

14. Special and Differential Treatment in Agricultural Negotiations

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INTRODUCTION

Over the past four decades or so, the issues that have dominated WTO/GATT negotiations have generally fallen in the prototype of either a transatlantic conflict or a north–south divide. The latter has centred on efforts for the incorporation and improvement of provisions on special and differential (S&D) treatment of developing countries in the multilateral rules and for their application. In three successive rounds of multilateral trade negotiations between 1964 and 1994, S&D treatment was the main element in the negotiating stand of most developing countries. The Doha Round has proved to be no different. This chapter aims to assess the proposals for S&D treatment in the context of the current negotiations on agriculture and recommend the way forward that may be in the best interest of developing countries.

Section two traces the genesis and evolution of S&D treatment in GATT/WTO and section three analyses the S&D provisions in the Agreement on Agriculture and in the modalities that were the basis of the specific commitments undertaken by members on agricultural support and protection. It also contains an account of the application of these provisions in the process of implementation. Section four examines the main proposals made in the Doha Round by the developing and developed countries to enhance S&D treatment. Finally, the last part takes up a critical examination of all aspects of S&D treatment in agricultural negotiations and suggests the way forward in the Doha Round.

S&D TREATMENT OF DEVELOPING COUNTRIES: ORIGIN AND EVOLUTION OF THE CONCEPT

The Havana Charter and GATT 1947

From the time initial negotiations were held to develop multilateral rules to

govern international trade in the post war world the attempt of the developing countries was to obtain greater flexibility in the use of trade policy measures to enable them to implement their programme of economic development. Their initiatives were founded on the belief that they needed greater space for manoeuvre in shaping their economic policies in order to foster their development. The Havana Charter for an International Trade Organisation, which was signed by 54 countries on 24 March 1948, contained a provision titled "Government Assistance to Economic Development and Reconstruction". It allowed the use of any protective measure, otherwise in conflict with the obligations of the Charter, to promote the establishment, development or reconstruction of particular industries or branches of agriculture, provided prior permission was obtained from the body representing the full membership before applying the measure. This provision, which was carried over *mutatis mutandis* into the General Agreement on Tariffs and Trade in 1948, can be said to contain S&D treatment in its embryonic form.

Revision of GATT 1947

In 1954-55 the provision was thoroughly overhauled and incorporated as Article XVIII of GATT, titled "Government Assistance to Economic Development". It gave to developing countries greater flexibility in deviating from the general obligations, in using tariff protection and applying quantitative restrictions for balance-of-payments purposes. Another provision, Article XXVIII bis, recognised that in multilateral trade negotiations account must be taken of the need for developing countries to use tariff protection to assist their economic development and maintain tariffs for revenue purposes.

The Addition of Part IV

The next step was the addition of Part IV to GATT in 1964. The core of this Part was the article on commitments, which sought to impose obligations on developed countries not to raise barriers to trade on products of interest to developing countries and instead to reduce these barriers. However, the language of the commitments of Part IV gave them the nature of guidelines rather than of legally enforceable commitments. It was not cast in the contractual mould, unlike the other Parts of GATT. The situation has not changed with the coming into force of the WTO Agreement, and Part IV has been carried forward into that Agreement in its original form. The only meaningful benefit that was provided to the developing countries in Part IV was the enunciation of the concept of non-reciprocity in trade negotiations between developed and developing countries.

Preferential Treatment of Developing Countries

During the discussions for the addition of Section IV to GATT, developing countries made a strong attempt to secure a departure from the MFN principle so as to make it possible to accord preferential treatment to products originating in developing countries. Despite these attempts, Part IV steered clear of the question of preferences.

The move gathered strength outside the GATT during the deliberations of the United Nations Conference on Trade and Development (UNCTAD). The economic rationale was found by extending the application of the infant industry argument from the domestic to the foreign market (Prebisch, 1964). In 1968 the UNCTAD Resolution 21 (II) finally recognised “the unanimous agreement in favour of the early establishment of a mutually acceptable system of generalised, non-reciprocal and non-discriminatory preferences which would be beneficial to the developing countries”. This led to steps by the developed countries to establish schemes according preferential treatment to developing country exports under what came to be known as the Generalised System of Preferences (GSP). Conformity with the GATT was obtained through the mechanism of waiver (GATT, BISD 18/S).

The Enabling Clause

Although preferential schemes became operational in several industrialised countries, developing countries were still dissatisfied on account of the requirement of waiver from the obligation of Article I of GATT. Moreover, differential treatment was limited to tariffs only. They sought a fundamental change in the GATT so that not only tariff preferences but also differential treatment in all trade rules became an element of its rights and obligations. Their argument was that equal treatment was inappropriate for dealing with unequal entities. It resembled the call for affirmative action in favour of weaker sections of societies in several democratic countries. Economic inequality could not be corrected by the application of equal measures, “but rather through the adoption of a treatment which, by favouring some nations, would eventually lead to an effective and certain equalization” (Espill, 1974).

Changes in the GATT framework to accommodate the above demands of the developing countries was at the centre of the north–south debate in the Tokyo Round of multilateral trade negotiations (1973-79). From these debates emerged the Enabling Clause, which was adopted as a Decision by the GATT membership on 28 November 1979. The full title of the Decision was “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” (GATT, BISD 26/S). The ideas incorporated in the Decision have over time come to be referred to as special

and differential (S&D) treatment rather than differential and more favourable treatment.

The Enabling Clause established a general basis for S&D treatment of developing countries in matters relating to trade in goods. Not only could the developed countries grant preferences to the developing countries, but the developing countries could also enter into regional or global agreements granting tariff and non-tariff preferences to each other. Equally importantly the Decision provided the basis for S&D treatment in multilaterally negotiated agreements on non-tariff measures. The Decision had some other important features. Special treatment was envisaged for the least developed countries (LDCs), "in the context of any general or specific measures in favour of developing countries". The notion of non-reciprocity in trade negotiations between developed and developing countries as already incorporated in Part IV of GATT was reiterated. The developed countries had sought recognition of the concept of "graduation" of the developing countries as a price for agreeing to S&D treatment on a lasting basis. The concept had two facets. The developed countries called for "not only the phasing out of more favourable treatment in the markets of developed countries but also the phasing in the LDC compliance with the generally prevailing rules of the international trading system based on a balance of rights and obligations" (Frank, 1979). Their efforts resulted in the idea being incorporated to some extent in the Enabling Clause.

Pursuant to the provision in the Enabling Clause regarding differential and more favourable treatment in non-tariff measure agreements, many of the agreements negotiated during the Tokyo Round included extensive provisions granting additional benefits to developing countries, some more significant than others. Further decisions were also taken in respect of the provisions on S&D treatment in Article XVIII of GATT 1967. The Decision on Safeguard Action for Development Purposes, which was one of the decisions of the Tokyo Round, addressed once again the issue of measures deviating from the provisions of GATT, which were needed to promote the establishment of a particular industry and waived the "requirements regarding prior consultation with contracting parties, prior concurrence of the contracting parties and adherence to time limits in urgent cases" (Hoda, 1987). In the Declaration on Trade Measures taken for Balance-of-Payment Purposes adopted in 1979, the developed countries renounced the use of trade measures (including quantitative restrictions) for safeguarding the balance of payments, while developing countries retained the full right to use such measures.

By the end of the 1970s S&D treatment of developing countries, which began with the efforts of developing countries to secure some flexibility in the use of trade policy instruments, had become an all-pervading concept, encompassing non-reciprocity, preferences, technical assistance and an

overall philosophy that equal treatment of unequal countries was inequitable. The rationale was partly economic and partly political.

S&D Provisions in the WTO Agreement

By incorporating GATT 1994 in it the WTO Agreement retained all the provisions on S&D treatment of GATT 1947 as well as those embodied in various decisions taken by the Contracting Parties to GATT 1947. In addition new provisions were introduced in the multilateral trade agreements annexed to the WTO Agreement. The S&D provisions are broadly of two types: those that give flexibility to developing countries in undertaking commitments and those that require the developed country trading partners to enhance the trade opportunities of developing countries and refrain from limiting them.

S&D PROVISIONS IN THE AGREEMENT ON AGRICULTURE AND THEIR IMPLEMENTATION

The WTO Agreement on Agriculture contains a number of provisions on S&D treatment of the developing countries. In addition, for undertaking specific commitments the countries participating in the Uruguay Round had before them a document on “modalities” of the negotiations, which was used as a basis of the negotiations, although it was never formally adopted by them. The term “modalities” embraces a number of elements of the process by which the participating governments conduct negotiations for reduction of trade barriers. It includes the product coverage, the negotiating tool (request-offer, formula or any other approach), the extent of reduction, the base level taken into consideration for applying the reduction, the period of implementation of agreed reductions, the manner of application of S&D treatment etc. In the analysis that follows, we describe S&D treatment in the rules of the Agreement on Agriculture as well as in the Uruguay Round modalities for undertaking specific commitments. We also discuss briefly the implementation of these provisions.

The Preamble to the Agreement on Agriculture recognises S&D treatment to be an integral element of the negotiations. It separately mentions the need for the developed country members to provide for a greater improvement of opportunities and terms of access for agricultural products of particular interest to developing country members, including the fullest liberalisation of trade in tropical agricultural products. The latter aspect was not further elaborated in the Agreement on Agriculture or in the modalities. But the principle of S&D treatment was given greater specificity in the requirement for commitments from developing countries in all the three pillars of the Agreement. The paper on modalities (GATT Document MTN.GNG/MA/W/24), which was used as a basis for the negotiation of reduction

commitments during the Round, also contained significant provisions for S&D treatment. Developing countries were required to undertake reduction commitments that were only two-thirds of the general level of reduction. The least-developed countries were exempted altogether from the obligation to make reduction commitments.

We take up below in detail how the broad principles of S&D treatment are reflected in the modalities and in the specific commitments made by the developing countries pursuant to those modalities. Under market access we also consider in summary form how the exhortation in the Preamble of the Agreement on Agriculture for the developed countries to provide greater market access to products of interest to the developing countries was reflected in the specific commitments made by the former.

S&D Treatment in Market Access

Tariffication

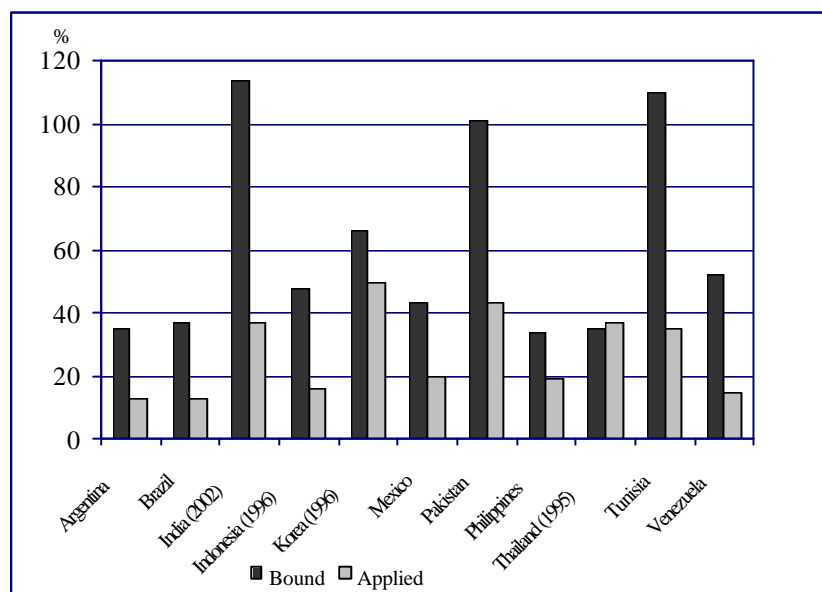
The biggest advance made in the WTO Agreement in respect of market access for agricultural products was the prohibition of quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, no-tariff measures maintained through state trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties. All these measures had to be converted to tariffs and then subjected to binding and/or reduction. A tariffs only regime not only increased the role of the price mechanism but also increased transparency. However, measures maintained under the balance-of-payments provisions or other general, non-agricultural-specific provisions of GATT 1994 or other multilateral agreements in the area of trade in goods were not brought within the purview of tariffication requirement. On this aspect no S&D treatment was extended to the developing countries.

Tariff Reductions and Bindings

The modalities required the ordinary customs duties including those resulting from tariffication to be reduced on a simple average basis by 36 per cent, with a minimum reduction of 15 per cent for each tariff line. The reductions were to be carried out in equal instalments over a period of six years. Developing countries were given the flexibility of offering ceiling bindings in respect of products subject to unbound ordinary customs duties. For products which had already been bound in earlier negotiations, the modalities required reduction of tariffs by 24 per cent on a simple average basis subject to a minimum of 10 per cent on each tariff line, to be implemented over 10 years. Since a large majority of developing countries had not bound their agricultural tariffs in earlier negotiations to any substantial extent, if at all, many of them made use of the possibility in the modalities of making ceiling bindings. In fact, even the requirement of reduction in respect of tariffs that

had been bound earlier was not strictly enforced and some developing countries merely incorporated their earlier commitments in the Uruguay Round schedules.

Analysis of the agricultural tariff profiles of 11 developing countries (Argentina, Brazil, India, Indonesia, Korea, Mexico, Pakistan, Philippines, Thailand, Tunisia and Venezuela) shows that the post Uruguay Round applied rates were far lower than the bound rates in all these countries except Thailand. Figure 14.1 gives the full picture.



Source: Gibson et al. (2001).

Figure 14.1 Bound and applied tariffs (1998)

Minimum and current access

During the Uruguay Round it was recognised that the tariffication process could result in the tariff levels being prohibitive. The modalities therefore stipulated that where there were no significant imports, minimum access opportunities must be provided. Such access opportunities had to be in the form of a tariff quota, starting with 3 per cent of the corresponding domestic consumption in the first year of the implementation period and rising to 5 per cent in the last year. If current access opportunities were already in excess of 5 per cent they were required to be maintained. There was no provision for S&D treatment, but developing countries that maintained quantitative restrictions for balance-of-payments reasons were exempted from the

tariffication requirement. Although the modalities did not explicitly contain any provision to this effect, the understanding during the negotiations was that countries that maintained restrictions that were not liable to conversion into tariffs would not have to undertake minimum access commitments.

Special agricultural safeguards

A feature of the Agreement on Agriculture is the special safeguard provision. WTO members that had tariffied non-tariff measures could reserve the right to invoke special safeguards in respect of these products. Where such a right has been reserved, members are entitled to impose additional duty on a product in any year when either the volume of imports exceeds or the price of imports falls below the designated trigger levels. Unlike in the GATT 1994 provision on emergency safeguard action and the WTO Agreement on Safeguards there is no requirement to prove serious injury to domestic agriculture and additional duties can be imposed once the designated trigger levels are crossed. There is no S&D treatment envisaged in the special safeguard provision.

Exemption from tariffication

The tariffication requirement extends to all agricultural products. A time-limited exception to the tariffication rule was made to enable Japan to take into account the political problem it had in implementing the rule in respect of rice. A condition of the exception was that the member concerned would have to grant higher minimum access in respect of the relevant product. The exception was extended to developing countries with additional flexibility. The minimum access requirement from them was lower. Korea and the Philippines have taken recourse to the special provision for developing countries for time-limited exemption from the tariffication rule (WTO Document WT/COMTD/W/77/Rev.1).

Greater Market Access for Developing Countries in Developed Country Markets

Although the modalities contained only an exhortation to the developed countries to improve the market access opportunities of the developing countries some progress was made in this regard. Since in the Uruguay Round reduction of tariffs was made on a simple average basis, some developed countries compensated the lower than average reduction on sensitive products by making a higher than average reduction in non-competing tropical agricultural products. According to estimates made immediately after the conclusion of the Uruguay Round (GATT Secretariat, 1994) the developed countries reduced their tariffs on agricultural products by an overall average amount of 37 per cent, ranging from 26 per cent for dairy products to 48 per cent for cut flowers. The reduction on dutiable

tropical products as a whole was 43 per cent, ranging from 37 per cent for tropical nuts and fruits to 52 per cent for spices, flowers and plants.

S&D Treatment in Domestic Support

Amber, blue and green boxes

The Agreement on Agriculture targeted practices that cause the most distortion to trade and production, capped them and sought to bring about a substantial reduction in the use of these practices. These practices constitute what has come to be known as amber box. It also identified the practices that were considered to have no, or at most minimal, distorting effects on trade and production and exempted them from reduction commitments. The exempted practices have come to be known as green box measures and are enumerated in an annex to the Agreement. Separately it also exempted direct payments under production limiting programmes, which has come to be known as the blue box. The measures were considered to be less distorting than measures that did not envisage any limitation on production. S&D treatment was provided in the disciplines on green box and amber box measures.

S&D treatment in green box

The listed green box measures include general services (e.g. research, extension, capital works for infrastructure services), buffer stocks for food security purposes, domestic food aid, direct payments to producers, decoupled income support, government participation in income insurance and income safety net programmes, payment for relief from natural disasters, structural adjustment assistance, and payment under environmental and regional assistance programmes. In order to benefit from the exemption the listed measures had to conform to certain general and specific criteria that were designed to ensure that the exempted measures caused no more than minimum economic distortions.

The specific criteria have been relaxed somewhat for the developing countries in respect of two of the green box measures viz., public stockholding for food security purposes and domestic food aid. Food purchases either for buffer stocks or for domestic food aid purposes have to be made by the governments at current market prices, and sales of buffer stocks have to be at no less than the current domestic market price. These conditions do not apply to the developing countries, although it is provided that in the case of purchases for buffer stocks the difference between the acquisition price and the external reference price must be accounted for in the measurement of amber box measures.

Notifications made to the WTO show that in the period 1995-98, 11 developing country members (Brazil, Costa Rica, Cyprus, India, Indonesia, Israel, Kenya, Korea, Pakistan, Philippines and Sri Lanka) had buffer-

stocking programmes in position and ten (Brazil, Cuba, Guyana, Indonesia, Korea, Morocco, Paraguay, Sri Lanka, Thailand and Venezuela) were operating domestic food aid programmes (source: WTO Document S/AG/NG/S/2). The notifications do not provide enough information for determining how many of them needed the additional flexibility extended to the developing countries by way of S&D treatment.

S&D treatment through exemption of subsidy practices

The most significant element of S&D treatment in the Agreement on Agriculture is the exemption from reduction commitments of the following measures required to encourage agricultural and rural development:

1. investment subsidies, which are generally available to agriculture;
2. agricultural input subsidies generally available to low-income and resource-poor farmers; and
3. support to producers to encourage diversification from growing illicit narcotics crops.

These exemptions are not included in the annex listing the green box measures but are separately provided for in the text of the Agreement. The relevant provision stipulates some conditions that govern the exemption. In respect of investment subsidies and agricultural input subsidies a prerequisite is that the subsidy must be generally available and not targeted at particular products.

During the period 1995-98, 25 developing countries (Bahrain, Brazil, Chile, Colombia, Costa Rica, Cyprus, Egypt, Fiji, Honduras, India, Korea, Malaysia, Maldives, Mexico, Morocco, Namibia, Pakistan, Paraguay, Philippines, Sri Lanka, Thailand, Tunisia, Turkey, Uruguay and Venezuela) notified to the WTO that they had schemes in operation that qualified for this exemption (source: WTO Documents G/AG/NG/S/2 and G/AG/NG/S/12/Rev.1). Although there is wide usage of the special exemptions for developing countries, in general there was a declining trend in the initial years of the implementation period.

S&D treatment in amber box reductions commitment including *de minimis*

The measures not included in the green and blue boxes were subject to reduction commitments. The modalities required governments first to compute, in accordance with a methodology that was prescribed, the Aggregate Measurement of Support (AMS). The AMS was the annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product-specific support provided in favour of the agricultural producers in general. The calculation of product-specific AMS had to be made separately for each

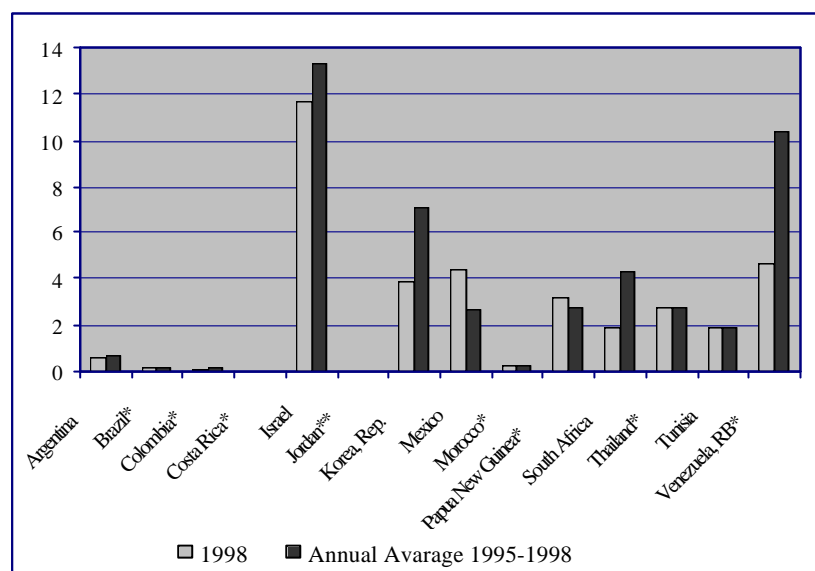
product benefiting from market price support, non-exempt direct payments and any other non-exempt policies. Support that was non-product-specific was required to be aggregated into one non-product-specific AMS.

There was no requirement to undertake reduction commitments if the product-specific AMS expressed as a percentage of the value of the production of the relevant product and non-product-specific AMS expressed as a percentage of the value of the entire agricultural production came to less than the *de minimis* value of 5 per cent. The *de minimis* level for developing countries was set at 10 per cent.

Reduction commitments had to be undertaken on the basis of the total AMS, which was the sum of the product-specific AMS, non-product-specific AMS and the Equivalent Measurement of Support calculated for products benefiting from measures for which it was not practicable to make calculations in accordance with the AMS methodology. The base level AMS was to be calculated on the basis of support provided in the years 1986-88. The modalities required Members to reduce the base level AMS by 20 per cent over a period of six years. For developing countries the reduction commitment was lower (13.33 per cent) and the implementation period was longer (10 years). Least-developed country members were exempted from the requirement to undertake reduction commitments on domestic support.

Only 15 developing country members (Argentina, Brazil, Colombia, Costa Rica, Cyprus, Israel, Jordan, Korea, Mexico, Morocco, Papua New Guinea, South Africa, Thailand, Tunisia and Venezuela) undertook reduction commitments in the Uruguay Round or in the course of their subsequent accession (source: WTO Document G/AG/NG/S/2). Figure 14.2 shows the current AMS of these members as a percentage of the total value of agricultural production or, where this is not available, as a percentage of the agricultural value added. Not only did the use of domestic support decline for most of these members after the Uruguay Round, but the percentage also was less than five for all except Israel in 1998.

Out of the 54 developing country members that made notifications on domestic support for the years 1995-98, only 12 (Brazil, Chile, Cyprus, India, Israel, Korea, Pakistan, Philippines, South Africa, Tunisia, Turkey and Uruguay) were benefiting from the *de minimis* provision (WTO Document G/AG/NG/S/2). Figure 14.3 shows the total of the subsidies in these members notified under the provision as a percentage of the total value of agricultural production or, where such data is not available, as a percentage of the agricultural value added. There was a decline in the use of the *de minimis* provision by the major developing country users and although it increased in some, the percentage in no developing country member exceeded three in 1998.



Notes: * Value added. Argentina value of production is for 1996; Tunisia value of Production in 1995-1996 is from 1997. Korea value of production is for 2000; Mexico is an average of 1994 and 2001.
 ** Average of Current Total AMS (2000-2001)/value of production (2000-2001) and Current Total AMS (2001)/value of production (2001). In 2001, Jordan's Current Total AMS was 0. Papua New Guinea has not notified, hence, total AMS commitment is used.

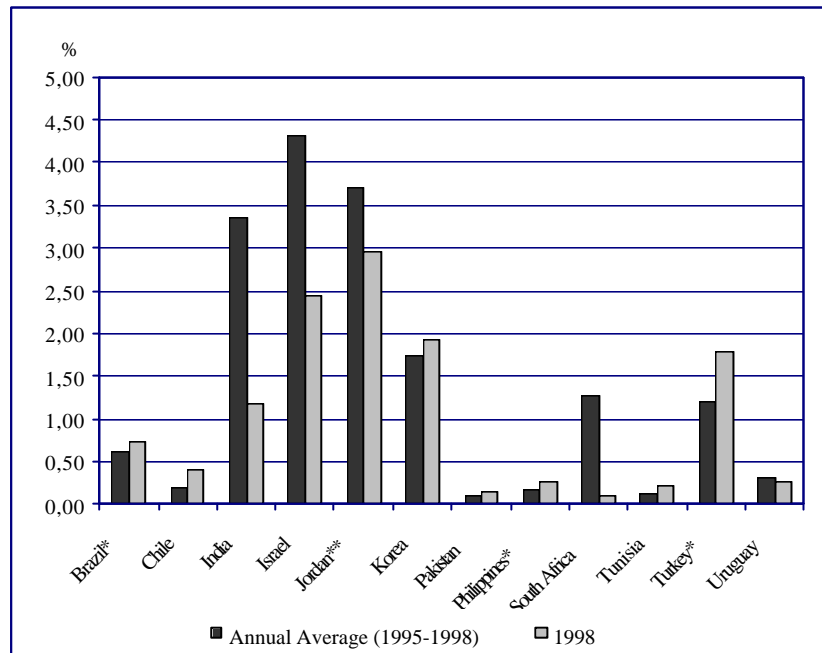
Source: WTO notifications, WTO Trade Policy Reviews and World Development Indicators.

Figure 14.2 Current AMS/value of production or value added

S&D Treatment in Export Subsidies

The Agreement mandated members to undertake reduction commitments in respect of six main types of export subsidy practices that were prevalent at that time and incorporate them in their schedules of specific commitments. These were direct subsidies on exports, sales for export by governments of non-commercial stocks at a lower price than for buyers in the domestic market, payments on export financed by virtue of governmental action such as levy, subsidies for reducing the cost of marketing exports, including the costs of international transport and freight, concessional internal transport and freight charges on export shipments and subsidies on agricultural products contingent on their incorporation in exported products. Members

were required to undertake commitments for reduction of the level of subsidies prevailing in 1986-90 both on budgetary outlay and export quantity. The budgetary outlay and export quantities were to be reduced by 36 per cent and 21 per cent respectively over the implementation period of six years.



Notes: * Value added.
 ** Average of *de minimis* (2000-2001)/value of production (2000-2001) and *de minimis* (2001)/value of production (2001). Chile 1995 and 1996 value of production is from 1997; India *de minimis*/value of production for 1998 refers to 1997; Korea value of production is for 2000; Pakistan 1998 value of production is from 1997. Tunisia value of production in 1995-1996 is from 1997; Uruguay 1995 value of production is from 1996.

Source: WTO notifications, WTO Trade Policy Reviews and World Development Indicators.

Figure 14.3 De minimis/value of production or value added

As a measure of S&D treatment the developing countries were required to undertake lower reduction commitments, i.e. 24 per cent for budgetary outlays and 14 per cent for exported quantities, and implement them over a longer period of 10 years. More importantly these countries were exempted from the requirement to undertake reduction commitments in respect of two of the listed practices, viz., subsidies for reducing the cost of marketing

exports and concessional internal transport and freight charges on export shipments.

All 12 developing country members (Brazil, Colombia, Costa Rica, Cyprus, Indonesia, Israel, Mexico, Romania, South Africa, Turkey, Uruguay and Venezuela) that have made export subsidy reduction commitments have availed of the flexibility to apply a lower rate of reduction. Compilations from individual country notifications made by the Secretariat (G/AG/NG/S/12/Rev.1) show that the actual use of export subsidies by these countries was very low and generally declining. Only five members (Korea, Morocco, Pakistan, Thailand and Tunisia) have made notifications to the WTO, showing the use of export subsidies during the years 1995-98 in the two categories in respect of which developing countries were exempted from undertaking reduction commitments (source: WTO Document G/AG/NG/S/5/Rev.1). Here too, the actual subsidies were exceedingly small in magnitude.

S&D and the Rules on Export Restrictions

The Agreement on Agriculture also contains disciplines on export prohibitions and restrictions. Before a member institutes an export prohibition or restriction it must notify the measure and discuss with any other member having an interest as an importer any matter related to the measure. Developing countries are not covered by the obligation unless they are net exporters of the product in question.

Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed Countries (LDCs) and Net Food-Importing Developing Countries (NFIDCs)

At the time of adoption of the Marrakesh Agreement in April 1994 there was recognition that the reform programme on agriculture undertaken in the WTO Agreement could result in higher prices of essential foodstuffs and cause difficulties for the least developed and net food-importing countries. To alleviate the situation Ministers agreed on an action programme as indicated below:

1. to review the level of food aid and initiate negotiations to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries and to adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided in full grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986;
2. to give full consideration in the context of aid programmes to requests for technical and financial assistance to least-developed and net food

- importing countries to improve their agricultural productivity and infrastructure; and
3. to ensure that any agreement on agricultural export credit makes appropriate provision for differential treatment for these countries.

In addition to the above, Ministers recognised that certain developing countries would experience short-term difficulties in financing normal levels of commercial imports and in order to address these they would be eligible for drawing on the resources of international financial institutions under existing or new facilities.

In not embodying firm legal commitments the language of the Decision is strongly reminiscent of Part IV of GATT, which we have examined earlier. As a result of this it is difficult to pinpoint the extent of compliance with the terms of the decision. Some progress has however been made on the quality of food aid (WTO Document G/AG/NG/S/4) and bilateral and multilateral aid programmes for technical and financial assistance to improve agricultural productivity in LDCs and NFIDCs (WTO Document G/AG/NG/S/4).

DOHA ROUND PROPOSALS FOR S&D TREATMENT IN THE NEGOTIATIONS ON AGRICULTURE

From the commencement of negotiations on agriculture in the spring of 2000 to the summer break in 2001 a large number of formal proposals were submitted by WTO members for further liberalization, and several of them made suggestions on S&D treatment. The Doha Ministerial Declaration (WT/MIN (01)/DEC/1) that launched the new round of multilateral trade negotiations in the WTO contained a renewed mandate on the negotiations on agriculture, which again stresses the S&D aspect.

After the Doha Ministerial Meeting in November 2001, negotiations have continued on an informal basis, but the specific proposals submitted by members have not been made public. However, these have been reflected in the overview paper circulated by the Chairman in December 2002 (TN/AG/6) and taken into account by the Chairman of the Special Session of the Committee of Agriculture in the first draft on modalities (TN/AG/1) submitted on 17 February 2003, and the revised text (TN/AG/1/Rev.1) made available on 18 March 2003. The key proposals made by members are outlined below:

Market Access:

- ?? Developed country members to grant immediately duty-free and quota-free access to tropical products

- ?? A preferential tariff quota to be reserved to least-developed countries, net food-importing developing countries or developing countries with a per capita income of less than US\$1000
- ?? Longer phase-out period to be allowed for the elimination of preferential country-specific quota allocation in favour of least-developed and other developing country suppliers
- ?? Preference-giving members to maintain the preferential margins in nominal terms
- ?? Agricultural producers in developing countries to be adequately compensated for the continued erosion of preference margins
- ?? Members to improve the transparency, stability and predictability of existing preferential trade arrangements and make them binding in the framework of the Agreement on Agriculture
- ?? Developed and advanced developing countries to enhance the market access opportunities in favour of least-developed, net food-importing, landlocked, small island developing countries
- ?? Members to promote access by developing countries to knowledge and technical infrastructures needed to ensure compliance with food safety standards in developed country markets
- ?? Developing countries to be allowed to exclude from market access commitments products that constitute the predominant staple in their traditional diet
- ?? Developing countries to be allowed to renegotiate the tariff bindings that they consider to be low
- ?? Developing countries to have the flexibility to select the most appropriate formula, with lower simple average cuts and lower minimum average cut
- ?? Developing countries to be allowed longer time frame (10 years) for implementation of tariff cuts
- ?? Developing countries maintaining tariff quotas shall not be required to undertake further commitments
- ?? Developing countries to have access to a new mechanism to protect their domestic markets against import surges
- ?? Developing countries to be entitled to apply countervailing duties on developed countries' exports on the basis of schedules and notifications of those countries without being required to prove injury
- ?? Importing state trading enterprises that fulfil rural development and food security objectives to continue to play a positive role in developing countries

Domestic Support:

- ?? Developing countries to have flexibility to maintain AMS commitments at the aggregate level, to implement reductions over a ten year period commencing in 2008, and to apply lower reduction commitments (no more than half of the commitments of developed countries)
- ?? The *de minimis* level for developing countries below which they should not be required to reduce to be raised to 15 per cent or at least maintained at the existing level of 10 per cent
- ?? The existing developing country exemptions to be maintained and expanded to include inter alia investment and input subsidies whether or not targeted, support to encourage diversification from crops considered harmful to human health such as tobacco, subsidies for marketing costs e.g. internal transport, agricultural cooperatives, product quality improvements, agricultural credit
- ?? Criteria for exemption under the green box to be relaxed for developing countries in respect of relief from natural disasters and regional assistance programmes
- ?? Criteria for measures relating to public stockholding for food stocking purposes and to domestic food aid to qualify for green box exemption to be relaxed further for developing countries

Export Competition:

- ?? Existing exemptions for developing countries to be continued and extended to other subsidy practices listed in the Agreement on Agriculture
- ?? Until a developing country reaches a certain stage of export competitiveness (3.25 per cent of world trade of the products concerned) the support provided to subsistence products and certain other crops not to be subject to commitments
- ?? Any new reduction commitment on export subsidies to be no more than half of the commitments by developed countries, with longer time frame for implementation.
- ?? S&D treatment to be extended to least-developed and net food-importing developing countries in any arrangement on export credit
- ?? An international food stockholding system to be put in place to deal with serious temporary crises in developing countries
- ?? State Trading Enterprises in developing countries exporting any product constituting less than a certain percentage (5 per cent) of world trade to be exempt from disciplines

- ?? Developing countries to be allowed to use export restrictions and taxes to address food security concerns or other commercial and marketing policy objectives

It can be observed from the above summary of points raised by the developing countries in the context of S&D treatment that the focus is on the policy flexibility for the developing countries. On market access there are some proposals for S&D treatment in the developed country measures, but these are more for consolidating or prolonging preferential access and less for deeper liberalisation on a non-discriminatory basis in respect of products of export interest to developing countries.

Chairman's Draft of Modalities for Further Commitments in Agriculture

The Chairman's draft of the modalities (TN/AG/W/1/Rev.1) makes extensive proposals on S&D treatment of developing countries. It maintains the pattern set in the Uruguay Round for developing countries being required to make lower percentage reduction of trade barriers over a longer implementation period. But there are other significant provisions as well. Developing countries would have the possibility of declaring a number of agricultural products as special products with respect to food security, rural development and/or livelihood security concerns. For these products the reduction of tariffs would be even lower. The draft also envisages the establishment of a new agricultural safeguard mechanism to enable these countries to effectively take into account these concerns. On domestic support the policy-specific criteria and conditions are to be relaxed for developing countries for certain measures. The draft proposes addition of new measures in respect of which developing countries would be exempted from reduction commitments, under either the green box or the special provision for developing country. The *de minimis* provision would also remain unchanged for developing countries. On export subsidies, developing countries would continue to benefit from exemptions in respect of transport and marketing cost subsidies. The Chairman's proposal is also to continue the Uruguay Round exemption from reduction commitments for the least developed countries.

S&D TREATMENT IN DOHA ROUND NEGOTIATIONS ON AGRICULTURE – THE WAY FORWARD

S&D treatment is clearly a means to an end and not an end in itself. In the Doha Round, as in the past negotiations, the proposals of the developing countries must be shaped by the ultimate goals that they set for themselves.

These should be really to secure that new access opportunities are created for the agricultural products exported by them, and at the same time their own agriculture is not exposed to undue risks. Before we consider the way forward we must evaluate the benefits that developing countries have derived from the application of the concept of S&D in past negotiations.

Increasing Trade Opportunity for Developing Countries: Experience in Past Negotiations

Non-reciprocity in trade negotiations was the most concrete result of the addition of Section IV in GATT 1947 in 1964. While acceptance of the concept undoubtedly lightened the burden of undertaking tariff commitments on the developing countries, there was a corresponding price to be paid in terms of additional market access opportunities in the developed countries. In the Tokyo Round the average tariff reduction in the developed countries on industrial products exported by the developing countries was less than the overall reduction, about one-quarter compared with one-third (Hoda, 2001). In the Uruguay Round the tariff cuts in the developed countries on non-agricultural products imported from the developing and the least developed countries were again lower as compared to the cuts on imports from all sources (GATT Secretariat, 1994).

In both the Tokyo and Uruguay Rounds the main reason for lower reduction in tariffs facing imports from the developing countries was that the principal industrial products exported by the developing countries (textiles and clothing, footwear, travel goods and fish and fish products) were sensitive for the developed countries. Reducing tariffs on these would have required that the reciprocal concessions made by the developing countries were sufficient to enable them to overcome the protectionist pressures emanating from domestic industries. Despite the acceptance in GATT/WTO of the concept of non-reciprocity, the ground reality is that obtaining reciprocal concessions by trading partners is politically imperative in all democracies before any trade liberalisation effort is undertaken affecting sensitive sectors of the economy. Domestic constituencies supporting liberalisation have to be created in order to help the government to create a countervailing force against protectionist interests. When reciprocal concessions are not made by developing countries their developed partners follow the line of least resistance and make only small reductions in tariffs in sensitive sectors. The concept of non-reciprocity may help developing countries to fend off pressures to make concessions themselves but it is a poor tool as far as extracting concessions from the developed countries in sensitive products is concerned.

The above having been said it must also be recognised that in past negotiations there has been substantial and virtually unilateral liberalisation by the major developed countries in the area of tropical agricultural products.

The liberalisation has been accomplished in respect of tropical products that do not compete directly with sensitive temperate-zone products, such as tropical beverages, tropical nuts and fruits and spices. We have seen that this process continued in the Uruguay Round. However, it must be underscored that what was feasible in the past in the softer areas of tropical products is not possible in the area of sensitive temperate-zone agricultural products. The possibility of getting concessions in agricultural products on a non-reciprocal basis seems to have been exhausted.

Flexibility in Trade Policy Measures

It cannot be denied that the S&D provisions in the Agreement on Agriculture and the modalities that were followed by the members in undertaking specific commitments were some of the most significant in the WTO Agreement. The foregoing analysis also shows that many developing country members have used these provisions in greater or smaller measure during the implementation period. But it also shows that the flexibility provided was far in excess of the requirement of the large majority of developing countries. They pitched their bound tariffs at levels that are much higher than the levels at which they have needed to apply them. Only 15 developing country members undertook AMS commitments but the current AMS has been less than 5 per cent of the total value of agricultural production or of the agricultural value-added in all but one of them. No developing country is using the *de minimis* provisions anywhere near the level of 10 per cent that is allowed to them separately for product-specific and non-product-specific support. Going by the country notifications developing countries have virtually ceased subsidising exports of agricultural products, and their utilisation of exempted export subsidy practices is very low.

In the period before the Uruguay Round, most developing countries were taxing their agriculture (Krueger et al., 1988). Furthermore, when the WTO Agreement entered into force, several Latin American countries had already undertaken unilateral measures for agricultural reform and the Sub-Saharan African countries were in the process of carrying out domestic agricultural liberalisation pursuant to structural assistance programmes or following currency adjustment (Valdes and McCalla, 1996). The progress in Asian countries was less dramatic but macro-economic imperatives were bringing about a change in their policies as well. For all these reasons the Uruguay Round results did not generally result in any pressure for change in their agricultural policies. On account of S&D provisions they got even greater flexibility than what a large majority of them needed.

One other significant point needs to be made here. In agriculture the main source of economic distortions is the developed and not the developing countries. In the Uruguay Round many developing countries were so preoccupied with S&D treatment that the developed countries got away with

the minimal liberalisation, although one good result was that a framework was created for future liberalisation. An assessment of the importance of S&D treatment accomplished during the Uruguay Round negotiations on agriculture must be made in the context of the overall results of these negotiations.

In market access the base rates resulting from the tariffication exercise were inordinately high in the OECD countries. Further the requirement to reduce tariffs by 36 per cent on a simple average basis, with a minimum reduction of only 15 per cent, allowed these countries to limit the reduction in sensitive products. Many of the rates are expressed in non ad valorem terms but calculations of the ad valorem equivalents show that the percentages were in the range of 0-495 for wheat, 80-404 for sugar, 35-578 for cheese, 82-674 for butter, 161-346 for skimmed milk powder, 31-405 for beef, 5-538 for pig meat, 14-500 for poultry meat and 40-505 for sheep meat (OECD, 2001). In many cases the tariffs resulting from tariffication were overstated and one author has come to the conclusion that “[t]he EU declared base tariffs which were higher than the level in 1986-88 for eight of the nine products, and for all but two, the final bound tariffs are above the levels in the period 1986-88 which already was a period with very high levels of protection” (Hathaway and Ingco, 1997). In the USA high base rates (in the range of 100-200 per cent) were established on traditionally protected products viz., cheese, butter, skimmed milk powder, groundnut and sugar and these were all subjected to the minimum cut (15 per cent) permitted by the modalities (Gulati and Hoda, 2004). The estimation of the ad valorem equivalent of final bound tariffs of the major industrialised countries on the basis of the average world unit price in 1995-97 brings out the continued existence of very high tariffs. In the US there were 24 tariff lines above 100 per cent, with the highest rate at 350 per cent, in the EU there were 141 tariffs lines with a high rate of over 500 per cent and in Japan 142 tariff lines with the highest rate of above 2000 per cent (Gibson et al., 2001). In addition the developed countries were allowed to use special agricultural safeguards for tariffied products, with the help of which they were able to raise tariffs further. The significance of the S&D treatment of developing countries in the modalities for undertaking tariff commitments (reduce tariffs by a simple average of 24 per cent over 10 years; on unbound tariffs bind at ceiling levels) must be assessed in the context of the exceedingly high levels of tariffs on many key products, that continue to prevail in the developed countries after the Uruguay Round cuts.

In domestic support the position is not very different. Developed countries had to reduce their total AMS by 20 per cent over six years while developing countries had to do so by 13.33 per cent over ten years. The total AMS did not capture all the practices resulting in economic distortions as direct payments under production limiting programmes (blue box) were exempted from reduction commitments. The aforementioned study (Gulati and Hoda, 2004) has thrown light on the magnitude of domestic support in the EU and

the USA. If the blue box payments were taken into account along with the current total AMS the level of domestic support in the EU would come to about 30 per cent of the value of agricultural production in the years 1999-2000. The requirement to make a reduction on the basis of total AMS gave to the EU the flexibility to retain or even increase the level of AMS for specific products. The average product-specific AMS percentage for rice, white sugar, skimmed milk powder, butter and beef was in the range of 50-75 per cent in 1995-2000. For cereals the current total AMS was about 25 per cent of the value of production during the years 1995-2000, but if blue box payments were also taken into account the corresponding percentage would be in the range of 80. In the USA, the total AMS is relatively lower but the product-specific support as a percentage of the value of production was high in the period 1995-98 for the traditionally protected products viz., dairy (21), peanuts (33) and sugar (49).

Let us consider export competition, and export subsidies in particular. Here developing countries were given S&D treatment by way of lower reduction percentages (24 and 14 per cent) as compared to the reduction requirement percentages for others (36 and 21) of budgetary support and exported quantities respectively. In addition they were exempted from reduction commitments in respect of subsidies on costs of marketing exports and internal transport charges on export shipments. We have seen that the level of subsidisation by countries that have undertaken reduction commitments is very small and diminishing for the most part. As regards the two categories of exempted export subsidy practices only five developing countries had notified their use. On the other hand a study (OECD, 2001) has brought out the very high levels of per unit export subsidisation by the EU which is the main WTO member which uses budgetary support for export subsidisation. According to this study the rate of subsidisation (per unit subsidy/world fob prices multiplied by hundred) by the EU during the years 1995-97 was in the range of 130-191 for rice, 146-164 for sugar, 102-112 for butter oil and 135-378 for pig meat.

Much is made of the fact that there has been a fall in the utilisation of export subsidies by the EU in recent years and its annual commitment levels have remained unutilised. However, an ABARE study (Podbury et al., 2001) has pointed out that a substantial part of the reduction in export subsidisation was illusory. Although reduction of intervention prices led to the reduction in explicit export subsidisation, simultaneously additional domestic subsidy was made available in the form of direct payments under production-limiting programmes. This subsidy fulfilled the same purpose as direct export subsidies as it helped the exporters to reduce their prices in order to compete with efficient suppliers. It was not called export subsidy, as it was available for domestic sales as well. In the USA while reliance on explicit export subsidies continues to be low it has been shown that direct payments have served the same purpose as those subsidies (Gulati and Hoda, 2004).

The Way Forward

The foregoing analysis sets out the reality of S&D treatment accorded to the developing countries in the Uruguay Round negotiations. The Agreement on Agriculture was so designed that it was the principal developed countries that retained for themselves a more beneficial treatment in many ways, while a lower order of flexibility was given to the developing countries. In the current round the objective of developing countries must be first to get equal treatment before they strive for special and differential treatment.

The application of a formula such as the one adopted in the Uruguay Round will still leave the tariff levels in the developed countries on many products higher than those prevailing in developing countries. What is needed is an element in the modalities for reduction of tariffs that would impose a cap on the tariff level at say 60 per cent ad valorem. Can the developing countries accept the maximum to be at this level? Most developing countries have a large number of consumers with relatively modest income, and they can ill afford to protect the producers to such an extent that domestic prices are on the average more than 60 per cent above international prices. Economic access to food is after all one of the main elements of food security. We have also seen that in the case of most developing countries there is a wide gap between the bound and applied rates, which means that generally these countries have not found it necessary to raise the tariffs to the high levels at which they have bound them. What about the need to protect domestic agriculture against price volatility, which is a characteristic feature of international commodity markets, and against the domestic and export subsidy practices of the developed countries? The need for protection against steep falls in international prices or against unfair trade practices is undeniable, but for this we do not need to keep the tariff levels high at all times. A special safeguard mechanism needs to be provided open to developing and developed countries alike.

As for high levels of subsidisation, while it would be necessary to set up defensive mechanisms to neutralise the subsidies, it would be imperative to do more. What is needed is to go to the root of the problem and bring down drastically the level of subsidisation. Any reduction of total AMS and the blue box payments by a specific percentage would still leave intact the considerable disparity that exists in the levels of subsidisation in the developing and developed countries. Domestic support causing economic distortions should be brought down to a uniform level of say, 5 per cent of the total value of agricultural production for developing and developed countries alike. Most developing countries cannot afford the luxury of subsidising their farmers. We have seen that a 5 per cent limit would suffice for most developing countries that have AMS commitments at present. Budget austerity in these countries is usually a big limiting factor in the options for agricultural and food policy (Greenfield and Konandreas, 1996).

For individual products also a ceiling, say 15 per cent, must be stipulated as a percentage of the value of production of the relevant product. There is no need to provide for separate *de minimis* exemption as for an overwhelming majority of developing countries the limits suggested above would suffice.

In respect of export subsidies too the developing countries should fall in line with their developed country partners in eliminating the practice, since their financial and development compulsions would never permit them to subsidise the consumers in other countries. Nor can they compete with the rich countries in such subsidisation. The developing country exemptions for freight and marketing cost-related subsidies also need to be extinguished to encourage developed countries to give up explicit export subsidies and related practices such as food aid and cross-subsidisation through state trading export monopolies as well as to discipline export financing. We have seen that the actual export subsidisation by the developing countries is of a very low order of magnitude.

If deep reform is made in world agriculture the need for special and differential treatment will be minimised but will not disappear. We do not suggest that the concept of S&D needs to be eliminated from the WTO Agreement. There are certainly some elements in the Agreement on Agriculture that must be retained, such as the Article 6.2 exemption from reduction commitments for generally available input support and investment subsidies. The Chairman of the Committee on Agriculture has made some good proposals for enhancing the exemptions under this Article. These provisions are needed to allow agriculture in developing countries to be modernised and reach its full potential. But overemphasis on S&D treatment would be counter-productive. It would deflect attention from the central task of reducing the disparity in the use of trade distorting measures by the developing and developed countries. It would ease pressure on the major industrialised countries to bring about fundamental reform in their agriculture. In the Doha Round the developing countries must throw a challenge to the major players. Let there be deep reform and let basically the same rules apply to all WTO members.

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