at the end of the implementation period, the difference between the identified primary and processed products shall not exceed an agreed defined percentage spread in the event that the combined effect of reductions through the tiered formula, through liberalisation of tropical and diversification products and through the tariff escalation is not deemed to have been sufficient.

93. Provision shall be made also for suitable procedures for negotiations on the elimination of non-tariff measures affecting trade in commodities.

94. This work shall continue through the post-modality phase to be concluded no later than the scheduling phase. The Secretariat will provide technical assistance in support of the commodity-dependent developing country Members throughout this period.

95. Provision shall be made to ensure the possibility that Members may take joint action through adoption of suitable measures, including through adoption of intergovernmental commodity agreements, for stabilization of prices for exports of agricultural commodities at levels that are stable, equitable and remunerative. The provisions of Article XXXVIII in the chapter on Trade and Development of GATT 1994, Part IV which *inter alia* stipulates that the WTO Members could take "joint action" through "international arrangements" for ensuring "stable equitable and remunerative prices" for exports of primary agricultural commodities should be reviewed, clarified and improved so that, taken together with the role of Article XX (h) referred to in paragraph 100 below, an understanding will be reflected in the Agreement on Agriculture that the term "arrangements" covers both commodity agreements of which all interested producing and consuming countries are parties; and agreements of which only commodity-dependent producing countries are parties.

96. Action for negotiations and adoption of intergovernmental commodity agreements in pursuance of the provisions of the paragraph above may be taken either jointly by producing and consuming countries or by commodity-dependent producing countries only.

97. Such intergovernmental commodity agreements may be negotiated and adopted by the countries themselves, or adopted after negotiations undertaken under the auspices of the WTO, UNCTAD or international commodity organizations.

98. Intergovernmental commodity agreements may be negotiated and adopted on an international or regional basis.

99. Such agreements may provide for participation of association of producers.

100. The general exceptions provisions of Article XX (h) of GATT 1994 shall also apply to intergovernmental commodity agreements of which only producing countries of the concerned commodities are Members.

101. Technical assistance shall be provided for, *inter alia*, the improvement of world markets for commodities and adoption and implementation of intergovernmental commodity agreements.

102. Financial resources required by the international trade and other organizations for providing technical assistance in accordance with the provisions of paragraphs 100 and 101 above shall be monitored through the mechanism established in WTO for administering Aid for Trade.

Tariff simplification

103. No tariff shall be bound in a form more complex than the current binding. All simplified bound tariffs shall not amount to any increase over the original more complex tariff.

104.

Either:

All bound tariffs on products in a Member's Schedule shall be expressed as simple *ad valorem* tariffs using the methodology set out in Annex A to TN/AG/W/3 of 12 July 2006.

Or:

No less than 90 percent of bound tariffs on products in a developed country Member's Schedule shall be expressed as simple ad valorem tariffs using the methodology set out in Annex A to TN/AG/W/3 of 12 July 2006.[17] As regards, the residual unconverted tariff lines, each Member shall, by the end of the implementation period, have undertaken a review of the situation so that a decision can be taken no later than one year after the end of the implementation period on how to thereafter achieve 100% *ad valorem* coverage.

105. The above commitments shall be applied subject to the terms and conditions of the methodology set out in Annex N.

106. In any case, the most highly complex forms of bound tariffs, such as those resulting from complex composition matrices, shall be converted to *ad valorem* or specific tariffs. The method for converting these into specific or *ad valorem* tariffs shall be the methodology to calculate *ad valorem* equivalents as set out in Annex A to TN/AG/W/3 of 12 July 2006.

107. Developing country Members making such conversions shall have an additional two years to achieve this outcome, if applicable. For developing country Members that face challenges in converting non-ad valorem tariffs into ad valorem tariffs, efforts will be made to address such challenges, including through technical assistance. Least-developed country Members shall not be required to effect any such changes.

108. The simplified tariffs shall be specified in Members' Draft Schedules. In all cases of proposed simplification, Members shall supply supporting data that demonstrates that the proposed simplified bound tariff is representative of, and does not amount to any increase over, the original more complex tariff and that the proposed simplification is in conformity with the agreed methodology. All Members shall be given sufficient time for evaluation of the proposed changes and all Members undertaking such a simplification shall respond constructively to queries made regarding those proposed conversions. Upon request, the WTO Secretariat shall provide advice on technical matters and shall give particular technical assistance to developing country Members.

[This section on tariff simplification is illogical and unfair:

1) It is illogical because non *ad valorem* tariffs are an efficient means to minimize the disturbing impact of the highly fluctuating world prices on domestic farmers, in DCs as in developed countries. DCs need not only "*ensuring "stable equitable and remunerative prices" for exports of primary agricultural commodities*" (paragraph 95 above) but even more the stabilization of prices of their food imports and non *ad-valorem* tariffs are an efficient means to mitigate the impact of tariff reductions.

2) It is unfair because the developed countries have used extensively the more efficient non *ad valorem* tariffs whereas, having used a single bound tariff for all agricultural products, most DCs did not enjoy this opportunity. On the 34 WTO Members using non *ad valorem* tariffs, 17 are from DCs but for a very low proportion of their tariff lines for most of them (from 0.3% for India to 6.5% for Singapore), with two exceptions for Malaysia (26.2% of tariff lines) and Thailand (43.8% of tariff lines), two G-20 net agricultural exporting countries which, by the way, are also opposed to a large extent of Special Products (WTO Secretariat, *Calculation of ad valorem equivalents*

[17] In the case of the European Communities, however, this figure shall be 85% and, within the residual 15 percent that is not converted, up to but no more than 5% may be retained as compound or mixed tariffs.

(AVEs): data requirements and availability, TN/AG/S/11, 15 November 2004). On the other hand, the percentage on non *ad valorem* tariff lines is of 45.8% in the EU, 42.5% in the US, 30.1% in Canada, 18.4% in Japan, going up to 68.1% in Norway and 89% in Switzerland. Another large interest of specific duties is that they avoid the negative impacts of exchange rates fluctuations.

In the EU the percentage of non *ad valorem* lines is higher in the bands with the highest tariffs: 99 of the 100 lines in the band higher than 90%, 113 of the 115 lines in the band 60%-90%, 227 of the 274 lines in the band 30%-60% but for only 509 of the 1288 lines of the band 0%-30%.

Now that the non *ad valorem* tariffs have been extensively used for a long time by the developed countries to protect efficiently their agriculture and make it more competitive, time is up to get rid of them for all countries.

3) Yet this elimination is not a demand of the developed countries but of the G-20, at least of the most export-oriented ones as Brazil and Argentine which favour their offensive interests over the defensive interests of the overwhelming majority of the DCs belonging to the G-33 and G-90 which need to protect more efficiently their farmers: "*The experience has shown that the use of non-ad valorem tariffs has often been a form of disguised protectionism in agriculture trade, as the final tariff in ad valorem terms depends on prices and currency movements. As a consequence, maintaining additional layers of protection in market access jeopardizes the Doha Mandate for "substantial improvements in market access". The ongoing objective of full simplification, i.e., the binding of all agriculture tariffs in ad valorem terms, remains the basic position of the G-20*" (*G-20 Submission, Guidelines for modalities in tariff simplification*, December 17, 2007, http://www.tradeobservatory.org/library.cfm?refID=101150).

4) The overwhelming majority of DCs need to expand their import protection toolbox

The real issue for most DCs – including China and India belonging at the same time to the G-20 and G-33 – is not to simplify their agricultural tariffs: they are already over-simplified, most of them having a single bound tariff for all agricultural products and their applied tariffs are also over-simplified. For example WAEMU has only 4 levels of tariffs for all goods, including agriculture: 0%, 5%, 10% and 20%.

Most DCs need to reinforce and diversify their import protection toolbox so as to protect more the products which need it the most, not only through a large use of specific tariffs or complex tariffs but through the tools used by the developed countries, notably variable levies (EU) and import quotas (US). Indeed, as long as the applied duty remains within the bound level, there should not be any WTO objection to the type of duty used.

And DCs which have been suffering from an increased food dependency should be allowed to raise their bound level which goes much beyond the strict jacket of the Special Products which would allow only to minimize the level of tariff reductions.

Contrary to the conventional wisdom, variable levies are quite transparent and predictable for traders since, at least in the EU up to 1995, they were based on fixed entry prices for the next marketing year so that the exporters were aware of the variable levy they would have to pay given their CIF price at the EU border. This predictability was much higher than *ad valorem* tariffs given the large fluctuations in the world prices. Although they are forbidden the AoA, the EU has maintained measures equivalent to variable import levies for cereals and fresh fruits and vegetables and, as the EU has notified this way of tariffying them in its Schedules, they cannot be challenged at the WTO. No wonder that the EU has supported Chile in its case against Argentina over its prices-bands system, close to variable levies, arguing that "*the measure at issue should be considered an "ordinary customs duty", there is no breach of Article II:1(b) of the GATT 1994*" (paragraph 105) because "*Below bound duty rates, there is no specific level of predictability or transparency imposed on the administration or level of ordinary customs duties*" (paragraph 106), and because "*In addition, when, as in this case, the operation of the measure results in an increase in the entry price of imports that is transparent and predictable, then the system should be deemed to operate as an ordinary customs duty*".

Unfortunately the WTO rules have been built for the sake of the exporters only, to reinforce their "market access", with the "*long-term objective… to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time*" and not at all to defend the right of farmers to survive, particularly in DCs.

The recent explosion of agricultural prices and food riots and the burst of its bubble should have opened the eyes of WTO Members on the foolishness of dismantling the agricultural import protection, particularly in poor countries.]

Tariff quotas

(a) Bound in-quota tariffs[18]

109. For developed country Members, all in-quota tariffs shall be reduced either by 50 per cent or to a threshold of 10 per cent, whichever results in the lower tariff. The reductions shall be implemented on the same time-frame as for the expansion of tariff quotas. The maximum in-quota tariff on the first day of implementation shall be 17.5 per cent. Where the in-quota tariff rate is already bound at or below 5% per cent *ad valorem* it shall be reduced to zero at the end of the first year of the implementation period.[19]

110. Where, in its current Schedule, a Member has a tariff quota which includes a tariff line or tariff lines each of which has bound in-quota tariff(s) equal to or higher than the bound out-of-quota tariff(s), effectively making the tariff quota non-operational, the Member concerned may eliminate the tariff quota. In such a case, the Member concerned shall compensate for the elimination of these quotas by reducing the threshold referred to in the previous paragraph by two percentage points for all operational quotas.

111. Developing country Members' in-quota tariffs shall be reduced by 15 per cent. SVEs' in-quota tariffs shall be reduced by 7.5 per cent[20]. However, there shall be no equivalent to the developed country Member requirement to reduce to a threshold if lower; nor to the requirement to reduce rates at or below 5 per cent *ad valorem* to zero. The reductions shall be implemented on the same time-frame as for the expansion of tariff quotas. Where the tariff lines in a tariff quota are declared to be Special Products with zero cut, there shall be no requirement to reduce the in-quota tariff.

112. Where a small, vulnerable economy has a tariff quota, all the tariff lines of which are declared Special Products, it shall not be required to reduce the in-quota tariffs.

113. The relevant reduction by RAMs shall be further reduced to one third of the percentage cut required for developing country Members. In-quota tariffs at or under 15 per cent need not be reduced. Saudi Arabia, the Former Yugoslav Republic of Macedonia, Viet Nam, Tonga and Ukraine, as very recently-acceded Members and small low-income RAMs with economies in transition[21] need not make any reductions.

114. All in-quota tariffs shall be bound in *ad valorem* form. For expanded Sensitive tariff quotas a single rate of duty, equal to the lowest current bound in-quota tariff applicable to the tariff lines covered by a single quota, shall be the starting point for reductions for all tariff lines covered by the expanded tariff quota..

(b) Tariff quota administration

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[18] Reductions in in-quota tariffs shall not count for the purposes of calculating the average cuts.

[19] Switzerland shall be allowed not to reduce to zero the in-quota tariff for 2 tariff lines of wine in bottles, and not to reduce to 10 per cent the in-quota tariffs for two tariff lines of bread cereals. This shall apply to bound in-quota tariffs only. Switzerland shall compensate with new market access opportunites equivalent to 1 per cent of domestic consumption.

[20] Venezuela may also apply this provision.

[21] This is applicable to Albania, Armenia, Georgia, Kyrgyz Republic, Moldova and Mongolia

115. Tariff quota administration of scheduled tariff quotas shall be deemed to be an instance of "import licensing" within the meaning of the Uruguay Round Agreement on Import Licensing Procedures and, accordingly, that Agreement shall apply in full, subject to the Agreement on Agriculture and to the following more specific and additional obligations.

116. As regards the matters referred to in paragraph 4(a) of Article 1 of that Agreement, as these agricultural tariff quotas are negotiated and scheduled commitments, publication of the relevant information shall be effected no later than 90 days prior to the opening date of the tariff quota concerned. Where applications are involved, this shall also be the minimum advance date for the opening of applications.

117. As regards paragraph 6 of Article 1 of that Agreement, applicants for scheduled tariff quotas shall apply to one administrative body only.

118. As regards the matters referred to in paragraph 5(f) of Article 3 of that Agreement, the period for processing applications shall be, unqualifiedly, no longer than 30 days for "as and when received" cases and no longer than 60 days for "simultaneous" consideration cases. The issuance of licences shall, therefore, take place no later than the effective opening date of the tariff quota concerned, except where, for the latter category, there has been an extension for applications allowed for under Article 1.6 of that Agreement.

119. As regards Article 3.5(i), licences for scheduled tariff quotas shall be issued in economic quantities.

120. Tariff quota "fill rates" shall be notified.

121. In order to ensure that their administrative procedures are consistent with Article 3.2 of that Agreement, "no more administratively burdensome than absolutely necessary to administer the measure", importing Members shall ensure that unfilled tariff quota access is not attributable to administrative procedures that are more constraining than an "absolute necessity" test would demand.

122. Where licences held by private operators exhibit a pattern of being less than fully utilized for reasons other than those that would be expected to be followed by a normal commercial operator in the circumstances, the Member allocating the licences shall give this due weight when examining the reasons for under utilization and considering the allocation of new licences as provided for under Article 3.5 (j).

123. Where it is manifest that a tariff quota is under filled but there would appear to be no reasonable commercial reason for this to be the case, an importing Member shall request those private operators holding unused entitlements whether they would be prepared to make them available to other potential users. Where the tariff quota is held by a private operator in a third country, e.g. as a result of country-specific allocation arrangements, the importing Member shall transmit the request to the holder of the allocation concerned.

124. As regards Article 3.5(a) (ii) of that Agreement, Members shall make available the contact details of those importers holding licences for access to scheduled agricultural tariff quotas, where, subject to the terms of Article 1.11, this is possible and/or with their consent.

125. Members shall provide for an effective re-allocation mechanism in accordance with the procedures outlined in Annex E

Special Agricultural Safeguard (SSG)

126. Developed country Members shall reduce to 1 per cent of scheduled tariff lines the number of lines eligible for the SSG on the first day of implementation, and it shall have been eliminated no later than the end of the seventh year of implementation. At no time during this seven year period may the total duty applicable on a tariff line exceed the pre Doha round tariff binding. If a tariff line included in the 1 per cent SSG entitlement is declared sensitive, the tariff quota expansion applicable to a two-thirds deviation shall apply. In addition, products subject to delayed implementation shall not be subject to other flexibilities reducing quota size other than sub-allocation. The standard implementation period for in-quota rate reductions shall apply to tariff lines included in the 1 per cent SSG entitlements.

127. For developing country Members the SSG coverage shall be reduced to no more than 2.5 per cent of tariff lines on the first day of implementation. For SVEs the SSG coverage shall be reduced to no more than 5 per cent of lines over 12 years. The terms and conditions of the SSG shall remain

unchanged from the terms and conditions in the Uruguay Round Agreement on Agriculture except that the tariff rates concerned shall be updated to reflect the outcome of the Doha Round negotiations.
128. Article 5 of the Agreement on Agriculture shall be amended accordingly to reflect these modalities.

D. SPECIAL AND DIFFERENTIAL TREATMENT

Special Products

129. Developing country Members shall be entitled to self-designate Special Products guided by indicators[22] based on the criteria of food security, livelihood security and rural development. There shall be 12 per cent of tariff lines available for self-designation as Special Products. Up to 5 per cent of lines may have no cut. The overall average cut shall, in any case, be 11 percent.*

* *A number of developing country Members have expressed reservations concerning the numbers specified in this paragraph, noting also that this may be affected by what is decided in other areas of the text.*

130. In the case of small vulnerable economies, including those among them which are ceiling binding and homogenously low binding countries, they may, if they choose to do so, apply the moderated tariff tiered formula for SVEs provided for in paragraph 65 above plus the Special Product entitlement outlined above. Alternatively, they may chose not to apply the tiered formula but simply meet an overall average cut of 24 per cent through having in effect opted to designate as many tariff lines as they choose as Special Products. The tariff lines so chosen need not be subject to any minimum tariff cut and need not be guided by the indicators.

131. In the case of RAMs, the maximum tariff line entitlements to Special Products shall be 13 per cent and the overall average cut to be achieved for the designated tariff lines may be further reduced to 10 per cent.

[The G-33's fight for Special Products and the Special Safeguard Mechanism is much too short to respond to the needs of DCs farmers and of their overall development

The 11th of the 12 indicators proposed by the G-33 (Annex F) is interesting but much too short to counteract dumping: "*The product in respect of which product specific AMS or blue box support has been notified by any WTO member and which has been exported by that notifying Member during any year from 1995 to the starting date of the implementation of Doha round*". Unfortunately, we have seen: 1) that the AMS is a highly misleading indicator of support given its prevailing fake market price support component; 2) that the blue box has almost disappeared in the EU and 3) that the US countercyclical payments could not enter the "new" blue box. Therefore the G-33 indicator should include all domestic subsidies going, directly or indirectly, to the exported product, including of the green box, particularly in its new form of the allegedly decoupled income support of the Single Payment Scheme which concerns today the bulk of the EU domestic subsidies.]

Special Safeguard Mechanism (SSM)

132. The SSM shall have no *a priori* product limitations as to its availability, i.e. it can be invoked for all tariff lines in principle. A price-based and a volume-based SSM shall be available. In no circumstances may any product be, however, subject to the simultaneous application of price – and volume-based safeguards. Nor shall there be application of either of these measures if an SSG, a measure under GATT Article XIX, or a measure under the Agreement on Safeguards is in place.

133. As regards the volume-based SSM, it shall be applied on the basis of a rolling average of imports in the preceding three-year period (hereafter "base imports").

[It is not clear: does it mean during the three previous civil years or during the 36 previous months? This makes a lot of differences in the lag to trigger the SSM! The ambiguity is stressed by the fact that paragraph 135 below speaks about "*the most recent three-year period preceding the year of importation*" and also "*over the preceding 12 months*" and paragraph 140 about "*the three year rolling average*".]

On this basis, the applicable triggers and remedies shall be set as follows:

(a) where the volume of imports during any year exceeds 110 per cent but does not exceed 115 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 25 per cent of the current bound tariff or 25 percentage points, whichever is higher;

[22] See Annex F.

(b) where the volume of imports during any year exceeds 115 per cent but does not exceed 135 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 40 per cent of the current bound tariff or 40 percentage points, whichever is higher;

(c) where the volume of imports during any year exceeds 135 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 50 per cent of the current bound tariff or 50 percentage points, whichever is higher;

(d) where, formally, these triggers could be met, but the absolute level of imports is manifestly negligible in relation to domestic production and consumption, remedies would not be applied.

134. Imports under any scheduled tariff rate quota commitment may be counted for the purpose of determining the volume of imports required for invoking the volume-based SSM (except where a volume increase is entirely attributable to a scheduled tariff rate quota increase under Doha implementation phasing), but no additional duty shall be imposed on imports within such tariff rate quota commitments.

135. As regards the price-based SSM, it shall be applicable where the c.i.f. import price[23] of the shipment[24] entering the customs territory of the developing country Member, expressed in terms of its domestic currency falls below a trigger price[25] equal to 85 per cent of the average monthly MFN-sourced price[26] for that product for the most recent three-year period preceding the year of importation for which data are available, provided that, where the developing country Member's domestic currency has at the time of importation depreciated by at least 10 per cent over the preceding 12 months against the international currency or currencies against which it is normally valued, the import price shall be computed using the average exchange rate of the domestic currency against such international currency or currencies for the three-year period referred to above.

136. The price-based SSM remedy shall apply on a shipment-by-shipment basis. The additional duty shall not exceed 85 per cent of the difference between the import price of the shipment concerned and the trigger price.

137. Developing country Members shall not normally take recourse to the price-based SSM where the volume of imports of the products concerned in the current year is manifestly declining, or is at a manifestly negligible level incapable of undermining the domestic price level.

138. The calculation of volume or price triggers, and the application of measures in accordance with the relevant provisions of this section, shall be on the basis of MFN trade only.

139. Any shipments of the product in question which, before the imposition of the additional duty, have been contracted for and were en route after completion of custom clearance procedures in the exporting country, either under the price- or volume-based SSM, shall be exempted from any such additional duty, provided that where a volume-based SSM may be applicable in the next twelve-month period, the shipment of the product in question may be so counted in that period for the purposes of triggering the SSM.

140. The volume-based SSM may be maintained for a maximum period of 12 months from the initial invocation of the measure, unless a seasonal product is involved, in which case the SSM shall apply for a maximum of six months or to cover the period of actual seasonality, whichever is the

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[23] Hereafter the "import price".

[24] A shipment shall not be considered for purposes of paragraphs 135 and 146 unless the volume of the product included in that shipment is within the range of normal commercial shipments of that product entering into the customs territory of the importing developing country Member.

[25] The trigger price shall be publicly disclosed and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

[26] Hereafter the "reference price". The reference price used to invoke the provisions of this paragraph shall be the average monthly c.i.f. unit value of the product concerned.

longer. For the next immediate (consecutive) period, the three year rolling average shall be inclusive of that immediately preceding period of imports when the SSM was in place. However, where this would have the effect of lowering the three year rolling average below the level which triggered the SSM in the initial period, the trigger level for the initial period shall apply. No product shall be subject to the volume-based SSM consecutively for more than two periods and where such consecutive application has occurred this may not be resorted to again before the elapse of a further two consecutive periods.

141. The operation of the SSM shall be carried out in a transparent manner and the basis upon which ongoing calculations of rolling averages of import volumes and prices shall be accessible to all Members so that they can be fully informed of the basis upon which any potential actions may be taken. Any developing country Member taking action shall give notice in writing, indicating the tariff lines affected by the additional SSM duty and including relevant data, to the Committee on Agriculture as far in advance as may be practicable or, where this is not possible, no later than 15 days after the implementation of such action. The Member taking action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

142. The above provisions on triggers and remedies apply subject to the limitation that the pre-Doha bound tariff is respected as the upper limit and shall prevail as such.

143. For least-developed country Members they may, nevertheless, apply the maximum remedy provided for above even if this would otherwise entail breach of a pre-Doha bound tariff, provided that the maximum increase over a pre-Doha bound tariff does not exceed 40 *ad valorem* percentage points or 40 per cent of the current bound tariff, whichever is higher. This would be provided that all other relevant conditions for application of the measure have been met.

144. [In the case of SVE's referred to in footnote 11 to these modalities, they may apply the maximum remedy provided for above even if this would otherwise entail breach of a pre-Doha bound tariff, provided that the maximum increase over a pre-Doha bound tariff does not exceed 20 *ad valorem* percentage points or 20 per cent of the current bound tariff, whichever is higher, for up to a maximum of (10-15) per cent of tariff lines in any given period. This would be provided that all other relevant conditions for application of the measure have been met.

145. For developing country Members other than those referred to in the preceding paragraph, they may apply the maximum remedy provided for above even if this would otherwise entail breach of a pre-Doha bound tariff provided that (a) the maximum increase over the pre-Doha bound tariffs would be no more than 15 *ad valorem* percentage points or 15 per cent of the current bound tariff, whichever is the higher; (b) the maximum number of products for which this provision would be invoked would be no more than 2-6[27] in any given period; and (c) this would not be permissible for two consecutive periods. All other provisions would be applicable.]

146. The relevant Articles of the Agreement on Agriculture shall be amended to reflect the above modalities.

[As the CIF import price is generally a highly dumped price and as the SSM is intended to provide DCs with more easily actionable remedy tools than the prevailing ones of the Anti-dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (ASCM), the remedy cannot be lower than what is already stated in these agreements, which both allow the same measures to compensate for the full amount of dumping:

a) "*The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less*, [not underlined in the text] *are decisions to be made by the authorities of the importing Member.*" (ADA article 9.1).

b) "*The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the countervailing duty to be imposed shall be the full*

[27] For the purposes of this provision a "product" is identifiable at the 6-digit level of the Harmonized System (HS) nomenclature, but with the understanding that this can entail a maximum of [4 - 8] tariff lines *per product* below that 6-digit level.

amount of the subsidy or less, [not underlined in the text] *are decisions to be made by the authorities of the importing Member*." (ASCM article 19.2).
c) As the SSM is a substitute to the two procedures (ADA and ASCM) and should be more affordable to DCs, the SSM should raise tariffs to at least cover the full amount of dumping or/and subsidies to the exported products.

According to Ramesh Sharma of FAO, "*The basic idea behind the G-33 proposal on remedy is similar to that of the SSG, i.e. the remedy should be linked to the depth of the price depression. While the SSG had an explicit and elaborate schedule for determining additional duties for given levels of price depressions, the G-33 proposal is very simple which is to apply an additional duty to the c.i.f. import price (the current, depressed price) which could make up for all the difference between the import price and the trigger price. In other words, the remedy would offset 100% of the depression so that the new, SSM duty-inclusive import price is equal to the reference price.*" (Ramesh Sharma, *Triggers and Remedy for Special Safeguard Mechanism*, Commodities and Trade Division, FAO, December 2006, http://www.faologe.ch/SSM%20-%20triggers%20and%20remedy%20-%20Dec%202006%20-%20Sharma.pdf). The more so as "*the three WTO general trade remedy measures apply only to a volume surge and not to import price depressions*".

The present provisions for the SSM cannot safeguard the domestic producers in the permanent structural context where the world reference prices and the c.i.f. import prices are highly volatile as we have acknowledged in the last two years.

The increase in tariff should rest on revised figures of the trigger price and the c.i.f. price to take into account the change in the dumping rates since the reference period so as to arrive at full cost world prices (viz. without subsidies), but also the change in the exchange rates between the two periods. Even when the current c.i.f. price is higher than the trigger reference price (or a moving average of recent world reference prices), higher tariffs are justified if the full cost c.i.f. price in the domestic currency is lower than the full cost trigger price because the dumping rate was higher during the reference period than it is now or because the domestic currency.]

Fullest liberalization of trade in tropical and diversification products

147. For those tropical and diversification products attached in Annex G, the following modality shall be applied over and above that which would otherwise result from application of the tiered formula.

148.

Either:

Where the scheduled tariff is less than or equal to 25 per cent ad valorem, it shall be reduced to zero. Where it is greater than 25 per cent ad valorem the applicable tariff cut shall be 85 per cent. There shall be no sensitive product treatment for any of the products appearing on the annexed list. The implementation of the cuts concerned shall be in four equal annual steps for all developed country Members.

Or:

Where the tariff is greater than or equal to 10 per cent, it shall be reduced by the percentage cut specified in paragraph 61 (d) above, except for tariffs in the top band which shall be reduced by the tariff escalation tariff cut for that band increased by 2 ad valorem points. Where the tariff is less than 10 per cent, it shall be reduced to zero. The reductions concerned shall be implemented by developed country Members in accordance with the general tariff reduction implementation period. Developing country Members declaring themselves in a position to do so are encouraged to make additional efforts on tropical products beyond what would be required under the tiered formula

Long-standing preferences and preference erosion

149.

Either:

For the products listed in Annex H, there shall be no tariff cuts on the items in that list for 10 years. Tariff cuts shall commence only after that point and shall be implemented over five years in equal annual instalments thereafter.

Or:

For those products listed in Annex H, where:

(a) *the pre-Doha MFN bound tariff is greater than 10 per cent ad valorem, and*
(b) *over the most recent three-year period, the total value of trade from long-standing preference receiving country Members is greater than US$ 50,000 or is 3 per cent of any long-standing preference receiver's total agricultural trade to the market concerned, and*
(c) *there is unconstrained long-standing preference eligibility in the market concerned,*
tariff cuts by long-standing preference granting country Members shall be implemented in equal annual instalments steps over a period that is two years longer than the implementation period for developing country Members for tariff cuts under the tiered formula.
Where, however, there is an overlap between products subject to this provision and those covered by the tariff escalation and/or tropical products provisions, the latter provisions shall prevail, except for the specific list of products identified in Annex X on which tariff reduction commitments shall proceed as is specifically determined in that Annex.
150. Long-standing preference granting Members having undertaken to provide targeted technical assistance, including additional financial and capacity building assistance to help address supply-side constraints and to promote the diversification of existing production in the territories of preference receiving Members, progress shall be reviewed annually.

E. LEAST-DEVELOPED COUNTRIES

151. Least-developed country Members are not required to undertake reductions in bound duties.
[This is theoretical since the IMF and World Bank, which are closely cooperating with the WTO in its "coherence policy" and which participate as observers in the meetings of the Committee on agriculture, are always expressing their reluctance to import protection. Thus the World Bank's Representative declared at the Committee on agriculture the 15-11-04: "*Unfortunately... the concept of food security has been used in the Doha negotiations primarily to suggest that developing countries should be allowed to maintain high barriers to imports of food products as a means of increasing national production, under the rubric of 'special products' or as a component of the 'development box'… This kind of policy is likely to have only very limited short-term benefits to farmers - and to be counter-productive to the objective of long-run structural food security.*"]
152. We reaffirm the need to facilitate LDCs' secure, beneficial and meaningful integration into the multilateral trading system.
[But it is precisely because they are too much integrated into the multilateral trading system that LDCs are so poor, as attested by the ratio of exports+imports of goods and services over 2 GDP in 2006: contrary to the Washington consensus, the more a country is integrated into world trade, the less it is developed, with the exception of China which has become the industrial workshop of the world.

US	Japan	EU-27	India	Latin America	World	LDCs	LMICs	SSA	China
13.5%	13.5%	14.3%	23.5%	24.5%	27%	29.5%	32.5%	34.5%	36%

Source: World Bank's country data profiles and EU Commission.]
In this regard, we recall the *Decision on Measures in Favour of Least-Developed Countries* contained in decision 36 of Annex F of the Hong Kong Ministerial Declaration (the "Decision"), and agree that developed Members shall, and developing country Members declaring themselves in a position to do so should[28]:
(a) (i) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs no later than the start of the implementation period in a manner that ensures stability, security and predictability.
(ii) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing country Members at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.

[28] Consistent with the text of the "Decision on Measures in Favour of Least-Developed Countries" in Annex F of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC)

(iii) Developing country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.

(b) Provide meaningfully enhanced market access for all LDCs.

(c) Ensure that preferential rules of origin applicable to imports from LDCs will be transparent, simple and contribute to facilitating market access in respect of agricultural products. In this connection, we urge Members to use the model provided in document TN/MA/W/74, as appropriate, in the design of the rules of origin for their autonomous preference programmes.

153. Accordingly, developed country Members shall inform WTO Members, by a date to be agreed, of the products that will be covered under the commitment to provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs defined at the tariff line level. The agreement on the date by which this information shall be provided shall be concluded prior to the date of the Special Session of the Ministerial Conference to be held to take decisions regarding the adoption and implementation of the results of the negotiations in all areas of the DDA (the "Single Undertaking").

154. As part of the review foreseen in the Decision, the Committee on Trade and Development shall monitor progress made in its implementation, including in respect of preferential rules of origin. The details of the monitoring procedure shall be defined and agreed by the Negotiating Group on Market Access by the time of the submission of final schedules. Under the monitoring procedure, Members shall annually notify the Committee on Trade and Development (a) the implementation of duty-free and quota-free programmes, including the steps taken and possible timeframes established to progressively achieve full compliance with the Decision and (b) the corresponding rules of origin. The first notification under this monitoring procedure shall be made by the start of the implementation of the results of the DDA. The Committee on Trade and Development shall review such notifications and shall report annually to the General Council for appropriate action.

COTTON MARKET ACCESS

155. Developed country Members and developing country Members declaring themselves to be in a position to do so shall give duty- and quota-free access for cotton exports from least-developed country Members from the first day of the implementation period.

[The US has agreed to import duty free African cotton but, despite the low level of its tariff rate quota on 5% of the domestic consumption – the duty inside the quota going from 0 to 4.4 cents/kg, against 31.4 cents/kg beyond the quota –, the US imports have reamined much below the quota from 2000 to 2007: at 6,676 tonnes on average (http://cottonusa.files.cms-plus.com/economicData/CWS-yearbook-12-10-2007.pdf), i.e. 9.7% of the tariff quota of 68,670 tonnes. And they can only decrease since the tariff quota is a percentage of the domestic consumption by the textile industry which has dropped sharply – from 11.349 million bales (i.e. 2,474 million tonnes, 1 bale=218 kg) in 1997 to 4.600 million bales (1.003 million tonnes) in 2007 – due to the intensified competition of imported Chinese clothing. Which explains the necessity for the USA to export an increased share of its cotton production: from 39.2% in 2000 to 85.9% in 2007.

As the bill of February 2006 having suppressed the Step 2 subsidies from 1st August 2006 relates not only to the part granted to exporters but also to that going to the US textile industry – condemned by the cotton panel as contradicting the national treatment clause (GATT article 3) –, this should imply larger cotton imports and the end result will be the necessity to export an ever increased share of production.]

156. Developing country Members that are not in a position to give duty- and quota-free access for cotton exports from least-developed country Members from the first day of the implementation period shall undertake to look positively at possibilities for increased import opportunities for cotton from least-developed country Members.

G. SMALL, VULNERABLE ECONOMIES

157. For the purposes of these modalities, this term applies to Members with economies that, in the period 1999 to 2004, had an average share of (a) world merchandise trade of no more than 0.16 per cent or less, and (b) world trade in non-agricultural products of no more than 0.1 per cent and (c) world trade in agricultural products of no more than 0.4 per cent.

158. Developed country Members and developing country Members in a position to do so shall provide enhanced improvements in market access for products of export interest to Members with small, vulnerable economies.

159. More specific provisions are to be found in relevant sections of this document.

III. EXPORT COMPETITION

A. GENERAL

160. Nothing in these modalities on export competition can be construed to give any Member the right to provide, directly or indirectly, export subsidies in excess of the commitments specified in Members' Schedules, or to otherwise detract from the obligations of Article 8 of that Agreement. Furthermore, nothing can be construed to imply any change to the obligations and rights under Article 10.1 or to diminish in any way existing obligations under other provisions of the Uruguay Round Agreement on Agriculture or other WTO Agreements.

[Fine, but this provision cannot prevent a continued huge dumping of US and EU agricultural products, for many reasons.

1) The first thing to do is to agree on a straightforward definition of agricultural dumping as exports made at prices below the Member's average total cost of production of each product without all subsidies, including upstream (on investments and inputs, of which feed) and downstream (on processing and marketing) the production level, and whatever the box in which they are classified: amber, blue and green. More simply all domestic subsidies to an exported product should be considered as export subsidies. This is what "directly and indirectly" in this paragraph 153 should mean. We have shown above (in comments to paragraph 64) that domestic subsidies going to the exported products have been much larger since 1995 than the formal export subsidies: if this is true for the EU it is even more for the US where export subsidies have been much lower.

2) Beyond "*other WTO Agreements*" or within them we must include the Appellate Body's rulings which should be considered as precedents to calculate export subsidies and incorporate them in the Members' Schedules.

Paragraph 11 of the Hong Kong Declaration of 18 December 2005 has stated: "*Without prejudice to Members' current WTO rights and obligations, including those flowing from actions taken by the Dispute Settlement Body*". If this paragraph was focused on the cotton issue the Ministerial Declaration' statement should be enlarged to all products, at least to all agricultural products. The Appellate Body rulings of December 2001 and December 2002 in the Dairy products of Canada case as in the US cotton case of March 2005 and the EU sugar case of April 2005 have all judged that domestic subsidies of all colours should be taken into account to assess dumping. Unfortunately the WTO Members do not consider that the Appellate Body rulings have a value of precedents.

The WTO should be rebuild on a new DSU where the panellists and the Appellate Body should interpret the cases within a hierarchy of norms in which the WTO rules would be superseded by the international agreements on human rights. Thus Article 103 of the United Nations Charter establishes the supremacy of the UN Charter over other international agreements. The Charter obliges to guarantee human rights – particularly the right to food – as elaborated in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic Social and Cultural Rights (1966).]

161. Nor can anything in these modalities be construed to diminish in any way the existing commitments contained in the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-importing Developing Countries of April 1994 and the Decision on the Implementation-related Issues and Concerns of 14 November 2001 on, inter alia, commitment levels of food aid, provision of food aid by donors, technical and financial assistance in the context of aid programmes to improve agricultural productivity and infrastructure, and financing normal levels of commercial imports of basic foodstuffs. Nor could it be understood to alter the regular review of these decisions by the Ministerial Conference and monitoring by the Committee on Agriculture.

B. SCHEDULED EXPORT SUBSIDY COMMITMENTS

162. Developed country Members shall eliminate their remaining scheduled export subsidy entitlements by the end of 2013. This shall be effected on the basis of:

(a) budgetary outlay commitments being reduced by 50 per cent by the end of 2010 in equal annual instalments from the date of entry into force, with the remaining budgetary outlay commitments being reduced to zero in equal annual instalments so that all forms of export subsidies are eliminated by the end of 2013.

(b) quantity commitment levels being applied as a standstill from the commencement until the end of the implementation period at the actual average of quantity levels in the 2003-05 base period.

Furthermore, throughout the implementation period, there shall be no export subsidies applied either to new markets or to new products.

163. Developing country Members shall eliminate their export subsidy entitlements by reducing to zero their scheduled export subsidy budgetary outlay and quantity commitment levels in equal annual instalments by the end of 2016.

164. In accordance with the Hong Kong Ministerial Declaration, developing country Members shall, furthermore, continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2021, i.e. five years after the end-date for elimination of all forms of export subsidies.

C. EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

165. Export credit, export credit guarantees or insurance programmes shall comply with the provisions set out in Annex J.

D. AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

166. Agricultural exporting state trading enterprises shall comply with the provisions of Annex K.

E. INTERNATIONAL FOOD AID

167. International food aid shall comply with the provisions of Annex L.

F. COTTON

168. Those export subsidies for cotton referred to in paragraph 162 above are prohibited in accordance with the mandate contained in paragraph 11 of the Hong Kong Ministerial Declaration. However, developing country Members which have any export subsidy entitlements referred to in that paragraph shall comply with this prohibition no later than the end of the first year of the implementation period.

[1) US cotton exports: formal export subsidies – the share of STEP 2 going to exporters – have only represented on average 8.0% of total subsidies to the exported cotton from 1995 to 2005 – $122 million on the $1.514 billion – and that percentage has been of 7.4% from 1999 to 2005: $158 million on $2.130 billion. And the share of exports to production has reached 70% on average from 2003 to 2005, peaking at 85.9% in 2007.

And, as 73.5% of the US cotton was exported in 2005, eventually the elimination of the $253 million of STEP 2 formal export subsidies the 1st August 2006 has represented only 7.1% of the $3.575 billion of subsidies granted to the exported cotton in 2005, against $3.322 billion in domestic subsidies to the exported cotton! The continuation of these unchallenged subsidies is not extraneous to the fact that the world cotton price (Northern Europe A Index), for which the US is price maker (it accounts for 40% of global exports) has collapsed to 46.11 cts/lb on November 3, 2008.

2) EU cotton exports: the EU has always claimed to be a fair trader in cotton as one of the largest importers, without import duty and export subsidies. So that it has been able to convince that, contrary to the US, it was the best friend of the C4s' fight in the cotton issue at the WTO.

However although the EU production dropped by 26% from 1997 to 2006, imports have fallen by 63% and exports have increased by 88% so that their share of the production has jumped from 37.2% to 94.6%, a higher proportion than for the US although the exported volume is clearly very much smaller. Consequently, if EU total direct payments to cotton have risen by 14.4% from 1997 to 2006, payments to the exported cotton have jumped by 190.6%, i.e. have almost trebled! Comparing the €866 million (or $941.6 million) of EU subsidies to the $413.1 million value of the 335,000 tonnes exported in 2006 (table 7) shows that the subsidy has been 128% higher or that the dumping rate has been of 56.1%! These 335,000 of EU cotton exports in 2006 – they have never been so large – are not insignificant as they exceed the level of Mali's exports (229,000 tonnes) which is the largest exporter of C4 and in West Africa. (More details on the cotton issue are available in *Updated comments on the cotton issue in the Revised Draft on agricultural modalities of 10 July 2008*, Solidarité, 4 December 2008).]

169. To the extent that new disciplines and commitments for export credits, export credit guarantees or insurance programmes, agricultural exporting state trading enterprises and international food aid create new and additional obligations for Members as regards cotton, any such obligations shall be implemented on the first day of the implementation period for developed country Members, and by the end of the first year of the implementation period for developing country Members.

IV. MONITORING AND SURVEILLANCE

170. See Annex M.

[See comments to this annex.]

V. OTHER ISSUES

A. [DIFFERENTIAL EXPORT TAXES

B. GIS]

C. EXPORT PROHIBITIONS AND RESTRICTIONS

171. In order to strengthen the existing disciplines on export prohibitions and restrictions of Article XI.2(a) of GATT 1994, Article 12 of the Agreement on Agriculture shall be modified to include the following elements.

172. Prohibitions or restrictions under Article XI.2(a) of GATT 1994 in Members' territories shall be notified to the Committee on Agriculture within 90 days of the coming into force of these provisions.

173. A Member instituting export prohibitions and restrictions under that provision shall give notice of the reasons for introducing and maintaining such measures.

174. A Member which intends to institute export prohibitions and restrictions shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the proposed measure. The Member instituting such export prohibitions and restrictions shall provide, up request, the interested importing Member with necessary information, including relevant economic indicators.

175. The Member instituting the measure shall report the progress made in the consultations to the Committee on Agriculture.

176. The Committee on Agriculture shall provide for annual notification update and surveillance of these obligations.

177. As provided in paragraph 7 of Article 18 of the Agreement on Agriculture, any Member may bring to the attention of the Committee on Agriculture such measures under that provision which it considers ought to have been notified by another Member.

178. Existing export prohibitions and restrictions in foodstuffs and feeds under Article XI.2 (a) of GATT 1994 shall be eliminated by the end of the first year of implementation.

179. Any new export prohibitions or restrictions under Article XI.2 (a) of GATT 1994 should not normally be longer than 12 months, and shall only be longer than 18 months with the agreement of the affected importing Members.

180. The above provisions apply consistently with Article 12.2 of the Agreement on Agriculture. To the extent that the above provisions on consultations apply any obligations additional to Article 12 of the Agreement on Agriculture, they shall not apply to least-developed and net food-importing developing countries.[29]

[It is not fair to prevent export restrictions if they are motivated by the legitimate concern to ensure the priority of the food security of the citizens in case of a surge in food prices, and as long as there does not exist a worldwide government which would guarantee such security. In the recent explosion of world food prices, the argument of international institutions and developed countries that export restrictions – and more generally the lack of free trade in agricultural products – are the root causes of soaring prices, cannot be sustained. In most cases export In fact it is the agricultural trade liberalization and the deliberate reduction of stocks, particularly in cereals, in the

[29] Cameroon, Congo (Brazzaville), Ghana, Nigeria and Swaziland shall have access also to this provision.

EU and US, which have led to the explosion in food prices and to the export restrictions taken by DCs, restrictions which were only adopted after prices had already exploded to levels that put domestic food security at risk.]

ANNEX B

ANNEX 2 OF THE AGREEMENT ON AGRICULTURE SHALL BE AMENDED AS FOLLOWS:

[Most of the following changes to Annex 2 refer to the necessity to better adapt it to the supposed needs of DCs. But this kicks the ball into touch to avoid the core issue of challenging the trade distorted effect of the developed countries' green box. The only function of the following possibilities for DCs to use more green box subsidies – although most DCs cannot afford to grant them – is to build a smokescreen avoiding to question the legitimacy of exempting such subsidies from reduction commitments in developed countries and from being taken into account in their dumping. DCs have all the less problems with the green box that they do not have any problem with the amber box with the leeway given by the AoA article 6.2 (input and investments subsidies) and article 6.4 (*de minimis* of 10% of the agricultural production value), so that almost all DCs with AMS commitments have an applied AMS nil as being below the *de minimis* ceiling.

1) To the contrary Members should revise radically the Annex 2 provisions, beginning by paragraph 1 which sets out the basic principle from which all the other paragraphs are derived. This paragraph states: "…*All policies for which exemption is claimed shall conform to the following basic criteria: (i) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and, (ii) the support in question shall not have the effect of providing price support to producers*".
a) First, green box subsidies imply transfers from consumers: from a domestic macro-economic point of view the distinction between a market price support – financed by consumers – and a subsidy – financed by taxpayers – is not convincing since most taxes end up being paid by consumers.

b) Second, green box subsidies bring a clear price support to producers: the drop in agricultural prices permitted by direct subsidies such as the EU "single payment scheme", the former US "production flexibility contracts" and the subsequent "fixed direct payments", and all the other green box subsidies have a clear impact on production and prices:
i) They bring a price support to farmers who can make do with prices lower than the average production cost.
ii) They compensate reductions in the prices of cereals, oilseeds and pulses used as feed, which bring a huge price support to farmers producing meats, eggs and milk.
iii) They bring a huge price support to agri-food industries as the prices of their main inputs are reduced, which increases their competitiveness on the domestic market, at the export level and at the import level, reducing their need of export subsidies and tariffs.
iv) The European Commission is repeatedly claiming that the full decoupling of the allegedly green box "single payment scheme" allows the EU farmers to respond better to "market signals", by producing in relation to market prices rather than responding to direct payments differentials among products. Forgetting that the prices of most EU agricultural products are no longer market prices but prices of "non market economies" as being much below average unit production cost. The green subsidies bring a large price support in allowing to maintain prices much below the average full production cost.

Since these two conditions of Annex 2 paragraph 1 apply to all specific green subsidies of paragraphs 2 to 13, this is the first reason why they cannot be put in the green box.]
Government Service Programmes
General services (paragraph 2)
[The "general services" for agriculture are not green, non trade-distorting, subsidies.
1) For Daryll Ray, of the University of Tennessee, "*WTO has declared that such research and education related expenditures have a minimal effect on trade. Such a declaration is inconsistent with the notion that any public policy that causes changes in production shifts the supply curve. In practice, these activities have a direct impact on price and trade, whether that be a set-aside program or yield enhancing research*" (*Is food too important to be left to WTO?* APAC, University of Tennessee, November 29, 2002, http://www.agpolicy.org). He adds in another paper: "*Clearly, neither the US nor the rest of the world would be facing today's low prices and failing small farms if the cumulative growth in agricultural productivity had not taken place*" (Daryll Ray, Daniel de la Torre Ugarte, Kelly J. Tiller, *US Agricultural Policy: Changing course to secure farmers livelihoods worldwide*, APAC, University of Tennessee, September 2003). And he extends his criticism of the green box to infrastructures subsidies: "*Little*

attention has been paid to legacy investments in the infrastructure of agricultural areas. These legacy investments… all influence production decisions in one way or another and that influence continues year after year while the influence of direct payments are limited to a given year" (Daryll Ray, *What is an agricultural subsidy?*, APAC, University of Tennessee, 26 mars 2004).

2) IFPRI confirms the huge benefits that subsidies to agricultural research and extension have brought to developed countries and could bring to India: "*IFPRI research shows that investments in R&D have the highest impact on agricultural growth per million rupees invested. The rates of return to public investment in research have been as high as over 60 percent, and in extension, over 50 percent. India currently invests only about 0.5 percent of its agricultural GDP in agricultural research, compared with 0.7 percent in the developing countries as a whole and as much as 2–3 percent in the developed countries*" (J. von Braun et al., *Indian agriculture and rural development*, IFPRI, 2005).]

Add the following subparagraph (h) to the existing paragraph 2:

(h) policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing country Members, such as provision of infrastructural services, land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes, to promote rural development and poverty alleviation.

Public stockholding for food security purposes

Modify the existing footnote 5 as follows:

For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS. **However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS.**

Modify the existing footnote 5 and 6 as follows:

For the purposes of paragraphs 3 and 4 of this Annex, **the acquisition of foodstuffs at subsidised prices when procured generally from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural poverty, as well as** the provision of foodstuffs at subsidised prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph. This is understood to mean, inter alia, that where such programmes referred to in this footnote and paragraph 4 above, including those in relation to lowering prices to more reasonable levels, involve also the arrangements referred to in footnote 5 to paragraph 4, there is no requirement for the difference between the acquisition price and the external reference price to be accounted for in the AMS.

Decoupled income support (paragraph 6)

Modify the existing subparagraph (a) as follows:

(a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined**,** fixed **and unchanging historical** base period **which shall be notified to the Committee on Agriculture. Transfer of entitlements to existing decoupled income support between producers or landowners shall not be precluded. An exceptional update is not precluded, provided that producer expectations and production decisions are unaffected, in particular due to (a) ensuring that any updated base period is not only a significant number of years in the past**[1]

[1] Where a Member has, at the time of entry into force of this Agreement, more than one type of direct payments within the same system of decoupled income support, it shall be possible to decide, within a period of no more than five years from the date of entry into force of this

[The vagueness of this circumlocution cannot hide the facility opened to update the payments. On the other hand this footnote 1 seems to be here to accommodate the change to deliver the EU SPS (single payment scheme), change contemplated by the EU Commission to adopt a uniform payment per hectare on a regional or national basis rather than on the historical entitlements to the former level of blue direct payments.]

but is also determined and promulgated by the administering authority in such a way that the updated base concerned could not have been reasonably anticipated by producers such that their production decisions could be materially altered, (b) that such updating is not made in conjunction with, or otherwise amounts *de facto* to, a decision to increase the uniform unitary rate per crop[2]

[Oddly enough, apart from this updating issue, the other conditions does not preclude the possibility to increase the decoupled payment provided that it is not based on the type or volume of production or of the price or of the production factors of another year than the base period. This leaves the possibility to increase the decoupled income support on the basis of a uniform payment for all farmers.]

and (c) that this updating shall not, in itself or otherwise by reason of its introduction, have the effect, directly or indirectly, of circumventing the obligations regarding domestic support measures and price support to producers pursuant to paragraph 1.

Members which have not previously made use of this type of payment and thus have not notified and which cannot establish a historical base period because of a lack of data shall not be precluded from establishing an appropriate base period which, provided that it is not based on any future factor use or production, need not be based on a pre-existing determinate historical record, but which shall be fixed and unchanging and shall be notified[3]**. This is without prejudice to the possibility for Members to establish appropriate base periods for substantially different decoupled income support in accordance with the conditions laid down in this paragraph.**

[Let us remind the reader why the UE fixed direct payments and the EU SPS are not in the green box:

1) The US fixed direct payments have been ruled not being in the green box by the WTO Appellate Body the 3 March 2005 since farmers receiving them are not allowed to grow fruits, vegetables and wild rice, an interdiction not removed by the Congress in the 2008 Farm Bill despite USDA's repeated pressuresA.

2) The EU "single payment scheme" is not in the green box, since it does do not abide by 3 of the 5 conditions imposed by the AoA Annex 2 paragraph 6:

1) First because it contradicts, even more than the US fixed direct payments, the condition b): not only the EU farmers cannot produce fruits and vegetables as their US colleagues but many other productions are either forbidden (milk and sugar beet if farmers have no production quota, wine if they do not have planting rights) or capped (rice, cotton, tobacco and olive oil and not beyond the milk or sugar beet quotas).

2) It is based on the amount of direct payments received from 2000 to 2002, a criterion not allowed by the condition a).

3) It contradicts the condition d): EU farmers must show each year that they have eligible hectares to receive the SFP so that it is still coupled to the hectarage.

4) Besides, since the SPS cannot be attributed to a particular production, it can be attributed to all of them of which it is reducing the export price below the EU average production cost. All EU agricultural exports can

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Agreement, to move from one to another type of direct payments for all or part of the territory of that Member, including the use of a changed base period. This decision shall be taken once and for all for each part of the territory of the Member concerned. Where a Member intends to exercise this possibility, it shall notify its decision to the Committee on Agriculture within 180 days of the entry into force of this Agreement.

[2] This shall mean the rate used to calculate the support per recipient on the basis of criteria such as area or yields.

[3] Developing country Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph

therefore be prosecuted on dumping to the extent their producers are getting the SFP, which concerns nearly all EU farmers.

There is also a common factor preventing the US fixed direct payments and the EU SPS to be in the green box: as long as a significant share of them would continue to be granted to farmers growing feed grains eventually fed to animals, they would remain input subsidies which must be notified in the PS AMS of animal products having consumed the feed.]

Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters (paragraph 8)

Modify the existing subparagraphs (a), (b) and (d) as follows:

(a) Eligibility for such payments shall arise**:**

(i) In the case of direct payments related to disasters only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss[8] which exceeds 30 per cent of the average of production in the preceding **five**-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. **In the case of developing country Members, payments for relief from natural disasters may be provided to producers when the production loss is less than 30 per cent of the average of production in the preceding five-year period or a three-year average based on the preceding five-year period.**

(ii) In the case of government financial participation in crop or production insurance schemes, eligibility for such payments shall be determined by a production loss which exceeds 30 per cent of the average production in a period demonstrated to be actuarially appropriate. In the case of a developing country Member's government's financial participation in crop or production insurance schemes, eligibility for payments may be provided to producers when the production loss is less than 30 per cent of the average of production in the preceding five-year period or a three-year average based on the preceding five-year period.

(iii) In the case of the destruction of animals or crops to control or prevent pests, diseases, disease-carrying organisms or disease-causing organisms named in national legislation or international standards, the production loss may be less than 30 per cent of the average of production referred to in paragraph 8(a)(i) or 8(a)(ii), as applicable.

(b) Payments made **under this paragraph** shall be applied only in respect of losses of income, **crops,** livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster **or destruction of animals or crops** in question.

(d) Payments made **under this paragraph** shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

[1) Point d) of the preceding paragraph 7 of Annex 2 – not modified by this revised draft – specifies that "*Where a producer receives in the same year payments under this paragraph and under paragraph 8 below (relief from natural disasters), the total of such payments shall be less than 100 per cent of the producer's total loss*". However this provision does not take into account the amber and blue subsidies already available to farmers. Especially if the income loss comes from a drop in price and not in production volume, the marketing loan and counter-cyclical payments allow already to compensate part of the price drop.

2) The provisions of paragraphs 7 and 8 allow larger loopholes than those already acknowledged in the US:
The new USTR Chief Agriculture Negotiator, Joe Glauber, who was a specialist of crop insurances in his former position of USDA's Deputy Chief economist, stated in 2006: "*Subsidies for crop insurance have averaged more than $3 billion a year since 2002, and annual disaster payments have averaged more than $2 billion*. *Moreover, much of the disaster assistance goes to producers who also are receiving crop insurance indemnity payments. The result, as the title of this paper suggests, is "double indemnity."*" (Joseph W. Glauber, *Double Indemnity: Crop Insurance and the Failure of U.S. Agricultural Disaster Policy*, in Bruce L. Gardner and Daniel A. Sumner, The 2007 Farm Bill and Beyond, 2007,
http://aic.ucdavis.edu/research/farmbill07/aeibriefs/20070516_Summary.pdf).]

[8] Developing country Members may determine the production loss of the affected sector(s) or region(s) on an aggregate basis.

Structural adjustment assistance provided through investment aids (paragraph 11)
Modify the existing subparagraph (b) as follows:
(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under criterion (e) below.. **The base period shall be a defined, fixed and unchanging historical base period which shall be notified to the Committee on Agriculture. Transfer of entitlements to existing decoupled income support between producers or landowners shall not be precluded**.
An exceptional update is not precluded, **provided that producer expectations and production decisions are unaffected, in particular due to (a) ensuring that any updated base period is not only a significant number of years in the past[4] but is also determined and promulgated by the administering authority in such a way that the updated base concerned could not have been reasonably anticipated by producers such that their production decisions could be materially altered, (b) that such updating is not made in conjunction with, or otherwise amounts *de facto* to, a decision to increase the uniform unitary rate per crop[5] and (c) that this updating shall not, in itself or otherwise by reason of its introduction, have the effect, directly or indirectly, of circumventing the obligations regarding domestic support measures and price support to producers pursuant to paragraph 1.**
[The vagueness of this circumlocution cannot hide the facility opened to update the payments.]
Members which have not previously made use of this type of payment and thus have not notified and which cannot establish a historical base period because of a lack of data shall not be precluded from establishing an appropriate base period which, provided that it is not based on any future factor use or production, need not be based on a pre-existing determinate historical record, but which shall be fixed and unchanging and shall be notified[6]. This is without prejudice to the possibility for Members to establish appropriate base periods for substantially different decoupled income support in accordance with the conditions laid down in this paragraph.
[The WTO Members should clarify once and for all the AoA contradictory provisions regarding this issue of "Structural adjustment assistance provided through investment aids" because several other provisions put these subsidies in the amber box:
1) AoA Article 6.2 puts them in the amber box for developed countries since they are only exempted from reductions for DCs: "*investment subsidies which are generally available to agriculture in developing country Members… shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures*".

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[4] Where a Member has, at the time of entry into force of this Agreement, more than one type of direct payments within the same system of decoupled income support, it shall be possible to decide, within a period of no more than five years from the date of entry into force of this Agreement, to move from one to another type of direct payments for all or part of the territory of that Member, including the use of a changed base period. This decision shall be taken once and for all for each part of the territory of the Member concerned. Where a Member intends to exercise this possibility, it shall notify its decision to the Committee on Agriculture within 180 days of the entry into force of this Agreement.

[5] This shall mean the rate used to calculate the support per recipient on the basis of criteria such as area or yields.

[6] Developing country Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph

2) Subsidies to agri-food industries and marketing units, included in the package of investment aids of paragraph 11 ("*Construction of processing, packaging and storage centres and equipment*"), are put in the amber box by Annex 4 paragraph ("*Policies directed at agricultural processors shall be included to the extent that such policies benefit the producers of the basic products*") and by Annex 3 paragraph 13 ("*Other non-exempt policies, including input subsidies and other policies such as marketing cost reduction measures*").
3) Developed countries claim that their farm investments subsidies are in line with the provisions of paragraph 11 which limit them "*to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages*", to the fact that "*The payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided*", and that "*The payments shall be limited to the amount required to compensate for the structural disadvantage*".
4) These paragraph 11 subsidies in the EU have animated many debates in the Committee on agriculture in 1998 and 1999.
a) During the Committee meeting of 1st October 1998, several Members have questioned the EU compliance of its subsidies to the setting up of young farmers and the modernization of farms with paragraph 11. The EU has answered that "*the payment is strictly determined by the costs and types of investment and not linked to the production volume or price. Payments are strictly related to the investment concerned. There is no obligation for beneficiaries to produce a particular product*". Such an answer contradicts an EU Commission report of 1999 that "*The Europe of fifteen is dominated by the specialised types of farming which grouped 80% of farms…in 1995. Specialisation…is going on since 1995*". The EU representative added that "*investment aids are always adapted at problems of specific structures: small farms, obsolete technical equipment, low diversification of agricultural activities, for example*", which is untrue since the beneficiaries had farms larger than the average.
b) The new EU regulation in force since 2000 no longer caps the income to be eligible to setting-up or farm modernization investments subsidies, which are granted within the "second pillar" of "rural development" that the EU notifies entirely in the green box. This is indeed the main but not confessed reason of the EU willingness to increase progressively the second pillar subsidies in relation to the first pillar.
c) Although the first condition for green subsidies is that "*they have no, or at most minimal, trade distortion effects or effects on production*", these investment subsidies have clearly the effect of increasing production, being excluded only those which effect is "*to increase the production of products without normal outlets on the markets*". Thus the production within the dairy and sugar quotas is considered as having normal although 10% of the EU milk production and 30% of sugar production have required the highest export subsidies in the EU.]
Payments under regional assistance programmes(paragraph 13)
Modify the existing subparagraphs (a), (b) and (f) as follows:
(a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.
[Since the very large majority of DCs' farmers, "*on the basis of neutral and objective criteria clearly spelt out*" by all the reports of international institutions, are suffering infinitely more from "*region's difficulties… of more than temporary circumstances*" than farmers in the disadvantaged regions of developed countries, the subsidies the later get on this item are increasing the competitiveness of their products in relation to those of their DCs' colleagues, which is again the broad economic definition of protection and thus of coupled subsidies. Allowing DCs to benefit more of this exemption would change nothing to this fact.]
Developing country Members shall be exempted from the condition that a disadvantaged region must be a contiguous geographical area.
(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production. **The base period shall be a defined, fixed and unchanging historical base period which shall be notified to the Committee on Agriculture. Transfer of entitlements to existing decoupled income support between producers or landowners shall not be precluded**.
An exceptional update is not precluded, **provided that producer expectations and production decisions are unaffected, in particular due to (a) ensuring that any updated base**

period is not only a significant number of years in the past[7] **but is also determined and promulgated by the administering authority in such a way that the updated base concerned could not have been reasonably anticipated by producers such that their production decisions could be materially altered, (b) that such updating is not made in conjunction with, or otherwise amounts *de facto* to, a decision to increase the uniform unitary rate per crop**[8] **and (c) that this updating shall not, in itself or otherwise by reason of its introduction, have the effect, directly or indirectly, of circumventing the obligations regarding domestic support measures and price support to producers pursuant to paragraph 1.**

[The vagueness of this circumlocution cannot hide the facility opened to update the payments.]

Members which have not previously made use of this type of payment and thus have not notified and which cannot establish a historical base period because of a lack of data shall not be precluded from establishing an appropriate base period which, provided that it is not based on any future factor use or production, need not be based on a pre-existing determinate historical record, but which shall be fixed and unchanging and shall be notified[9]**. This is without prejudice to the possibility for Members to establish appropriate base periods for substantially different decoupled income support in accordance with the conditions laid down in this paragraph.**

(f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production **(including livestock production)** in the prescribed area.

[7] Where a Member has, at the time of entry into force of this Agreement, more than one type of direct payments within the same system of decoupled income support, it shall be possible to decide, within a period of no more than five years from the date of entry into force of this Agreement, to move from one to another type of direct payments for all or part of the territory of that Member, including the use of a changed base period. This decision shall be taken once and for all for each part of the territory of the Member concerned. Where a Member intends to exercise this possibility, it shall notify its decision to the Committee on Agriculture within 180 days of the entry into force of this Agreement.

[8] This shall mean the rate used to calculate the support per recipient on the basis of criteria such as area or yields.

[9] Developing country Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph

ANNEX F

ILLUSTRATIVE LIST OF INDICATORS FOR THE DESIGNATION OF SPECIAL PRODUCTS

1. The product is a staple food, or is a part of the basic food basket of the developing country Member through, *inter alia*, laws and regulations, including administrative guidelines or national development plan or policy or historical usage, or the product contributes significantly to the nutritional or caloric intake of the population.

2. A significant proportion of the domestic consumption of the product in its natural, unprocessed or processed form, in a particular region or at a national level, is met through domestic production in the developing country Member concerned.

3. Domestic consumption of the product in the developing country Member is significant in relation to total world exports of that product; or a significant proportion of total world exports of the product are accounted for by the largest exporting country.

4. A significant proportion of the total domestic production of the product in a particular region or at the national level is produced on farms or operational land holdings of up to and including 10 hectares, or is produced on farm or operational land holdings which are of a size equal to or less than the average farm size of the developing country Member concerned, or a significant proportion of the farms or operational land holdings producing the product are up to and including 10 hectares in size or of the average farm size or less of the developing country Member concerned.

5. A significant proportion of the total agricultural population or rural labour force, in a particular region or at the national level, is employed in the production of the product.

6. A significant proportion of the producers of the product, in a particular region or at the national level, are low income, resource poor, or subsistence farmers, including disadvantaged or vulnerable communities and women or a significant proportion of the domestic production of the product is produced in disadvantaged regions and areas including, *inter alia,* drought-prone or hilly or mountainous regions.

7. A significant proportion of the total value of agricultural production or agricultural income of households, in a particular region or at the national level, is derived from the production of the product.

8. A relatively low proportion of the product is processed in the developing country Member as compared to the world average; or the product contributes a relatively high proportion to value addition in the rural areas, in a particular region or at the national level, through its linkages to non-farm rural economic activities, including handicrafts and cottage industries or any other form of rural value addition.

9. A significant proportion of the agricultural customs tariff revenue is derived from the product in a developing country Member

10. A significant proportion of the total food expenditure, or of the total income, of households in a particular region or at the national level in the developing country Member concerned, is spent on the product.

11. The product in respect of which product specific AMS or blue box support has been notified by any WTO Member and which has been exported by that notifying Member during any year from 1995 to the starting date of the implementation of Doha Round.

12. The productivity per worker or per hectare of the product in the developing country Member, in a particular region or at the national level, is relatively low as compared to the average productivity in the world.

ANNEX M
MONITORING AND SURVEILLANCE

1. The existing Article 18 of the Agreement on Agriculture will be replaced by the text below. Enhanced monitoring also requires that, as a matter of urgency, the Committee's Working Procedures (G/AG/1) and the Notification Requirements and Formats (G/AG/2) be amended to reflect the new commitments that result from the current negotiations which require amendments to existing notification formats, additional notification obligations and an enhanced role for the Committee in reviewing and monitoring implementation of commitments and disciplines under the Agreement on Agriculture.

2. In addition to the provisions set out below, the revision of G/AG/2 shall require that a Member that provides support which it claims is consistent with Annex 2 of the Agreement, shall include in the initial notification required under 4(b)(ii) of the possible Article 18 a summary of the measure, including, where appropriate, base periods and yields, the sources where full details may be found, the expected budgetary outlay under each programme and such other information as the Committee on Agriculture may decide. Any revision to a measure claimed to be consistent with Annex 2 of the Agreement shall also be so notified before the revision takes affect.

3. In revising the Working Procedures of the Committee on Agriculture and Members' Notification Requirements and Formats, Members shall provide for an enhanced surveillance role for the Committee so as to improve transparency and the contribution of obligations established under these modalities to the long-term objective of establishing a fair and market-oriented agricultural trading system.

Possible new Article 18 to Replace the Current Article 18 of the Agreement on Agriculture

Review of the Implementation of Commitments

Objectives

1. The Committee on Agriculture shall review and monitor the implementation of Members' obligations established under this Agreement. The Committee on Agriculture shall provide effective surveillance of compliance with obligations through ensuring transparency and give an opportunity to Members to assess the contribution of these obligations to the long-term objective of establishing a fair and market-oriented agricultural trading system.

Institutional aspects

2. The Committee on Agriculture shall meet as necessary, but not less than 4 times per year, for the purposes established in this Article and to afford Members the opportunity of consulting on any matter relating to the provisions of this Agreement. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by Members. The Committee shall establish subsidiary bodies, as appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement. The Committee shall establish Working Procedures and Notification Requirements and Formats to reflect Members' obligations as set out in this Agreement and Members' Schedules and taking into account the requirements established in this Article. With respect to the Notification Requirements and Formats, there shall be special and differential treatment for developing country Members with respect to the deadlines to be met.

The review process

3. The review process shall be primarily undertaken on the basis of notifications submitted by Members in relation to their specific binding commitments and the disciplines applicable to them and in relation to other matters which may be agreed, using the Notification Requirements and Formats to be established under paragraph 2.

[But if this review process is the same as the trade policy review process, the Members could continue to lie in their notifications as long as the WTO Secretariat makes its report on the sole base of the data that the reviewed Member is willing to provide so that all the trade policy reviews are highly favourable for Members.]

4. The basis for the review process shall be supplemented by such documentation as the Secretariat may be requested by the Committee to prepare in order to facilitate the review process, including the advance circulation of Members' questions. Should a Member be unable to submit a final notification by the appropriate deadline set out in the Notification Requirements and Formats, that Member should submit a provisional notification pending the provision of the final notification. Where appropriate, a Member shall include in its notifications the sources for the domestic provisions that regulate the measure.

(a) In relation to market access:

(i) A Member with tariff and other quota commitments shall provide a comprehensive one-off notification of the administration of its tariff quota commitments including: information on the allocation and re-allocation of quotas and licenses; administrative procedures applicable; and any other information relevant to the implementation of commitments under these arrangements as well as prompt notification of any changes to any of these matters. A Member with tariff and other quota commitments shall provide an annual notification of imports under tariff quota commitments as well as the levels of, and significant changes in tariff quota fill.

(ii) If there is a choice made (and without prejudice to the outcome of that decision) to permit some retention of the special safeguard pursuant to the options in paragraphs 116-118 above and, accordingly, a Member would be thereby entitled to have in its Schedule some right to invoke the Special Agricultural Safeguard under Article 5 of this Agreement, it shall notify safeguard actions when initiated, and provide information on triggers and remedies, as well as an annual summary of these safeguard actions.

(iii) A developing country Member shall notify Special Safeguard Measure actions when initiated, and provide information on triggers and remedies, as well as an annual summary of these actions.

(b) In relation to domestic support commitments:

(i) Members shall provide an annual notification of domestic support measures, to allow Members to assess compliance with their Scheduled commitments concerning Overall Trade-distorting Domestic Support, Bound Total Aggregate Measurement of Support, product-specific AMS limits, *de minimis* levels and limits to support under Article 6.5. The annual notifications shall also include information on support which is claimed to be consistent with Article 6.2, Article 6.5 and Annex 2. The notifications shall include: information on support measures; the details of the calculation of support for each measure; the monetary value of such support; and, where appropriate, the value of production by product; the total value of agricultural production; and sources for the information and data included in the notification.

(ii) A Member providing support which it claims to be consistent with Article 6.5, Article 6.2 or Annex 2 shall provide a comprehensive one-off notification setting out the programmes under each provision, the source for the domestic legislation under which support is provided and a summary description of the measure. A Member introducing or amending a programme which it claims to be consistent with Article 6.5, Article 6.2 or Annex 2 shall provide a notification for each new or modified measure.

(c) In relation to export competition, a Member with commitments in Section II of Part IV of its Schedule, and a developing country Member using the provisions of Article 9.4, shall, *inter alia*, submit annual notifications setting out its use of export subsidies, by product or groups of products consistent with that Member's scheduled commitments, where appropriate, in both export quantity and budgetary outlay terms. A Member which provides export financing support shall provide an initial notification identifying the steps taken to ensure compliance of its export credits, export credit guarantees and insurance programmes with disciplines set out in the relevant Article and an annual notification to enable the monitoring of self-financing and repayment disciplines. A Member that has provided international food aid shall provide annual notifications of the provision of both emergency and non-emergency food aid. A Member that has maintained any agricultural exporting state trading enterprises shall notify the steps taken to ensure compliance with the disciplines in Article 10.4 as amended.

(d) In relation to export prohibitions and restrictions, a Member instituting an export prohibition or restriction under Article XI.2(a) of GATT 1994 shall notify the measure and report on the progress made in consultations to the Committee on Agriculture.

(e) Members shall also submit additional notifications on these and other matters within the scope of the provisions of this Agreement, including commitments undertaken with respect to cotton, and other matters relevant to the Agreement on Agriculture as may be agreed by the Committee on Agriculture.

(f) Annual notification shall be submitted according to the periods set out in the Notification Requirements and Formats established under paragraph 2.

[But paragraph 2 does not specify the periods within which the notifications should be made and, above all, the sanctions that should be used against the Members with overdue notifications. Otherwise there is no reason that the laxity which has prevailed since 1995 would not last, preventing other Members to prosecute the defaulting Members by lack of data. Yet the notifications requirements and formats adopted the 30 June 1995 by the Committee on agriculture (G/AG/2) had prescribed that, for instance for domestic supports "*the final notification should be submitted no later than 120 days following the end of the [marketing] year*".]

Notifications of new measures or modifications of existing ones shall be submitted immediately after they have been decided and, in any case, before their entry into force.

5. In the review process Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments.

[This is a provision far too vague to protect the importing country.]

6. In the review process, any Member may bring to the attention of the Committee on Agriculture any measure which it considers ought to have been notified by another Member, including by means of a counter notification.

7. The review process shall provide an opportunity for Members to raise any matter relevant to the implementation of commitments under the reform programme as set out in this Agreement.

The surveillance process

8. The Committee, and any working bodies established under its Working Procedures, shall provide an effective forum for Members to monitor compliance with commitments and disciplines under the Agreement on Agriculture and to undertake surveillance of progress towards the long-term objective of establishing a fair and market-oriented agricultural trading system. In the discharge of its surveillance functions, and based on factual reports from the Secretariat as requested by the Committee, the Committee and its working bodies shall review the implementation of commitments and obligations at such intervals and in relation to such matters to be agreed, including:

(a) The follow-up to the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries;

(b) Special review of implementation of special and differential treatment provisions of this Agreement and related development concerns;

(c) The implementation of cotton-related commitments;

(d) Conformity with notification obligations;

(e) As requested by Members, factual background papers based on information provided by Members in notifications, including annual summaries of notifications of support claimed to be in compliance with Annex 2 of the Agreement on Agriculture, notifications relating to Food Aid and export prohibitions and restrictions. For support claimed to be in compliance with Annex 2 of the Agreement on Agriculture, Members shall notify the base period and all other criteria relevant to programmes under the provisions. Notifications under paragraph 6(a) shall include regular and periodic updates on how the programmes concerned achieve the stated objectives.

Special and Differential Treatment

9. The Secretariat of the WTO shall give priority, within the limits of its resources, to requests for technical co-operation from developing country Members, including advice and assistance in meeting notification obligations, with the objective of enhancing their participation in the Committee's work. Members should also give consideration to the provision of technical assistance to developing country Members to assist meeting the provisions of this Article and complementary obligations.

Appraisal

10. Members shall review the effectiveness of monitoring and surveillance mechanisms, with the objective of making further improvements, following a period of 3 years from the entry into force of this Agreement.