*Annotated version of **TN/AG/W/1/Rev.1** (Harbinson draft agriculture negotiating text, 18 March 2003) by Sophia Murphy, with considerable help from Tobias Reichert and Stuart Clark. My thanks to Shefali Sharma for comments. Annotations should appear in a different colour (if you have that capacity), in italics and in a different font from the original text.*

June 12, 2003. ***Questions and comments to: smurphy@iatp.org***

TN/AG/W/1/Rev1
18 March 2003

NEGOTIATIONS ON AGRICULTURE
FIRST DRAFT OF MODALITIES FOR THE FURTHER COMMITMENTS

Revision

Preface

1. Under the programme adopted by the Special Session of the Committee on Agriculture on 26 March 2002, a revision of the first draft of modalities for further commitments is to be prepared and circulated in advance of the Special Session to be held on 25-31 March 2003 (TN/AG/1 refers). In accordance with this requirement, the Chairman submits herewith the present draft on his own responsibility.

Two things here:

A. Modalities are the commitments undertaken by governments in an agreement. For example, a modality for export subsidies might call for a 60 percent cut over five years. The negotiations now in progress are all about modalities. Modalities determine what is forbidden, what is allowed, and how things should change.

B. The Chairman presenting this on his own responsibility means that the document is not the result of a negotiation. Countries are under no obligation to accept it as the basis for future work. Japan and a few other countries rejected this document as a basis for negotiation. However, the lack of an alternative gives the document considerable weight – and the document does reflect a mix of different positions put forward over the past year. Nothing is included that one government or another has not proposed at some stage in the process. Current negotiations are continuing with this as the starting document.

2. The present draft is an evolution of the first draft of modalities based on the discussions at the Special Session held on 24-28 February (TN/AG/W/1 refers). On that occasion, participants engaged in intense and focused debate. A number of participants indicated that the draft did not correspond in various ways with their vision of the modalities to be established. Others found the paper useful or expressed interest in various ideas presented. Overall, while a number of useful suggestions emerged, positions in key areas remained far apart. In the circumstances, there was insufficient collective guidance to enable the Chairman, at this juncture and in those areas, significantly to modify the first draft as submitted on 17 February 2003. The present paper must therefore be considered as an initial, limited revision of certain elements of the first draft of modalities.

In other words, this is a revised version of the modalities released on Feb. 12th. However, not all that much changed between versions, because countries are so far apart in their positions.

3. The discussions at the Special Session in February made it clear that a major negotiating effort, focusing particularly on the key divergences referred to above, is still required in order to establish

modalities for further commitments by 31 March. Readiness on all sides to engage in serious negotiations aimed at finding solutions that can attract broad-based support will be of the essence. In parallel, as indicated by the Chairman in his report to the formal Special Session on 28 February 2003, further technical work, some of which has already been initiated, will need to be pursued in a number of areas.

4. As with the first draft submitted on 17 February 2003, the present revision is based on the work carried out during the series of formal and informal Special Sessions of the Committee on Agriculture and related intersessional and technical consultations conducted in accordance with the mandate provided by Ministers at Doha and the programme thereunder as adopted by the Special Session on Agriculture on 26 March 2002. Paragraphs 13 and 14 of the Doha Ministerial Declaration provide (WT/MIN(01)/DEC/1 refers):

> "13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 Members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.
>
> "14. Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole."

These two paragraphs are the mandate for the AoA review as agreed in Doha. In brief, governments are committed to: "establish a fair and market-oriented trading system"; to "prevent restrictions and distortions in world agricultural markets"; to increase market access 'substantially'; to move towards eliminating export subsidies—the original language of actual elimination was watered down by the EU in Doha—and; large reductions in "trade-distorting" domestic support (the amber box, not the green, with the blue left with indeterminate status). Special and Differential Treatment (SDT) (more favourable rules for the South) should be integral to every part—in other words, each section should include provisions, rather than create a separate article of SDT provisions.

SDT is also "to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development."

In Doha, governments gave themselves until 31 March 2003 to agree modalities—a deadline that has now slipped. This means the schedules (in which governments turn their negotiated commitments into actual numbers and relate them to actual agricultural programs) will not be ready in time for the Cancun Ministerial as had been planned. In Doha, governments tied agreement on agriculture to progress on other agreements, making agriculture part of a so-called "single-undertaking" of agreements on multiple issues, including services and non-agricultural tariffs.

In the text that follows, measures apply to all countries unless a group of countries is explicitly excluded. Most sections have a specific set of articles entitled "Special and Differential Treatment," which provides the rules for developing countries.

5. The present paper does not claim to be agreed in whole or in any part and is without prejudice to the positions of participants. Square brackets are used in a number of places for a variety of purposes, such as to put forward figures for indicative purposes, to suggest alternatives, or possible formulations. Where text is not in square brackets, this does not convey any degree of acceptance. In a few areas, the text has not been fully elaborated and any resulting unevenness may need to be ironed out.

None of the text is agreed, but square brackets are used to show alternative proposals, or where a number has been given to provide an example, rather than as a proposed final option.

6. It is the Chairman's earnest hope that the Special Session to be held on 25-31 March will be used by participants for meaningful and serious negotiations. Only constructive engagement by participants will create the space for establishing modalities in line with the Doha mandate.

General Provisions and Terms

7. Unless otherwise specified below, the following general provisions and terms shall apply:

(a) Product coverage

The product coverage as specified in Annex 1 of the Agreement on Agriculture shall apply (hereafter referred to as "agricultural products").

(b) "Year"

"Year" in the context of these modalities refers to the annual basis (calendar year, financial or marketing year) to be specified in Members' draft Schedules.

(c) "Commitment"

The term "commitment" includes concessions.

(d) Starting-point of reduction commitments

The starting-point for the first instalment of the reduction commitments in all areas shall be the beginning of year 1 of the respective implementation periods. Subsequent reductions shall be made at the beginning of each of the successive implementation years.

Market Access

Tariffs

8. Tariffs, except in-quota tariffs, shall be reduced by a simple average for all agricultural products subject to a minimum reduction per tariff line. The base for the reductions shall be the final bound tariffs as specified in the Schedules of Members. Except as provided in paragraph 16 below, the tariff reductions shall be implemented in equal annual instalments over a period of [five] years, applying the following formula:

In-quota tariffs refer to the quotas created under the first AoA, known as tariff rate quotas (TRQ). These were amounts of a given import that had to be let in at a tariff low enough to make them competitive with the domestic producers. It was a way to try to force a minimum amount of imports onto even a highly protected market—they are an issue where products face otherwise prohibitively high tariffs and import levels are correspondingly low. They reflect the WTO premise that imports MUST be allowed, even where a country has negotiated high tariffs. When a country already imports the equivalent of five percent or more of domestic consumption of a given product, no TRQ is required. Five percent was the minimum import requirement agreed to for developed countries in the AoA, phased in over five years. Developing countries had to create TRQs equivalent to four percent of domestic consumption by the end of a nine-year implementation period. By and the large the system has failed to ensure increased import levels, while creating a lot of new headaches for trade administrators and negotiators.

The baseline for tariff reductions are those in place in the schedule of existing AoA commitments. Developed countries have already implemented all the reductions agreed to in

the first AoA, and developing countries are almost there—they were given a ten rather than five year implementation period.

(i) For all agricultural tariffs greater than [90 per cent *ad valorem*] the simple average reduction rate shall be [60] per cent subject to a minimum cut of [45] per cent per tariff line.

Ad valorem means by value (as opposed to by quantity). Instead of a fixed tariff per bushel of wheat, the tariff is fixed per peso/dollar/euro (substitute local currency) value. However, especially in agriculture, many countries still apply "specific" tariffs, which charge a certain amount on the quantity of an imported product. This problem is dealt with below (para 9).

The proposal in (i) would mean that, for example, if a country's tariff on sugar was 200%, then over the five year implementation period, it would have to be reduced by 60%, and so would be no more than 80% at the end of implementation. However there is still some flexibility as the average tariff cut doesn't have be met for every product but for all "tariff lines" which the respective initial tariff is applied What has to be met is a minimum cut of 45% for every tariff line, as long as the 60% average is maintained by higher cuts for other products. In our example if the country with the 200% tariff on sugar had also a tariff of 100% on skimmed milk powder, it could reduce the tariff for sugar by only 45% (to 110%) if it committed a stronger cut of 75% cut for skimmed milk powder (reducing the tariff on skimmed milk powder to 50%.)

The same basic formula is applied below, but the lower the initial tariff, the lower the cut required. This graduation of cuts is to reduce tariff peaks. This is especially efficient as "trade-offs" between cutting higher and lower tariffs to meet the average can only be made in the respective groups of tariffs. In the Uruguay Round it was possible to reduce a 1% tariff by 100% and reduce two high tariffs by only 15% (which was the minimum cut allowed) and still meet the 36% average reduction for all tariff lines. The EU proposes exactly the same formula for the current Round—it does not accept this proposal from Harbinson.

(ii) For all agricultural tariffs lower than or equal to [90 per cent *ad valorem*] and greater than [15 per cent *ad valorem*] the simple average reduction rate shall be [50] per cent subject to a minimum cut of [35] per cent per tariff line.

(iii) For all agricultural tariffs lower than or equal to [15 per cent *ad valorem*] the simple average reduction rate shall be [40] per cent subject to a minimum cut of [25] per cent per tariff line.

This proposal, to cut the highest tariffs the most, reflects the US ambition to "harmonize" tariffs, meaning to bring everyone closer to having the same level of tariffs. The harmonisation according to the "Swiss formula" with a coefficient of 25 as proposed by the US and Cairns would have meant that the highest possible tariff would have been 25%, no matter how high they were before. Harbinson tries to create an UR formula—simple percentage cuts for any given tariff line—but with some steps to ensure more significant reductions in the highest tariffs.

In applying this formula, where the tariff on a processed product is higher than the tariff for the product in its primary form, the rate of tariff reduction for the processed product shall be equivalent to that for the product in its primary form multiplied, at a minimum, by a factor of [1.3].

*This proposal is to tackle the problem of tariff escalation. When a country allows cocoa to enter duty-free, or nearly so, while imposing high tariffs on chocolate, the problem is referred to as tariff escalation. So if cocoa faced a 2% tariff and chocolate a 20% tariff, the proposed rules would require that the 40% minimum cut on the cocoa tariff (see (iii) above) be matched by 40*1.3 or a 52% cut on the chocolate tariff. NGOs, UN agencies and developing country governments have fought against tariff escalation for a very long time, trying to protect incentives for more value-added production in developing countries, who are usually the ones whose exports face this kind of discrimination. However, the example shows the practical problems of this proposal. Most of the chocolate sold contains more sugar and milk than cocoa. Both sugar and milk are protected in many countries by tariffs higher than the tariff on chocolate. So should chocolate tariffs come down by a higher percentage than cocoa, under the rules?*

9. Where participants apply non-*ad valorem* tariffs, the allocation of any tariff item in categories (ii) and (iii) above shall be based on tariff equivalents to be calculated by the participant concerned in a transparent manner, using three-year average external reference prices or data, based on a recent representative five-year period, excluding the highest and the lowest entry. Full details of the method and data used for these calculations shall be included in the tables of supporting material for the draft Schedules and shall be subject to multilateral review.

Many agricultural tariffs are not ad valorem tariffs as explained above. Hence their "ad-valorem-equivalents" vary with world market prices. And so may the (Harbinson-created) tariff category they belong to: high, medium or low. To stay with our example: If the tariff for sugar was fixed at 80 US-$ per ton and the world market price was at a certain moment 100 US-$ per ton, the tariff equivalent would then be 80% - and we have a medium tariff, subject to a 50% cut. However, if the world market price fell to 80 US-$ the tariff equivalent would now be 100% and we have a high tariff, requiring a cut of 60%. This shift does not occur with ad valorem tariffs – in the given example, the 80% tariff would have fallen to 64 US$ per ton when the world price fell. Harbinson gives two alternatives to calculate the world market prices with which the tariffs have to be compared, to ensure non-ad valorem tariffs are properly covered.

Special and Differential Treatment

10. In implementing their market access commitments, developed country Members shall take fully into account the particular needs and conditions of developing country Members by providing for greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members, including the fullest liberalization of trade in tropical products, whether in primary or in processed form, and for products of particular importance to the diversification of production from the growing of illicit narcotic crops, or crops whose non-edible or non-drinkable products, while being lawful, are recognized as being harmful for human health.

This is an exhortation, not a binding commitment of any kind. It fails the Doha-agreed standard of "operational" and remains what is known as "best-endeavour" – i.e. we will try… "The fullest liberalization of trade" does not mean anything without benchmarks. The legal, "non-edible", "non-drinkable" product that causes harm is tobacco.

11. Developing countries shall have the flexibility to declare up to [ ] agricultural products at the [6-digit] [4-digit] HS level as being special products with respect to food security, rural development and/or livelihood security concerns and designate these products with the symbol "SP" in Section I-A of Part I of their Schedules (hereafter referred to as "SP products"). This concept will be evolved in further technical consultations.

The HS level (Harmonized System) is the World Customs Union code for referring to products. The more digits are included, the more precise is the designation.

For example for cereals, some of which are most likely to fall into the category of special products in most countries, the HS-codes are as follows:
10.01 Wheat and meslin.
1001.10 - Durum wheat
1001.90 - Other
10.02 1002.00 Rye.
10.03 1003.00 Barley.
10.04 1004.00 Oats.
10.05 Maize (corn).
1005.10 - Seed
1005.90 - Other
10.06 Rice.
1006.10 - Rice in the husk (paddy or rough)
1006.20 - Husked (brown) rice
1006.30 - Semi-milled or wholly milled rice, whether or not polished or glazed
1006.40 - Broken rice
10.07 1007.00 Grain sorghum.
10.08 Buckwheat, millet and canary seed; other cereals.
1008.10 - Buckwheat
1008.20 - Millet
1008.30 - Canary seed
1008.90 - Other cereals

The biggest difference would obviously be with rice, where only one tariff line would be necessary at the four digit level as opposed to four at the six digit level. However, all preparations of cereals have their own codes at four digit level and would have to be notified separately. At six digits, to protect even a handful of crops, countries would need to list upwards of 20 strategic products, something that is unlikely to be supported by the large exporters. A four digit code would be more generous—offering a four digit option is one of the gestures towards developing country interests that changed between drafts of these modalities. Special Products is the term Harbinson has chosen to talk about food security crops. It is helpful that the definition includes rural development and/or livelihood security concerns, so that food security is understood in a wider sense than just food supplies.

The proposal is that developing countries could designate SP products in their schedules (the second part of a negotiation) and these products would face different rules than the others. The detail will matter a lot, and therefore the technical consultations will be very important.

The proposal also offers developing countries a more graduated (and less stringent) set of tariff bands for tariff reduction on the non-SP products – see 12. below.

12. For all agricultural products other than SP products, the reduction commitments of developing countries shall be implemented applying the following formula:

(i) For all agricultural tariffs greater than [120 per cent *ad valorem*] the simple average reduction rate shall be [40] per cent subject to a minimum cut of [30] per cent per tariff line.

(ii) For all agricultural tariffs lower than or equal to [120 per cent *ad valorem*] and greater than [60 per cent *ad valorem*] the simple average reduction rate shall be [35] per cent subject to a minimum cut of [25] per cent per tariff line.

This is the level at which many developing countries bound their tariffs during the Uruguay Round, including on staple crops.

(iii) For all agricultural tariffs lower than or equal to [60 per cent *ad valorem*] and greater than [20 per cent *ad valorem*] the simple average reduction rate shall be [30] per cent subject to a minimum cut of [20] per cent per tariff line.

(iv) For all agricultural tariffs lower than or equal to [20 per cent *ad valorem*] the simple average reduction rate shall be [25] per cent subject to a minimum cut of [15] per cent per tariff line.

Under the Uruguay Round, developed countries had to cut by a minimum of 15%; this is now the minimum allowed to developing countries.

13. Where participants apply non-*ad valorem* tariffs, the provisions of paragraph 9 above apply.

14. The simple average reduction rate for all SP products shall be [10] per cent subject to a minimum cut of [5] per cent per tariff line.

This means tariffs on every agricultural product must come down by at least five percent, and if a country chooses to cut a tariff for one strategic product by only 5 % it has to cut the tariff on another strategic product by at least 15% to meet the overall special product average tariff reduction of 10%.

In all cases, the base for the reductions shall be the final bound tariffs as specified in the Schedules of Members. The reduction commitments shall be implemented in equal annual instalments over a period of [ten] years.

It is proposed to give developing countries twice as long to implement their tariff reductions as developed countries.

Preferential Schemes

15. In implementing their tariff reduction commitments, participants undertake to maintain, to the maximum extent technically feasible, the nominal margins of tariff preferences and other terms and conditions of preferential arrangements they accord to their developing trading partners. As an exception to the modality under paragraph 8 above, tariff reductions affecting long-standing preferences in respect of products which are of vital export importance for developing country beneficiaries of such schemes

may be implemented in equal annual instalments over a period of [eight] instead of [five] years by the preference-granting participants concerned, with the first instalment being deferred to the beginning of the [third] year of the implementation period that would otherwise be applicable. The products concerned shall account for at least [20] per cent of the total merchandise exports of any beneficiary concerned on a three-year average out of the most recent five-year period for which data are available. Interested beneficiaries shall notify the Committee on Agriculture, Special Session accordingly and submit the relevant statistics. In addition, any in-quota duties for these products shall be eliminated. The preference-providing Members shall undertake targeted technical assistance programmes and other measures, as appropriate, to support preference-receiving countries in efforts to diversify their economies and exports.

One of the concerns for development as trade in agriculture has been liberalized is the effect of these changes on preference schemes. The benefit of these has been lessened as trade barriers have gradually been reduced. This provision proposes to give a three-year grace period to certain tariff reductions to help with transition—the final tariff cut would have to be the same; the only benefit is an additional three years before starting the cuts. To qualify, the developing country concerned must depend on the product in question for at least 20 percent of the value of its total exports and must submit a notification to this effect to the WTO Committee on Agriculture. The preference-granting country (usually a developed country) is called upon to invest in efforts to diversify the developing country economy that depends on the preference scheme, but again this is a best-endeavour rather than binding obligation. It mirrors the preference system. Developed countries are allowed but not obliged to give preferences.

Tariff Quotas

See note under paragraph 8. above for an explanation of tariff quotas.

Tariff Quota Volume

16. Final bound tariff quota quantities or values as specified in Members' Schedules (hereafter referred to as "tariff quota volume") which are equivalent to less than [10] per cent of "current" domestic consumption of the product concerned shall be expanded to that level. However, for up to one-quarter of the total number of tariff quotas concerned, a Member may opt for binding the tariff quota volume at a level equivalent to [8] per cent of that consumption, provided that the volumes for a corresponding number of tariff quotas concerned are expanded to [12] per cent.

Under the first AoA, the tariff rate quotas were to ensure that at least the equivalent of 5 percent of domestic consumption was allowed in at tariff levels low enough to compete with domestic suppliers (four percent for developing countries). This proposal would increase that to ten percent, with the opportunity to protect some products a little more (a quota equivalent to only eight percent of domestic consumption), if another product's quota is increased to compensate. This is a significant increase in the minimum market access required.

17. "Current" domestic consumption means the average consumption of the period 1999-2001 or of the most recent three-year period for which data are available. Full details of the method and data used for the calculations of domestic consumption for the products concerned shall be included in the tables of supporting material for the draft Schedules and shall be subject to multilateral review.

18. The expansion of tariff quota volumes shall be implemented in equal instalments over a period of [five] years. The starting-point for implementing the expansion of tariff quotas shall be the beginning of

year 1 of the implementation period. Additional market access opportunities provided by the expansion of tariff quotas shall be on an MFN basis.

MFN means most favoured nation. It means that no WTO member shall be treated less well than any other when a country is assigning the quota to different importers. TRQs in the existing system have created a number of problems because of the lack of transparency in the allocation of quotas. There is no agreed methodology for allocating the quotas among importers. If the new quotas are assigned on an MFN basis, it means importers cannot discriminate in favour of LDCs, or any developing country for that matter, or in favour of their regional neighbours.

Special and Differential Treatment

19. Developing countries shall not be required to expand tariff quota volumes for SP products. For other agricultural products, final bound tariff quota volumes as specified in Members' Schedules which are equivalent to less than [6.6] per cent of "current" domestic consumption of the product concerned shall be expanded to that level. However, for up to one-quarter of the total number of tariff quotas concerned a Member may opt for binding the tariff quota volume at a level equivalent to [5] per cent of that consumption, provided that the volumes for a corresponding number of tariff quotas concerned are expanded to [8] per cent.

This follows the same pattern as for developed countries (para. 17 above) but allows smaller quotas—as low as 6.6 percent, with some flexibility across different product lines. The modalities in paragraphs 18 and 19 above apply, except that the commitments by developing countries shall be implemented over a period of [ten] years.

In-quota Tariffs

20. There shall be no requirement to reduce in-quota tariffs, except that (i) in-quota duty free access shall be provided for tropical products, whether in primary or in processed form, and for products of particular importance to the diversification of production from the growing of illicit narcotic crops, or crops whose non-edible or non-drinkable products, while being lawful, are recognized as being harmful for human health, and (ii) in respect of tariff quotas where fill rates on average of the most recent [three] years for which data are available have been less than [65] per cent.

This means the existing in-quota tariffs stand with two exceptions. First, in-quota imports of tropical products, narcotic crop replacements and tobacco replacements must be granted duty free access. The "non-edible, non-drinkable, lawful but harmful" crop is tobacco. The second exemption is where the quota volume has not successfully been filled—the quota was offered but no exporter came forward to take advantage. In this case, the tariffs must be lowered to make the market more attractive to would-be exporters.

Special and Differential Treatment

21. Developing countries shall not be required to reduce in-quota tariffs, except as provided for under the provisions of (ii) in paragraph 22 above.

(From here on, a number of issues are dealt with in attachments rather than in the body of the text.)

Tariff Quota Administration

22. The administration of tariff quotas shall be subject to disciplines as outlined for further consideration in Attachment 1 to this document. It is noted that this outline is the subject of ongoing technical consultations.

Special Safeguard Provisions

Article 5 of the Agreement on Agriculture

23. The provisions of Article 5 of the Agreement on Agriculture shall cease to apply for developed countries [at the end of the implementation period for the further tariff reductions] [[two] years after the end of the implementation period for the further tariff reductions].

Article 5 of the AoA created a Special Safeguard—SSG—for countries that had turned non-tariff barriers into tariffs (tariffied, in the jargon). Although the resulting tariffs were usually high, these countries were given the further protection of the SSG. The SSG is a special duty that can be imposed on imports if world prices suddenly fall, or if, for other reasons, a sudden surge in import levels is threatening domestic suppliers. The SSG can be applied without the normal—onerous—obligations of demonstrating harm. They provide quick—although temporary—relief for the domestic suppliers, although the formula used to calculate extra tariffs did not generate that much relief. Under the AoA, only 21 developing countries underwent tariffication, and thereby were eligible to use the SSG.

This proposal is to end the SSG for developed countries either five years from the coming into effect of the new agreement, or seven years after, assuming the proposed five year implementation period for tariff reduction stands.

Special and Differential Treatment

24. An outline of a possible new special safeguard mechanism to enable developing countries to effectively take account of their development needs, including food security, rural development and livelihood security concerns, is currently subject to technical work and will be included at the appropriate stage in Attachment 2. The right to invoke this mechanism shall be reserved by designating in Schedules with the symbol "SSM" the products concerned. In addition, items already currently covered and designated with the symbol "SSG" shall be eligible for measures under Article 5 of the Agreement on Agriculture, provided, however, that measures under a new safeguard mechanism shall not be taken concurrently with measures under Article 5.

The proposal is to create a new special safeguard mechanism – SSM—distinguished from the existing special safeguard (SSG) which was created under Article 5 of the Agreement on Agriculture. The SSM would be for developing countries only. The criteria for what crops can be designated for protection by the SSM will be reviewed in Attachment 2 (as yet not available). The proposal allows developing countries that had access to the SSG under the first AoA to continue that privilege, but a product can only be protected by one form of safeguard, not both. It is important to note that there is no link to the SP-products, while in the first Harbinson draft, the SSM was offered as an alternative to the lower tariff reduction rates available to Special Products. That is, special products would not have been eligible for SSM protection. The SSG's usefulness was restricted by its limiting the allowable tariff protection to less than the actual price decline caused by the import surge. The SSM is not yet defined, and so cannot be evaluated as yet.

State Trading Import Enterprises

25. State trading import enterprises shall be subject to disciplines as outlined for further consideration in Attachment 3 to this document. This outline is to be the subject of further technical consultations.

Other Market Access Issues

26. It is recalled that under paragraph 13 of the Doha Ministerial Declaration non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture. Such concerns have been taken into account in various parts of the present text (and not only in market access). Nevertheless, further consideration needs to be given to non-trade concerns and other market access issues identified in paragraph 28 of document TN/AG/6 dated 18 December 2002 and the extent to which these issues should be taken into account in the modalities to be established and/or subsequent work.

The 18 December 2002 paper provided a compendium of proposals made over the year by WTO member states in the agricultural negotiations. Non-trade concerns (NTCs) include food security, environmental protection and rural development. In the negotiations, the European Union has added animal welfare and eco-labels as NTCs they wish to see addressed. This is a heavily contested area, and this language suggests that there is not yet sufficient common ground for Harbinson to even attempt a proposal on the question.

Export Competition

Export Subsidies

27. The basis for the further commitments on export subsidies shall be the final bound budgetary outlay and quantity commitment levels as specified in Members' Schedules.

This means the export subsidy reduction commitments will use the final bound levels from 2000 as their starting point.

28. For a set of agricultural products representing at least [50] per cent of the aggregate final bound level of budgetary outlays for all products subject to export subsidy commitments, final bound levels of budgetary outlays and quantities as specified in Members' Schedules shall be reduced over [five years (n = 5)] using the following formulae with the constant factor c equal to [0.3] (Attachment 4 to this document provides an illustration of the operation of these formulae):

(1) $B_j = B_{j-1} - c \cdot B_{j-1}$ with j = 1, ….. , n

(2) $Q_j = Q_{j-1} - c \cdot Q_{j-1}$ with j = 1, ….. , n

with
B = budgetary outlays Q = quantities c = constant factor j = implementation year
and B_0 and Q_0 being the base levels, respectively.

29. At the beginning of [year 6], budgetary outlays and quantities shall be reduced to zero.

30. For the remaining products, final bound levels of budgetary outlays and quantities as specified in Members' Schedules should be reduced over [nine years (n = 9)] instead of [five] years using the formulae

(1) and (2) above. However, for these products the constant factor c shall equal [0.25]. At the beginning of [year 10], budgetary outlays and quantities for these products shall be reduced to zero.

This means that over five years, governments must eliminate at least half the expenditure on export subsidies. And it means that the products supported by the 50% of budgetary outlays that are cut cannot be supported at all after five years. The remaining half must be eliminated over a further four years, to eliminate export subsidies altogether at the end of nine years.

As an easy example: a country has bound export subsidies of 100 million US-$ for skimmed milk powder and 100 million US-$ for sugar. So it has total export subsidies of 200 million US-$. Under the proposal, the country could choose to eliminate the subsidies for skimmed milk powder over 5 years, and can go on subsidising sugar (on a decreasing level) for up to nine years. However, it is not allowed to subsidise exports of skimmed milk powder after year 5 even if it stayed within its overall limits on export subsidy spending. That is, it could not divide the 100 million US-$ it used for sugar to pay for some subsidies to milk powder as well.

Special and Differential Treatment

31. For a set of agricultural products representing at least [50] per cent of the aggregate final bound level of budgetary outlays for all products subject to export subsidy commitments, final bound levels of budgetary outlays and quantities as specified in developing country Members' Schedules shall be reduced over [ten years (n = 10)] using the formulae (1) and (2) above, with the constant factor c equal to [0.25]. At the beginning of [year 11], budgetary outlays and quantities shall be reduced to zero.

Few developing countries use export subsidies. Those that do must eliminate half their subsidies over ten years.

32. For the remaining products, final bound levels of budgetary outlays and quantities as specified in developing country Members' Schedules should be reduced over [twelve years (n = 12)] instead of [ten] years using the formulae (1) and (2) above. However, for these products the constant factor c shall equal [0.2]. At the beginning of [year 13], budgetary outlays and quantities for these products shall be reduced to zero.

Any remaining subsidies must then be eliminated in the following two years (twelve years overall). These subsidies would all be coming down from the first year of implementation, but at a more gradual rate than for developed countries, and countries can choose up to half their export subsidy programs for a slower rate of reduction (12 rather than ten years).

33. The exemptions for developing countries under Article 9.4 for certain transport and marketing-cost subsidies set out in Article 9.1(d) and (e) of the Agreement on Agriculture shall be continued for the time of the implementation period of the further export subsidy commitments to be undertaken by developing countries.

Under the existing AoA, developing countries were exempt from reduction commitments on certain export subsidies that went to support some transport and marketing costs. The phrasing suggests that these subsidies too might have to go, at the end of the 12-year implementation period.

Export Credits

34. Export credits and export credit guarantees and insurance programmes shall be subject to disciplines as outlined for further consideration in Attachment 5 to this document. It is noted that this outline is the subject of ongoing technical consultations.

See notes in attachment 5.

Food Aid

35. International food aid shall be subject to disciplines as outlined in a revised draft for consideration in Attachment 6 to this document. This revised draft will itself be the subject of further technical consultations.

See notes in attachment 6.

State Trading Export Enterprises

36. State trading export enterprises shall be subject to disciplines as outlined for further consideration in Attachment 7 to this document. This outline is to be the subject of further technical consultations.

See notes in attachment 7.

Export Restrictions and Taxes

37. Except as provided for in paragraph 2(b) of Article XI and Articles XX and XXI of GATT 1994, the institution of new export prohibitions, restrictions or taxes on foodstuffs shall be prohibited.

Article XI of GATT deals with the elimination of quantitative restrictions. The basic rule is that only duties, taxes or "other charges" are legitimate ways to restrict imports. Import and export licenses, import or export quotas, for example, are not allowed, except in certain circumstances, listed in paragraph two of the article. Paragraph 2(b) deals with exceptions that allow import and export prohibitions or restrictions related to standards for the "classification, grading or marketing" of commodities.

WTO staff consider the need for export restrictions to avoid food shortages in developing countries to be covered by Articles XX and XXI.

Article XX addresses General Exceptions to GATT rules, which allows countries to adopt measures necessary to protect human, animal or plant health; to protect "public morals"; to restrict products made by prison labour; and; to protect "exhaustible natural resources"; so long as the measures invoked fall on domestic and imported products alike. Public morals means that countries can block access for products that might offend their cultural norms—pornographic material for example, or liquor in a Muslim state.

Article XXI addresses Security Exceptions, and allows members to withhold information on security grounds, and to take whatever action they need "in pursuance of its obligations under the United Nations Charter for the maintenance of peace and security".

The point of paragraph 39 is forbid developed countries to interfere with exports. For example, when cereal prices spiked in 1995-96, the European Union imposed temporary export restrictions. This had the effect of further raising world prices, which hurt the interests of poor net-food importing countries, who are dependent on the world market to acquire the food they need.

Special and Differential Treatment

38. The new disciplines under paragraph 39 above are not applicable to developing countries. For these Members, the provisions of Article 12 of the Agreement on Agriculture shall continue to apply.

Developing countries would continue not to be bound by the prohibition on export subsidies in this proposal. However, under Article 12 of the AoA, developing countries that are net exporters of a given foodstuff are also forbidden to impose export restrictions on that particular foodstuff.

Domestic Support

Annex 2 of the Agreement on Agriculture (Green Box)

See comments in attachments 8, 9 and 10.

39. The provisions of Annex 2 of the Agreement on Agriculture shall be maintained, subject to possible amendments as outlined in a revised draft for consideration in Attachment 8 to this document. This revised draft will itself be the subject of further technical consultations.

Special and Differential Treatment

40. Possible amendments to Annex 2 of the Agreement on Agriculture are outlined for further consideration in Attachment 9 to this document. This outline, which is to be the subject of further technical consultations, includes several essentially editorial changes as compared to the previous version.

Article 6.2 of the Agreement on Agriculture

41. The provisions of Article 6.2 of the Agreement on Agriculture shall be maintained and enhanced as outlined for further consideration in Attachment 10 to this document. This outline, which is to be the subject of further technical consultations, includes an essentially editorial change as compared to the previous version.

Article 6.5 of the Agreement on Agriculture (Blue Box)

42. Direct payments under production-limiting programmes provided in accordance with the provisions of Article 6.5 of the Agreement on Agriculture (Blue Box payments) [shall be capped at the most recent notified level and bound at that level in Members' Schedules. These payments shall be reduced by [50] per cent. The reductions shall be implemented in equal annual instalments over a period of [five] years.] [shall be included in a Member's calculation of the Current Total Aggregate Measurement of Support (AMS)].

The Blue Box contains domestic support programs where payments to producers are linked to limiting production. For example, a farmer might get a fixed price for a given crop, but the payment is limited to a certain number of acres.

This proposal includes two options. The first is to cap and bind program expenditures is this kind (no increases allowed in the future) and then to reduce the expenditures by half, in equal instalments, over a five year implementation period. The second is to eliminate the box, and

include the programs it contains in the so-called amber box. The Amber Box includes the domestic support programs that have to be reduced under AoA disciplines (see para. 44 below). The total expenditure in the Amber Box is known as the Aggregate Measurement of Support (AMS).

Special and Differential Treatment

43. For developing countries, [the commitment shall be implemented in equal annual instalments over a period of [ten] years, with the rate of reduction being [33] per cent.] [Blue Box payments shall be included in a Member's calculation of the Current Total AMS as of the [fifth] year of the implementation period.]

There are also two alternative proposals for the few developing countries with Blue Box programs. The first is to reduce expenditures by a third over ten years; the second to add the programs to the AMS calculation, starting in year five of implementation.

Amber Box

44. The final bound Total AMS as set out in Members' Schedules shall be reduced by [60] per cent in equal annual instalments over a period of [five] years.

The Amber Box contains all programs not exempt under the Blue or Green Boxes (the Green Box is contained in Annex 2 of the AoA and the proposals on amendments to it are contained in attachments eight and nine, below). This support is also referred as trade-distorting support, although no definition of trade-distorting is provided in the AoA.

45. Article 6.3 of the Agreement on Agriculture shall be amended so as to ensure that the Current AMS for individual products shall not exceed the respective average levels of such support provided over the period 1999-2001.

This proposal would update the baselines used for AMS calculations. Under the AoA, many developed countries used inflated numbers for their baseline, making the AMS reductions meaningless. By 1997, two years into AoA implementation, the United States had already reduced its AMS expenditures by more than the amount required at the end of implementation in 2000. The proposal in paragraph 47 would try to ensure that the reductions are based on recent real expenditures. It should be noted, however, that spending on domestic support in some developed countries in the period 1999-2001 was very high, in part because many agricultural commodities faced record-setting low prices.

Special and Differential Treatment

46. For developing countries, the final bound Total AMS shall be reduced by [40] per cent in equal annual instalments over a period of [ten] years.

Few Developing Countries have notified amber-box measures above the de-minimis level i.e. they do not declare a positive AMS. Those that do would have to reduce that spending by 40% over ten years.

Other matters

Inflation

47. Scheduled Total AMS commitments may be expressed in national currency, a foreign currency or a basket of currencies. In case a foreign currency or a basket of currencies is used and the final bound Total AMS in a Member's Schedule is expressed in national currency (or another foreign currency) and a participant wants to avail itself of this option, the final bound Total AMS shall be converted using the average exchange rate(s) as reported by the IMF for the year at issue.

48. The provisions of Article 18.4 shall be maintained.

Article 18.4 addresses the need to take inflation into account in the implementation of domestic support reductions—if a currency suddenly loses value, it may be difficult for a government to contain domestic support at the levels agreed to.

Article 6.4 of the Agreement on Agriculture (de minimis)

49. The *de minimis* level of 5 per cent under subparagraph (a) of Article 6.4 of the Agreement on Agriculture shall be reduced annually by [0.5] percentage point over a period of [five] years.

The de minimis *was established as a threshold measure for which programs had to be included in AMS commitments. Under the AoA, developed countries with non-product specific programs that cost less than five percent of their total value of agricultural production could exclude those programs from reduction commitments. Developing countries could use a threshold of ten percent. If a program cost more than the five (or ten) percent threshold, then the whole program had to be added to the AMS calculation. A similar threshold was established for product-specific support. For example, if a developed country's total wheat production was worth US$1 million, and its support to wheat production cost US$50,000 or less, then that support would be exempt from the AMS (a developing country could spend up to US$100,000). If wheat programs cost US$60,000, then that $60,000 would have to be included in the AMS for reduction.*

This proposal would cut the de minimis *for developed countries in half in equal instalments over five years, leaving a* de minimis *in place of 2.5 percent of the total value of production. Fewer domestic support programs would thus be eligible for exclusion. Because most EU programs exceed the* de minimis *level, the Commission advocates the elimination of the* de minimis *exemption altogether. The U.S. uses the threshold and wants to keep it in the rules.*

Special and Differential Treatment

50. The *de minimis* level of 10 per cent under subparagraph (b) of Article 6.4 of the Agreement on Agriculture shall be maintained.

51. Developing countries shall have the flexibility to credit to the non-product-specific *de minimis* support an amount of any negative product-specific support up to the equivalent of 10 per cent of the respective Member's total value of production of the basic agricultural product concerned during the relevant year.

Negative product-specific support is created by government programs that penalize producers. For example, if world wheat prices are US$4/ bushel but the government has a program in place that pays farmers only US$3.50/ bushel, then a US$0.50/ bushel of negative support is created. By allowing developing countries to include this in their de minimis *calculation, the proposal would effectively increase the amount of non-product-specific domestic support developing countries can provide—but only if governments were already penalising producers of certain crops by paying them below markets prices. There is a logic behind this: subsidise inputs, and your farmers can sell for lower prices to feed the poor. But the sustainability of this is*

questionable, especially if the inputs are imported and have to be paid for with foreign exchange earnings.

Least-developed Countries

52. In addition to the special and differential treatment provisions above, least-developed countries shall not be required to undertake reduction commitments. [However, they are encouraged to consider making commitments commensurate with their development needs on a voluntary basis, including in response to requests from their trading partners.]

LDCs are defined at the WTO by the UN criteria established by UNCTAD (the UN Conference on Trade and Development). There are currently 49 LDCs. As under the AoA, the agreement proposes to exclude them from tariff, domestic support and export subsidy reduction commitments. The language in brackets would not be binding, even if agreed to, but suggests that some WTO members do not agree that the blanket exemption of LDCs is a good idea.

53. Developed countries [should] [shall] provide duty- and quota-free access to their markets for all imports from least-developed countries.

"Should" versus "shall" speaks for itself – some governments are pushing for this measure (notably the European Union), while others are resistant, including many non-LDC developing countries, whose exports would be displaced by such a move.

Others

Recently Acceded Members

54. Members that have recently acceded to the WTO shall have the flexibility to defer the respective implementation periods by [2] years.

Accession to the WTO is an onerous process. Many of the newly acceding states have had to make greater concessions to get in than the WTO agreements themselves would have required. For this reason, many newly acceded states requested exemptions from further tariff reductions and the like. This has not been accepted here—the proposal is only to allow a slightly deferred implementation period.

Others

55. Participants will further consider the possible introduction of additional forms of flexibility for certain groupings (e.g. SIDS, vulnerable developing countries, transition economies) which have made specific proposals to this effect (TN/AG/6 refers).

Non-LDC developing countries—SIDS are small island developing states; transition economies are those moving from state-run to market economies—have made a variety of proposals to protect their interests in the revised AoA. The December 18, 2002 overview paper (TN/AG/6) mentioned above provides an overview of these proposals. The lack of enthusiasm from other members is clear in that Harbinson did not even spell out the proposals in the draft text, for governments to consider. It suggests these countries will have a lot of negotiating to do to gain the exceptions they seek.

Attachment 1

Tariff Quota Administration

Draft for further consideration of possible disciplines regarding tariff quota administration

1. Tariff concessions in Part I of a Member's Schedule which are limited to specified quantities or values of a product or products ("tariff quota commitments") shall be administered in conformity with the provisions of this Article and, subject to these provisions, in accordance with other relevant WTO provisions, including those of the Agreement on Import Licensing Procedures.

In other words, tariff rate quotas (TRQs) will be governed by the text that follows.

2. Tariff quota commitments shall be administered in a manner which ensures that the market access opportunities represented by such commitments are made fully and effectively available. To this end the following general requirements shall be complied with:

As noted above, TRQs have been heavily criticised because no arrangement was made for how they should be administered, allowing countries to allocate them without giving all exporters an equal chance. The following provisions are intended to tighten the rules and thereby to avoid these problems in the future.

(a) Tariff quota commitments shall be administered in a transparent and predictable manner and, to maximum practicable extent, in the same way as other tariff concessions.

(b) Domestic purchasing requirements or other measures having the same effect shall not be imposed, directly or indirectly, on or in connection with importation of tariff quota products.

Countries cannot make TRQ allocations dependent on buying something from the importing country.

(c) Except as specifically described in Schedules, no seasonal restrictions shall be imposed on imports under tariff quotas.

Some countries protect their domestic producers by imposing tariffs on foodstuffs that only last for the season that the food is raised locally. For example, a country might impose an eight week tariff on strawberries or green beans every summer so that local growers so not face competition in the local market. The TRQs are not to be limited in this way, except where countries reserve their right to this tool in their schedules (where they list their specific obligations), describing the specific measure and the imports it applies to.

(d) A tariff quota commitment shall not be administered in a manner which precludes the importation of any product within the tariff description of the commitment, or which restricts importation of such products in processed form or for sale to final consumers.

The TRQ cannot be restricted to only one form of a product within a tariff line—it cannot apply to red wheat but not white wheat. Tariff lines are defined to the 6-digit level (see the discussion on special products above, paragraph 11. Nor can the importing country impose conditions that block the importation of a processed version of the product, or a "shelf-ready" version that can be sold directly to consumers.

(e) Methods of tariff quota administration shall not be employed which result in the attribution to importers of commercially non-viable allotments.

The TRQ has to be effective; the level of the tariff and amount of the allocation have to be such that there is a reasonable chance for the exporter to use the quota to commercial advantage.

(f) Only imports of tariff quota products from MFN suppliers shall be credited as imports against tariff quota commitments.

Only TRQs allocated such that every WTO member has an equal chance of securing a quota share will count as meeting the obligation. Quotas allocated to historic trading partners or in other ways that favour one supplier over another will not count towards the TRQ commitment.

(g) Export or re-export requirements shall not be imposed in connection with the importation of tariff quota products.

Some countries granted TRQs but then required that the imports be re-exported, to stop them competing on the domestic market. This could no longer be an explicit requirement in the granting of a quota.

(h) An importer shall be treated no less favourably than another on the basis of degree of foreign affiliation or ownership.

This establishes non-discrimination at the company level—local and foreign importers will be given equal treatment, a principle referred to as national treatment.

(i) No charges, deposits or other financial requirements shall be imposed, directly or indirectly, on or in connection with the administration of tariff quota commitments or with importation of tariff quota products other than as permitted under the GATT 1994.

3. The following specific requirements shall apply to the methods of tariff quota administration referred to hereunder ("year" in this context refers to the calendar, marketing or other annual basis to which the commitment relates as specified in a Member's Schedule):

(a) In the case of tariff-only methods of administration and methods not requiring import licences as a condition of importation: access opportunities shall be made available from the beginning of the year concerned and timely advance public notice shall be given of any suspension of the opportunity to import at the in-quota rate of tariff.

(b) In the case of methods of administration under which import licences are a requirement:

(i) The total quantity or value of a tariff quota shall be allocated to importers sufficiently in advance of the year to which they relate so as to enable imports to be effected from the beginning of that year and to facilitate imports from developing countries and distant suppliers.

(ii) No restrictions shall be applied with respect to retail distributors and other end-users applying for and being allotted shares of tariff quotas. Nor shall conditions or formalities be imposed which would prevent any importer from utilizing fully the share which has been allocated to it within the period of validity of the corresponding import licence.

(iii) Tariff quota licences shall be valid for a period of [eight] months and shall not be transferable without the concurrence of the administering authority.

(iv) The quantity or value of any tariff quota commitment which remains unused following the expiry of the period of validity of the licences initially issued in connection with that tariff quota shall be reallocated in time to enable importation before the end of the year concerned.

(c) In the case of allocation of tariff quota shares to supplying countries: where an allocated country-specific share remains unused or is consistently under-utilized, such unused or under-utilized share shall be re-allocated to non-traditional suppliers.

4. The provisions of this Article shall apply to tariff quota commitments that are administered by or through state trading enterprises.

5. In addition to the requirements of Article X:1 of GATT 1994 relating to publication, Members administering tariff quota commitments shall establish Internet Websites on which all relevant information relating to their administration of tariff quota commitments can be accessed, including information regarding administrative requirements and procedures, the business and e-mail addresses of importers to whom tariff quota shares have been attributed, and current tariff quota fill rates. Developing country Members shall have the option of establishing centralized enquiry points instead of Websites.

6. Special and differential treatment: developed country Members shall accord special and differential treatment to products from developing country Members in connection with the allocation of expanded access under existing or new tariff quotas resulting from the negotiations under the Doha Development Agenda. For the purposes of Article XIII of GATT 1994, where a tariff quota has been allocated in full or in part among developing country suppliers the individual country allocations shall be as specified in the Schedule of the Member concerned; and any re-allocation of shortfalls shall be made among the developing country suppliers concerned. Developed country Members shall, on request, provide to the maximum extent possible advisory and marketing assistance in order to facilitate imports from developing countries under tariff quotas.

This implies that exceptions to the most favoured nation treatment (MFN) required above will be allowed for developing country exports. Would need to test how the two provisions will coexist. The advisory and marketing assistance falls again in the best endeavour category.

Attachment 2

Draft for further consideration of a possible new safeguard mechanism for developing countries

(Text to be included following further technical work)

The first draft of the Harbinson Draft Modalities referred to the provisions of Article 5 of the Uruguay Round AoA (SSG) as a starting point, recognizing that the existing SSG would not be adequate to meet DC needs. The SSG was particularly weak in regards to:

- *restricting the size of extra duties applicable so as to only partially offset the effect of surges or price drops.*

- *limiting the length of application of the extra duties based on volume surges to the end of the year in which they were invoked.*

The critical questions for the new safeguard will be:

- *What restrictions, if any, will affect the coverage of the new safeguard?*

- *What rules will regulate the magnitude of any resulting extra tariffs? Will they be sufficient to effectively offset the price drop?*

- *What restrictions will apply to the period of application? The volume based SSG was limited to the year that it was invoked.*

Attachment 3

State Trading Import Enterprises

Draft for further consideration of possible provisions for a new Article 4.3 of the Agreement on Agriculture

Article 4 of the AoA deals with Market Access. The current AoA has only 2 paragraphs on market access; this proposes a third to address State Trading Import Enterprises (STIEs) specifically. Article XVII of GATT, mentioned below, is the article that deals with State Trading Enterprises (STEs), both importing and exporting.

3. (a) Members shall ensure that state trading import enterprises are operated in conformity with the provisions of this Article and, subject to these provisions, in accordance with Article XVII and other relevant provisions of GATT 1994, this Agreement and other WTO agreements. For the purposes of this Article, state trading import enterprises shall include any governmental or non-governmental enterprise, including a marketing board, which has been granted or which enjoys de facto as a result of its governmental or quasi governmental status, exclusive or special rights, privileges or advantages, including any statutory or constitutional powers, in the exercise of which or by virtue of which such state trading import enterprises (hereinafter referred to as "governmental import enterprises") influence through their purchases and sales the level, direction or prices of imports.

This definition means that private companies can also be presumed to be state traders, if they operate with either government-mandated special privileges or even just de facto *privileges, as a result of their relationship with the government. The language tries to emphasise that the key is the impact the entity has on the market—is it influencing import prices—not its legal status.*

(b) Members shall ensure that governmental import enterprises are not operated in such a way as to nullify or impair the benefits of market access concessions and of the commitments relating to non-tariff measures under Article 4.2 of this Agreement.

This means that governments cannot allow STIEs to undermine any of the commitments made under the market access provisions of the agreement. Article 4.2 of the AoA prohibits the introduction, or reintroduction, of any non-tariff measures that have were converted into tariffs under the terms of the AoA.

(c) Any Member which establishes or maintains a governmental import enterprise shall notify relevant information on the operations of that enterprise in accordance with a format and at intervals to be established by the Committee on Agriculture.

(d) The disciplines regarding governmental import enterprises shall not unduly impede developing countries in the pursuit of their legitimate food and livelihood security and rural development objectives. The notification requirements to be established under subparagraph (c) above shall provide for appropriate special and differential treatment for developing countries.

This recognizes that STIEs might play a role for developing countries, but nothing is proposed at this point. Developing countries need to consider what they might want to protect here.

Attachment 4
Illustration of the Operation of the Export Subsidy Reduction Formula

1. In accordance with paragraph 29, the following formulae are to be applied for the reduction of export subsidies:

(1) $B_j = B_{j-1} - c \cdot B_{j-1}$ with j = 1, ….. , n

(2) $Q_j = Q_{j-1} - c \cdot Q_{j-1}$ with j = 1, ….. , n

with
B = budgetary outlays Q = quantities c = constant factor j = implementation year
and B_0 and Q_0 being the base levels, respectively.

2. The following table illustrates the operation of these formulae. Column 1 refers to the base level and the implementation years. Column 2 provides the path of reductions expressed, for each implementation year, as a percentage of the base level of budgetary outlays (formula (1)) or quantities (formula (2)) for the product concerned if the constant factor c equals 0.15. Columns 3 to 6 provide the corresponding paths for alternative values of the constant factor c.

Export subsidy reduction formula
(Base level = 100 per cent of final bound level of budgetary outlays/quantities)

	Constant Factor c				
	0.15	0.2	0.25	0.3	0.35
Base level	Per cent				
	100	100	100	100	100
Year	"Current" bound level in per cent of base level				
1	85.0	80.0	75.0	70.0	65.0
2	72.3	64.0	56.3	49.0	42.3
3	61.5	51.2	42.2	34.3	27.5
4	52.3	41.0	31.6	24.0	17.9
5	44.5	32.8	23.7	16.8	11.6
6	37.8	26.2	17.8	11.8	7.6
7	32.1	21.0	13.4	8.3	4.9
8	27.3	16.8	10.1	5.8	3.2
9	23.2	13.4	7.6	4.1	2.1
10	19.7	10.7	5.7	2.9	1.4
11	16.7	8.6	4.3	2.0	0.9
12	14.2	6.9	3.2	1.4	0.6

3. For example, if the constant factor c equals 0.3 (Column 5), then at the beginning of implementation year 1, the bound level of budgetary outlays will have to be reduced to 70 per cent of the final bound level of budgetary outlays (formula (1)). At the beginning of implementation year 2, the bound level of budgetary outlays will have to be reduced to 49 per cent of the final bound level of budgetary outlays, at the beginning of implementation year 3 to 34.3 per cent and so forth. If the constant factor c equals 0.2, the corresponding percentages are 80 per cent, 64 per cent, 51.2 per cent and so forth.

4. The application of formula (2) in a practical case could look as follows: If the final bound quantity for product x equals 500 tonnes (base level Q_0) and a constant factor of 0.3 is chosen, the calculation using formula (2) above yields the following results for the bound levels for the first three years of implementation ("current" bound levels Q_1, Q_2 and Q_3):

Base level Q_0 = 500 tonnes	"current" bound level in year 1, …, 3		
Year		in tonnes	in per cent of base level (Column 5 of table above)
1	$Q_1 = Q_0 - c \cdot Q_0 = 500 - 0.3 \cdot 500 =$	350	70.0
2	$Q_2 = Q_1 - c \cdot Q_1 = 350 - 0.3 \cdot 350 =$	245	49.0
3	$Q_3 = Q_2 - c \cdot Q_2 = 245 - 0.3 \cdot 245 =$	171.5	34.3

and so forth.

Attachment 5

Export Credits

Draft for further consideration of a possible new Article 9 bis or 10 bis of the Agreement of Agriculture on Governmental Support for Export Financing

Articles 9 and 10 of the AoA address disciplines on export subsidy commitments. Article 10 addresses both export credits and food aid, in recognition that both can serve de facto *as export subsidies. However, article 10 of the AoA only required that governments "work toward the development of internationally agreed disciplines" to address the problem of abuse of export credits. These negotiations were held at the Organization for Economic Cooperation and Development (OECD), where eventually US recalcitrance led to the talks breaking down without resolution.*

Export credits are government programs that underwrite commercial sales, effectively eliminating the risk for the exporting entity and often providing more favourable than commercial terms for the importer (for example, longer periods for reimbursement, or lower interest rates). The US provides 70 percent of all the export credits in agriculture. The European Union, and some other others, are now trying to put more disciplines on export credits in the revised AoA itself.

General

1. Subject to the provisions of this Article, Members shall not, directly or indirectly, provide support or enable support to be provided for or in connection with the financing of exports of agricultural products or the credit and other risks associated therewith otherwise than on market- related terms and conditions. [Each Member accordingly undertakes not to provide export financing support otherwise than in conformity with this Article.] [Each Member accordingly undertakes not to provide export financing support otherwise than in conformity with this Article and with the commitments as specified in that Member's Schedule.]

The second bracket offers more room for exceptions—that beyond the terms set up in the agreement itself, countries could notify further exceptions to the disciplines in their schedules.

Forms and providers of export financing support subject to discipline

2. Export financing support that is subject to the provisions of this Article includes:

(a) direct financing support, comprising direct credits/financing, refinancing, and interest rate support;

(b) risk cover, comprising export credit insurance or reinsurance and export credit guarantees;

(c) government-to-government credit agreements covering the imports of agricultural products exclusively from the creditor country under which some or all of the risk is undertaken by the government of the exporting country;

(d) any other form of governmental support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.

3. The provisions of this Article shall be applicable to export financing support provided by or on behalf of: government departments, agencies, or statutory bodies, at both the national and sub-national levels; any financial institution or entity engaged in export financing in which there is governmental participation by way of equity, provision of loans or underwriting of losses; any governmental or non-governmental enterprise, including a marketing board, which has been granted or enjoys de facto exclusive or special rights, privileges or financing advantages, including statutory or constitutional powers, in the exercise of which or by virtue of which support for or in connection with the financing of exports is provided; and any bank or other private financial, credit insurance or guarantee institution which acts on behalf of or at the direction of governments or their agencies.

Terms and conditions

4. Export financing support which is provided in conformity with the following terms and conditions shall be deemed to comply with paragraph 1 above:

(a) Maximum repayment term: the maximum repayment term of a supported export credit shall not exceed the period beginning at the starting point of credit and ending on the contractual date of the final payment. The "starting point of a credit" shall be no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period. The following maximum repayment terms shall be respected:

(i) for breeding cattle: [ ] months for contracts up to and including [ ]; and [ ] months for contracts exceeding [ ];

(ii) for agricultural vegetable reproduction material: [ ] months;

(iii) for exports of agricultural products to developing countries, as specified in paragraph 9(a) below: [.. months];

(iv) for exports of basic foodstuffs to least-developed and for net food-importing developing countries as listed in document G/AG/5/Rev.5, as specified in paragraph 10(a) below;

(v) for all other products and destinations: [six months/180 days].

One of the problems with the disciplines on export credits is that both those who give the credits (whose exporters very much want the programs to continue) and those who receive them (usually cash-strapped developing countries) want the system to continue. The same is true, but less so, for export subsidies—and the resistance by other exporters is much greater to the subsidies, as they are a larger threat to other exporters. Thus while both 4.a.iii and 4.a.iv look like Special and Differential Treatment, they also conveniently provide the cover the US needs to continue its export credit programs on longer terms than the otherwise agreed norm (180 days). This is especially important as the major (net-) importers of basic foodstuffs are developing countries—the same countries where exporters seek the most government support, as the risk of not being paid is greater.

(b) Cash payments: a minimum cash payment shall be required to be paid, by or on behalf of the importer, at or before the starting point of the supported credit, representing not less

than [15] per cent of the total amount of the contract/shipment value but excluding interest as defined in subparagraph (c) below. Cash payments shall not be financed.

(c) Payment of interest: in the case of direct financing support, "interest" excludes premiums and other charges for insuring or guaranteeing supplier or financial credits, banking fees or commissions relating to the export credit, and withholding taxes imposed by the importing country. Interest shall be payable. Where the repayment term exceeds 180 days, interest shall be payable not less frequently than every six months, with the first payment to be made no later than six months after the starting point of export financing.

(d) Minimum interest rates: interest rates in respect of direct financing support shall not be below the actual cost of borrowing for the funds so employed (including the cost of funds if capital was borrowed on international capital markets in order to obtain funds of the same maturity), plus an appropriate risk-based spread reflective of prevailing market conditions: provided however that, for repayment terms of twenty-four months or longer, Members shall use Commercial Interest Reference Rates (CIRRs) as published by the OECD, plus an appropriate risk-based spread reflective of prevailing market conditions.

(e) Repayment of principal: the principal sum (transaction value minus cash payment) of an export credit shall be repayable in equal, regular six-monthly instalments starting not later than six months after the starting point of the credit.

(f) Premiums in respect of coverage of risks under export credit insurance, reinsurance and export credit guarantees: premiums shall be charged, shall be risk-based and shall be adequate to cover long-term operating costs and losses. Premium shall be expressed in percentages of the outstanding principal value of the credit, shall be payable in full at the date of issuance of cover and shall not be financed. Premium rebates shall not be accorded. Furthermore, support in the form of export credit insurance, reinsurance or guarantees shall not be provided in respect of export financing contracts whose terms and conditions are not otherwise in conformity with the provisions of this paragraph.

(g) Foreign exchange risk: Export credits, export credit insurance, export credit guarantees, and related financial support shall be provided in freely traded currencies. Foreign exchange exposure deriving from credit that is repayable in the currency of the importer shall be fully hedged, such that the market risk and credit risk of the transaction to the supplier/lender/guarantor is not increased. The cost of the hedge shall be incorporated into and be in addition to the premium rate determined in accordance with this Article.

(h) Period of validity of export financing offers: credit terms and conditions (e.g., interest rates for direct financing support and all risk-based terms and conditions) offered for an individual export credit or line of credit shall not be fixed for a period exceeding six months without payment of premium.

Non-conforming financing support

5. Export financing supports which do not conform with all the relevant provisions of paragraph 4 of this Article, hereinafter referred to as "non-conforming export financing", constitute export subsidies for the purposes of this Agreement and are subject to specific export financing reduction commitments under this Article.

6. The commitments for each year of the implementation period, as specified in Part IV, Section IV, of a Member's Schedule, represent with respect to non-conforming financing support:

(a) in the case of scheduled reduction commitments relating to the value of non-conforming export financing support, the maximum level of such financing support in value terms, that may be provided in that year in respect of the agricultural product, or group of products concerned;

(b) in the case of scheduled quantity reduction commitments, the maximum quantity of an agricultural product, or group of products, in respect of which non-conforming export financing may be provided in that year; and

(c) in the case of commitments relating to repayment terms, the maximum and degressive non-conforming repayment terms that may be supported in each successive year of the specified implementation period.

Emergency exception

7. An emergency situation is defined as a sudden, significant and unusual deterioration in a Member country's economy and its ability to finance current imports of basic foodstuffs, and which may have far-reaching consequences such as social deprivation or unrest. In the event of such an emergency the importing Member country concerned may request an exporting Member to provide more generous export financing terms than are permissible under this Article. A Member making such a request shall concurrently notify the Committee on Agriculture in writing accordingly. The Member to whom such a request is addressed shall consider the request for more generous terms in accordance with the need to sustain the viability of its export credits, export credit guarantees, or export credit insurance programmes.

Since it is both in the credit provider and receiver's interest to continue the practice, to the detriment of third parties, the decision on whether there is an emergency might better rest with the appropriate UN agency and not with governments themselves.

Transparency and notification

8. No later than three months after the entry into force of this Article each Member shall submit a notification concerning that Member's export financing programmes, export financing bodies and other related matters in accordance with the format specified in Annex [ ] hereto. This notification shall be updated at the beginning of each subsequent year. At not less than [ ] monthly intervals Members shall submit a notification to the Committee on Agriculture in which details are provided of export financing commitments entered into in accordance with the format specified in Annex [..] hereto. Least-developed country Members shall not be required to submit such notifications. [Note: the Annexes referred to in this paragraph to be developed at the appropriate stage.]

Special and differential treatment

9. In respect of imports of agricultural products, special and differential treatment in favour of developing country Members shall comprise:

(a) longer maximum repayments terms of up to [ ] months;

(b) repayment of the principal sum in equal and regular instalments not less frequently than annually, with the first payment due no later than twelve months after the starting point of credit;

(c) payment of interest not less frequently than annually, with the first interest payment to be made no later than twelve months after the starting point of credit.

10. In respect of imports of basic foodstuffs least-developed countries and net food-importing developing countries as listed in G/AG/5/Rev.5 shall be accorded:

(a) additional longer maximum repayment terms of up to [ ] months;

(b) differential and more favourable interest rates and/or premiums.

11. Developing country Members providing direct export financing support may use London Interbank Offered Rates (Libor rates) and CIRRs, plus an appropriate risk-based spread, as minimum interest rate benchmarks.

12. For developing country Members the provisions of this Article, other than those relating to notification and transparency, shall enter into force at the beginning of the year following the end of the developing country implementation period for export subsidy commitments: provided that, with respect to any product or group of products for which a developing country Member is listed as a significant exporter in document G/AG/2/Add.1, these provisions shall become applicable with effect from the entry into force of this Article; and provided further that the provisions of Article 9.4 of this Agreement shall also apply to export financing.

Other matters

13. The provisions of Articles 3.1, 3.3, 8, 10.1 and 10.3 of this Agreement shall apply *mutatis mutandis* to the commitments with respect to export financing under this Article.
These are other articles in the AoA that will need to be adjusted to reflect the terms of the above with regard to export credits.

14. [Annexes hereto comprise….]

Attachment 6

Article 10.4 of the Agreement on Agriculture

Draft for further consideration of a possible replacement of paragraph 4 of Article 10 of the Agreement on Agriculture

Article 10.4 of the AoA provides some limitations on food aid, to try to discipline its use as an export subsidy. The language below would replace it, in an attempt to further limit abuses of food aid.

4. (a) Members recognize that international food aid and the commitments undertaken in this regard under the Food Aid Convention play a critically important role in alleviating hunger and in contributing to world food security, particularly in responding to emergency food situations and to other food and nutrition needs of developing countries. The following provisions are accordingly intended not to limit the role of bona fide international food aid, but to ensure that such aid is not used as a method of surplus disposal, nor as a means of achieving commercial advantages in world export markets.

This paragraph makes very explicit the intention to block food aid as a method of dealing with surpluses and as a means of increasing market sales, both predominantly practices of the US. Given the US food aid makes up approximately 60% of the total and that the delinking from farm support policies and commercial interests will reduce domestic political support, this intention could have major implications for even emergency food aid.

(b) Members donors of international food aid, whether provided in-kind or in the form of financial grants to be used to purchase food for or by the recipient country, shall ensure:

(i) that, in the case of food aid to meet or relieve emergency or critical food needs arising from natural disasters, crop failures or humanitarian crises and post-crisis situations, such aid is provided on the basis of pledges and commitments to, or in response to appeals from, specialized United Nations food aid agencies, other relevant regional or international intergovernmental agencies, non-governmental humanitarian organizations and private charitable bodies, or in response to an urgent government-to-government ministerial request for assistance in meeting food needs in the immediate aftermath of a natural disaster;

*This discipline tries to largely limit the provision of in kind food aid to recognized emergencies only. However, different from the first draft, **regular** donations to agencies like the WFP can also be donated in kind. In the first draft they had to be in response to **specific appeals**. This would effectively allow the WFP to be used for surplus disposal.*

(ii) that food aid for other purposes, including under programmes and projects to enhance nutritional standards amongst vulnerable groups in least-developed and net food-importing developing countries, is provided exclusively in the form of untied financial grants to be used to purchase food for or by the recipient country: except that such food aid may be provided in-kind within the framework of programmes and projects operated by specialized United Nations food aid agencies, or through non-governmental humanitarian organizations or private

charitable bodies under agreements concluded with a donor Member; provided full details of the food aid to be provided under such agreements are notified to the Committee on Agriculture by the Member concerned.

Non emergency food aid was more often used for surplus disposal and commercial advantage so this section tries to restrict this type of food aid to untied financial grants. However the exemptions are now so large as to largely defeat the purpose. From the first draft a new exemption has been added to permit large NGOs with agreements with the US government to continue to use in kind food aid in non emergency situations. If accepted, this exemption would likely result in even larger non emergency food aid programs by these agencies, including more monetizations (selling the food on the open market to generate funds for development work) which are often blamed for distorting local markets.

(iii) that food aid is provided exclusively in fully grant form;

Previously, concessional food sales with long repayment periods were permitted as food aid resulting in increased debts just to feed people. For the first time, such concessional sales must now be counted as export subsidies and disciplined accordingly.

(iv) that the provision of food aid is not tied directly or indirectly, formally or informally, explicitly or implicitly, to commercial exports of agricultural products or of other goods and services to recipient countries.

This is a statement of intent but it is not clear that some of the exemptions in 4(b)(i) and 4(b)(ii) won't undermine this intent.

(c) Members shall ensure that their food aid transactions are carried out in accordance with the procedures under the FAO "Principles of Surplus Disposal and Consultative Obligations", including, where appropriate, the system of "Usual Marketing Requirements". Any Member may raise any matter relating to a donor Member's compliance with these principles and requirements under Article 18.6 of this Agreement.

The disciplines contained here. if accepted, will require a reworking of the FAO principles and the Food Aid Convention, both of which currently permit concessional sales as food aid.

(d) Members which are recipients of food aid undertake not to re-export such food aid otherwise than as may become appropriate as part of a food aid transaction initiated by a specialized United Nations food aid agency.

(e) Members shall report on the form in which food aid is provided, as well as on the products, amounts, destinations, channelling and other relevant terms and conditions of their food aid operations, on the basis of a format and at intervals to be established by the Committee on Agriculture.

(f) Food aid transactions which are not in conformity with the provisions of subparagraphs (b) and (c) above and which cannot be accommodated within limits of a Member's export subsidy reduction commitments shall be deemed for the purposes of Article 10.1 of this Agreement to constitute non-commercial transactions which circumvent that Member's export subsidy commitments.

In other words, even forbidden forms of food aid can continue, but they must be accounted for as export subsidies and disciplined accordingly.

Attachment 7

State Trading Export Enterprises

Draft for further consideration of possible additional provisions for inclusion as a new Article 10.5 of the Agreement on Agriculture

5. (a) Members shall ensure that state trading export enterprises are operated in conformity with the provisions of this Article and, subject to these provisions, in accordance with Article XVII and other relevant provisions of GATT 1994, this Agreement and other WTO agreements. For the purposes of this Article, state trading export enterprises include any governmental or non-governmental enterprise, including a marketing board, which has been granted or which enjoys de facto as a result of its governmental or quasi-governmental status, exclusive or special rights, privileges or advantages, including any statutory or constitutional powers, in the exercise of which or by virtue of which such state trading export enterprises (hereinafter referred to as "governmental export enterprises") influence through their purchases and sales the level, direction or prices of exports.

Given that STEs includes non-governmental enterprises, as defined above, the choice of "governmental export enterprises" as an alternative name seems inappropriate. If looking for shorthand, an acronym might have been simplest. It is important to note that this Appendix is specifically aimed as destroying the Australian and Canadian Wheat Boards, the least trade distorting public sector market interventions to assist farmers.

(b) Members shall ensure that governmental export enterprises are not operated in such a way as to circumvent export subsidy commitments under this Agreement nor in such a manner that would nullify or impair the conditions of competition in world export markets that would prevail in the absence of such special rights, privileges or advantages. To this end Members undertake:

(i) to ensure that exports of a product by a governmental export enterprise do not take place at a price less than the price paid by such an enterprise to the domestic producers of the product concerned;

The Canadian and Australian Wheat Boards use 'price pooling', that is all producers are paid the same price for the same product. However, sales take place at whatever price the market will bear – some below and some above the pooled price – similar to the practice of purely private sector traders. This discipline would effectively destroy price pooling. It would not discipline private sector traders whose trades result in the same practice.

(ii) not to restrict the right of any interested entity to export, or to purchase for export, agricultural products;

This effectively eliminates the single desk selling on which both the Canadian Wheat Board (CWB) and the AWB Ltd (formerly the Australian Wheat Board) depend. It is unlikely that without the market clout that single desk selling provide, these Wheat Boards would not survive. Another wheat board in Canada gave up single desk selling and lasted only two years.

(iii) not to grant special financing privileges, including government grants, loans, loan guarantees, or underwriting of operational costs, to governmental export enterprises that export for sale, directly or indirectly, a significant share of the respective Member's total exports of an agricultural product.

Such guarantees are not essential to the survival of either the Canadian or Australian Wheat Boards. These guarantees are a safety net only and are rarely invoked. The AWB, in fact, gave up this facility by building up its own assets to replace such government credit guarantees.

(c) The provisions of subparagraph (b) above, other than (b)(i), shall not apply to developing country Members.

If this discipline stands, it is unlikely that developing countries will ever be able to introduce structures like the AWB and CWB.

(d) The provisions of subparagraph (b)(ii) above shall enter into force progressively on the basis of a plan to be negotiated and specified in Part IV, Section V of the Schedule o the Member concerned.

(e) Any Member which establishes or maintains a governmental export enterprise shall notify relevant information on the operations of that enterprise in accordance with a format and at intervals to be established by the Committee on Agriculture.

Such provisions of 'relevant information' could, depending upon the detail required, seriously undermine the commercial dealings of these organizations. Their competition in the private sector guards all information about their operations with fierce secrecy.

Attachment 8

Annex 2 of the Agreement on Agriculture

Possible amendments for further consideration (changes in italics)

Annex 2 is commonly referred to as the Green Box.

1. Addition to paragraphs 5, 6, 11 and 13:

Reference to base periods

Payments shall be based on activities in a fixed and unchanging historical base period. All base periods shall be notified.

Paragraph 5 addresses direct payments to producers—such payments, subject to certain conditions, are not counted towards the AMS (described above under domestic support). These payments are enumerated in paragraphs 6 through 13.

Paragraph 6 addresses decoupled income support; 11 is about investment to facilitate structural adjustment; and 13 is about payments made in regional assistance programs (for example, special payments for a disadvantaged region within a country).

The proposal is an attempt to make clearer the obvious intent of the AoA—that direct payments of various sorts should be based on historic, not current, production, so as to minimize the effect on producers' decisions. The US violated this understanding with the 2002 Farm legislation, which established updated baselines for producers receiving government payments of different kinds that were otherwise compatible with green box criteria. This requirement presumably attempts to prohibit such abuses in the future.

2. Modification of subparagraphs 7(a), (b) and (c):

Paragraph 7 is about government payments in income insurance and income safety-net programs. The subparagraphs are rewritten here, to restrict their applicability. The new language is in italics.

Compensation criteria with respect to government financial participation in income insurance and income safety-net programmes.

(a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) 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. Any producer meeting this condition shall be eligible to receive the payments *from the government.*

(b) The amount of such *payments by governments shall restore a producer's income to no more than 70 per cent of income derived by that producer from agriculture in the averaging period used to trigger eligibility for payment.*

(c) The amount of any such payments shall relate solely to *income derived from agriculture of the farm enterprise as a whole*; it shall not relate to the type or volume of production

(including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.

3. Modification of subparagraphs 8(a), (b) and (d):

Paragraph 8 is about government payments for natural disaster relief. Some of the additions below are widening the definition of natural disaster to include compensation for the kind of wide-spread slaughter necessitated by disease outbreaks (for example the recent epidemic of BSE in European cattle).

Compensation criteria with respect to payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters.

(a) Eligibility for such payments shall arise:

- *in the case of direct payments related to disasters:* only following a formal recognition … excluding the highest and lowest entry.

- *in the case of government financial participation in crop insurance schemes: eligibility for such payments shall be determined by a production loss which exceeds 30 per cent of the average of production in an actuarially appropriate period.*

- *in the case of the destruction of animals or crops to control or prevent diseases named in national legislation or international standards: the production loss may be less than the 30 per cent of the average of production referred to above.*

(b) Payments made *under paragraph 8* shall be applied only in respect of losses of income, 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 paragraph 8* shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

4. Addition at the end of subparagraph 10(d):

Paragraph 10 addresses structural adjustment programs that work through incentives to retire land or reduce herd sizes ("resource retirement programs").

Structural adjustment assistance provided through resource retirement programmes

(d) Payments shall not … remaining in production. *Payments shall be time limited.*

5. Addition at the end of subparagraph 11(a), modification of subparagraph 11(b), and inclusion of new subparagraph 11(b) *bis*:

Structural adjustment assistance provided through investment aids

(a) *Such structural disadvantages must be clearly defined.*

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production *or inputs into the production* (including livestock units) …

(b bis) The amount of such payments in any given year shall not be related to, or based on, the use of factors of production in any given year after the base period.

6. Modification of scope of paragraph 12:

Paragraph 12 is about payments for environmental programs. It is here that Harbinson proposes to add the EU concern to include animal welfare payments as a legitimate non-trade concern.

Payments under environmental programmes*/animal welfare payments*

(a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental, conservation *or animal welfare* programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.

(b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

Overall, it should be noted that these proposals are a long way from what developing countries had proposed in order to tighten Green Box expenditures. Both the EU and the US have gradually shifted their domestic support from amber and blue to green box programs. As a result, green box spending exploded during the implementation of the AoA. Some countries had actually proposed that decoupled income support, as well as emergency and natural relief programs, be disciplined. Or that total green box spending be capped, even if at a high level. Clearly, while such spending remains undisciplined, and while the definition of "non-trade distorting" remains largely a matter of declaration rather than science, a significant disadvantage for developing countries persists.

Attachment 9

Annex 2 of the Agreement on Agriculture

Possible new elements of special and differential treatment for further consideration (changes in italics)

1. Inclusion of a new sentence at the end of paragraph 3:

Public stockholding for food security purposes

The volume and accumulation … product and quality in question. *Developing country Members shall be exempted from the condition in paragraph 3 that the volume and accumulation of food security stocks shall correspond to predetermined targets.*

This would give developing countries better opportunities to use their food security stocks for stabilising prices, by accumulating them during bumper harvests and lowering them during times of high prices.

2. Inclusion of new paragraph 6 *bis*:

Payments to maintain domestic production capacity of staple crops for food security purposes in developing countries

(a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to provide support for the producers of staple crops.

(b) Total production of the crop shall account for no less than [X] per cent of the total value of agricultural production and:

- *total consumption of such crop shall account for no less than [Y] per cent of the total domestic consumption of agricultural products in terms of calorie intake; or*

- *total export of such crop shall account for no less than [Z] per cent of the total export of a particular country.*

(c) The amount of payment shall be limited to the minimum to maintain domestic production capacity of such crop of the Member concerned.

The importance of livelihoods, raised under strategic products, has been dropped here. It should be introduced in this context as well, as a criterion for eligibility. The whole proposal is worthwhile, but begs the question of how developing countries are to pay for such programs. The same point, obviously, applies below and to attachment 10. .

3. Inclusion of new paragraph 6 *ter*:

Payments to small-scale producers/family farms for the purpose of maintaining rural viability and cultural heritage in developing countries

(a) Eligibility for such payments shall be determined by reference to clearly defined criteria in government programmes designed to provide support for small-scale producers/family farms.

(b) Small-scale producers/family farms shall be defined in national legislation, taking into account such factors as total annual sales, share of hired farm labour, off-farm income, etc.

(c) The amount of such payment shall be limited to the minimum level for continued existence of such farms based on the purpose of maintaining rural viability and cultural heritage.

(d) The payment shall not mandate or in any way designate the agricultural products to be produced by the recipients.

4. Modification of subparagraphs 7(a), (b) and (c):

Compensation criteria with respect to government financial participation in income insurance and income safety-net programmes.

(a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry, *or, in the case of developing country Members, a certain proportion* of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) *which shall be clearly defined in national legislation*. Any producer meeting this condition shall be eligible to receive the payments.

(b) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance, *or, in the case of developing country Members, shall compensate for less than a certain proportion of the producer's income loss, which shall be clearly defined in national legislation.*

(c) The amount of any such payments shall relate solely to income *derived from agriculture of the farm enterprise as a whole*; it shall not relate to the type or volume of production … production employed.

5. Modification of subparagraph 8(a):

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

(a) Eligibility for such payments shall arise only following formal … excluding the highest and the lowest entry, *or, in the case of developing country Members,* [*exceeds 10 per cent of the average of production in the preceding year*] [*exceeds a proportion to be determined in national legislation of the average of production in the preceding three-year period*].

6. Modification of subparagraph 10(b):

Structural adjustment assistance provided through resource retirement programmes

(b) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, *or, in the case of developing country Members, one year,* and in the case of livestock … disposal.

7. Inclusion of new sentence at the end of subparagraph 13(a):

Payments under regional assistance programmes

(a) Eligibility for such payments …… temporary circumstances. *Developing country Members shall be exempted from the condition that disadvantaged regions must constitute a clearly designated contiguous geographical area with a definable economic and administrative identity.*

Attachment 10

Article 6.2 of the Agreement on Agriculture

Possible amendments for further consideration (changes in italics)

This list proposes an extension of the kinds of programs that developing countries could invest in without penalty under the domestic support disciplines imposed in the agreement. Again, it is not a bad list, but does not address the question of where funding is to be found for such programs.

In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, *and in accordance with paragraph 13 of the Doha Ministerial Declaration the following measures* in developing country Members shall be exempt from domestic support reduction commitments:

(i) investment subsidies which are generally available to agriculture

(ii) agricultural input subsidies generally available to low-income or resource-poor producers

(iii) domestic support to producers to encourage diversification from growing illicit narcotic crops *or those whose non-edible or non-drinkable products, being lawful, are recognized [by WHO] as harmful for human health*

(iv) subsidies for concessional loans through established credit institutions or for the establishment of regional and community credit cooperatives

(v) transportation subsidies for agricultural products and farm inputs to remote areas

(vi) on-farm employment subsidies for families of low-income and resource-poor producers

(vii) government assistance for conservation measures

(viii) marketing support programmes and programmes aimed at compliance with quality and sanitary and phytosanitary regulations

(ix) capacity building measures with the objective of enhancing the competitiveness and marketing of low-income and resource-poor producers

(x) government assistance for the establishment and operation of agricultural cooperatives

(xi) government assistance for risk management of agricultural producers and savings instruments to reduce year-to-year variations in farm incomes

Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.

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