

# NEGOTIATING THE INTERNATIONAL AGREEMENT ON AGRICULTURE AFTER DOHA ROUND – INDIAN PERSPECTIVE

A.K. Koul\*

## I. INTRODUCTION

Agriculture sector was not subjected to international regulations under GATT 1947. Although there was no specific exclusion under the GATT jurisprudence, yet the two major agriculture producers of the world namely, the EEC and the USA managed to exempt themselves from the jurisdiction of GATT. Uruguay Round Negotiations (1986-95) culminated into a fortified and strengthened international rules to cater for a rule based system of regulating international trade in almost all sectors including agriculture and also led to the establishment of WTO and various other international agreements including the WTO Agreement on Agriculture besides, the GATT 1994 as a new incarnation.

The WTO Agreement on Agriculture (AoA) 1995, essentially centered on easiest issues leaving complex issues to be negotiated in future under its Article 20 which catalogued, *inter alia*, the effects of the reduction commitments on world trade in agriculture, non-trade concerns, special and differential treatment of developing country members, and the objective of establishing a market oriented agriculture trading system and what further commitments are necessary to achieve the long term objectives. The preamble of the AoA is equally emphatic that the long-term objective is to establish a fair and market-oriented trading system. For achieving the market-oriented trading system in world agriculture a reform process 'is needed for negotiating commitments on progressive reductions in agriculture and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agriculture markets', and 'committed to achieve specific binding commitments in each of the following areas: market access; domestic support; export competition; and to reaching an agreement on sanitary and phytosanitary issues'.

---

\* Vice Chancellor, National Law University, Jodhpur.

The preamble makes it clear that while implementing the commitments on market access, developed country Members should take into account the particular needs and conditions of developing country Members by providing greater access for agriculture products of particular interest to the developing country Members, including the fullest liberalization of trade in tropical products. The preamble reiterates that reform programmes should be made in an equitable way among all Members, taking into account the non-trade issues, including food security, and the need to protect the environment. Further, the preamble underpinned the need for giving special and differential treatment (S&D) to developing countries as it is an integral part of negotiations.

To be concise, the three pillars of AoA Agreement are (i) increased market access for agriculture products, (ii) commitments to reduce domestic subsidies on agriculture production, and (iii) commitments to reduce export subsidies on agriculture products keeping in view the long-term objectives of the Agreement in establishing a market-oriented agriculture trading system as well as balancing the interest of less-developing Members in an equitable and fair manner.

The AoA Agreement was drafted essentially to deal with the protectionist policies of the developed countries which were not allowing the agriculture sector to sail under free market conditions, rather the protectionist policies of the developed countries were conceived either in the form of direct subsidies to farm sector and farmers or indirect ways of supports by budgetary outlays etc. For example, the total measurement of government support to agriculture for the OECD countries, the producer support estimate or PSE increased from US\$247 billion during the period of 1986-1988 to US\$400 billion in 1999. Agriculture subsidies and import quotas cost European Union taxpayers and consumers close to US\$ billion during 1986-1988, the figure increased to US\$130 billion in 1998. For the United States, the increased costs climbed from US\$42 billion during 1986-1988 to US\$48 billion in 1998. According to a Joint World Bank/ OECD study if developed countries terminated domestic and export farm subsidies, food prices would rise resulting in a shift of food production to lower-wage developing countries such as India. OECD would experience a net annual economic gain of US\$50 billion (approximately) and developing

countries US\$120 billion<sup>1</sup>. The United States in 1989 aids US\$2.5 billion in commodity bonus under its Export Enhancement Programme (EEP) to agriculturists to boost the export sales of US\$8.5 billion in agriculture products to 65 countries<sup>2</sup>.

For the developing countries especially India, agriculture is a mainstay of more than 70% of its population for providing livelihood. It accounts for a quarter of the Gross Domestic Product (GDP). The percentage of rural population in India is the highest (72 percent in 2000) in the world and has not changed much compared to the situation two decades earlier<sup>3</sup>.

Agricultural negotiations in WTO are of importance to India as 72% of its population are dependent for their livelihood on agriculture, the large majority of rural population survives on an annual per capita income of US \$175 as compared to the current US\$480 national per capita, 70% of the cultivable land is vulnerable to vagaries of monsoon, etc.

India at the very start of agricultural negotiations in the WTO (2001) submitted a detailed and comprehensive proposal<sup>4</sup>. It covered all aspects of the negotiations and remains one of the longest proposals ever submitted by any member.

In India, poverty reduction can be achieved better with rural rather than urban economic growth. It is also true that one percent increase in agricultural per capita GDP created a 1.61 percent increase in the per capita income of the poorest 20 percent of the population in 35 representative countries<sup>5</sup>. Agriculture growth helps in increasing wages, lowering food prices, increasing demand for consumer and intermediate services, facilitating development of agribusinesses, increasing reforms to labour and capital and

---

<sup>1</sup> UCTAD, AGRICULTURAL TRADE LIBERALIZATION IN THE URUGUAY ROUND: IMPLICATION FOR DEVELOPING COUNTRIES (2000).

<sup>2</sup> USDA, *GAO Tell Senate Panel, EEP Programme should continue as Effective Trade Tool*, INTERNATIONAL TRADE REP., 291 (BNA,1990).

<sup>3</sup> Garan Datt and Ravillion Martin. *Why Have Some Indian States Done Better Than others at Reducing Rural Poverty?* POVERTY, INCOME DISTRIBUTION, SAFETY NETS, MICRO CREDIT, WORKING PAPERS, 1594 (World Bank, Washington D.C. 1996).

<sup>4</sup> G/AG/NG/W/102, 15 Jan. 2001.

<sup>5</sup> C.Peter Timmer. *How will Do the Poor Connect to the Growth Process?* PAPER 178 (Harvard Institute for International Development, Cambridge, Mass. 1997).

improving the overall allocative efficiency of factor markets<sup>6</sup>. Growth of the agriculture sector is crucial for achieving a number of development goals such as enhancing overall economic growth and poverty reduction, improving food security and conserving natural resources.

Enhancing agricultural growth in developing countries requires integration with the world economy, provided the world markets are not distorted. Although the ratio of trade to GDP increased substantially in Europe and Central Asia as well as in Latin America after the WTO coming into existence, but the growth in this ratio in South Asia including India is less. It is therefore, suggested that the developmental framework for agriculture should ensure that economic policies are not biased against primary production and export, trade policies in developed countries are not biased against developing countries and public and private investments in infrastructure, technical development and credit are needed for modernizing production and improving competitiveness.

## II. WTO AGREEMENT ON AGRICULTURE: AN ANALYSIS

### A. *Three Pillars of the WTO Agreement on Agriculture*

The Agreement on Agriculture as already said is a modest first step towards serious reform of international rules governing trade in agricultural products. The Agreement is built on three pillars:

- (i) increased market access for agricultural products;
- (ii) commitments to reduce domestic subsidies on agricultural production; and
- (iii) commitments to reduce export subsidies on agricultural products.

The Preamble to the Agreement conceives long-term objectives of the WTO members to establish a fair and market oriented agricultural trading system that includes substantial reductions in agricultural support and protection. Further, in implementing these commitments on market access, developed countries would take fully into account the particular needs and

---

<sup>6</sup> Harry de Gorter, D Lugco and Laura Ingacio, *Domestic Support: Economics and Policy Instruments* in Mulinda D. Ingco and John D. Nash (eds.), *AGRICULTURE AND THE WTO: CREATING A TRADING SYSTEM FOR DEVELOPMENT* 1-22 (Washington D.C., World Bank and Oxford University Press 2004).

conditions of developing country members by providing for them greater opportunities and terms of access for their agricultural products in the markets of the developed country members of WTO.

There is a further, commitment of fullest liberalisation of trade in tropical agricultural products. These commitments as a reform programme are to be made in an equitable way among all WTO members taking into account non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of these negotiations and also to take into account the possible negative effects on the implementation of programme on the least developed and net-food importing developing countries. The objectives of the Uruguay Round negotiations are set out in the agricultural sector in the Ministerial Declaration on the Uruguay Round<sup>7</sup> and the long-term objectives of the reform process has been set in Mid-Term Review of the Uruguay Round.<sup>8</sup> The Agreement on Agriculture consists of twenty-one Articles with five Annexes.

### ***B. Market Access***

For the fifty years, it is established that the agricultural sector in international trade has been subjected to innumerable non-tariff barriers which have taken various shapes and forms such as quotas, variable import levies and voluntary import and export restraints. To remedy this situation, the Agreement on Agriculture requires:

1. a guaranteed minimum access level for all agricultural products;
2. the 'tariffication' of non-tariff barriers into tariff equivalents; and
3. the use of tariff-rate quotas to ensure that the market access commitments are honoured.<sup>9</sup>

WTO members in the Agreement on Agriculture have agreed to minimum access opportunities for products which are not significant imports of specific member countries. Access is based on three percent of domestic consumption in 1995 and increasing to five percent by 2000. If import

---

<sup>7</sup> BISD 33S/19, Part I, Section D.

<sup>8</sup> MTN. TNC/11, pp. 6-7.

<sup>9</sup> Article 4.

volume is greater than these thresholds, current market access levels are to be maintained. The minimum access commitments are designed to allow a modest level of trade in agricultural products to occur, where previously non-tariff barriers effectively blocked such trade, and/or where the new tariff equivalents are so high that they would continue to block all such access.

**(i) *The Tariffication Process***

The tariffication process although is an important step for liberalisation of agricultural trade in future WTO negotiation, yet it is far from satisfactory solution. Guidelines for the calculation of tariff equivalents are contained in Annex 5 of the Agreement.<sup>10</sup> The tariff equivalent is generally the difference between the internal and external price for the product, expressed as an *advalorem* or specific duty rate. The external price is the average f.o.b. unit value price set by major exporters of the product, adjusted by adding insurance and freight costs.<sup>11</sup> The internal price is the prevailing wholesale price in the domestic market.<sup>12</sup> Article 4 of the Agreement on Agriculture prohibits members from maintaining, resorting to or reverting to non-tariff measures, old or new in order to eliminate the adverse effect that non-tariff barriers have had on agricultural trade. The process of tariffication requires members of the WTO to convert existing non-tariff measures into ordinary customs duties and to find them. Non-tariff measures identified in the Agreement include minimum import prices, quantitative import restrictions, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints; and similar border measures other than ordinary customs duties regardless of whether those measures were grandfathered under GATT 1947, maintained under GATT 1994 waivers, or listed in a country's Protocol of Accession to GATT 1994.<sup>13</sup>

The tariffication of the WTO Agreement on Agriculture replaces non-tariff barriers with tariff rate quota. Under a tariff-rate quota, one tariff rate applies to imported products up to a stated amount. The higher tariff rate applies to imported products in excess of that amount.

---

<sup>10</sup> See Annex 5.

<sup>11</sup> Attachment to Annex 5 (2).

<sup>12</sup> Attachment to Annex 5(4).

<sup>13</sup> Article 4.2.

Thirty-seven WTO members have tariff rate quotas listed in their schedules with a total of 1,371 individual tariff quota commitments.<sup>14</sup> The average quota fill rate for the period 1995-1999 has been approximately 63 percent, that is, about one-third of all quotas are not filled in any given year. In addition, a significant number of quotas are reserved for specific countries and a great deal of flexibility exists with respect to the administration of those quotas that are open to all exporters. The fact of the matter is that world exports of agricultural products are concentrated in a handful of WTO members. A WTO member will assess duties on agriculture imports that are in excess of the minimum or current access level commitments for the imported product. For example, assume that during 1996-1998, a WTO member limited imports of butter to 10,000 tons, (subject to a tariff of four per cent *advalorem*) with the result that the WTO member's domestic market price for butter was 75 per cent above the world market price. Under tariffication, that WTO member might establish a tariff-rate quota for butter with an in-quota quantity of 10,000 tons and in-quota tariff-rate of four percent *advalorem* and apply an over-quota tariff of 75 per cent *advalorem*.

### **(ii) Tariff reduction**

Under the WTO Agreement on Agriculture, the developed countries are required to reduce agricultural tariffs by an average of thirty six percent on a simple average basis over a six year period ending in 2000. In the case of developing countries the average reduction is twenty four per cent over a ten year period ending in 2004. The lower in-quota duty rates generally will not be reduced. All customs duty rates are to be bound, with developing countries establishing ceiling bindings where no bindings existed before the Uruguay Round. Least developed countries commit to tariff bindings on agricultural products, but are not required to make any further commitments to reduce tariffs.

In addition to the average tariff reductions, a minimum fifteen per cent tariff reductions must be made for each tariff line (ten per cent in the case of developing countries). In order to meet the overall thirty six percent tariff reduction commitments, members of WTO have reduced duties on import-

---

<sup>14</sup> WTO, Committee on Agriculture, Tariff and Other Quotas, BACKGROUND PAPER BY THE SECRETARIAT, G/AG/NG/5/7 (23 May, 2000) p.2.

sensitive agricultural products by fifteen per cent minimum and made greater reduction on products that are either less import-sensitive or in which there is little trade.<sup>15</sup>

### *C. Commitments on Domestic Subsidies*

Article 7 of the Agreement on Agriculture read with Annex 2 to the Agreement comes to grips on the trade distorting aspects of domestic subsidies in the agricultural sector. The Agreement categorises domestic subsidies by placing them in three boxes: an exempt green box (permissible and non-countervailable); an excluded blue box (permissible, countervailing if they cause injury, but not subject to reduction commitments); or an amber box (permissible but countervailing if they cause injury, and subject to reduction commitments). There is no prohibited or red-box category for domestic subsidies. Article 3.2 of the Agreement imposes a standstill on the use of domestic subsidies; subject to the provisions of Article 6, a member shall not provide support in favour of domestic producers in excess of commitment levels specified in Section I of Part IV of the Schedule. Further having frozen the use of domestic subsidies, members agree in Article 6 of the Agreement to reduce their domestic subsidies in accordance with Part IV of the member's Schedule submitted at the conclusion of the Uruguay Round. For developed countries, that commitment is a reduction of the remaining non-exempt domestic subsidies by twenty percent from levels existing during 1986-88 base period in six equal annual installments. Developing countries are required to make reductions of 13.3 percent over ten years.<sup>16</sup> Least developed countries are not obliged to make any reduction, but must bind their levels of support.<sup>17</sup> Once all exempt duties have been accounted for and excluded, WTO members calculate their non-exempt domestic subsidies using a methodology called the Aggregate Measurement of support or 'AMS'. Exempt subsidies and the AMS are discussed below. Once the reductions have been implemented, members thereafter agree to bind their reductions in a Final Bound Commitment Level.

---

<sup>15</sup> Brosch, K.J., *The Uruguay Round Agreement on Agriculture* in Harvey M. Applebaum and Lyn M. Schlitt (eds), *THE GATT, THE WTO AND THE URUGUAY ROUND AGREEMENT: UNDERSTANDING THE FUNDAMENTAL CHANGES* 865 (1995).

<sup>16</sup> Article 15.2.

<sup>17</sup> *Ibid.*

### ***D. Exempt 'Green Box' Subsidies***

The Green Box subsidies are such subsidies which have a minimum trade distorting effect and as such are exempt from GATT/WTO disciplines.<sup>18</sup> Annex 2 of the Agreement on Agriculture provides that in order to qualify as an exempt or green box domestic subsidy two threshold requirements are to be met:

1. The subsidy in question must be provided through a publicly funded government programme that does not involve transfers from consumers; and
2. The subsidy must not have the effect of providing support to producers.<sup>19</sup>

Annex 2 lists twelve types of exempt subsidies, including the following:

- Generalised government service programmes in areas of research, pest and disease control, and training;
- Domestic stockpiling for food security and domestic aid purposes;
- Direct payment to producers in the form of decoupled income support (support that is not tied to production);
- Governments financial participation in income safety net and crop disaster insurance;
- Structural adjustment assistance provided through producer retirement programmes;
- Structural adjustment assistance provided through resource retirement programmes;
- Structural assistance provided through investment aids; and
- Payments under environment and regional assistance programmes.<sup>20</sup>

### ***E. Excluded 'Blue Box' Subsidies***

Article 6 of the Agreement on Agriculture, in addition to the green box subsidies exempted under Annex, 2 listed above excludes from the Aggregate Measurement of Support (AMS) calculation three other categories of

---

<sup>18</sup> Article 6.1.

<sup>19</sup> Article 2.1.

<sup>20</sup> Annex. 2.2-2.13.

domestic subsidies that have been described as 'blue box subsidies';

1. Certain developing country subsidies designed to encourage agricultural production;
2. Certain *deminimus* subsidies, and
3. Certain direct payments aimed at limiting agricultural production.

Article 6.2 of the Agreement excludes three types of government assistance, whether direct or indirect, from the AMS calculations:

- Investment subsidies which are generally available to low income or resource poor producers in developing member country;
- Investment subsidies which are generally available to agriculture;
- Subsidies to agricultural producers to encourage diversification from growing illicit narcotic drugs.

In keeping with the *deminimus* subsidies, Article 6.4 excludes from the AMS calculation;

1. product-specific domestic subsidies where the subsidy does not exceed 5 per cent of that member's total value of production of a basic agricultural product during the relevant year; and
2. Non-product specific domestic subsidies where such subsidies do not exceed 5 per cent of the value of that members total agricultural production. The applicable percentage for developing countries is 10 per cent.

The third type of 'blue box' subsidy is the direct payments made under production-limiting programmes and are excluded provided;

1. They are based on fixed area and yields;
2. They are made on 85 per cent or less of the base level of production; or
3. They are livestock payments made on a fixed number of head (Article 6.5(a) of the Agreement).

A WTO member may confer both green box and blue box subsidies on its farmers; however, the important distinction between excluded subsidies and exempt green box subsidies is that blue box subsidies are actionable under an importing member's countervailing law, whereas green box subsidies are not

### ***F. The Aggregate Measurement of Support (AMS) Calculation***

Under the Agreement on Agriculture, all non-exempt, non-excluded domestic subsidies are calculated and reduced to a single figure, the Aggregate Measurement of Support (AMS).

Article 1(a) of the Agreement defines the AMS as follows:

The annual level of support expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product, or non-product-specific support provided in favour of agricultural producers in general, other than the support provided under programmes that qualify as exempt from reduction under Annex 2 of this Agreement, which is:

- (i) with respect to support provided during the base period, specified in the relevant tables of supporting material incorporated by reference in Part IV of a member's Schedule; and
- (ii) with respect to support provided during any year of the implementation period and thereafter, calculated with the provisions of Annex 3 of this Agreement, taking into account the constituent data and methodology used in the tables of supporting materials incorporated by reference in Part IV of the member's Schedule.

The 'basic agricultural product' in relation to domestic support commitments is defined as the product as close as practicable to the point of first sale as specified in a member's Schedule and in the related supporting material.<sup>21</sup>

AMS subsidies includes both budgetary outlays and revenue foregone by governments.<sup>22</sup> Fees paid by producers are deducted from the AMS. A specific AMS expressed in monetary terms is established for each basic agricultural product. Once the AMS has been calculated, subsidy reductions of 20 per cent for developed countries over the six years from 1995 and 13.3 percent for developing countries were implemented over 10 years. Least developed countries were not required to make any reduction.

Although AMS is calculated on a product by product basis, the commitments for reductions apply to the aggregate amount. This allows

---

<sup>21</sup> Article 1 (b).

<sup>22</sup> Article 1(e).

countries flexibility to shift support from one product to another, though they are required to keep within outer ceiling limits.

### ***G. Export Subsidies in the Agreement on Agriculture***

Article 3.3 of the Agreement provides that a member:

Shall not provide export subsidies listed in paragraph 1 of Article 9 in respect of the agricultural products or groups specified in Section II of Part IV of its Schedule in excess of the budgetary outlay and quantity commitment levels specified herein and shall not provide such subsidies in respect of any agricultural product not specified in that Section of its Schedule.

The Agreement on Agriculture, therefore, tightens its hold on export subsidies by prohibiting export subsidies in two instances:

1. Products that never received export subsidies in the 1986-90 base period may not receive them in the future; and
2. Export subsidies not listed in Article 9.1 are not permitted.

Article 9(1) lists the following export subsidies subject to reduction commitments:

- (a) the provision by governments or their agencies of direct subsidies, including payments-in-kind to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;
- (b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;
- (c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;
- (d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export production and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

- (e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (f) subsidies on agricultural products contingent on their incorporation in exported product.

By the end of the implementation period a member must be in full compliance with its budgetary and quantity reduction commitments.

### ***H. Prevention of Circumvention of Export Subsidy Commitments***

Article 10 of the Agreement on Agriculture prevents circumvention of the export subsidy reduction commitments in four ways. One, members agree not to circumvent the export subsidy reduction commitments through food aid except in conformity with Article 10(1); two, member agree to work towards the development of internationally agreed disciplines on export credits, export credit guarantees, and export insurance programmes.<sup>23</sup> Third, any member which claims that any quantity exported is in excess of a reduction commitment level is not subsidised must establish that no export subsidy, whether listed in Article 9 or not has been granted in respect of quantity of exports in question. Fourth, export subsidies not listed in paragraph I of Article 9 shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments, nor shall non-commercial transactions be used to circumvent such commitments.

#### ***I. Disciplines on Export Prohibitions and Restriction***

Where any WTO member institutes any new export prohibition or restrictions on foodstuffs in accordance with paragraph (2) of Article XI of GATT it is incumbent on the member to observe the following provisions:

- (a) the member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing member's food security;
- (b) the member has to give notice in writing before instituting an export prohibition or restriction in advance to the Committee on

---

<sup>23</sup> Article 10.2.

Agriculture<sup>24</sup> communicating the nature, and duration of such a measure, and shall upon request consult other member/members and provides information who have a substantial interest as importer with respect of any matter related to the measure in question.

The above provision does not apply to a developing country member, unless the measure in question in taken by a developing country member which is a net food-exporter of the specific foodstuff concerned.<sup>25</sup>

### ***J. Peace Clause—Hold Back Subsidies***

Article 13 catalogues the exemptions during the nine-year implementation period ending 2006. During the implementation period, notwithstanding the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures:

- (a) domestic support measures that conform fully to the provisions of Annex 2 to the Agreement on Agriculture shall be;
  - (i) non-actionable subsidies for purposes of countervailing duties;
  - (ii) exempt from actions based on Article XVI of GATT 1994 and Part III of the Subsidies Agreement; and
  - (iii) exempt from actions based on non-violation or impairment of the benefits of tariff concessions accruing to another member under Article II of GATT 1994, in the sense of paragraph 1(b) of Article XXIII of GATT 1994.

Legal action against domestic and export subsidies under:

- (i) Member's countervailing duty law;
- (ii) the Agreement on Subsidies and Countervailing Measures; or
- (iii) Article XXIII of GATT on the basis of 'adverse effects,' 'serious prejudice' or 'non-violation nullification and impairment, may be brought only under the following circumstances:

First, all green box domestic subsidies are exempt under all three types of legal action. Second, all non-exempt domestic subsidies that do not grant support to a specific product in excess of the amount received during 1992

---

<sup>24</sup> As established under the Agreement.

<sup>25</sup> Article 12(2).

marketing year are exempt from action under (ii) and (iii). However, they are not exempt under (i) if they cause injury to a domestic industry producing a like product, in which case, they may be subject to an importing member's countervailing duty law. Third, all non-exempt domestic subsidies exceeding reduction commitments are subject to action under (i), (ii) and (iii). Fourth, export subsidies that conform to the Agreement's reduction commitments are exempt from action under (ii) and from 'adverse effects' and 'serious prejudice' actions under (iii) but are subject to a GATT, 'non-violation' and nullification 'impairment' action. If they cause injury to a domestic industry producing a like product, they also are subject to an importing members countervailing duty law, but 'due restraint has to be shown in initiating any countervailing measures.' Fifth, all export subsidies exceeding reduction commitments are subject to action under all three types of legal action.

### ***K. Doha Round***

Agricultural negotiations was part of the Doha Round of WTO Ministerial Conference launched in November 2001 and committed member governments to arrive at : (i) substantial improvements in market access; (ii) reduction of all forms of export subsidies with a view to phase out; and (iii) substantial reductions in trade distorting domestic support. Besides, the Doha Mandate also took note of non-trade concerns such as rural development and food security. Doha Ministerial Conference was followed by failed Cancun (September 2003) Ministerial Conference and subsequently the General Council of WTO after an intense negotiations developed a 'July Framework' (2004) which was considered as a significant step in, arriving at modalities. The 'July Framework' (2004) with respect to domestic support and export competition had the following features:

1. The overall reduction targets is cutting total trade distorting support calculated by adding final bound total AMS, *deminimis*, and Blue-Box using a tiered formula.
2. Twenty percent in the first year of implementation.
3. As far as AMS is concerned, the product specific AMS will be capped and greater cuts by countries providing higher levels of AMS.
4. De minimis will be cut and the extent of reductions in the *deminimis* to be negotiated – developing countries that allocate almost all de

minimis support for sustenance and resource poor farmers will be exempt.

5. The definition and criteria for inclusion in the Book will be revised.
6. The Blue Box criteria is to ensure that the measures are less trade distorting than AMS measures.
7. The Blue Box will be capped at 5 percent of the value of the agriculture production.
8. The Green Box criteria is to be reviewed.
9. Parallel elimination of all export subsidies, trade-distorting export of export credits, certain activities of State Trading Enterprises (STEs), bilateral food aid are also of great concern.
10. Export subsidies eliminated by annual instalments, taking into account coherence with internal reform steps of members.
11. Disciplines on export prohibitions and export restrictions to be negotiated.

On Special and Differential Treatment (S&D) the July framework allows for a longer implementation period and lower rate of reductions for domestic support. It also allows for continued access to Article 6.2 of which exempt measures are taken to achieve agriculture and rural development, and investment subsidies to resource poor farmers for calculation of current Total AMS. On export promotion the framework allows for a long period for phase out and benefit under Article 9.4 of AoA (Subsidies to reduce the cost of marketing exports of agricultural production, processing cost and costs of international transportation and freights, and internal transportation and freight charges on export shipments) to continue for a reasonable period after phasing out all forms of export subsidies. It also specifies that interests of net food importing countries are to be protected and STEs in developing countries will be given special considerations.

The Framework Agreement has moved in a positive direction on several aspects that are of considerable interest to developing countries. Caping product specific AMS, higher reduction by countries providing greater AMS, modification of criteria for Blue Box, and elimination of export subsidies are positive steps.

### ***L. India's Perspective***

India has been steering since the beginning of AoA negotiations till its failure in 2006, bold initiatives and have been constantly on the look out for a workable and acceptable solution in the overall perspectives of the claims of various stakeholders as well as the disadvantageous position of the less developing countries. The DDA and Round have raised high expectations for vulnerable sections of society who are looking at welfare gains from the round to steer them clear of deprivation and provide succor. India also believes in "win-win situation" where developed and developing countries could settle a workable, reasonable, and honourable settlement which could be salable to all the stakeholders and in case negotiations fail, it would risk the entire multilateral trade institutions to crumble and developed countries would be accused of such disaster.

The resumption of negotiations should be based on a shared understanding of clear principles namely,

- (i) being firmly faithful to the Doha mandate, as elaborated by July 2004 Framework and the Hong Kong Ministerial Declaration
- (ii) taking on board whatever has been agreed by members since the commencement of negotiations and
- (iii) focus on negotiations rather than rhetoric. For India, it is important that Doha Round should be brought to a successful conclusion.

India for a successful conclusion should work for a balance between market opening and the development needs of the majority of the WTO members, but the onus of such a balance depends on the concessions and reduction commitments of the developed countries. The Government of India has been working overtime with its municipal stakeholders for developing responses to the issues arising out of AoA negotiations and pursuing its national interests by forgoing coalitions of developing countries such as G-20 on Agriculture, G-30 on special products and special safeguard mechanism under AoA negotiations<sup>26</sup>.

---

<sup>26</sup> Mr. Kamal Nath, Commerce and Industry Minister, Statement in Parliament, in reply to a question in Lok Sabha on 28<sup>th</sup> November 2006.

The G-20 and G-30 alliances on negotiations in agriculture, of which India is a member, have been emphasizing that the livelihood and standards of living of the poor farmers in developing countries (In India 72% of the population are engaged in farming and bulk of the farmers are engaged in subsistence farming) are seriously jeopardized by the subsidies and market access barriers prevailing in international agricultural trade and any round that would be faithful to its development dimension must urgently redress this situation.

Towards safeguarding the interests of Indian agriculture and farmers, India has also been playing a key role in further strengthening the developing countries coalitions by bringing together the G-20, the G-33, the African Caribbean – Pacific countries and the Least Developed Countries to reinforce each others positions on issues of mutual interest. India has been emphasizing that specific and detailed proposals that have been made in domestic support and market access by the G-20, and on special products (SPS) and the Special Safeguard Mechanism (SSM) by the G-33 should ensure a final outcome consistent with the agreed negotiating mandate for substantial and effective reductions in trade-distorting domestic support. India has taken the position that the self designation of an appropriate number of SPS and an effective and operable SSM for safeguarding the vulnerable farm communities and proportionate lower tariff reductions commitments should be integral to the final outcome on agriculture.

### ***M. An Analysis***

After hectic meeting and consultations among nearly 30 trade ministers in Davos (Switzerland) during the last week of January 2007, the Director General of WTO has announced full resumption of negotiations on the Doha Work Programme of the WTO. The talks in Davos on the sidelines of the annual meeting of the World Economic Forum were preceded by intense bilateral talks within the G-6 countries (US, EU, Australia, Japan, India and Brazil) following the collapse of negotiations in the WTO in the last week of July 2006. Some reports indicate that the US and EU would have liked the negotiations to continue within a small group of countries which would then be brought to larger groups in the WTO when some concrete steps were involved. But India along with others developing countries preferred an inclusive and transparent multilateral format of negotiations in Geneva.

Talks have now been resumed in the various negotiating groups, though a parallel process of negotiations in small groups is also reportedly continuing<sup>27</sup>.

The resumption of negotiations of the AoA, have been welcomed by the Members of WTO after the same was suspended on 16 November, 2006 and India has welcomed the resumption of negotiations as it believes that Doha Development Agend (DDA) is the most ambitious attempt in ensuring that the issue of development as core value of multilateralism, non-discrimination, predictability, stability, transparency are fully supportive of development. India believes that the success of the Doha Round would usher in welfare gains percolating down horizontally so that the economic disparities and maladies such as unemployment, low purchasing power, poverty and economic inequity could be tackled ushering in social harmony. India along with other developing countries has been stressing that the key to negotiations of DDA and Round is to ensure that the round delivers on development and help developing countries to integrate them into the world trading system taking advantage of opportunities. India having full faith in WTO dismisses the option of elimination of distortions in international agriculture through regionalism or other route; comparative advantage of developing countries should not be stifled by protectionism practised by developed countries in their agricultural markets. According to Indian posture in the AoA negotiations, the fresh initiatives should start tackling the peripheral issues before tackling the core issues and modalities.

The intensity of negotiation process is indication of high stakes involved in Agriculture negotiations in the WTO. The intricate negotiating process characterized by realignment of alliances through reconciliation's of positions among members reflects the complexity of issues with different members having varying degrees of sensitivities in different areas of the negotiations.

G-20 emerged as a reaction to the joint EU-USA paper of 13 August 2003 and played a major role in restoring the balance in these negotiations by shaping the July Framework for Modalities [WTO, WT/L/579/ Annexure I]. G-20 mainly challenged the three basic elements of the joint EU-US proposals:

---

<sup>27</sup> South North Development Monitor, Geneva, 6182, Feb.2, 2007: FINANCIAL TIMES LONDON. Jan. 28, 2007

- (i) Modification of Blue Box criteria with a view to increasing domestic support entitlements of certain members.
- (ii) Blended formula for tariff reductions.
- (iii) Reneging from the commitments to phase out export subsidies on all products.

The July Framework for Modalities on Agriculture bears out the successful challenge mounted by the G-20 on these three elements:

First, any modification of the criteria of Blue Box has been made contingent upon agreement on additional disciplines to ensure that the Blue Box parpuments are less trade distorting than the AMS measure. The onus of bringing about consensus on modification of criteria of the Blue Box would fall on the demanders for such a change. Any change for creating a new Blue Box, if ever accepted, will entail discussion on additional criteria, such as, product specific caps and reductions, price gap differentials, disciplines on accumulation of support on certain products and offset against transfers from AMS/ *de minimis*.

Second, the blended formula for tariff reduction, which was perceived as biased in favour of the tariff structures of its proponents enabling them to maintain the status quo, and at the same time, imposing an overly onerous burden of tariff reduction on developing countries, has been replaced with the tiered formula based on the principle of progressivity of tariff reductions through deeper cuts in higher tariffs. The principle that developing countries would undertake proportionally lesser tariff reduction commitments than their developed counterparts has also been explicitly enshrined.

Lastly, a firm commitment to an end date for phasing out export subsidies on all products has been secured. The principle of parallelism between the direct export subsidies and indirect subsidies in other export support programmes, which was used in the EU –US agreement to maintain each others export subsidy programmes has not given way to complete phase out of all trade distorting export subsidy programmes.

### III. AGRICULTURE

In agriculture, the negotiation has narrowed down to TDS and tariff. The base levels of TDS in the US and EU are \$48 billion and euro 110 billion respectively (year 2000, the last year of notification). In July 2006

they had offered to reduce the levels to \$23 billion and euro 33 billion respectively. The G-20 had proposed reduction by 70-80 per cent which would bring these levels to \$12 billion and euro 27 billion respectively. There were expectations that the EU might be flexible. Now with the indication that the US might consider a level of \$15 billion, the gap is not large. Tariff, in any case, has not been a hard issue as the EU has been the main target of attention in this regard and the EC, on behalf of the EC, has shown willingness to go up to a 53 percent reduction. The proposals of the G-20 and the US in this regard are for a 54 per cent and 66 percent reduction. Slightly more flexibility on the part of the EC appears likely.

Thus, the gap between the demand and offer has considerably narrowed down. The point to ponder over is whether this convergence will benefit developing countries in terms of protection of their farmers in the domestic market and expansion of their export prospects outside. The fear is that neither of these two objectives will be attained since a vast loophole and a wide escape route has not yet caught the full attention of developing countries. The US and EU may reduce their tariffs and TDS and at the same time, increase their green box subsidy without limit, thus neutralizing the effects of reduction of TDS and tariff.

This fear is real as is evident from the post-1995 practices of the US and EU. They fulfilled their obligations of reduction of reducible subsidies, i.e. the categories of subsidy they were obliged to reduce in agriculture but enhanced the subsidies that were immune from reduction. There is no reason to believe that they will not do the same again and use the loopholes and escape routes available in the newly emerging agreement to their advantage. In case of the EU, the common agriculture policy (CAP) of 2003 would shift a large bulk (about 75 percent) of the blue box subsidy to the green box. The latest five-year farm bill of the US stipulates additional payments (about \$5.5 billion over a 10-year period) through the green box. Reports from the US indicate that this move is partially aimed at avoiding challenges in the WTO.<sup>28</sup>

The green box subsidy is immune from reduction in the WTO as it is presumed to be non-trade-distorting. This presumption is a mistake as the

---

<sup>28</sup> WASHINGTON TRADE DAILY, Vol.16, No.24, Feb.1, 2007.

subsidy, even though not strictly in the form of direct market intervention, enhances the staying capacity of the farmer in agriculture by its wealth effect and by assisting the farmer to take risk. It encourages and supports unviable agricultural production and thereby distorts agricultural trade.

A recent analytical and quantitative study by the United Nations Centre for Trade and Development (UNCTAD) India office shows the following four results without the green box subsidies in the major developing countries.<sup>29</sup>

- (a) Agricultural exports of the US and EU will decrease by 39 and 45 percent respectively, while the exports of developing countries will increase by 22 percent;
- (b) Agricultural production of the US and EU will decrease by \$20.9 billion and \$53.8 billion respectively, while the production in developing countries will increase by \$41.9 billion;
- (c) Agricultural employment will decrease in the US and EU by 2.4 and 5.8 percent respectively, while it will increase by 4 percent in developing countries; and
- (d) Cost of production will rise in the US by 15 percent and in the EU by 17 percent.

It is thus necessary that developing countries firmly cast aside the myth that the green box subsidies are non-trade-distortive and set about having them eliminated or minimized. The July 2004 framework (WTO general council decision of August 1, 2004, Annex A, paragraph 16) which elaborates the mandate of the negotiation under the Doha Work Programme calls for a review and clarification of the criteria of the green box subsidy with a view to ensure that “they have no, or at most minimal, trade-distorting effects or effects on production”. The G-20 has given some proposals on this but the proposals are not specific in terms of quantitative targets as those on TDS and tariff. Further, the G-20 has so far not insisted on integrating the green box criteria in the mainstream negotiation on agriculture. In fact, the G-20 members in the G-6 i.e. India and Brazil, appear to have allowed the G-6 negotiation on agriculture to be centered around tariff and TDS

---

<sup>29</sup> UNCTAD INDIA *Green Box Subsidies: A Theoretical and Empirical Assessment*, available at the website, [www.unctadindia.org](http://www.unctadindia.org)

without bringing in the green box criteria as an essential and compulsory part. It is important to insist that the green box is brought into the mainstream agriculture negotiation and given the same priority and importance as the tariff and TDS.

While major developed countries are firmly defending their green box, they are trying to weaken the provisions for SP that addresses the food security, livelihood security and rural development needs of developing countries. Reports from Davos indicate that there were pressures on developing countries to dilute their stand on SP but the G-33 (a group of 45 developing countries that have been actively championing special products and special safeguard mechanism), with active roles played by Indonesia, India and China, issued a firm warning in Davos that any such dilution would not be acceptable. Developing countries must continue to remain firm on two essential elements in SP: adequate coverage of the SP and adequate protection for them. The G-33 has given specific proposals which need to be pursued with full determination.

Domestic support: They were predicated upon the adoption of the Aggregate Measurement of Support (AMS) as a basis both for calculating the level of subsidy received by farmers in contracting Members and for measuring the reduction commitments to be undertaken. AMS was defined by Article 1(a) to mean 'the annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product-specific support provided in favour of agricultural producers in general'. This was amplified by detailed rules in Annex 3, which provided for the calculation of AMS on a product-specific basis, using 1986-8 as the base period. The URAA committed members, in the case of developed countries, to a reduction of 20 percent in the aggregate base AMS over six years. So-called 'green box' subsidies were exempt from the calculation of AMS and the reduction commitments, and there was a *de minimis* exclusion for product-specific domestic support which did not exceed 5 percent of the total value of production of that product in a given year or, for non-product-specific domestic support, which did not exceed 5 percent of the value of total agricultural production in a given year<sup>30</sup>. Exemption from reduction commitments was also conferred

---

<sup>30</sup> URAA Art. 6.4.

on direct payments made under certain production-limiting programmes, the so-called 'blue box'<sup>31</sup>. It may be noted that the availability of 'green box' exemption has proved a particularly important factor, both in terms of domestic policy development within the Community and elsewhere, and in terms of its significance as a focal point for dispute in the Doha Round. Those subsidies which did not fall within the 'green box' or 'blue box', and which were not *de minimis*, remained within the so-called 'amber box', subject to AMS reduction commitments. The URAA also required Members, in the case of developed countries, to reduce export subsidies by 21 percent by volume and 36 percent by value from a 1986-90 base.

The impact of any development in agriculture negotiations would be felt in India which maintains high bound rates, out of 82 diverse agricultural items ranging from cereals and pulses, cereal products, dairy products, plantation crops, to meat and poultry, sugar, agriculture, edible oils (both crude and refined), India maintains a bound tariff rate equal to 100 percent or more on 62 such items.<sup>32</sup>

In Doha Round of Negotiations on Agriculture (2002), the structure of AoA was not challenged, however, the negotiating positions of WTO Members fell into three categories:

1. The industrialized countries such as EU, Japan, Switzerland, Norway raised the issue of multifunctionality of agriculture in the sense that agriculture plays multifarious roles in maintaining rural communities, which are non-trade concern in agriculture, hence there needs a slow and dual process of reform in agriculture sector as such they were defensive in maintaining the three pillars of agriculture. Many of the developing countries especially African, Caribbean and Pacific (ACP) countries which are dependent on preferential schemes of access for their products in the market of EU supported the idea of multifunctionality of agriculture.
2. The Cairns Group of agriculture exporting countries led by Australia and comprising Argentina, Bolivia, Brazil, Canada, Chile, Columbia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, the

---

<sup>31</sup> For developing countries, the *deminimis* percentage was 10 percent. *Ibid.*, Art. 6.5.

<sup>32</sup> Ministry of Finance, Department of Revenue, New Delhi. Figures available on 1 January 2004.

Philippines, Thailand and supported by United States demanded aggressive liberalization of agriculture in all three pillars. The United States, although a major domestic support provided to its agriculture, showed all its willingness to reduce its domestic support provided other member's match its level of support and got increased access for its products in all markets, both developed and developing.

3. A group of developing countries (India, Pakistan, Turkey, Zimbabwe, Nicaragua, Kenya, Nigeria, Dominican Republic, Honduras, El Salvador, Venezuela, Philippines, Indonesia and others) demanded substantial reductions in domestic support and export subsidies but were not willing to extend tariff reductions under the market access as these countries believed that a high proportion of their population being engaged in agriculture, the consequent food security and livelihood are of immense importance to them and hence the tariff reductions under market access could not be offered. The Group emphasized that the developed countries should liberalized agricultural trade taking into account the special and differential treatment of less developing countries. However, some developing countries were in a position to meet the competitiveness of their agricultural goods in the international market favoured the position taken by friends of multifunctionality of agriculture.

The Swiss formula was brought into the negotiations as the formula had 'the effect of compressing tariffs below the chosen coefficient. This formula suggested by Switzerland, was used to reduce industrial tariffs in developed countries during the Tokyo Round of Trade Negotiations. It has the effect of compressing all tariffs below the chosen coefficient with the result that higher tariffs are disproportionately reduced. The formula is:  $\text{New Tariff} = \frac{\text{Existing Tariffs} \times \text{Coefficient}}{\text{Existing Tariff} + \text{Coefficient}}$ . The value of coefficient is to be determined through negotiations. Swiss Formula was not acceptable to EU as it would have obliged EU to reduce their tariffs substantially believed to be anywhere between 50-150 percent to below 25 percent. EU preferred Uruguay Round approach [During Uruguay Round, the formula chosen for reductions in tariffs on agricultural products was an average reduction of 36 percent (24 percent for developing countries) with at least 15 percent (10 percent for developing countries) on each tariff line.]

The EU has over the years referred its Common Agriculture Policy (CAP) and the reforms of CAP(2003) has considerably reduced the gap between the applied and bound tariffs in its trade distorting (AMS) domestic support<sup>33</sup> where as the United States had under its Farm Security and Rural Investment Act, 2002, had increased its domestic support. As such the United States became a major user of export support programmes in the form of export credits, guarantees and insurance programmes.

The extreme positions of the three groups of countries was put to sorting out in a special session on Agriculture under the chairmanship of Stuart Harbinson<sup>34</sup> which proposed.

- (a) elimination of export subsidies for at least 50 percent products in five years and for all products in nine years;
- (b) rules based approach to discipline export credits, guarantees and insurance programmes;
- (c) S&D for less developing countries in terms of longer implementation programme, and lesser commitments; and
- (d) Continuation of the existing flexibilities enjoyed by less developing countries under Article 9.4 for subsidizing the cost of transport and marketing of export shipments of agricultural products for the duration of the implementation period of the Agreement.

Harbinson's proposal on domestic support meant reduction in AMS by 60 percent, capping of the product-specific support [support given to an individual within the AMS] at an average of 1999-2001 levels and reduction of *de-minimis* for developed countries by 50 percent, Blue Box payments to be capped and reduced to half, and some discipline on Green Box, such as de-coupled income support should be based not only on a fixed (as in the Uruguay Round Agreement) but also on unchanging historical base period. Under the S&D treatment for developing countries, the

---

<sup>33</sup> Art.1(a) of the AoA defines the AMS as: "Aggregate Measurement of Support" and AMS means the aggregate levels of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of basic agricultural product and non-product specific support provided in favour of agricultural producers in general, other than support provided under programmes that qualify an exempt from reduction....."

<sup>34</sup> Draft Modalities Paper on 17 February, 2003 (WTO, TN/AG/W/1).

proposal proposed enhancement in the scope of Art.6.2 and Green Box Support as applied to developing countries.

Harbinson's proposals on market access conceived a tiered approach to tariff reductions using the principle of deeper cuts in higher tariffs, which meant that tariffs over 90 percent (120 percent for developing countries) would be cut by an average of 60 percent (40 percent for developing countries) with a minimum of 35 percent (27 percent for developing countries) per tariff line. Tariffs lower than or equal to 15 percent (20 percent for developing countries) would be cut by 40 percent (27 percent for developing countries) with a minimum per line of 25 percent (17 percent for developing countries). Developing countries were given further flexibility to designate few tariff lines as special products/ strategic products (SP) on which average reduction will be 10 percent with a minimum of 5 percent on each tariff line and no-tariff rate quota (TRQ) expansion. The existing TRQs were to be expanded to 10 percent (6.67 percent for developing countries) of their consumption level. Special safeguards (SSG) [Article 5 of the AoA enabling imposition of additional duty if the prices of imported products fall below a designated trigger or the volume of imports increased above the designated trigger] for developed countries to be eliminated at the end of the implementation period. For developing countries, the existing SSG were to be maintained and a new special safeguard mechanism (SSM), for addressing rural development, food livelihood security concerns, was proposed.

The Harbinson's proposals were resisted by United States and EU. United States opposed the proposals on the ground that market access was not fully addressed in the proposals where as EU and its friends of multifunctionality were skeptical that the proposals were too ambitious on market access and export subsidies.

The Harbinson's proposals were followed by an informal mini-ministerial meeting held at Montreal, Canada, July 2003 wherein it was felt that the extreme positions between the United States and EU need to be resolved before proceeding to the Ministerial Conference at Cancun scheduled for September, 2003. The US and EU came out with a joint proposal on August 13, 2003<sup>35</sup>. The joint proposal was opposed by a

---

<sup>35</sup> [www.agradepolicy.org/output/resource/ EC-US Joint text 13 August, 2003. pdf](http://www.agradepolicy.org/output/resource/EC-US%20Joint%20text%2013%20August,%202003.pdf).

number of countries, at it was felt that the two countries had accommodated their own interests.

However, the joint proposals indicated a compromise of interests between EU and US policies on agriculture:

- (i) A provision was made to enable members to take differential reduction commitments in the AMS based on their initial level of support. Since the EU had higher AMS in terms of its proportion of the value of total agriculture production than the United States, this methodology would enable the United States to undertake lesser commitments than the EU.
- (ii) A maximum limit (cap) of 5 percent of the value of agricultural production of a member was proposed on the Blue Box (Art. 6.5 of the AoA), would oblige the EU to reduce its existing Blue Box payment by approximately 50 percent. This method of capping of support level was a departure from the capping method used in the Uruguay Round of "Capping" the applied levels in a historical period and reducing it further from that level.

The joint EU-US proposal on tariff reductions under the market access pillar was a blend of the Uruguay Round (initially proposed by the EU) and swiss formula (initially proposed by the US). It was proposed that a proportion of tariff lines would be subjected to the Uruguay type of average reduction with stipulated minimum reduction on each tariff lines and a proportion of tariff lines to be subjected to reduction by using the Swiss formula. On analysis, it was found that as the tariff structures of the EU and the United States are highly skewed with a small proportion of tariff lines at high levels, and many tariff lines at low or zero tariffs, it would have had small impact on tariff reductions, rather would have enabled EU to continue to protect its so called sensitive sectors, such as, sugar, cereals, meat and dairy products. The developing countries disagreed to the joint proposal as they felt that they would not be able to undertake substantial reductions of their tariffs due to their rural development, food and livelihood needs. The poorest of the developing countries along with other developing countries had bound their tariffs during the Uruguay Round a levels between 100-150 percent, the joint proposals would have forced these countries to make substantial tariff reduction commitments. On export competition, the

joint proposal would have enabled EU to continue with export subsidies on some products and eliminate it on some products. The United States extracted some concessions for itself by drawing a parallel between export subsidies and export credits.

### ***A. Emergence of G-20 Alliance of Developing Countries***

The Group comprised – 23 developing countries at Cancun, Argentina, Brazil, Chile, China, Columbia, Costa Rica, Cuba, El Salvador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Paraguay, Peru, Philippines, Thailand, South Africa and Venezuela–Post Cancun, Columbia, Costa Rica, Ecuador, El Salvador, Guatemala, Peru left the Group but Zimbabwe, and Tanzania joined as new members.

The emergence of G-20 of developing countries was essentially by way of ructions to the EU and United States joint proposed as the developing countries felt that their interests have been overlooked. The G-20 put forward a proposal<sup>36</sup>, the essence of which was that;

- (a) Accepting the concept of harmonization of support in the AMS and its deeper reductions at higher levels, these reductions in AMS be undertaken on “product specific basis in order to avoid the shifting of such support across products;
- (b) Deeper reductions commitments in domestic support on export oriented production;
- (c) Elimination of blue box;
- (d) Capping and/or additional disciplines on Green Box duct payments so that such payments are not trade-distorting and parking grounds for domestic support shifted from other boxes.
- (e) Expansion in the scope of S&D treatment for developing countries and maintaining the *de-minimis* at the existing levels for developing countries.

### ***B. Cancun Ministerial Meeting: 2003***

At the Fifth Ministerial Conference at Cancun, Mexico during 10-14 September 2003, the acrimony between the US, EU on one side and the G-20 of developing countries on the other side led to the collapse of Cancun

---

<sup>36</sup> WTO, WT/MIN(03)W/6

Ministerial Meeting, although a draft Cancun Ministerial text was tabled for discussion<sup>37</sup>. However, the hope of continuing with the negotiations was kept alive when ministers asked the Chairman of the General Council of WTO to continue marshalling the outstanding issue of negotiations<sup>38</sup>.

After the Cancun failure, the outstanding issues which needed negotiations were : domestic support for which substantial reductions in total AMS are required; blue box should be capped which at present is unlimited and subsequently subjected to reduction commitments; market access, blended formula as suggested in Cancun draft<sup>39</sup> may be taken into consideration while accommodating the concerns of developing countries and reductions made in accordance with equity so that the burden of tariff reductions should not impose burdens on developing countries and extending developing countries, S&D treatment, export commitments, the commitment of phasing out all forms of export subsidies on all agricultural products by a certain date.

In 2004, three special sessions on agriculture were held to keep the negotiations on going. These three sessions saw the negotiations in groups such as United States, EU, G-20, Cairns Group, G-10, G-33 and LDC's group. At the same time some serious thinking crept up in some formal and informal notings to these groups, specially the letter of Robert Zoellick, USTR of 115am 2004, to all trade ministers<sup>40</sup>, G-20 criticism of the blended formula<sup>41</sup>, G-20 proposals on market access, 28 May, 2004<sup>42</sup>, letter of EU Commissioner, Pascal Lamay and Franz Fishler dated 9<sup>th</sup> May 2004 to all trade Ministers<sup>43</sup>; Reiteration of the views of the Alliance for Strategic Products and Special Safeguard Mechanism<sup>44</sup>.

---

<sup>37</sup> WTO; Job (03)/150/Rev.2, Annexure I.

<sup>38</sup> WTO; WT/MIN(03)/W/24.

<sup>39</sup> *Supra* n. 37.

<sup>40</sup> [www.abanet.org/intlaw/hubs/ programs/ Apring 0415-02-15.04.pdf](http://www.abanet.org/intlaw/hubs/programs/Apring_0415-02-15.04.pdf).

<sup>41</sup> WTO,TN/AG/GEN/9.

<sup>42</sup> [www.g-20.wire-gov.br/contendo/ proposals\\_Market01.htm](http://www.g-20.wire-gov.br/contendo/ proposals_Market01.htm).

<sup>43</sup> Excerpts in <<http://europa.eu.int/rapid>.

<sup>44</sup> G-33, A Group of developing countries which organized themselves for securing expansion of special products (SP) and (SSM) for developing countries. These countries are :Indonesia, Philippines, Korea, China, India, Turkey, Dominican Republic, Honduras, Panama, Nicaragua, Peru, Kenya, Zimbabwe, Nigeria, Venezuela, Cuba, Barbados, Jamaica, Mauritius.

### ***C. Group of Five (FIPS)***

Five interested parties joined together on the initiative of US and included Australia, Brazil, India and EU to be known as Group of Five to sort out the differences between them as these countries had high stakes in the negotiations. The Group of Five met many times on the sidelines of various Conferences such as OECD Conference in May 2004, UNCTAD XI in June 2004 and in Paris in July 2004 and in Geneva on 31<sup>st</sup> July 2004.

### ***D. "July Framework" Agreement 2 August 2004***

All the negotiations lead to 'July Framework' Agreement adopted by Members (WT/2/579) on 2 August 2004.

### ***E. Export Competition***

The main issues pertaining to the export competition were

- (i) whether export subsidies on all agricultural products will be eliminated?
- (ii) The developing countries were apprehensive that EU export subsidies programme of sugar, meat and dairy products which is almost 85 percent would put the developing countries to disadvantage unless EU eliminates these subsidies.
- (iii) EU was willing to eliminate subsidies provided full 'parallelism' on all forms of export competition including credit exports, food aid (used mainly by US) and state trading enterprises (used mainly by Canada and Australia) was also negotiated.
- (iv) "Full parallelism" became a subject of acrimony between EU and USA, as EU proposals for complete elimination of export credit programmes, food aid be given only in fully-grant form and state trading enterprises should not be given monopoly, however, US was not agreeable to eliminate export credits, and food aid programme, whereas Canada and Australia were completely in favour of retaining the monopoly of state trading enterprises.
- (v) The developing countries proposed a rule based approach for elimination of export subsidies which however, was countered by the EU on the grounds *inter alia*, that the rule based approach would lead to a symmetrical commitments, and non transparency.

The Chairman in the first draft of the Framework Agreement<sup>45</sup> proposed elimination by an end date to be agreed, of the explicit credit subsidies, export credits, guarantees and insurance programmes and repayments periods beyond 180 days, disciplining of such programmes with repayments periods of up to 180 days covering, *inter alia*, payment of interests, minimum interest rates, minimum payment requirements and other elements, which can constitute subsidies or otherwise distort trade.

With regard to exporting state trading enterprises, trade distorting practices, such as export subsidies, government financing, and underwriting all losses will be eliminated.

The S&D treatment of less developing countries with regard to state trading enterprises in terms of receiving special consideration for maintaining the monopoly status in case they were used to preserve domestic price stability and ensuring food security was secured. The S&D provision regarding continuation of the provision of Article 9.4 of the AoA, to be continued for a reasonable period to be negotiated was also agreed.

#### ***F. Domestic Support***

Proposed changes in the criteria of Blue Box (Article 6.5 of the AoA) especially the deletion of the "production limitation" condition of these programmes have been debated since the Cancun Ministerial Meeting. The concerns expressed in the negotiations on the counter cyclical payments programme, provided in the US Farm Security & Rural Investment Act of 2002 in the Blue Box were considered as most trade distorting (AMS/*de minimis*) and farmers entitlements to receive counter cyclical payments fluctuate in response to changes in the price of the products which makes them closer to price support mechanisms classified as most trade distorting category of support (AMS).

The G-20 was willing to consider any change in the criteria of Blue Box provided:

- (i) It is ensured that an effective overall cut will be made on all trade distorting support by establishing a clear level of departure from an overall cut and allow for the possibility of offsetting payments transferred from one box to another against their original entitlement levels.

---

<sup>45</sup> WTO, Job(04)/ 96.

- (ii) It must be ensured that the payments classified as the Blue Box are genuinely less trade distorting than those under the AMS/ *de minimis*. G-20 was of the view that the creation of a new Blue Box should be explicitly conditioned upon the developments of additional criteria that will ensure that these payments are less trade distorting. Such criteria should include product specific caps and reductions, limiting the compensation of price variation, disciplines on accumulation of support on same products and offsets against transfers from AMS/ *de minimis*.

### ***G. Market Access***

Market access has been most contentious pillar. The blended formula contained in the joint EU-USA proposal of August 2003 was essentially to maintain the protectionist policies of the two countries and imposing an overly onerous burden of tariff reductions on developing countries. The G-20 issued a formula critique of the blended formula<sup>46</sup> describing it as fundamentally flawed and criticized it on two grounds:

- (i) that it fails to deliver “substantial improvements in Market Access”, specially for products protected by tariff peaks in developed countries, and
- (ii) inequitable results arising from the application of blended formula on different tariff structures of developed and developing countries, and thereby putting an onerous burden of tariff reduction on developing countries. G-10, also expressed its reservation on the blended formula as it was not taking into account their sensitive tariff lines.

The EU and USA defended the blended formula and asserted that S&D was provided to developing countries in several respects: different distortion of tariff lines to each element, different reduction, coefficients, lesser reduction commitments in the tariff elimination element, recognition of the special products, longer implementation periods and access to a special safeguard mechanism.

The EU argued that the blended formula was designed to achieve substantial improvements in market access, while providing flexibility for countries to address their most sensitive tariffs through a combination of tariff cuts and TRQ expansion. USA was in favour of this formula as it would

---

46 WTO, TN/AG/GEN/9 dated 7<sup>th</sup> May 2004.

have ensured higher tariff reduction commitments on the part of developing countries in whose markets the export interests of US lie. The EU was in favour of the blended formula as it met with their defensive interests and were willing to work with developing countries with similar defensive interests to ensure that they were not called upon to make inordinately high tariff reductions.

The developing countries sensing that their interest have not been addressed in the blended formula came out with a proposal on 28<sup>th</sup> May 2004 setting out elements for developing a common formula for tariff reductions in both developed and developing countries. The essential elements of this approach were:

- (i) that progressivity in tariff reductions through deeper cuts in higher tariffs; granting of flexibility to take into account the sensitive nature of some products; and
- (ii) the formula should guarantee neutrality in respect of tariff structure and proportionality of tariff reductions between developed and developing members with developing members undertaking lesser tariff reductions commitments as to ensure a fair and equitable outcome.

The USA and EU after sensing strong opposition to the blended formula, reluctantly considered the possible alternatives at the FIPS Ministerial Meeting and finally abandon the blended formula for a “tired formula” reductions.

The July Framework, therefore, established that tariff reductions would be made through tiered formula that takes into account their different tariff structures. Further, progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs and flexibility for sensitive products. S&D for developing countries will be an integral part of all elements and proportionality will be achieved by requiring lesser tariff reduction commitments from developing country members. The points of difference however, remained concerning the approach for tariff reductions within each tier/ band of the formula. The United States stressed on the use of Swiss formula within each band whereas many developing countries opposed it on the ground that given the harmonized tariff structures of developing countries, this will make it difficult to ensure proportionality of commitments between the developed and the developing countries.

Another contentious issue related to the selection and treatment of sensitive products especially for developed countries. The EU and G-10 Group of countries favoured in favour of large carve-out for sensitive products for which the additional market access commitments will be provided through expansion for tariff rate quota in lieu of the stipulated tariff reductions.

The G-20's arguments against such an approach were that an unlimited carve out of this nature would make the tiered formula meaningless, as products with high tariffs, if declared sensitive, will be excluded from any meaningful tariff reductions and thereby transgressing the principle of progressivity to be achieved through deeper cuts in higher tariffs.

The first draft of the Framework Agreement of the Chairman of the Special Session on Agriculture of 16 July 2004 (WTO, Job (04)/96) seemed to take in to account the position of the EU and the G-10 in terms of the selection of sensitive products. He stated that the number of sensitive products would approximate to the number of tariff rate quotas in members schedules.

Through intense negotiations in the consultation held by the Chairman and the FIPS ministerial meeting in Geneva, the section on selection and treatment of sensitive products are substantially revised. Members ultimately decided that the number of tariff lines to be designated as sensitive should remain under negotiations in next phase, and the treatment of sensitive products should be determined in a manner that it does not undermine the objective of the tiered formula.

#### IV. CONCLUSIONS

The Doha Development Agenda is one of the most ambitious attempts in ensuring that the issue of development is firmly at the core of multilateral trading system. The fundamental principles of multilateral trading system namely, non-discrimination, predictability, stability and transparency are fully supportive of development. The success of the record could perhaps for the first time usher in welfare gains percolating down horizontally. Even those in the lowest structure of economic development can jostle for space in this incremental global growth. Most importantly; it would address maladies such as unemployment, low purchasing power, poverty thereby attenuating the economic inequity and ushering in social harmony.

The key to negotiations should be firstly to ensure that this round delivers for development and secondly helps developing countries to integrate into the world trading system. Agriculture would remain at the heart of negotiations since the livelihood of more than a billion resource poor farmers depend on it. For globalization, to entail win-win scenarios, the comparative advantage of developing countries should not be shifted by protectionism in their developed partners.