

**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
LAW FACULTY**

**THE DOHA ROUND NEGOTIATIONS ON TRADE IN
AGRICULTURAL PRODUCTS: ISSUES AND IMPLICATIONS FOR
ETHIOPIA**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF LAWS**

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Approved by Board of Examiners

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Ethiopia

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Declaration

I declare that, “**The Doha Round Negotiations on Trade in Agricultural Products: Issues and Implications for Ethiopia**” is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

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Acronyms

ACP	African, Caribbean and Pacific
ADLI	Agricultural Development Lead to Industrialization
AGOA	African Growth and Opportunities Act
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
AoA's SSG	Agreement on Agriculture Special Agricultural Safeguards
ASG	Agreement on Safeguards
ASARECA	Association for Strengthening Agricultural Research in Eastern and Central Africa
AVEs	<i>Ad valorem</i> Equivalents
DRMFSS	Disaster Risk Management and Food Security Sector
EBA	Everything-But-Arms
EC	European Commission
EOS	Enhanced Outreach Strategy
EU	European Union
FAC	Food Aid Convention
FAO	Food and Agricultural Organization
FBT AMS	Final Bound Total Aggregate Measure of Support
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preference
HKMD	Hong Kong Ministerial Declaration
HS	Harmonized System
IMF	International Monetary Fund
ICTSD	International Centre for Trade and Sustainable Development
LDCs	Least Developed Countries
LIFDCs	Low-Income Food Deficit Countries
MFN	Most Favored Nation
MOFED	Ministry of Finance and Economic Development
MT	Metric Tones
NAMA	Non Agricultural Market Access
NBE	National Bank of Ethiopia
NFIDCs	Net Food Importing Developing Countries
NGOs	Non Governmental Organizations

NTBs	Non Tariff Barriers
OECD	Organization for Economic Co-operation and Development
OTDS	Overall Trade Distorting Domestic Support
RAMs	Recently AcceDed Members
RDMA	Revised Draft Modalities for Agriculture
SCM	Subsidies and Countervailing Measures
S & D	Special and Differential Treatment
SDF	Sugar Development Fund
SDT	Special and Differential Treatment
SePs	Sensitive Products
SNNPR	Southern Nations Nationalities and Peoples Region
SPs	Special Products
SSA	Sub Saharan Africa
SSA LDC's	Sub Saharan African Least Developed Countries
SSG	Special Agricultural Safeguards
SSM	Special Safeguard Mechanism
STEs	State Trading Enterprises
SVEs	Small and Vulnerable Economies
TRQ	Tariff Rate Quota
TSF	Targeted Supplementary Food
UNCTAD	United Nations Conference on Trade and Development
UR	Uruguay Round
URAA	Uruguay Round Agreement on Agriculture
US	United States of America
USA	United States of America
USAID	United States Agency for International Development
USD	United States Dollars
US NGOs	United States Non Governmental Organizations
WTO	World trade Organization

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6. Conclusion

Agriculture is the lifeblood of the economy and livelihood of a substantial number of the population of Ethiopia. For thousands of families, farming is not an occupational choice; it is the only means of survival. Agriculture should and can provide the first step on the development ladder. A sustainable, fair system of farming and farm labor can feed poor families, generate income, put children through school and create dynamic internal markets, laying the foundations for a better future for a large proportion of Ethiopians. For a very poor country like Ethiopia other sources of growth may exist, but few can match agriculture in its ability to reduce poverty and fuel wider economic development. Without the increasing incomes and affordable food that a dynamic agricultural sector provides, economic transformation will be sluggish and economies will remain trapped in a cycle of low growth and poverty.

As a result, and because Ethiopia is presently in the process of acceding to the WTO, the Agreement on Agriculture (AoA) and mandated negotiations under the agreement are of great importance. As an acceding country, Ethiopia needs to follow progress in the Doha Round. This helps, firstly, to measure how the eventual Doha outcome of reforms by WTO members will benefit its economy and, secondly, to anticipate how the Doha agreements will increase WTO member expectations of the commitments currently-acceding countries should make.

The disciplines that are emerging out of the Doha negotiations on trade in agricultural products entail several implications on Ethiopia in all the three pillars of the AoA i.e. domestic subsidy, and export subsidy, market access. Most of these affect Ethiopia's economy whether or not the Country joins the WTO. Others, however, has a bearing directly or indirectly on the accession negotiation Ethiopia is expected to undertake in the near future. The following are some of the implications the current agricultural negotiation may have on Ethiopia. Among others, the main areas include:

- **Domestic Support:** Ethiopia had to set its AMS at zero due to budgetary constraints. According to the existing rules in the AoA Zero AMS for Ethiopia implies the total surrender of the right to use Amber Box measures in the future should be necessary to support its agricultural sector. The rule prohibiting countries with zero AMS not to

provide support above the *de minimis* levels still remains untouched either by the July Package or the Hong Kong Ministerial Declaration. Some WTO Members frequently put pressures on acceding countries to refrain from the use of Amber Box measures. Thus, it is normally expected that in acceding to the WTO Ethiopia might not be allowed to provide Amber Box domestic support to its farmers.

Reduction of the level of *de minimis* is one of the new principles emerged out of the Doha Round negotiations. Nevertheless, as an S & D treatment, developing countries without AMS commitments and some NFIDCs are exempted from *de minimis* cuts. Furthermore, other recently acceded LDCs like Cambodia and Nepal are allowed to set their *de minimis* level at 10%. Consequently, there is a higher probability that Ethiopia might not be confronted with serious challenges in the accession negotiation in its request to set the level of *de minimis* support at least at 10% without any commitment to reduce it.

The right of developing countries to provide input and investment subsidies as well as expenditures designed to encourage diversification away from the production of narcotic crops remains intact by the proposals of Doha Round negotiations. Hence, Ethiopia can still reasonably request for the ability to give development program supports to its farmers in the accession negotiation.

It appears the proposals in the Green Box are being made to include programs of interest of developing countries in areas of public stockholding for food security purposes, domestic food aid, and payments made for relief from natural disasters. As a result, many kinds support programs that do not fall under the Green Box according to the existing AoA may come under the future Green Box. This would expectedly facilitate Ethiopia's endeavor in its accession negotiation to have covered many of its support programs under the Green Box. The present round agricultural negotiation on the Green Box does also affect Ethiopia's economy regardless of its accession to the WTO. Developing countries (that are not in a position to provide high amounts of domestic support) argue that even Green Box subsidies may distort production and trade. High scale direct payments, for example, can compensate farmers' fixed costs which are higher than variable costs for

most crops. At the moment, the Green Box subsidies incorporate most of the U.S. domestic support programs and the EU is in the process of transferring much of its domestic support to the Green Box. However, the proposals of the current negotiations do not contain effective disciplines guaranteeing that the use of the future Green Box by developed country members will be non or minimally trade-distorting. They are not, as such, envisage capping or reduction of the Green Box. The continuation by developed countries of granting trade-distorting domestic subsidies through box shifting will certainly hurt Ethiopia in the long-term in its effort to attain food security and overall economic development whether or not it joins the WTO.

Many developing countries have long regarded the existing production-limiting Blue Box subsidies in the AoA as trade distorting and want their review. However, to their dismay the Doha Round negotiations introduce “direct payments that do not require production” as an additional but permissible new form of Blue Box subsidies. Developing countries consider this arrangement defective as it involves the possibility of shifting subsidies from the Amber to the Blue Box by converting product-specific subsidies to counter cyclical payments having equally trade distorting effect. To the extent those Blue Box subsidies in other countries impose distortions on world markets; Ethiopia would remain affected in the long-term whether or not it accedes to the WTO. As a result, the Country may have an interest in seeing tighter disciplines on their use.

The decision to effect substantial reduction in the Overall Trade-Distorting Domestic Support (OTDS) from bound levels is regarded as the most important attribute of the current negotiation. With the exception of the *de minimis* level, there are no FBT AMS and Blue Box subsidies in Ethiopia that can be subjected to reduction commitments. As an S&D treatment, the various proposals also exempt NFIDCs and developing countries with no AMS commitments from OTDS cuts. Therefore, it seems that OTDS cuts would not create a challenge for Ethiopia in the accession negotiation.

It should be noted that any trade-distorting domestic support granted by developed countries would still hurt Ethiopian farmers regardless of its accession to the WTO. Thus, it is in Ethiopia’s interest that the contemplated OTDS cuts would results in substantial

reductions in affluent countries' trade distorting domestic support. Nevertheless, some analysts express their doubt that significant overall reduction in the size of domestic support may not be achieved by the Doha Round agricultural negotiations as a result of a plethora of exceptions and loopholes that are sought to be created. Therefore, as a country where the agricultural sector plays a crucial role in the overall economic development, any failure of the present round negotiation to bring substantial reductions in trade-distorting support would have negative effects for Ethiopia in the long-term irrespective of its accession to the WTO.

- **Export subsidies:** The rules emerged out of the Doha Round are even more stringent than those in the AoA concerning export subsidies. The multilateral trading system is actually on the move towards eliminating export subsidies once and for all. Ethiopia does not currently maintain any export subsidy in the agricultural sector. Past accession experiences together with the new emerging rules indicate it is in fact very unlikely that Ethiopia will be allowed to grant export subsidies to its farmers.

Export development is very much at the center of the Ethiopian Government's growth strategy. For a country like Ethiopia with a small urban population, agricultural exports provide an opportunity to achieve more rapid agricultural growth than is afforded by reliance on domestic market demand. Improving the export sector is very crucial to Ethiopia so that it can achieve rapid economic development. In an effort to improve the sector, the Country might and will necessarily need to provide export subsidies. The fact that Ethiopia does not grant export subsidy at present does not mean that it won't in the long-term. The commitment Ethiopia undertakes on accession should not have deprived of the country the policy space it might need in the event it becomes necessary to grant export subsidies.

Moreover, the elimination of export subsidies has also important implications on Ethiopia whether or not it accedes to the WTO. One of the consequences of the removal of export subsidies will most likely be reduction of global production. This puts upward pressure on prices of exports currently receiving the subsidies which includes the most basic food such as wheat, beef, coarse grains, dairy products and sugar. High prices affect the food

aid system in a way which is counter-cyclical, that is to say, when food prices are high food aid declines. As a country which is frequently affected by draughts, it is very probable that the elimination of export subsidy without any safeguard mechanism might harmfully affect Ethiopia's economy in the short run since it would not be able to buy products like wheat at a relatively cheaper price. Moreover, it is to be expected that the more expensive agricultural products become, the less prepared donor countries will be to provide food aid at least to the previous extent.

In addition, some stringent rules are appearing from Doha regarding export credits, STE's and food aid. Therefore, unlike what would have been under the AoA, Ethiopia may be required to provide a sound justification to be allowed to keep any export credit guarantee scheme or Agricultural exporting STE's. On food aid, the new rules may not allow countries like USA from providing the necessary amount of food aid. Donor countries would not have the policy space needed to grant food aid to countries like Ethiopia at any rate to the level as before. Thus, although the new rules of the current negotiations would benefit Ethiopia in the end, it is also undeniable that they will surely have a negative influence to the Country's economy in the short-term.

- **Market Access:** Even though Ethiopia will go to the WTO negotiating table with an extremely liberal tariff system, the experience from past accession cases indicate that it will undoubtedly be faced with pressure to bind tariffs at low rates, or to lower its applied tariffs even further. Thus, Ethiopia should focus on resisting this pressure because any trade regime which is significantly liberal would be a disaster in the long-term for the country's small producers by increasing the flood of cheap imports.

The Government of Ethiopia should retain the right to set tariffs at levels appropriate for each sector, thus encouraging agricultural and industrial development. The ability to maintain the necessary policy space to use tariffs to support their development priorities is essential for developing countries. Binding tariffs at low levels early in a country's development can compromise its capability to attain policy objectives linked to poverty reduction.

Given that existing least developing country members of the WTO are not required to make further tariff reduction commitments under the Uruguay Round, it is unconscionable that acceding Least Developed Countries should have to do so. In line with this view, the proposals of the current negotiations exempted least-developed countries from undertaking reduction commitments which is a welcome move to Ethiopia. This will expectedly facilitate any of the Country's claims for reasonable tariff cuts or to be exempted from reduction commitments.

The special safeguard mechanism (SSM) is also indeed one example of a potential gain that Ethiopia should not renounce in the accession negotiations. Although it appears that tariff is the only protection available to Ethiopia's agricultural sector, it is a very looming possibility that the Country might be requested to bind its tariff on sensitive products at a very low level. As Ethiopia will be placed in direct competition with the largest agro-exporters, use of an SSM could be of vital importance to protect its vulnerable agricultural sector. The rights and obligations of new members must be based on development indicators. Thus, Ethiopia may negotiate for the right to resort to SSM on certain key products that are indispensable for domestic food security.

Protectionist OECD countries are under immense pressure at the WTO to substantially reduce tariff barriers in agriculture. The margins between MFN and preferential tariffs will gradually decrease as WTO Members such as Japan, EU and US reduce their tariffs. Thus, erosion of the preferential treatment is one of the negative impacts the Ethiopian economy encounters in the near future regardless of the Country's accession to the WTO. Moreover, such erosion will have the effect of making tariff escalation and tariff peaks to be a serious problem to Ethiopia's agricultural sector.

- **Other Issues:** The Peace Clause may likely be reintroduced in the current negotiations at the insistence of the US and some EU member states. However, whether there is a need to duplicate the "peace clause" of the Uruguay Round is less certain. Recent WTO cases such as the US upland cotton shows that without the protection under the peace clause, most subsidies currently used by the US and other developed Members of WTO would have been actionable under the SCM Agreement. The continual of this kind of immunity

would allow rich countries to keep on granting large scale subsidies to their farmers which in effect have a negative impact to the economy of Ethiopia in the long run regardless of its accession to the WTO.

The AoA's disciplines on export restrictions are made not to have application on developing countries unless they are net exporters of the foodstuff for which the export restriction or prohibition is to be imposed. The proposals of the present negotiations do not seem to include this kind of S&D treatment. Restrictions on the export of some agricultural products is one of the mechanisms the Government of Ethiopia has been using to tackle the current rise of the prices of basic food stuffs in the country. Since the Country might need to limit exports of some basic agricultural products in the future should be this necessary to guarantee food security, the lack of S&D provisions in this regard might indeed be a problem of concern in the accession negotiation.

2. Domestic support

2.1. Background

The concept of domestic support is used only in the AoA. However, its meaning is basically similar to the more common concept of “domestic subsidies”.¹ But what types of measures are categorized as subsidies? The agreement on Subsidies and Countervailing Measures (SCM) defines a subsidy as a financial contribution made by a government or any public body conferring a benefit on the recipient.² Contrary to export subsidies (which refers to “subsidies contingent upon export performance”), agricultural domestic supports are subsidies supplied to agricultural producers irrespective of whether their products are exported or not.³ Although the forms of support are diverse ranging from direct budgetary transfers to highly disguised forms of market price support, they have some common features. Firstly, these kinds of support are intended to guarantee certain levels of income for agricultural producers. Secondly, they are mostly applied by means of either setting minimum artificial prices on the market (which are of necessity higher than world market prices) or through direct budgetary transfers to agricultural producers.⁴

The problem with several forms of domestic support lies not in making beneficiary farmers better off rather they distort the patterns of agricultural production and trade at the international level in the process thereby leaving non-supported farmers elsewhere worse off.⁵ Hence, domestic support measures may in reality invalidate benefits accruing from trade liberalization.⁶ Domestic support measures also affect international trade indirectly because they encourage domestic production and frequently result in excess

¹ Melaku G. Desta, *The Bumpy Ride towards the Establishment of “A Fair and Market-Oriented Agricultural Trading System” at the WTO: Reflections Following the Cancun Setback*, 8 DRAKE J. AGRIC. L. 489, 521 (2003).

² Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, art.1 (1), [hereinafter The SCM Agreement], available at http://www.wto.org/english/docs_e/legal_e/24-scm.pdf

³ Desta, *supra* note 1, at 521.

⁴ G de Jonquieres, *Crushed at Cancun*, FINANCIAL TIMES, Sept. 15, 2003, available at <http://www.investmentwatch.org/articles/ft16sep.html>.

⁵ *Id.*

⁶ *Id.*

supply.⁷ Because world market prices are invariably lower than in the domestic market of the subsidizing countries, the excess can be exported only with the aid of subsidies or given in the form of food aid to other countries.⁸ Moreover, since the artificially higher domestic market prices naturally attract imports; there is always a need to supplement domestic support measures by some form of import restrictions in order to prevent importation of rival foreign products or re-importation of the subsidized exports themselves.⁹ Therefore, domestic support measures distorts agricultural markets directly by giving artificial incentives for further production and indirectly by making the use of import barriers and export subsidies unavoidable.¹⁰

GATT never imposed any significant regulation on the use of either agricultural or non-agricultural domestic support.¹¹ The *Australia Ammonium Sulphate* case introduced the only exception in that countries would not be allowed to introduce subsidies on goods that are already subject to tariff reduction commitments.¹² This quasi-judicial development led to the 1955 Understanding which provides:

a contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation failing evidence to the contrary that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction or increase of a domestic subsidy on the product concerned.¹³

Although the Tokyo Round attempted to introduce a more effective discipline on the use of domestic subsidies,¹⁴ the final version of the 1979 Subsidies Code merely required signatories to seek to avoid causing adverse effects to others' interests through the use of

⁷ Desta, *supra* note 1, at 522.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Australia: The Australian Subsidy on Ammonium Sulphate*, GATT Doc. GATT/CP. 4/39 (Apr. 3, 1950), available at <http://ielaw.info/gatt/8.pdf>.

¹³ *Production Aids Granted on Canned Peaches, Canned Pears, Canned Fruit Cocktail and Dried Grapes*, para. 5, EEC Doc. L/5778 (Feb. 20, 1985), available at <http://www.worldtradelaw.net/reports/gattpanels/ecccannedfruit.pdf>

¹⁴ Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, pmbl., available at http://www.wto.org/english/docs_e/legal_e/tokyo_scm_e.doc (last visited Oct. 27, 2008).

domestic subsidies.¹⁵ It was indeed the Uruguay Round SCM Agreement which introduced a more meaningful discipline on domestic subsidies for the first time despite the fact that it left agricultural domestic support measures principally to the AoA.¹⁶

2.2. Domestic Support under the Agreement on Agriculture

Since domestic support measures has an indirect effects of making market access restrictions and export subsidies unavoidable, the AoA's approach is one of decoupling farm support from production decisions.¹⁷ The AoA adopted a positive list approach in the sense that trade-distorting domestic support measures are in principle prohibited except in cases where they are expressly allowed. Permitted measures are categorized in to three main groups.¹⁸ The first categories of measures are available to all WTO members. The Green Box measures under Annex 2 of the AoA and *de minimis* levels are measures which fall in to this group.¹⁹ The second group involves those available exclusively to developing countries. Following the principle of special and differential treatment, three forms of support are available exclusively to developing country members: (i) investment subsidies that are generally available to agriculture; (ii) agricultural input subsidies that are generally available to low-income or resource-poor producers; and (iii) measures of producer support to encourage diversification from growing illicit narcotic crops.²⁰ Finally come the third category measures which are available almost exclusively to developed or high-income developing countries. The Blue Box and the Amber Box measures fall in this group. While the former measures are *de jure* available to every member but *de facto* limited to developed countries the latter involves measures that are *de jure* limited to a group of thirty-four countries constituting mainly OECD.²¹ The following sections discuss each category of measures in detail.

¹⁵ *Id.* art. 8, para. 3.

¹⁶ The SCM Agreement, *supra* note 2, arts. 1-2.

¹⁷ Desta, *supra* note 1, at 523.

¹⁸ *Id.*

¹⁹ The Agreement on Agriculture, Apr. 15, 1994, art. 6, para. 4 (a-b), [hereinafter The AoA], available at http://www.wto.org/english/docs_e/legal_e/14-ag.pdf

²⁰ *Id.* art. 6, para. 2.

²¹ Desta, *supra* note 1, at 524.

2.2.1. Amber Box Measures

All kinds of domestic support measures which do not fall under the “Green” and “Blue” boxes are deemed to have significant (or more than minimal) trade-distorting impact and therefore fall into the “Amber Box” category.²² Market price support is a classic type of the Amber Box measures by which the government sets the official price of an agricultural product, for example, by being the sole buyer of the product or otherwise so as to encourage producers to maintain or increase the level of production.²³ These measures are prohibited to all except for the thirty-four members which are reported to have used such trade-and production-distorting measures during the 1986-88 base periods and on which they have undertaken Aggregate Measurement of Support (AMS) reduction commitments in their schedules.²⁴ The AMS is defined as “the annual level of support, expressed in monetary terms, provided for an agricultural product . . . or non-product specific support provided in favor of agricultural producers in general.”²⁵ The calculation of the AMS takes into account both product-specific as well as sector-wide support, and the final commitments are expressed in aggregate terms in the form of Total AMS.²⁶ The reduction commitments are then applied from the Total AMS, determined by each country for the 1986-88 base period, called the Base Total AMS.²⁷ Developed countries committed themselves to undertake 20% reduction from the Base Total AMS over a six-year implementation period in equal annual installments.²⁸ Developing countries, on the other hand, undertook only a 13.3% reduction commitment over a ten year

²² WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: DOMESTIC SUPPORT: AMBER, BLUE AND GREEN BOXES (2004), available at http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_boxes_e.htm; *Dispute Settlement: 3.15 Agriculture*, at 21, UNCTAD Doc. UNCTAD/EDM/Misc.232/Add.32 (2003).

²³ Desta, *supra* note 1, at 524.

²⁴ WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: DOMESTIC SUPPORT: AMBER, BLUE AND GREEN BOXES (2004), available at http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_boxes_e.htm

²⁵ The AoA, *supra* note 19, art. 1(a).

²⁶ *Id.* art. 1(h).

²⁷ *Id.* art. 1(h)i, 1 (h)ii.

²⁸ *Modalities for the Establishment of Specific Binding Commitments under the Reform Program*, para. 8, GATT Doc. MTN.GNG/MA/W/24 (Dec. 20, 1993) [hereinafter *Modalities*], available at http://docsonline.wto.org/gen_search.asp?searchmode=simple

implementation period.²⁹ LDCs had to bind their AMS level but were exempted from this reduction commitment.³⁰

A WTO member would fulfill its obligations in any given year of the implementation period if the Current Total AMS, which is the actual amount of support provided during that year, did not exceed the corresponding annual or final bound commitment level specified in its schedule.³¹ It is important to note that this commitment applies on a sector-wide level rather than on a product-specific level, permitting countries to legally increase product-specific Amber Box support to any level as long as the aggregate limit was respected.³² In effect, the Agreement on Agriculture allows developed countries with abundant financial resources to continue to provide farm support within their AMS commitments. “The notification process reveals that the European Union, the United States and Japan account for over 85% of total domestic support under the AMS.” All countries except Argentina and Iceland were below their baselines between 1995 and 2001 (i.e. their utilization rate was below 100%).³³ Most countries have changed their domestic support policies to comply with the Agreement on Agriculture. The United States for example converted Amber Box into Green Box support for crops by eliminating the target price. The European Union also modified its Common Agricultural Policy (CAP) in 2003 by decoupling parts of the payments, in consequence shifting the decoupled direct income payments into the Green Box.³⁴

Only the thirty-four members that had undertaken domestic support reduction commitments were allowed to give Amber Box support within the limits of their commitments.³⁵ On the other hand, those members that had not undertaken such commitments--exclusively the poorest developing countries--were prohibited from providing Amber Box measures whatsoever.³⁶ The right to provide *de minimis* levels of

²⁹ *Id.* para. 15.

³⁰ *Id.* para. 16; *see also* the AoA, *supra* note 19, art. 15.

³¹ The AoA *supra* note 19, arts. 6-7.

³² Desta, *supra* note 1, at 525; The AoA *supra* note 19, arts. 6-7.

³³ *Training Tool for Multilateral Trade Negotiations on Agriculture*, at 44, UNCTAD Doc. UNCTAD/DITC/TNCD/2006/7 (Mar. 2007) [hereinafter Training Tool].

³⁴ *Id.*

³⁵ *See supra* text accompanying note 24.

³⁶ Desta, *supra* note 1, at 525; the AoA, *supra* note 19, arts. 6-7.

support and the special and differential treatment available to developing countries are the only exceptions to this rule.³⁷

a. *De Minimis* Levels of Support

De minimis levels are defined as support up to 5% of the value of individual commodity production in the case of product-specific AMS and up to 5% of the value of aggregate production in the case of non-product specific AMS.³⁸ The *de minimis* level is raised to 10% for developing country members.³⁹ Thus, in theory, even developing countries without an AMS entitlement can provide support up to 20% of the value of production provided this support is distributed in such a way that no more than 10% of the value of production is provided as non-product specific AMS and that the remaining product-specific AMS does not exceed 10% of the value of production of each commodity.

Countries which provided AMS support above *de minimis* levels in the base period have a greater flexibility in that they are required only to ensure that all AMS outlays are below their AMS ceiling, and they are not caught by the sub ceilings inherent in the *de minimis* rules. On the contrary Countries that have not provided domestic support in the base period are not allowed to do so.⁴⁰ With the exception of South Africa, all SSA countries reported zero base total AMS due to pre-Uruguay Round structural adjustments programs. Thus, most trade-distorting subsidies were either removed or brought down to minimum levels.⁴¹ Zero base total AMS means non-exempt support to agriculture in these countries should not exceed the *de minimis* which may limit their options to directly support agriculture in the future. Therefore, in order to use the additional non-exempt support the only option available for SSA LDC's is under *de minimis* or special and differential treatment.⁴²

³⁷ Desta, *supra* note 1, at 525; *see also* the AoA, *supra* note 19, arts. 6-7.

³⁸ The AoA, *supra* note 19, art. 6(4) a.

³⁹ *Id.* art. 6(4) b.

⁴⁰ *Id.* arts. 6-7.

⁴¹ COMMODITY POLICY AND PROJECTIONS SERVICE, FAO, AGREEMENT ON AGRICULTURE: OPTIONS TO SUPPORT FOOD SECURITY IN SUB-SAHARAN COUNTRIES 4-5.

⁴² ISABELLA MAMATY, ICTSD, RESOURCE PAPER NO 3, AFRICAN COUNTRIES AND THE AGREEMENT ON AGRICULTURE: WHAT SCOPE FOR SUSTAINABLE DEVELOPMENT?' 13-14 (Mar. 2002).

b. Development Programs

In addition to right to provide *de minimis* levels of support, developing countries can exclude-as a special and differential treatment-investment subsidies which are generally available to agricultural producers and agricultural input subsidies normally available to low-income or resource-poor farmers as well as expenditures designed to encourage diversification away from the production of narcotic crops.⁴³ In cases where half of all non-product specific AMS measures qualified for these exemptions, the theoretical maximum of AMS support which developing countries could provide to their agricultural sectors would increase to 25% of the value of production. In practice, “it is very unlikely that expenditure outlays could be so precisely targeted so as to utilize all the allowable legroom, and the practical ceiling on AMS outlays in developing countries is probably closer to 15% to 18%. Green Box expenditures are in addition to these.”⁴⁴

Although the special and differential treatment exemption under Article 6 offers African countries a scope for supporting their agricultural output through input and investment subsidies, only few of them have used them. This is because almost all of these countries have very limited financial resources to provide such support.⁴⁵

2.2.2. Green Box Measures

Annex 2 to the AoA provides for a detailed but non-exhaustive list of the so-called “green” box measures. These measures are generally considered trade-neutral for which governments may claim exemptions from reduction/elimination requirements.⁴⁶ In order to qualify as Green Box support, the support must have no or at most minimal trade-distorting effects or effects on production. This basic requirement is supplemented with general and policy-specific criteria that have to be satisfied before being exempted from

⁴³ The AoA, *supra* note 17, art. 6(2).

⁴⁴ ECONOMIC AND SOCIAL DEPARTMENT, FAO, WTO AGREEMENT ON AGRICULTURE: THE IMPLEMENTATION EXPERIENCE, available at <http://www.fao.org/docrep/005/Y4632E/y4632e00> (last visited Dec 28, 2007).

⁴⁵ MAMMATY, *supra* note 42, at 9.

⁴⁶ The AoA, *supra* note 19, annex 2.

reduction commitments.⁴⁷ The general criteria, as stated under Paragraph 1(a) and b of Annex 2, are; a. the support in question shall be provided through a publicly funded government program (including government revenue forgone), not involving transfers from consumers and b. the support in question shall not have the effect of providing price support to producers. In addition to these general criteria, the annex provides for policy specific conditions. There are different policy specific criteria and conditions depending on the nature of the particular subsidy measure under consideration. Although governments are allowed to take precautionary food security measures and provide general services (such as research, pest control, training, and infrastructural development) to producers and domestic food aid to the needy, they are required to carry out these tasks as much as possible within the framework of market forces.⁴⁸ Members may give an unlimited amount of direct income support to their farmers, so long as the payments are made in a manner that is decoupled from production decisions and trade.⁴⁹ Furthermore, Members are allowed to provide income insurance and disaster relief services on condition that farmers are not thereby made to profit from such occurrences.⁵⁰ Finally, Members can also provide assistance for structural adjustment, and environmental and regional development purposes.⁵¹ In general, while decoupled payments may be made for whatever reason and in unlimited amounts, those payments that take the form of income insurance, disaster relief, structural adjustment assistance, environmental or regional development programs have to comply with the requirement that they not be given in excess of the actual losses suffered or extra costs incurred to implement the government program.⁵²

It appears that the use of Green Box measures is increasing as more and more domestic support is decoupled and shifted into the Green Box. Between 1995 and 2000 some fifty countries notified WTO of the use of Green Box support, the United States, Japan, the European Union, Republic of Korea and Switzerland being the five countries with the highest expenditures. The principal categories of support were general services and

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* annex 2, para. 6.

⁵⁰ *Id.* annex 2, para. 8.

⁵¹ *Id.* annex 2, paras. 11-13.

⁵² *Id.* annex 2.

domestic food aid accounting 30% and 32% respectively. Other types of support, for example, structural adjustment through investment aids, environmental programs and decoupled income support, each accounted for 5%-7% of total Green Box support.⁵³ Even though Green Box supports are considered to be non- or only minimally trade-distorting there is no precise WTO definition of what constitutes non-trade distorting support and the trade-distorting effects of direct payments are difficult to measure. In addition the way to handle the “multifunctionality” of agriculture-a subject strongly related to Green Box support-remains ambiguous as this type of support comprises measures intended to achieve objectives not directly related to agricultural production such as improving environmental conditions.⁵⁴

There has been a criticism towards Green Box support by agricultural exporters such as Cairns Group members and developing countries that are not in a position to provide high amounts of domestic support in that even decoupled direct payments distort production and trade. High scale direct payments, for example, can compensate farmers' fixed costs which are higher than variable costs for most crops. This would enable developed countries to cross-subsidize exports by covering farmers' fixed costs, allowing them to remain in business or even inducing them to enter production.⁵⁵ A recent paper by the UNCTAD India Team, for instance, provides evidence that the degree of trade distortion arising from Green Box support measures may not be minimal.⁵⁶

Most African countries reported some limited support to agriculture under the Green Box, which covers many of the important agricultural support programs in Sub-Saharan African (SSA) countries, such as government services (research, plant, production etc.). However, since they have very limited financial resources to provide such support, their expenditure on Green Box policies remains insignificant compared with that of other WTO members.⁵⁷ Indeed, “many of the measures included in the Green Box reflect the

⁵³ Training Tool, *supra* note 33, at 44.

⁵⁴ *Id.* at 45.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ MAMATY, *supra* note 42, at 8-9.

circumstances of countries where the level of agricultural production is not expected to rise further.”⁵⁸

2.2.3. Blue Box Measures

The AoA exclude direct payments made to farmers under production-limiting programs- the Blue Box measures- from the calculation of the Current Total AMS, and consequently, from the reduction requirements on the fulfillment of certain important conditions.⁵⁹ Firstly, the payments need to be direct payments in the sense that they should not be transferred to farmers through market manipulation devices.⁶⁰ Secondly, the payments should be given on condition that some form of production-limiting measures being taken by the recipient, including on a fixed acreage and yields, or on 85% or less of the base level production, or, in the case of livestock payments, on a fixed number of head.⁶¹ Blue Box measures were regarded as “acceptable but temporary or transitional policies that would help pave the way for further reforms of domestic support policies over time.”⁶² Although this option is *de jure* available to every WTO member, only six OECD countries i.e. the European Union, Iceland, Norway, Japan, Slovenia, the United States, and Slovakia are reported to have used Blue Box measures.⁶³ What is ironic about the Blue Box measures is that on top of requiring farmers to produce so as to be eligible for these payments, governments can also make the size of the payments directly dependent on the volume of production. The only limitation is that the amount of production should be no more than 85% of the production in the base period.⁶⁴

EU area payments to farmers for diverting area to cereals, oilseeds, and protein crops, are the main Blue Box policies. The outcome of these payments remains to be

⁵⁸ Derk Bienen et al., *Programme to Support the Integration of the ACP States into the Multilateral Trading System of the WTO: Support to Ethiopia in its Accession Process to the WTO (contract no. 7 ACP-RPR-753 project n°39b) Impact Study on WTO Accession*, 33 (Sept. 10, 2005).

⁵⁹ The AoA, *supra* note 19, art 6.

⁶⁰ Desta, *supra* note 1, at 525; the AoA, *supra* note 19, art. 6.

⁶¹ The AoA, *supra* note 19, art. 6 (5).

⁶² Training Tool, *supra* note 33, at 46.

⁶³ WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: UPDATE PHASE 2: DOMESTIC SUPPORTS-AMBER, BLUE, AND GREEN BOXES, *available at* http://www.wto.org/english/tratop_e/agric_e/negs_bkgnd14_ph2domest_e.htm (last visited July 20 2008).

⁶⁴ MELAKU G. DESTA, *THE LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS: FROM GATT 1947 TO THE WTO AGREEMENT ON AGRICULTURE* 412 (2002).

indeterminate.⁶⁵ These payments entail leaving a proportion of planted land behind and keeping it idle. Then again, the very same payments have the effect of increasing output of certain commodities because eligibility for the subsidy depends on the planting of cereals, oilseed, or protein crops.⁶⁶

The Blue Box measures are of much less importance to SSA countries because they rarely maintain production-limiting programs.⁶⁷ That is why no African country has reported any measure under the Blue box.⁶⁸ However, to the extent the Blue Box policies in other countries impose distortions on world markets, African countries may have an interest in seeing tighter disciplines on their use.⁶⁹

2.3. The Doha Agricultural Negotiations on Domestic Support: Issues and Implications for Ethiopia

2.3.1. Negotiations on the Modalities- General

The AoA has long considered Subsidies falling under the Green Box and the Blue Box non-trade distorting and were, therefore, not required to be reduced. On the other hand, Amber Box subsidies were trade-distorting and were liable to be reduced. However, further reduction of the domestic support has been constantly demanded by developing countries.⁷⁰ The Doha Ministerial Declaration has attempted to address this issue by envisaging negotiations to achieve “substantial reductions in trade-distorting domestic support.” In addition, Ministers agreed to provide special and differential treatment for developing countries.⁷¹

⁶⁵ Training Tool, *supra* note 33, at 46.

⁶⁶ *Id.*

⁶⁷ FAO, *supra* note 41, at 5.

⁶⁸ MAMATY, *supra* note 42, at 9.

⁶⁹ FAO, *supra* note 41, at 5.

⁷⁰ Inaamul Haque & Majid Ali, *WTO's July Package and Developing Countries: Preferring Pragmatism to Ideology*, INT'L TRADE L.J. 34, 41 (2004).

⁷¹ Ministerial Conference: Fourth Session Doha, Ministerial Declaration, Nov. 20, 2001, para. 3, WTO Doc. WT/MIN (01)/DEC/1, available at http://docsonline.wto.org/gen_search.asp?searchmode=simple

This section summarizes the main negotiating positions of member states and discusses the domestic support provisions in the July Package and Hong Kong Ministerial Declaration as well as in the May 2008 RDMA.

Regarding domestic support reductions the early US proposal is to reduce within five years the non-exempt support as defined by the Aggregate Measurement of Support (AMS) (Amber Box) and the production-limited (Blue Box) support to at most 5% of the average value of agricultural production. The intension was to eliminate all non-exempt domestic support on some later date. The US also suggested that *de minimis* supports would be excluded from reductions and subsequent elimination. Special conditions would be available to developing countries to enable them to provide additional support to facilitate development and food security.⁷²

The early EC proposal, on the other hand, involves on keeping the Blue and Green Boxes basically unchanged and reducing the Amber Box Aggregate Measurement of Support by 55%. The criteria for Green Box would be expanded as to include so-called non-trade concerns such as rural development, the environment and animal welfare. This flexibility in the Green Box would mean that the EU can easily shift support from the non-exempt Amber Box to the exempt Green Box. As regards *de minimis* support, contrary to the US proposal, the suggestion of the EU is for their elimination in developed countries.⁷³

The position of the majority of developing countries is to eliminate considerable portions of Amber Box support and reduce them on a product-specific basis with a significant cut to be made on the first year. The *de minimis* threshold is to be reduced for developed countries but not for developing countries and the Blue Box will be eliminated. Moreover, the endeavor of developing countries is to restructure Green Box criteria or cap the Green Box so that developed countries cannot use it as a get-out to continue granting production support. Finally, the special and differential treatment under Article 6.2 of the AoA will be expanded. The G-20 and, by and large, the Cairns Group supports this position of developing countries.⁷⁴

⁷² Training Tool, *supra* note 33, at 48.

⁷³ *Id.*

⁷⁴ *Id.*

The July Package was agreed with a view to realize “substantial reductions in trade-distorting domestic support.”⁷⁵ However, the United State's demand to redefine the Blue Box-which allows it to shift certain types of subsidies, particularly counter-cyclical direct payment to farmers under its Farm Bill- has put the benefits expected to flow from the July Package in jeopardy.⁷⁶ Developing countries regarded this as the creation of a loophole which makes it possible to shift subsidies from box to box⁷⁷ “enabling the developed countries to maintain their high domestic subsidies or even increase their overall level of support (as happened after the Uruguay Round) thereby making a mockery of the often-stated WTO aim of domestic support reduction.”⁷⁸

a. Amber Box Measures

Final Bound Total AMS (Amber Box) will be reduced substantially using a tiered approach with Members having higher total AMS will make greater reductions.⁷⁹ To prevent countries from circumventing the objective of the agreement through shifting of unchanged domestic support between different products, product-specific AMS will be capped at their respective average levels according to a methodology to be agreed.⁸⁰ Capping of product-specific support seems to be a welcome move as this would likely prevent developed countries from putting a very high percentage of their domestic support into a small group of commodities.⁸¹ Commodities like cotton and sugar that attract very large subsidies in developed countries are likely to be the highest to be

⁷⁵ Doha Work Program: Decision Adopted by the General Council on 1 August 2004, Aug. 2, 2004, para. 6, WTO WT/L/579 [hereinafter The July Package], available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

⁷⁶ EMESTO ZEDILLO, UNCERTAIN FUTURE FOR FREE TRADE, <http://www.forbes.com/columnist/buisness/global/2004/0920/018.htm> (last visited Aug. 20, 2008); FARM SECURITY AND RURAL INVESTMENT ACT (2002), available at <http://www.ers.usda.gov/Features/farbill/2002Farm Act.pdf>

⁷⁷ H. ZUNCKEL, ADEQUATELY BOXING AFRICA IN THE DEBATE ON DOMESTIC SUPPORT AND EXPORT SUBSIDIES, http://www.tralac.org/pdf/TB_2-04_-_Agricultural_negotiations_by_African_countries.doc (last visited Aug. 20, 2008).

⁷⁸ MARTIN KHOR, PRELIMINARY COMMENTS ON THE WTO'S GENEVA JULY DECISION, THIRD WORLD NETWORK, <http://www.ifg.org/analysis/wto/MartinsComments.html> (last visited Aug. 20, 2008).

⁷⁹ The July Package, *supra* note 75, annex A, para. 9.

⁸⁰ *Id.*

⁸¹ PARTHAPRATIM PAL, CENTAD, AGRICULTURAL SUBSIDIES AND NEGOTIATIONS: STRATEGIES AND OPTIONS 23-24 (2005).

affected by this new discipline. However, this provision may also have some negative implications on developing countries.⁸² As said by Pal:

in many developing countries, the domestic prices of agricultural products are lower than the reference international prices. Aggregate product-specific support, therefore, is negative for such countries. But on the other hand, the non-product specific supports (e.g. input subsidies and power subsidies) are almost always positive. There was an ambiguity in the UR AoA about the treatment of negative AMS. Taking advantage of that ambiguity, many countries clubbed their negative product-specific AMS with their positive non-product specific AMS which resulted in a negative total AMS. However, it appears that the July Framework provisions may not allow clubbing negative product-specific support with positive non-product specific support. This might have implications for countries which so far have managed to offset the positive non-product specific AMS by negative product-specific AMS.⁸³

Ministers agreed in Hong Kong that there will be three bands for reductions in Final Bound Total AMS, with higher linear cuts in higher bands.⁸⁴ Accordingly, “the Member with the highest level of permitted support will be in the top band, the two Members with the second and third highest levels of support will be in the middle band and all other Members, including all developing country Members, will be in the bottom band.”⁸⁵

i. *De Minimis* Levels of Support

The issue of the reduction of *de minimis* support is likely to become contentious in the present round of negotiations.⁸⁶ Currently, under the *de minimis* provision developed countries are exempted up to 5% and developing countries up to 10% of the value of production from the domestic support reduction.⁸⁷ Developing countries have been resisting any attempt to reduce *de minimis* support on the ground their only option available to provide Amber Box subsidies is through the use of the *de minimis* provisions. “If the permitted level were to be reduced, that would limit their possible use of domestic

⁸² PAL, *supra* note 81, at 24.

⁸³ *Id.*

⁸⁴ Ministerial Conference: Sixth Session Hong Kong, Ministerial Declaration, Dec. 18, 2005, para. 5, WTO Doc. WT/MIN(05)/DEC [hereinafter the HKMD].

⁸⁵ *Id.*

⁸⁶ PAL, *supra* note 81, at 26.

⁸⁷ The AoA, *supra* note 19, art. 6(4).

subsidies further. Thus, it is only fair that they should not have to reduce their *de minimis* support.”⁸⁸ In this respect it is important to note that the July Package exempts developing countries from reduction in the *de minimis* level of subsidies if “almost all” such subsidies are given to “subsistence and resource-poor” farmers.⁸⁹ In Hong Kong, even developing country Members without AMS commitments secured exemption from *de minimis* cuts.⁹⁰ The May 2008 RDMA also reaffirmed these S&D principles and further provides that some NFIDCs would also be exempted from *de minimis* cuts.⁹¹

ii. Development Programs

As one of the S&D treatment, the July Package provides that the modalities to be developed will enable developing countries to have continued access to the provision under article 6.2 of the AoA.⁹² This rule is confirmed in the May 2008 RDMA which states that “the provisions of Article 6.2 of the Agreement on Agriculture shall remain unchanged.”⁹³ Article 6.2 allows developing countries to exclude from reduction commitment investment subsidies which are generally available to agricultural producers and agricultural input subsidies normally available to low-income or resource-poor farmers as well as expenditures designed to encourage diversification away from the production of narcotic crops.⁹⁴

b. Green Box Measures

Despite the fact that its contents are assumed to be non-distorting or minimally distorting some problems are also associated with the Green Box itself. At the moment, it incorporates most of the U.S. domestic support programs and the EU is in the process of transferring much of its domestic support to the Green Box. Thus, certain Green Box

⁸⁸ KHOR, *supra* note 78.

⁸⁹ The July Package, *supra* note 75, annex A, para. 11.

⁹⁰ The HKMD, *supra* note 84, para. 5.

⁹¹ *Revised Draft Modalities for Agriculture*, para. 32, WTO Doc. TN/AG/W/4/Rev.2 (May19, 2008) [hereinafter The May 2008 RDMA].

⁹² The July Package, *supra* note 75, para. 6.

⁹³ The May 2008 RDMA, *supra* note 91, at 18.

⁹⁴ The AoA, *supra* note 19, art. 6(2); *see supra* text 43-45 and accompanying text.

subsidies can turn out to be trade-distorting.⁹⁵ In the July Package it has been agreed that the Green Box criteria would be reviewed and clarified to ensure that its contents have no or only minimal trade-distorting effects.⁹⁶

It is said that the contemplated review, however, is not enough to guarantee that the mechanism in reality is minimally trade-distorting. Since the July Package does not, as such, envisage capping or reduction of the Green Box there is a possibility that “the Green Box subsidies could thus be increased, offsetting the decrease in other categories of domestic subsidies, and in ultimate analysis resulting in little or no overall reduction in domestic support (or possibly even a net increase).”⁹⁷ This loophole in the Green Box was not effectively dealt in the AoA because developing countries did not visibly perceive its full implications then. But now the situation is different and the serious implications are clearer. Hence, developing countries should seek greater discipline of the Green box.⁹⁸

As far as developing countries are concerned, the provisions of the Green Box are seen to reflect the nature of the support programs administered by developed countries. On the other hand, the agricultural sector in developing countries often has different requirements and may require a different set of agricultural support instruments. Consequently, developing countries are of the opinion that the Green Box provisions should be modified to suit their requirements and needs also.⁹⁹ In Hong Kong it is agreed that the Green Box criteria will be reviewed to ensure that programs of developing countries that cause not more than minimal trade-distortions are effectively covered.¹⁰⁰

In line with this outlook, some improved programs of interest of developing countries are proposed in the May 2008 RDMA. The suggested amendments include:¹⁰¹

⁹⁵ Haque & Ali, *supra* note 70, at 41.

⁹⁶ The July Package, *supra* note 75, annex A, para. 16.

⁹⁷ Haque & Ali, *supra* note 70, at 41.

⁹⁸ *Id.*

⁹⁹ PAL, *supra* note 81, at 26.

¹⁰⁰ The HKMD, *supra* note 84, para. 5.

¹⁰¹ The May 2008 RDMA, *supra* note 91, annex b.

- policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing countries, such as land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes, to promote rural development and poverty alleviation;
- acquisition of stocks of foodstuffs by developing countries with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS;
- the acquisition of foodstuffs at subsidised prices when procured generally from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural poverty;
- Natural disaster relief (and government-funded insurance payments) for producers in developing countries where production loss is less than 30% of a previous average;
- While tight criteria on the updating of base periods on which decoupled income support, structural adjustment assistance, and regional assistance programs are calculated in developed countries, softer conditions apply for developing countries.

Although the above proposals appear to comply with the negotiating mandate aimed at ensuring that “programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered”,¹⁰² the May 2008 RDMA, in its present structure, do not contain effective disciplines guaranteeing that the use of the future Green Box, by developed country members, will be non or minimally trade-distorting.¹⁰³

¹⁰² The July Package, *supra* note 75, para. 16.

¹⁰³ *South Centre Comments on Draft Modalities for Agriculture*, at 7, South Centre Doc. SC/AN/TDP/AG/2 (Aug. 2007) (Analytical Note) [hereinafter South Centre Comments 2007].

c. The Blue Box Measures

The Blue Box subsidy was thought of as a transitory subsidy measure, which should be phased out by the end of the implementation period of the UR. However, this has not happened, and the July Package actually endorses a point made by countries that defend the use of the Blue Box. These countries argued repeatedly for the ability to switch from the more trade-distorting Amber Box subsidies to the less distorting Blue Box supports so that the reform would be less painful and more feasible.¹⁰⁴ That is why the July Package says “Members recognize the role of the Blue Box in promoting agricultural reforms.”¹⁰⁵

Members agreed in the July Package to review Article 6.5 of the AoA in such a way to include “direct payments that do not require production” as an admissible Blue Box subsidies.¹⁰⁶ This provision in effect allows trade-distorting counter-cyclical payments under the US Farm Bill to be categorized as Blue Box subsidies. As counter-cyclical payments are not decoupled from prices, these cannot be put under the Green Box, and without this new provision made by Paragraph 13.2, these payments would have been included under the Amber Box and thus would have been subject to substantial reduction commitments.¹⁰⁷ This process, however, would be subject to two qualifications: firstly, it would be regulated by a new criterion to be negotiated and secondly, such payments will have to be less trade-distorting than those under the Amber Box.¹⁰⁸

Another change is that the Blue Box support, currently unlimited, are to be capped at no more than 5% of the value of a country’s agricultural production over a “historical period” that still has to be negotiated.¹⁰⁹ The experience with the UR AoA has shown that the choice of a base period has a significant bearing on the actual levels of commitment. In the July Package, countries have been given the choice of selecting an appropriate base

¹⁰⁴ WTO, WTO AGRICULTURE NEGOTIATIONS: THE ISSUES, AND WHERE WE ARE NOW 59 (2004), available at http://www.wto.org/english/tratop/e/agric/e/negs_bkgrnd00_contents_e.htm.

¹⁰⁵ The July Package, *supra* note 75, annex A, para. 13.

¹⁰⁶ *Id.*

¹⁰⁷ ICTSD, QUARTERLY INTELLIGENCE REPORT NO. 12, AGRICULTURE NEGOTIATIONS AT THE WTO: THE JULY PACKAGE AND BEYOND 6, available at <http://www.e-alliance.ch/media/media-5713.pdf> (last visited Oct. 13, 2008).

¹⁰⁸ The July Package, *supra* note 75, annex A, para. 14.

¹⁰⁹ *Id.* para. 15.

period for calculation of the cap on Blue Box subsidies. It is obvious that if a “historical period” is chosen in which the total value of agricultural production was very high, it will inflate the ceiling imposed on the Blue Box subsidies.¹¹⁰ Following the US suggestion,¹¹¹ the proposal in the May 2008 RDMA reduce the 5% ceiling on Blue Box spending to be “2.5% of the average total value of agricultural production in the 1995-2000 base period.”¹¹²

In case of developing countries, however, the May 2008 RDMA proposed the maximum permitted value of Blue Box support to be “5% of the average total value of agricultural production in the 1995-2000 or the 1995-2004 base period as may be selected by the Member concerned.”¹¹³ Since Blue Box spending has not been used by developing countries to date, it appears this provision is inserted to encourage developing countries switch from Amber to Blue Box spending.¹¹⁴

The US currently grants a relatively insignificant amount of Blue Box subsidies. As a result, the 2.5% ceiling is not constraining. In fact, the US could still increase those payments without exceeding this ceiling.¹¹⁵ The EU currently makes significant use of Blue Box subsidies above the proposed 2.5% limit. Nevertheless, as the EU has already planned to transfer a large part of these to the Green Box, it should easily be able to reduce the size of subsidies in the Blue Box to meet the agreed upon limit.¹¹⁶ Even if it fails to do so that would not be exceptionable because the cap is elastic.¹¹⁷ Actually, the May 2008 RDMA provides that for members with at least 40% of their OTDS placed in the Blue Box during the 1995-2000 base period, the reduction commitment will be the same as the percentage reduction the Member concerned is to make in its Final Bound Total AMS.¹¹⁸

¹¹⁰ PAL, *supra* note 81, at 20.

¹¹¹ South Centre Comments 2007, *supra* note 103, at 5-6.

¹¹² The May 2008 RDMA, *supra* note 91, para. 38.

¹¹³ *Id.*, para. 48.

¹¹⁴ South Centre Comments 2007, *supra* note 103, at 6.

¹¹⁵ *Id.* at 5-6.

¹¹⁶ KHOR, *supra* note 78.

¹¹⁷ The July Package, *supra* note 75, annex A, para 15.

¹¹⁸ The May 2008 RDMA, *supra* note 91, para. 39.

Developing countries consider this arrangement defective as it involves the possibility of shifting subsidies from the Amber to the Blue Box by converting product-specific subsidies to counter-cyclical payments having equally trade-distorting effect.¹¹⁹ However, since the content and size of the new Blue Box will have to be negotiated developing countries are well advised to strenuously oppose any attempt of shifting evidently trade-distorting subsidies to the Blue Box because this would be contrary to the spirit and letter of the AoA and the Doha Declaration.¹²⁰ Some, however, said:

no doubt, the flexibilities as envisaged in the Framework Package, if availed, would allow the Blue Box support levels to remain high. Notwithstanding, developing countries should analyze and rethink the level of harm that the Blue Box has done or can do. In case the harm is marginal they should use it as a bargaining counter to set some concessions elsewhere. It is possible that they find the suggested course of action more cost effective. The direct or indirect effects of the misuse of the boxes on their overall trade may not be significant, compared to the time and effort being devoted to it in negotiations.¹²¹

As on January 2008, greater differences still remain regarding the criteria on the new Blue Box support. Expansion of the Blue Box criteria is a very sensitive issue for the US as it seeks to become a larger user. The EU would like to preserve the status quo in the old Blue Box and firmly opposed to the review of the current criteria of the Blue Box. The G-20, on the other hand, wants a review of the criteria of the Blue Box to ensure that such payments are less trade-distorting than AMS measures. The Cairns Group also shared the same view but they have not proposed any additional criteria to limit the flexibility allowed under the box, or the expansion of the criteria on the US terms.¹²² The African Group stresses that disciplines on domestic support should not lead to “box-shifting” subsidies and views the tightening of Blue Box as critical.¹²³

¹¹⁹ Ashfak Bokhari, *WTO farm accord unlikely before 2006*, <http://www.dawn.com/2004/11/08/eb7.htm> (last visited Aug. 21, 2008).

¹²⁰ *From Doha to the July 2004 framework package: a content analysis*, Pt. II, para. 14, South Centre Doc. SC/TADP/AN/CC/2 (Sept. 2004), available at http://www.southcentre.org/index.php?option=com_content&task=view&id=290&Itemid=67

¹²¹ Haque & Ali, *supra* note 70, at 40-41.

¹²² *State of Play in Agriculture Negotiations: Country Groupings' Positions-Domestic Support Pillar*, at 11-12, South Centre Doc. SC/AN/TDP/AG/4-2 (Jan. 2008) (Analytical Note) [hereinafter *State of Play*].

¹²³ *Id.*

d. OTDS Cuts

The decision to effect substantial reduction in the Overall Trade-Distorting Domestic Support (OTDS) from bound levels is the most important attribute of the July Package.¹²⁴ The Package calls for greater overall reduction in trade-distorting domestic support (as measured by the Final Bound Total AMS plus permitted *de minimis* level and the Blue Box payments) in accordance with a tiered formula.¹²⁵ In Hong Kong agreement is reached on three bands for the overall cut of trade-distorting domestic support with higher linear cuts in higher bands.¹²⁶ Accordingly, “the Member with the highest level of permitted support will be in the top band, the two Members with the second and third highest levels of support will be in the middle band and all other Members, including all developing country Members, will be in the bottom band.”¹²⁷ Because the highest level of permitted support is given by the EU, it will be in the top band followed by the US and Japan. All other countries, including developing countries, are in the third band.¹²⁸

Following these reductions, the sum of all trade-distorting support should not exceed 80% of the sum of Final Bound Total AMS plus permitted *de minimis* plus Blue Box.¹²⁹ This rule indeed helps a great deal to achieve the Doha principle of substantial reductions in trade-distorting domestic support.¹³⁰ Developing country Members with no AMS commitments are exempted from undertaking reductions in their OTDS.¹³¹ The May 2008 RDMA reaffirmed this S&D treatment and further specifies that NFIDCs will also be exempted from undertaking OTDS cuts.¹³²

¹²⁴ Haque & Ali, *supra* note 70, at 41.

¹²⁵ The July Package, *supra* note 75, annex A, para. 7.

¹²⁶ The HKMD, *supra* note 84, para. 5.

¹²⁷ *Id.*

¹²⁸ Training Tool, *supra* note 33, at 51.

¹²⁹ The July Package, *supra* note 75, annex A, para. 7.

¹³⁰ Haque & Ali, *supra* note 70, at 41.

¹³¹ The HKMD, *supra* note 84, para. 5.

¹³² The May 2008 RDMA, *supra* note 91, paras. 6-7.

2.3.2. Domestic Support: Ethiopian Context

a. Amber Box Measures

According to the recent impact study on Ethiopia’s WTO Accession:

Currently, there are no amber box subsidy measures for agricultural products. However, an intervention (minimum guarantee) price for cereals was introduced in 2002 to contrast a significant fall of producer price due to a bumper crop. The State guaranteed the purchase of cereals at a guarantee minimum price when market prices fell below a certain level. The trigger price was however relatively low and in practice applies (applied) only in case of larger than average domestic supply of cereals. Although no data on actual expenditure for the program were provided, it is expected that these subsidies were (on the three years average reference period) below the threshold of 10% of cereal production value.¹³³

The following table shows that for the year 1998-2000 the Total Aggregate Measurement of Support for Ethiopia is zero.

Table1: Domestic Support: Ethiopia, Reporting Period 1998 – 2000: Calculation of the Total Aggregate Measurement of support¹³⁴

Description of basic products (including non-product specific AMS)	Products –specific AMS from Supporting Tables DS:5 to DS:7	Product-specific measurements of support (from Supporting Table DS:8)	Current Total AMS (aggregate)
1	2	3	4
Nil			

Source: MOFED: Ministry of Finance and Economic Development

Indeed budgetary constraint seems to be the foremost obstacle for the inadequacy of such support by the government of Ethiopia. Consequently, Ethiopia had to set its AMS at zero.¹³⁵ According to the existing rules in the AoA Zero AMS for Ethiopia implies the total surrender of the right to use Amber Box measures above the *de minimis* level should this be necessary to support its agricultural sector in the future.¹³⁶ Some WTO Members frequently put pressures on acceding countries to refrain from the use of Amber Box

¹³³ Bienen et al., *supra* note 58, at 33.

¹³⁴ MOFED, *WT/ACC/4-Ethiopia* [hereinafter ACC-4].

¹³⁵ *Id.*

¹³⁶ The AoA, *supra* note 19, arts. 6-7.

measures.¹³⁷ The rule prohibiting countries with zero AMS not to provide Amber Box support above the *de minimis* levels still remains untouched either by the July Package or the Hong Kong Ministerial Declaration.¹³⁸ Thus, it is normally expected that Ethiopia may be required not to use these types of measures in its accession negotiation. As a result, in acceding to the WTO Ethiopia might not be allowed to provide Amber Box domestic support to its farmers (with the exception of the *de minimis* level and the development program subsidies).

i. *De Minimis* Levels of Support

There is a significant variation in terms of the level of *de minimis* that were accorded to recently acceded countries. For instance, Nepal, Cambodia, Ecuador, Mongolia, Panama, Georgia and Jordan are entitled to the *de minimis* limit of 10%, while for Bulgaria, Kyrgyz Republic and Estonia the *de minimis* limit is 5%. Latvia was given a transitory period to shift from around 8% *de minimis* limit to 5% by 2003. China's *de minimis* level was set at a somewhat unusual level of 8.5 %.¹³⁹

The provisions of the AoA have long allowed developing countries to provide *de minimis* level of support (which is 10%) with no obligation to reduce it.¹⁴⁰ However, reduction of the level of *de minimis* is one of the new principles emerged out of the Doha Round negotiations. Both the July Package and the HKMD speaks of *de minimis* cuts.¹⁴¹ Nevertheless, as an S&D treatment, developing countries without AMS commitments and some NFIDCs are exempted from *de minimis* cuts.¹⁴² As a result of severe budgetary limitations, Ethiopia has to set its AMS at zero. In addition, the country would not be faced with difficulties as such to be categorized as an NFIDC in the negotiation for accession. What is more, other recently acceded LDCs like Cambodia and Nepal are allowed to set their *de minimis* level at 10%.¹⁴³ Consequently, there is a higher probability

¹³⁷ Training tool, *supra* note 33, at 92.

¹³⁸ See generally the July Package, *supra* note 75, paras. 6-12; see generally the HKMD, *supra* note 84, para. 5.

¹³⁹ Training tool, *supra* note 33, at 92-93.

¹⁴⁰ The AoA, *supra* note 19, art. 6(4)b.

¹⁴¹ See *supra* notes 86-91 and accompanying text.

¹⁴² The HKMD, *supra* note 84, para. 5; the May 2008 RDMA, *supra* note 91, para. 32.

¹⁴³ Training tool, *supra* note 33, at 92-93.

that Ethiopia might not be confronted with serious challenges in the accession negotiation in its request to set the level of *de minimis* support at least at 10% without any commitment to reduce it. The fact that Ethiopia does not currently maintain any Amber Box subsidies does not mean that it won't in the future. With rapid economic development the country is experiencing at the moment there is a reassuring possibility that it will acquire the financial ability to provide such kinds of subsidies to its farmers. Thus, in the upcoming accession negotiation Ethiopia might utilize these principles to its advantage, thereby securing exemption from *de minimis* commitments. This rule might in effect allow the country to use *de minimis* level of support with no obligation to reduce it.

ii. Development Programs

Studies indicate that the Government of Ethiopia grants agricultural input subsidies to small farmers.¹⁴⁴ As the following table shows, between the years 1998-2000 the Government supplied 323,000 USD worth of input subsidies to small farmers.

Table 2: Domestic Support: Ethiopia, Reporting Period 1998 – 2000 (value in USD): "Development Programmes"

Measure type	Name and description of measure with reference to criteria in Article 6:2 of the Agreement on Agriculture	Monetary value of measure in year in question	Data sources
1	2	3	4
(a) "investment subsidies generally available to agriculture"			
(b) "input subsidies generally available to low-income or resource-poor producers"	Agricultural inputs to small farmers	323.000	MFED
(c) "support to encourage diversification from growing illicit narcotic crops"			

Source: MOFED: Ministry of Finance and Economic Development

The right of developing countries to provide input and investment subsidies as well as expenditures designed to encourage diversification away from the production of narcotic crops is still remains intact by the Doha Round negotiations.¹⁴⁵ Hence, Ethiopia can

¹⁴⁴ ACC-4, *supra* note 134.

¹⁴⁵ The July Package, *supra* note 75, para. 6; the May 2008 RDMA, *supra* note 91, para. 18.

reasonably request for the ability to give development program supports to its farmers in the accession negotiation.

b. Green Box Measures

The majority of the support programs the Government of Ethiopia provides to its farmers generally fall under Green Box measures.¹⁴⁶ The Government has adopted various support programs so as to improve and accelerate the transformation of agriculture from subsistence smallholders to market oriented farming system. These support programs largely includes general services that normally fall under Green Box measures including agricultural research, training and extension, pest and disease control, market and promotion services, infrastructure services, domestic food reserve and food aid, resource conservation and environmental protection, irrigation, settlement and regional support programs.¹⁴⁷ The following table provides a detailed description of Green Box supports the Ethiopian government grants to its farmer between the years 2002/03 and 2004/05.

Table 3: Domestic Support: Reporting Period: 2002/03 – 2004/05

Measures exempt from the reduction commitment -- "Green Box"¹⁴⁸

Measure type	Name and description of measure with reference to criteria in Annex 2 of the Agreement on Agriculture	Monetary value of measure in year in question (in million Birr)				Data sources
		2002/03 1995	2003/04 1996	2004/05 1997	Average 2002/03- 2004/05 6 = (3+4+5):3	
1	2	3	4	5	6 = (3+4+5):3	7
(a) General services						
(i) Research	Budget expenditures for running Agricultural research system.	125.12	153.91	235.10	171.38	MoFED
(ii) Training services	Expenditures to set up, maintain and develop agricultural training institutions and centres.	597.15	968.38	509.40	691.64	MoFED
(iii) Extension and advisory services	Budget allocations to establish and maintain a nationwide network of provision of agricultural extension and advisory services; improving quality of plant varieties/seeds, animal breeds.	93.61	205.45	420.13	239.73	MoFED
(iv) Infrastructure services	Budgetary expenditures to construct, Maintain and develop irrigation systems, Water supply facilities and Drainage works, etc. for agricultural sector.....	124.53	498.37	11904.53	4175.68	MoFED
(v) Pest and disease control, inspection services	Budgetary expenditures in activities related to plant and animal health protection; sanitary and phytosanitary defence and alertness; pest and disease surveillance, prevention and control; provision of vaccines, etc.....	12.52	0.17	341.33	118.00	MoFED
(b) Public stockholding	Budgetary expenditures in activities related to co-					

¹⁴⁶ Bienen et al., *supra* note 58, at 33.

¹⁴⁷ *Id.*

¹⁴⁸ ACC-4, *supra* note 134.

t) for food security purposes (Emergency Food Security Reserve Admin.	operatives, Public co-operatives & Emergency Food Security Reserve Admin.	77.69	18.17	44.01	46.62	MoFED
(c) Domestic food aid (food security & disaster prevention) Payments for relief from natural disaster	Budgetary outlays in activities related to food aid distribution to deprived people in remote, mountainous and other disadvantaged areas for hunger relief purpose.	603.44	1308.71	1411.72	1107.96	MoFED
(d) Environmental programmes		97.57	243.60	44.46	128.54	MoFED
(e) Regional assistance programmes	Priority investments to develop communes under harsh and especially disadvantaged conditions in remote and distant areas etc.	4600.91	5095.55	5795.55	1932.15	MoFED
(f) Other						
Total		6332.54	8492.31	20705.85	11843.6	

Source: MOFED: Ministry of Finance and Economic Development

The above table shows that regional assistance programs in the form of priority investments to develop communes under harsh and especially disadvantaged conditions in remote and distant areas etc. is the chief type of Green Box measure the Ethiopian Government provides to its farmers. The government spends 5164 million birr on average to finance this kind of subsidies. Infrastructure services and Domestic food aid (food security & disaster prevention) are also the second and third major Green Box subsidies on which the Government spends on average 4175.68 and 1107.96 million birr respectively.

In general, it can be said that the AoA is relatively liberal concerning policies that are directed towards supporting consumers.¹⁴⁹ The main provision of the AoA related to consumer support is included under the “domestic food aid” category of the Green Box which specifies that eligibility to receive food assistance shall be subject to clearly defined criteria related to nutritional objectives.¹⁵⁰ However, there is an important exemption for developing countries to this general rule, which allows them to provide foodstuffs at subsidized prices with the objective of “meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices.”¹⁵¹ This is important for countries like Ethiopia which provide subsidized food through fair price on

¹⁴⁹ FAO, *supra* note 41, at 5-6.

¹⁵⁰ The AoA, *supra* note 19, annex 2, para. 4.

¹⁵¹ *Id.* annex 2, n.para. 4.

shops on a regular basis. Even if Ethiopia joins the WTO, the provision on domestic food aid will allow the country to provide food at subsidized prices in situations when food prices became high. Supplying subsidized food to the urban poor is indeed one of the mechanisms the Government of Ethiopia uses to address the current rising cost of food prices in country.¹⁵² The use of food security stocks which is important to an LDC like Ethiopia to mitigate the effects of market instability on food security also falls under Green Box Measures.¹⁵³ Between the years 2002/03 and 2004/05, for instance, the Ethiopian Government spends 46.62 million birr to finance Public stockholding for food security purposes.¹⁵⁴

Along the lines of what is agreed at Hong Kong, in the May 2008 RDMA, some improvements for programs of interest of developing countries are proposed in areas of public stockholding for food security purposes, domestic food aid, and payments made for relief from natural disasters.¹⁵⁵ As a result, many kinds support programs that do not fall under the Green Box according to the existing AoA may come under the future Green Box. This would expectedly facilitate Ethiopia's endeavor in its accession negotiation to have covered many of its support programs under the Green Box.

The implications of the present round agricultural negotiation on the Green Box are not confined only on the accession negotiation. In reality it may affect Ethiopia regardless of its accession to the WTO. Since certain Green Box subsidies can turn out to be trade-distorting,¹⁵⁶ many developing countries requested that the Green Box criteria should be tightened to ensure that it is non or minimally trade-distorting. However, although the July Package states that the Green Box criteria will be reviewed and clarified to ensure that such measures have no, or at most minimal, trade-distorting effects or effects on production, no additional disciplines are mentioned on this issue in the HKMD.¹⁵⁷ What is more, the May 2008 RDMA, in its present structure, do not contain effective

¹⁵² ENA, *Bringing down Rising Cost of Living Urgent Gov't Agenda: Meles*, THE ETHIOPIAN HERALD, May 13, 2008, (Addis Ababa), at 1.

¹⁵³ The AoA, *supra* note 19, annex 2, para. 3.

¹⁵⁴ ACC-4, *supra* note 134.

¹⁵⁵ *See supra* note 101 and accompanying text.

¹⁵⁶ Haque & Ali, *supra* note 70, at 41.

¹⁵⁷ The July Package, *supra* note 75, para. 16; Training Tool, *supra* note 33, at 51.

disciplines guaranteeing that the use of the future Green Box by developed country members will be non-or minimally trade-distorting.¹⁵⁸ Hence, there is a possibility that “the Green Box subsidies could thus be increased, offsetting the decrease in other categories of domestic subsidies, and in ultimate analysis resulting in little or no overall reduction in domestic support (or possibly even a net increase).”¹⁵⁹ The continuation by developed countries of granting trade-distorting domestic subsidies through box shifting will certainly hurt Ethiopia in the long-term in its effort to attain food security and overall economic development whether or not it joins the WTO.

c. The Blue Box Measures

Like many SSA countries which rarely maintain Blue Box subsidies,¹⁶⁰ studies indicate that the Government of Ethiopia does not grant this type of domestic subsidies to its farmers.¹⁶¹ In view of the importance of agricultural production and agricultural employment in Ethiopia’s economy and its role in guaranteeing food security to a rapidly growing population, the policy of the Government of Ethiopia is focused on boosting production in the agricultural sector.¹⁶² As such, the Blue Box measures are of much less importance to Ethiopia and they would not create a challenge for the Country in the negotiations for accession. The following table shows that between the years 1998 and 2000 no subsidies of the Blue Box type were granted to Ethiopian producers.

Table 4: Domestic Support: Reporting Period: 1998 – 2000
Direct Payments under Production-Limiting Programs --"Exempt Direct Payments"

Measure Type	Name and description of measure with reference to criteria in Article 6:5 of the Agreement on Agriculture	Year	Monetary value of measure	Data sources
1	2	3	4	5
Nil				

Source: MOFED: Ministry of Finance and Economic Development

¹⁵⁸ South Centre Comments 2007, *supra* note 103, at 7.

¹⁵⁹ Haque & Ali, *supra* note 70, at 41.

¹⁶⁰ See *supra* notes 67-69 and accompanying text.

¹⁶¹ ACC-4, *supra* note 134.

¹⁶² ENA, *Curbing High Cost of Living Hinges on Ensuring Rapid Sustainable Dev't: Ministry*, THE ETHIOPIAN HERALD (Addis Ababa), Aug. 16, 2008, at 1.

There are other implications the Doha Round negotiations bring on Ethiopia regardless of its accession to the WTO. Many developing countries have long regarded the existing production-limiting subsidies in the AoA as trade-distorting and want their review.¹⁶³ However, to their dismay the Doha Round negotiations introduce “direct payments that do not require production” as an additional but permissible new form of Blue Box subsidies.¹⁶⁴ Developing countries consider this arrangement defective as it involves the possibility of shifting subsidies from the Amber to the Blue Box by converting product-specific subsidies to counter-cyclical payments having equally trade-distorting effect.¹⁶⁵ To the extent those Blue Box subsidies in other countries impose distortions on world markets; Ethiopia would remain affected in the long-term whether or not it accedes to the WTO. As a result, the Country may have an interest in seeing tighter disciplines on their use.

d. OTDS Cut

The OTDS cut rule simply propagates for a reduction in the sum of the Final Bound Total (FBT) AMS plus permitted *de minimis* level and the Blue Box payments according to a tiered formula with higher linear cuts in higher bands.¹⁶⁶ Ethiopia had to set its AMS at zero due to severe financial constraints. Moreover studies indicate that the Country does not grant any Blue Box subsidies.¹⁶⁷ Therefore, in the first place except for the *de minimis* level, there are no FBT AMS and Blue Box subsidies in Ethiopia that can be subjected to reduction commitments. In addition, the various proposals also exempt (as an S&D treatment) NFIDCs and developing countries with no AMS commitments from OTDS cuts.¹⁶⁸ The NFIDC status of the Country would not also be a subject of contention as such. Therefore, it seems that OTDS cuts would not create a challenge for Ethiopia in the accession negotiation.

¹⁶³ State of Play, *supra* note 122, at 11-12.

¹⁶⁴ See *supra* notes 105-108 and accompanying text.

¹⁶⁵ Bokhari, *supra* note 119.

¹⁶⁶ The July Package, *supra* note 85, annex A, para. 7; the HKMD, *supra* note 84, at 5; also see *supra* text accompanying notes 124-30.

¹⁶⁷ The ACC-4, *supra* note 134

¹⁶⁸ The HKMD, *supra* note 84, para. 5; the May 2008 RDMA, *supra* note 91, paras. 6-7.

One also needs to take note that any trade-distorting domestic support granted by developed countries would still hurt Ethiopian farmers regardless of its accession to the WTO. Thus, it is in Ethiopia's interest that the contemplated OTDS cuts would result in substantial reductions in affluent countries' trade-distorting domestic support. Nevertheless, some analysts express their doubt that significant reductions in existing levels of support would occur because, firstly, nothing would be achieved beyond what is already planned by some of the developed countries and, secondly, several developed countries (e.g. the EU) are contemplating to shift a part of their domestic support to the Green Box and their willingness to reduce the content of support in other boxes is really illusory.¹⁶⁹ Ultimately, it is a looming possibility that significant overall reduction in the size of domestic support may not be achieved by the Doha Round agricultural negotiations as a result of a plethora of exceptions and loopholes that are sought to be created.¹⁷⁰ Therefore, as a country where the agricultural sector plays a crucial role in the overall economic development, any failure of the present round negotiation to bring substantial reductions in trade-distorting support would have negative effects for Ethiopia in the long-term irrespective of its accession to the WTO.

¹⁶⁹ Haque & Ali, *supra* note 70, at 41.

¹⁷⁰ KHOR, *supra* note 78.

3. Export competition

3.1. Background

The Agreement on Agriculture defines export subsidies as “subsidies contingent upon export performance.”¹ However, this definition raises the fundamental question of what a “subsidy” is. The concept of subsidy is defined only by the Agreement on Subsidies and Countervailing Measures which explains it as a financial contribution made by a government or any public body conferring a benefit on the recipient.²

Export subsidy comes in to the picture in situations where producers receive prices that exceed world prices because an exportable surplus requires a subsidy so that it can be sold on the world market. Thus, the export subsidy is the difference between the world and domestic prices. The rise of world prices has an automatic effect of diminishing export subsidies.³ Export subsidies are considered trade-distorting since “they provide exporters receiving the subsidies with a direct price advantage, encourage overproduction and depress world prices. The provision of export subsidies is counter-cyclical to the world price movement, which can exacerbate price fluctuations.”⁴ The lower and more uneven prices hurt susceptible producers in developing countries. Nevertheless, the majority of the export subsidies are on temperate products like dairy and cereals. As a result, consumers in net food-importing developing countries benefit from the lower prices in the short run.⁵

Although the GATT 1947 contains disciplines on export subsidies, there were several important differences with respect to the rules that applied to agricultural primary products as opposed to industrial products.⁶ Whereas countries were prohibited from

¹ The Agreement on Agriculture, Apr. 15, 1994, art.1 (e) [hereinafter the AoA], *available at* http://www.wto.org/english/docs_e/legal_e/14-ag.pdf

² Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, art.1 (1), [hereinafter the SCM Agreement], *available at* http://www.wto.org/english/docs_e/legal_e/24-scm.pdf

³ *Training Tool for Multilateral Trade Negotiations on Agriculture*, at 55, UNCTAD Doc. UNCTAD/DITC/TNCD/2006/7 (Mar. 2007) [hereinafter Training Tool].

⁴ *Id.*

⁵ *Id.*

⁶ WTO, AGRICULTURE: EXPLANATION-INTRODUCTION, *available at* http://www.wto.int/english/tratop_e/agric_e/ag_intro01_intro_e.htm (last visited Nov. 8, 2008)

using export subsidies on industrial products, they were allowed to use export subsidies on agricultural primary products subject only to the vague and impracticable condition that the subsidies should not be used to capture more than an “equitable share” of world exports of the product concerned.⁷ The attempts that were made during subsequent rounds of trade negotiations to bring export subsidies on primary products under the same rules as those applying to non-primary products were futile.⁸ The subsidies code (a result of the Tokyo Round), for instance, strengthened the export subsidies discipline of non-primary products by abolishing the “dual pricing” requirement and introducing a flat prohibition of them, but its provisions on export subsidies on “certain primary products” were nothing more than the use of new words repeating old stories.⁹ As a result, developed countries were in particular allowed to use export subsidies freely and extensively until the Uruguay Round was concluded in 1994.¹⁰

It is the Uruguay Round which brought an essential change to this situation through the conclusion of the Agriculture on Agreement and the Agreement on Subsidies and Countervailing Measures.¹¹ Despite being a generic agreement applying to all sectors SCM Agreement often expressly excludes agricultural subsidies from its coverage.¹² However, the SCM Agreement is still important for the agricultural trade in at least two ways: “filling any loopholes that may, and do, exist within the subsidies provisions of the AoA, and serving as a principal contextual guide for the interpretation of relevant AoA provisions.”¹³

⁷ Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, art. 10(1), available at http://www.wto.org/english/docs_e/legal_e/tokyo_scm_e.doc (last visited Oct. 27, 2008).

⁸ Melaku G. Desta, *The Bumpy Ride towards the Establishment of “A Fair and Market-Oriented Agricultural Trading System” at the WTO: Reflections Following the Cancun Setback*, 8 DRAKE J. AGRIC. L. 489, 513 (2003).

⁹ *Id.*

¹⁰ Desta, *supra* note 8, at 513-514; see generally the SCM Agreement, *supra* note 2.

¹¹ Desta, *supra* note 8, at 514.

¹² The SCM Agreement, *supra* note 2, art. 8.

¹³ Desta, *supra* note 8, at 514.

3.2. Export competition under the Agreement on Agriculture

Although some export subsidies are completely prohibited by the SCM Agreement, they are expressly permitted by the AoA in the agricultural sector. Indeed, agriculture is the only sector in WTO where export subsidies are legal.¹⁴ The AoA has created two categories of export subsidies--listed and non-listed--each subject to distinct disciplines. Whereas the former is subjected to reduction commitments the later is not.¹⁵ The next sections discuss these two types of subsidies in detail.

3.2.1. Export Subsidies “proper”

Listed agricultural export subsidies refers to those listed under Article 9.1 as export subsidies subject to two types of reduction commitments i.e. quantitative (by 21%) and budgetary (by 36%) on a 1986-1990 base period levels and over a six-year implementation period.¹⁶ Developing countries were required to undertake only two-thirds of these obligations to be implemented over a period of ten years.¹⁷ Those countries that were providing export subsidies during the base period would be allowed to continue to do so provided that the supports remained within specific reduction commitments. No country that did not have export subsidy in the base period --almost by definition developing countries--has the right to introduce them.¹⁸ Nevertheless, as special and differential treatment, Article 9.4 of AoA allows developing countries to provide export subsidies in internal transportation and freight charges on export shipments as long as they are not applied in a manner that would evade reduction commitments.¹⁹

¹⁴ See generally the AoA *supra* note 1.

¹⁵ *Id.* arts. 9-10; see also Desta, *supra* note 8, at 514.

¹⁶ *Modalities for the Establishment of Specific Binding Commitments under the Reform Program*, para. 11, GATT Doc. MTN.GNG/MAIW/24 (Dec. 20, 1993) [hereinafter *Modalities*].

¹⁷ *Id.* para. 15.

¹⁸ WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: PHASE 1: EXPORT SUBSIDIES, COMPETITION AND RESTRICTIONS, (2002) [hereinafter *Backgrounder*], available at http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd06_export_e.htm

¹⁹ PARTHAPRATIM PAL, IMPLEMENTATION ISSUES OF THE AGREEMENT ON AGRICULTURE AND ITS IMPLICATIONS FOR DEVELOPING COUNTRIES 8 (2002), http://www.networkideas.org/themes/agriculture/sep2002/ag09_AOA.htm; The AoA, *supra* note 1, art 9(4) paras. d-e.

With the exception of South Africa, all SSA countries declared that they had no export subsidy. On the contrary, the tradition in Africa has been one of taxing exports. Therefore, these countries are greatly limited in what they can do in this area in the future as they are not allowed to use export subsidies except for transportation and marketing assistance by virtue of their developing country status.²⁰

Currently, only twenty-five WTO members are allowed to use export subsidies and have scheduled reduction commitments in respect of different products implying that only these twenty-five countries are allowed to use the export subsidies listed in Article 9.1 of the AoA and on the products they have scheduled in their commitments.²¹

The actual level of export subsidies provided fluctuates depending on production, world prices and exchange rates. Between 1995 and 2000, on average US\$ 6.2 billion of export subsidies were provided worldwide of which the European Union accounts for almost 90%. The available data from the years 2000 and 2001, however, show that from the beginning of implementation period the use of export subsidies in the European Union has declined by more than 50%.²² Since most of the export subsidies are provided by developed countries from the northern hemisphere, the bulk of subsidies apply to temperate products with nearly 35% going to dairy products and 23% for meat. Beef, which is important to the economies of some developing countries, represents almost 60% of all meat subsidies. Producers of cereals and sugar are also given a sizeable amount.²³

The rate of global export subsidy expenditure (US\$ 6.2 billion over the period 1995 to 2000) is just 59% well below the final 2000 commitment value of US\$ 11 billion. However, there is a good deal of variation on utilization both between countries and between products. While some countries that were allowed to subsidize their exports did not do so at all (Bulgaria, Brazil, Indonesia, Panama and Uruguay) other countries took

²⁰ COMMODITY POLICY AND PROJECTIONS SERVICE, FAO, AGREEMENT ON AGRICULTURE: OPTIONS TO SUPPORT FOOD SECURITY IN SUB-SAHARAN COUNTRIES 7.

²¹ Backgrounder, *supra* note 18; the AoA, *supra* note 1, art. 9(1).

²² RALF PETERS, UNCTAD, ROADBLOCK TO REFORM: THE PERSISTENCE OF AGRICULTURAL EXPORT SUBSIDIES 4 (2006), available at

<http://www.unctad.org/TEMPLATES/Download.asp?docid=7048&lang=1&intItemID=1397> -

²³ *Id.*

full advantage (Norway's utilization rate was 153 %, as against 119 % for Switzerland, 80 % for the EU, and 14 % for the US).²⁴ The above given numbers relate to scheduled export subsidies. However, other forms of export subsidies exist which are discussed below.

3.2.2. Other Measures of Export Support

Non-listed export subsidies are export subsidies as defined by Article 1.e but which do not fall in any of the enumerations under Article 9.1.²⁵ Article 10.1 of the AoA puts the only limitation on the use of non-listed export subsidies in that they may not be used in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments.²⁶ There is a mutually exclusive relationship between Article 10.1 and Article 9.1 in the sense that the former is applied to a residual category of export subsidies that fall outside the scope of the latter.²⁷ Article 10.2 goes a step further and picks up three forms of non-listed export support practices, including export credit schemes, and declares that Members shall undertake to work toward the development of internationally agreed disciplines governing their use.²⁸

Although the current Agreement on Agriculture mentions some loosely defined disciplines regarding food aid, it does not include subsidy components in export credits, state trading enterprises and food aid in reduction commitments.²⁹ The use of export credits has been expanding in recent years. Export credits may distort export competition when the credit conditions go beyond what private arrangements could achieve. Exporting state trading enterprises or single-desk traders may cross-subsidize, which would also distort trade and food aid may be used as a surplus disposal instrument.³⁰ The following section gives a thorough discussion on these three forms of export subsidies.

²⁴ *Id.* at 6.

²⁵ MELAKU G. DESTA, *The LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS: FROM GATT 1947 TO THE WTO AGREEMENT ON AGRICULTURE* 232 (2002).

²⁶ The AoA, *supra* note 1, art. 10(1).

²⁷ DESTA, *supra* note 25, at 233-34.

²⁸ The AoA, *supra* note 1, art. 10(2).

²⁹ Training Tool, *supra* note 3, at 53,

³⁰ *Id.* at 55.

a. Export Credit Practices

In the normal course of business firms seeking to conclude contracts to sell their products to foreign buyers will normally prefer the agreed price to be settled on delivery of the goods, or with the exchange of shipping and other documents of title. However, competitive conditions in world markets for the product concerned may compel exporting firms into arrangements under which, for instance, payment of the contract price by the importer is deferred over an agreed period of time. All these put exporting firms in a position to offer attractive financing arrangements on top of competing on the basis of such matters as the quality and price of their products, as well as delivery times.³¹

The two closely related main elements of an export credit are financing and risk. The financing element concerns with the financial terms and conditions of an export contract (including the contract price itself, such credit-related matters as the length of the credit, the rate of interest payable, the proportion of the contract value that is required to be paid as a down-payment, as well as the scheduling of the payments that are to be made by the importer in respect of the balance of the contract price, and any fees payable) as agreed between the exporter and the importer.³²

Such export credits can be financed into two major forms. Firstly, a commercial bank in the exporting country may finance the export transaction in the form of a financial trade-related credit provided to the exporting firm. The transaction in this case is called "supplier credits". Secondly, the financing of an export credit may also be extended through a commercial bank in the exporting country, either directly to the foreign buyer or to the foreign buyer's bank in the importing country. The transaction here is referred to as a "buyer credits".³³

Each financing arrangement entails for the party financing an export credit certain risks against which insurance cover can be obtained in the form of export credit insurance policies which enables the financiers to be reimbursed for losses arising from payment

³¹ *Export Credits and Related Facilities*, at 1, WTO Doc. G/AG/NG/S/13 (June 26, 2000), <http://www.agradepolicy.org/output/resources/ExpC.Doc>.

³² *Id.*

³³ *Id.* at 2.

delays or non-payment. Sometimes, specialised export credit institutions in the exporting country may give export credit guarantees to reimburse a lender if the borrower fails to repay a loan.³⁴

Depending on the source of support export credits can be divided in to two types: those supported by governments and those arranged among exporters, importers and financial institutions without government influence. Private export credits fully on commercial terms without any direct or indirect government involvement are part of normal business transactions. They do not distort markets, but quite the opposites facilitate trade.³⁵ Officially supported export credits, on the other hand, may results in an importer receiving a loan at an interest rate below the normal market rate, for a length of time which goes beyond what the market would offer or a repayment schedule which is abnormal in timing, nonetheless does not face an adequate fee to counterbalance these special conditions. Accordingly, the total costs for financing the purchase of that exporter's goods would be lower than would otherwise occur, so the program would effectively subsidise the importer.³⁶

Bearing in mind this potential to distort trade, officially supported export credits for agricultural products was at issue during the URAA.³⁷ Under the WTO Agreement on Agriculture countries agreed to “work towards the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programs.”³⁸ To the disappointment of many Members, including the European Communities, no such agreement was reached due largely to the opposition by the United States. Hence, in the absence of a protocol regulating the use of export credits, governments are currently free to provide credits to importers at any terms, regardless of the degree to which they effectively subsidise the importers.³⁹ The only limitation on

³⁴ *Id.* at 2.

³⁵ OECD, AN ANALYSIS OF OFFICIALLY SUPPORTED EXPORT CREDITS IN AGRICULTURE 8, <http://www.agradepolicy.org/output/resources/OECD.pdf> (last visited July 19, 2008).

³⁶ *Id.*

³⁷ *Id.*

³⁸ The AoA, *supra* note 1, art. 10(2).

³⁹ OECD, *supra* note 35, at 8.

their use is that they may not be used in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments.⁴⁰

It is true that some programs of export credit do bias targeted importers' purchasing decisions and do distort markets. However, the results of an OECD study on export credits indicate that the overall trade-distorting effect of export credits on total trade in agricultural products is very small. Between 1995 and 1998, total export credits facilitated on average 4.4% of world trade but only a portion of these are estimated to have distortional effects.⁴¹ The total subsidy element amount is estimated to have been US\$ 300 million in 1998 of which the US provides 86%, the EU 7% (excluding intra-EU credits); Canada 5% and Australia 2%. The US is indeed the largest user of export credits with the highest subsidy content at 6.6%. Finally, it is important to note that cereals account for almost half the subsidy element of all used export subsidies.⁴²

b. State Trading Enterprises (STEs)

The activities of State Trading Enterprises (STEs) was governed by Article XVII of GATT 1947, which recognizes these entities as legitimate participants in international trade but establishes guidelines with respect to their behavior.⁴³ The Uruguay Round Agreement did not directly change any of the provisions in Article XVII; instead it includes a Memorandum (Understanding on Interpretation of Article XVII) to clarify the definition and scope of trading activities, improve notification requirements, and facilitate formation of a Working Party on state trading.⁴⁴

Largely adopting an institutional approach to state trading, the Understanding defines STEs as “governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through purchases or sales

⁴⁰ The AoA, *supra* note 1, art. 10(1).

⁴¹ Training Tool, *supra* note 3, at 56.

⁴² *Id.*

⁴³ The General Agreement on Tariffs and Trade, Oct. 30, 1947, art. XVII, [hereinafter GATT], *available at* http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47

⁴⁴ Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, [hereinafter Understanding on the Interpretation of Article XVII of the GATT], *available at* http://www.wto.org/english/docs_e/legal_e/08-17.doc

the level or direction of imports or exports.”⁴⁵ The reference to the "rights and privileges" that "influence ... the level or direction of *imports*" in the preceding sentence is related to imports which is not *per se* a matter falling under the disciplines of export subsidies. Rather, the concern here is related solely to the matter of exports under that working definition.

Article 9 of the Agreement on Agriculture explains the types of export subsidies which are subject to reduction commitments. If a state trading enterprise receives such subsidies, they would be subject to reduction. In addition, Article 10 stipulates that export subsidies not listed in Article 9 shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments.⁴⁶ This rule is also applicable to state trading enterprises.⁴⁷

The basic concern with activities of exporting state trading enterprises is that such entities might allow member countries to evade the Uruguay Round commitments made in the Agreement on Agriculture. This is because statutory regulations provide STEs with opportunities unavailable to commercial firms that compete against them.⁴⁸ Most of the times STEs are created to assume trading activities in a manner which private companies would not, their objectives being likely different by design from those of commercial criteria; and, in any case, it is very difficult to test for commercial behavior.⁴⁹

At first, many STEs have exclusive rights to purchase and sell particular commodities destined for the domestic and/or export markets that allow them to act as a monopolist, offering producers' prices lower than those available in the world market and/or charging consumers prices higher than those prevailing in the international market. The profits

⁴⁵ *Id.* para 1.

⁴⁶ The AoA, *supra* note 1, art. 10 (1).

⁴⁷ MERLINA INGCO & FRANCIS NG, THE WORLD BANK, POLICY RESEARCH WORKING PAPER 1915, DISTORTIONARY, EFFECTS OF STATE TRADING IN AGRICULTURE: ISSUES FOR THE NEXT ROUND OF MULTILATERAL TRADE NEGOTIATIONS 8 (Apr. 1998).

⁴⁸ PRAVEEN M. DIXIT & TIM JOSLING, INTERNATIONAL AGRICULTURAL TRADE RESEARCH CONSORTIUM, WORKING PAPER NO. 97, STATE TRADING IN AGRICULTURE: AN ANALYTICAL FRAMEWORK 7 (July 1997).

⁴⁹ R. PEARCE & R. SHARMA, FAO, MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE RESOURCE MANUAL: EXPORT SUBSIDIES 12 (2000).

from the domestic market could be used by the STE to subsidize foreign sales of one or more commodities in which it has monopoly rights.⁵⁰

Some STE's also engage in price pooling by which the final price paid to producers is a mixed price based on net revenue of all sales in foreign and domestic markets, which allows them to pay producers the same return irrespective of the time of delivery during the marketing year. As a result, STEs have better flexibility of discretionary pricing in the international market (through delayed payments to domestic producers) than private exporters.⁵¹

It is also argued that STEs controlling domestic supplies or exports have less uncertainty in sourcing supplies letting them greater freedom than private firms in making export sales commitments thereby increasing their scope for offering favorable long-term agreements with importing countries.⁵²

In developing countries not many cases exist where exporting STEs might be seen as posing a serious constraint to more open trading in international markets. STE's have an important food security role in developing countries. Furthermore, as most developing countries are small trading nations STEs can also provide them with the economies of scale to compete effectively in international markets. As a result, "it would be unfortunate if future negotiations led to binding provisions that circumscribed the ability of developing country STEs to operate effectively."⁵³

c. Food Aid

Other than raising total world consumption food aid can also have the same trade-distorting effect as a cash export subsidy in situation where it displaces other exports and is used to dispose of surplus. Studies indicate that part of the food aid currently provided is supply-driven rather than demand-driven and is used as a disposal tool.⁵⁴ "Monetization" (selling food aid on domestic markets, rather than targeting donations to

⁵⁰ DIXIT & JOSLING, *supra* note 48, at 7-8.

⁵¹ *Id*

⁵² DIXIT & JOSLING, *supra* note 48, at 7-8.

⁵³ PEARCE & SHARMA, *supra* note 49, at 12.

⁵⁴ Training Tool, *supra* note 3, at 56.

the poor) is more likely to distort markets. “Tied” food aid, which accounts 90% of global food aid, involves the procurement of goods and services from the donor country.⁵⁵ Food aid may possibly substitute local production, and developing countries can produce some products like vegetable oil that are provided as food aid. It is suggested that since food aid plays a pivotal role in reducing hunger during emergencies, assistance of other kinds such as cash aid have to be introduced.⁵⁶

With the intension to avoid possible circumvention of export subsidy commitments the Agreement on Agriculture provides that food aid: (a) must not be tied in anyway; (b) must be conducted according to the conventions of the FAO Sub-committee on Surplus Disposal; and (c) must conform to Article IV of the Food Aid Convention (FAC).⁵⁷ The last condition entails that food aid must be made applied as either donations of food or cash to purchase food; sales of grain for the (non-convertible) currency of the recipient country; or credit sales with subsidies meeting specific criteria.⁵⁸

Between the years 1994 and 2003 the average food aid supplied amounts to ten million metric tons per year. Over half of global food aid is donated by the United States. Emergency food aid, given to countries experiencing conflict or extreme shortfalls in production, averaged 43% of the total. The rest is given in the form of project food aid and program food aid. Whereas project food aid is generally given to NGOs to support a wide variety of development projects, program food aid is given on a government-to-government basis and is sold on recipient country markets with proceeds used by the recipient government.⁵⁹

⁵⁵ LINDA M. YOUNG & PHILIP C. ABBOTT, ICTSD, COMMENT BRIDGES NO 5, THE WTO NEGOTIATIONS AND DISCIPLINES FOR FOOD AID 3 (2005),

http://www.agradepolicy.org/output/ictsd/bridges9-5_FoodAid_Young_Abbott.pdf

⁵⁶ *Id.*

⁵⁷ The AoA, *supra* note 1, art. 10(4).

⁵⁸ PEARCE & R. SHARMA, *supra* note 49, at 7.

⁵⁹ YOUNG & ABBOTT, *supra* note 55, at 3.

3.3. The Doha Agricultural Negotiations on Export competition: Issues and Implications for Ethiopia

The preceding section centered on discussing the main provisions of the AoA in relation to export subsidies and problems encountered in implementation with reference to their implications on Ethiopia. Founded on this analysis, the present section focuses on examining the new negotiating positions and discusses the export subsidy provisions in the July Package and Hong Kong Ministerial Declaration as well as the May 2008 RDMA with regard to the likely implication on Ethiopia.

3.3.1. Negotiations on Modalities-General

Agricultural export subsidies have still been the most controversial subject all the way through the Doha negotiations. Developing countries regard export subsidies as the most destructive trade policy instruments.⁶⁰ The Doha Ministerial Declaration calls for “reductions of, with a view to phasing out, all forms of export subsidies.”⁶¹ Indeed, “success or failure for the entire Doha ministerial conference was hanging in the balance until the very last minute on the inclusion or otherwise of this emphasized language in this declaration.”⁶²

In the early stages of the negotiation the proposal of the EU was an average “substantial” cut in the quantity of export subsidies and an average 45% reduction in the level of budgetary outlays, on the condition that the treatment of all forms of export subsidization will be on equal footing. The European Union also suggested eliminating export subsidies entirely for some key products for developing countries and the trade-distorting elements of export credits ought to be subjected to stringent regulations.⁶³ The early US proposal was reducing the levels of scheduled budgetary outlays and quantity commitments on export subsidies to zero and disciplines should be developed on export credits. Reflecting the extent of the use of these two instruments in the United States, this

⁶⁰ Desta, *supra* note 8, at 515.

⁶¹ Ministerial Conference: Fourth Session Doha, Ministerial Declaration, Nov. 20, 2001, para. 3, WTO Doc. WT/MIN (01)/DEC/1, available at http://docsonline.wto.org/gen_search.asp?searchmode=simple

⁶² Desta, *supra* note 8, at 516.

⁶³ Training Tool, *supra* note 3, at 57.

proposal is stricter than the EU proposal concerning export subsidies but less strict concerning export credits.⁶⁴

The Cairns Group, which has always taken a tough position about export competition, proposed eliminating and prohibiting all forms of export subsidies for all agricultural products. The African Union did not require the elimination of export subsidies up until the European Union itself indicated its readiness to eliminate them if other countries remove state trading enterprises and export credits with subsidy components (parallelism). It is this proposal that contributed to the agreement in the July Package for the elimination of export subsidies by a certain date.⁶⁵

Paragraph 17 of the July Package commits members to eliminate export subsidies and “all export measures with equivalent effect.”⁶⁶ Subsequent paragraphs in the Package provide an indication of those measures to be disciplined and eliminated for having equivalent effects to export subsidies include export credit, credit guarantees and insurance programs, certain practices of STEs, certain food aid transactions, etc.⁶⁷ The text require “parallelism” (as required by the EU as the main user of direct export subsidies) reflecting the fact that different members use different forms of export subsidies and therefore, the commitments as regards every form of subsidization should lead to similar concessions across members.⁶⁸ In Hong Kong, Members agree on the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effects by the end of 2013.⁶⁹

⁶⁴ *Id.*

⁶⁵ *Id.* at 57-58.

⁶⁶ Doha Work Program: Decision Adopted by the General Council on 1 August 2004, Aug. 2, 2004, para 17, WTO WT/L/579 [hereinafter The July Package], available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

⁶⁷ *Id.* paras. 18-19.

⁶⁸ *Detailed Analysis of Annex A to the General Council Decision July 2004 “Framework for Establishing Modalities in Agriculture”*, pt. II, p. 12, South Centre Doc. SC/TADP/AN/CC/2.2 (Aug. 2004) [hereinafter Detailed Analysis].

⁶⁹ Ministerial Conference: Sixth Session Hong Kong, Ministerial Declaration, Dec. 18, 2005, para. 6, WTO Doc. WT/MIN(05)/DEC [hereinafter the HKMD].

3.3.1.1. Export Subsidies “proper”

As already discussed, regarding export subsidies for which commitments were made during the Uruguay Round, Members agreed to eliminate the budgetary outlays and bring to zero the quantity of subsidized exports by the end of 2013.⁷⁰ Longer implementation periods are to be given to developing country Members.⁷¹ The May 2008 RDMA fixes 2016 as a cut-off date by which developing countries must eliminate their scheduled export subsidies as opposed to the end of 2013 which is maintained for developed countries.⁷²

In line with what is agreed in the HKMD, developing country Members will continue to benefit from the provisions of Article 9.4 of the AoA until 2021 i.e. for five years after the end-date for elimination of all forms of export subsidies.⁷³ It is important to remember that, as an S&D treatment, Article 9.4 of the AoA allows developing countries to use subsidies for internal transport and freight charges on export shipments and subsidies to reduce the cost of marketing of agricultural exports.⁷⁴

3.3.1.2. Other Measures of Export Support

a. Export Credit Practices

While the majority of countries are of the opinion that export credits could be used to circumvent export subsidy commitments others argue that export credits do not contain large amounts of subsidies and are useful for food security in importing countries suffering from financial crisis or food supply problems.⁷⁵ Two approaches have already emerged regarding this issue i.e. the “rules based” and the “reduction commitments”.⁷⁶

⁷⁰ The July Package, *supra* note 66, para. 18; *see also* the HKMD, *supra* note 69, para. 6.

⁷¹ The July Package, *supra* note 66, para. 22.

⁷² *Revised Draft Modalities for Agriculture*, paras. 145-46, WTO Doc. TN/AG/W/4/Rev.2 (May19, 2008) [hereinafter The May 2008 RDMA].

⁷³ *Id.* para. 147.

⁷⁴ The AoA, *supra* note 1, art. 9(4).

⁷⁵ Training tool, *supra* note 1, at 58.

⁷⁶ WTO, WTO AGRICULTURAL NEGOTIATIONS: THE ISSUES, AND WHERE WE ARE NOW 23 (Dec. 1, 2004)

[hereinafter Agricultural Negotiations], *available at* http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd00_contents_e.htm.

According to the “rules based” approach export credit and insurance should be based on commercial terms, which would be classified in line with criteria such as duration of credit (e.g. 180 days), benchmarks for interest rates (e.g. the London inter-bank rate — plus something), appropriate insurance premiums, and so on. Everything outside this category would be considered as export subsidies and would have to be reduced or eliminated.⁷⁷ In the “reduction commitments” strategy, on the other hand, the subsidy component of export credits, insurance programs and guarantees are calculated and would treat them in the same way as regular export subsidies.⁷⁸

The reduction-commitment route has been criticized by a number of developing countries in that it would reinforce the inequality of the existing export subsidy system which allows those countries with high subsidies in the base period to subsidize more during the reform period. Some countries also express their disapproval in the rule being too severe since subsidized credit can play a crucial role in times of foreign currency crises.⁷⁹

According to the July Package export credits, export credit guarantees or insurance programs with repayment periods of more than 180 days are to be eliminated. Moreover, some of the terms and conditions (such as payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade) in programs with repayment periods of 180 days or less are going to be eliminated but subject to disciplines to be negotiated.⁸⁰ Such export credit programs are agreed to be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially-oriented discipline.⁸¹ In explaining as to when such programs are said to be self financing, the May 2008 RDMA provides that “where premium rates charged under a programme are inadequate to cover the operating costs and losses of that programme over a previous (4)-(5) year rolling period, this shall, in and of itself, be sufficient to determine that the programme is not self-financing.”⁸²

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ The July Package, *supra* note 66, para. 18.

⁸¹ The HKMD, *supra* note 69, para. 6.

⁸² The May 2008 RDMA, *supra* note 72, annex J, para. 3 (b).

As an S&D provision, the HKMD stipulates that the disciplines on export credits, export credit guarantees or insurance programs will include “appropriate provision in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision.”⁸³ The May 2008 RDMA, for instance, provides for LDCs and NFIDCs to grant allowances for a repayment term in respect of them of between 360 and 540 days for the purpose of acquiring basic foodstuffs.⁸⁴

b. State Trading Enterprises (STEs)

With respect to STEs the July Package lists a series of practices which are agreed to be eliminated.⁸⁵ In Hong Kong, as a means of ensuring the trade-distorting practices of STEs are eliminated, disciplines on exporting STEs are made extended to the future use of monopoly status of such enterprises to avoid this is used to circumvent disciplines on export subsidies, government financing and underwriting of losses.⁸⁶

Recognizing STEs are important for the development endeavours of poorer countries, the July Package gives special consideration to poorer countries’ whose monopoly privileges aim to keep stability of domestic prices for consumers and to ensure food security.⁸⁷ Along with this observation, the May 2008 RDMA provides that developing countries are allowed to preserve the monopoly powers of STEs (a) to maintain domestic consumer price stability and to ensure food security and (b) if the share of the enterprise in world exports of the product concerned is less than 5% and such that over three consecutive years it does not exceed that level.⁸⁸ The text goes even further and establishes that “agricultural exporting state trading enterprises in least-developed country Members and Members, small, vulnerable economies, whether or not they enjoy such special privileges

⁸³ The HKMD, *supra* note 69, para. 6.

⁸⁴ The May 2008 RDMA, *supra* note 72, annex J, para. 5.

⁸⁵ The July Package, *supra* note 71, para. 18.

⁸⁶ The Hong Kong Ministerial Declaration, *supra* note 69, para. 6.

⁸⁷ The July Package, *supra* note 66, para. 25.

⁸⁸ The May 2008 RDMA, *supra* note 72, annex K, paras. 5-6.

to preserve domestic consumer price stability and to ensure food security, shall be permitted to maintain or use monopoly powers for agricultural exports.”⁸⁹

c. Food Aid

With respect to food aid, members have agreed in the July Package to eliminate food aid transactions not in conformity with the disciplines to be negotiated. The objective of such disciplines will be the prevention of commercial displacement.⁹⁰ Since the sort of issues to be discussed mainly relate to the role of international organizations and provision of food aid in grant form, it seems that these disciplines would aim at targeting US food aid programs.⁹¹

USA is accused of disposing food surpluses through general development aid programs. Food in kind is granted to developing country governments and US NGOs (to be monetized and sold very cheap in the recipient country) regardless of the existence of an emergency situation i.e. the timing of the disbursement of food aid has nothing to do with the food aid needs of the country concerned. What is more, the countries in dire need of food aid are the actually least beneficiaries of US-food aid. This is because these countries are not seen by the US as potential commercial outlets for its exports.⁹² Indeed most of the recipient countries of US food aid prefer genuine development assistance in cash to use in accordance with their policy priorities to food in kind. Food aid in cash greatly promotes local and regional acquisition of food, at the discretion of the recipient country. It is said that the current US system of aid tied to the discharge of their food surpluses negatively affect the food security situation of the recipient countries in the long-term.⁹³

Developing countries that are recipients of either the emergency or non-emergency food aid have expressed their worry over the potential negative impact on the availability of food aid.⁹⁴ Ministers agreed in Hong Kong to provide a "safe box" for bona fide food aid

⁸⁹ *Id.* annex K, para. 6.

⁹⁰ The July Package, *supra* note 66, para. 18.

⁹¹ Detailed Analysis, *supra* note 68, pt. II, pp. 13-14.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Training Tool, *supra* note 3, at 58.

to deal with emergency situations. They also agreed that the disciplines on food aid will include appropriate provision in favor of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision.⁹⁵ Outside that, they agreed to eliminate commercial displacement through effective disciplines on in-kind food aid, monetization (i.e. selling parts of the food to cover for example transport expenses) and re-exports.⁹⁶ With this objective in mind, the May 2008 RDMA includes the following general proposals:⁹⁷

- all food aid needs to be needs-driven and fully in grant form,
- all food aid should not tied directly or indirectly to commercial exports of agricultural products or of other goods and services and should be delinked from market-development objectives of donor countries,
- in-kind aid should not have an adverse effect on local or regional markets and;
- Members should make “best efforts” to move to cash-based food aid.

3.3.2. Export competition: Ethiopian Context

3.3.2.1. Export subsidies proper

As a result of the policy adjustments implemented by the Ethiopian government since 1991, export subsidies were abolished and the country does not currently maintain any export subsidy in the agricultural sector.⁹⁸ According to the existing provisions of the AoA, no country that did not have export subsidy in the base period --almost by definition developing countries--has the right to introduce them afterwards.⁹⁹ The rules emerged out of the Doha Round are even more stringent than the present tendency of the multilateral trading system is towards eliminating export subsidies once and for all.

⁹⁵ The HKMD, *supra* note 69, para. 6.

⁹⁶ *Id.*

⁹⁷ The May 2008 RDMA, *supra* note 72; annex L, paras. 2-5.

⁹⁸ Derk Bienen et al., *Programme to Support the Integration of the ACP States into the Multilateral Trading System of the WTO: Support to Ethiopia in its Accession Process to the WTO (contract no. 7 ACP-RPR-753 project n°39b) Impact Study on WTO Accession*, 37 (Sept. 10, 2005).

⁹⁹ Backgrounder, *supra* note 18; see also *supra* notes 18-21 and accompanying text.

Members have already agreed to eliminate their scheduled export subsidies by the end of 2013.¹⁰⁰ The following accession cases also verify this trend.

Cambodia, an LDC, has agreed to eliminate agricultural export subsidies on accession by binding them at 0% due to sustained pressures from countries like Australia.¹⁰¹ The same goes to Nepal which does not have any export subsidy commitment.¹⁰² This might not be surprising as neither Cambodia nor Nepal has previous export subsidies for agricultural products. On the other hand, for the year 1999–2001 Viet Nam provides approximately US\$73 million per year in export subsidies which is pretty less in comparison to the US\$6–7 billion a year that rich countries spend on export subsidies and cheap export credits.¹⁰³ Hence, one might expect that Viet Nam would be allowed to use export subsidies since the AoA prohibits the use of export subsidies only by countries that did not use them before. However, its accession package proves otherwise. As a result of pressure from some Working Party Members (led by Australia and New Zealand, representing the Cairns group, together with the USA) not only did Viet Nam agree to eliminate all its agricultural export subsidies but to do that at the moment of accession¹⁰⁴ a WTO-plus commitment which goes well beyond the obligations of both existing developed and developing country members. This commitment will effectively seal off Cambodia's, Nepal's and Viet Nam's right to introduce export subsidies on any agricultural product in the future should this be necessary in order to protect the livelihoods of poor farmers or achieve development priorities.

The fact that Ethiopia does not currently maintain any export subsidy in the agricultural sector might mean that in acceding to WTO the Country would not be allowed to use export subsidies in the future.¹⁰⁵ Export development is very much at the center of the

¹⁰⁰ The HKMD, *supra* note 69, para. 6.

¹⁰¹ *Report of the working party on the accession of Cambodia*, WTO Doc. wt/acc/khm/21/add.1 (Sept. 11, 2003) [hereinafter Cambodia], available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/ACC/KHM21.doc>

¹⁰² Training tool, *supra* note 3, at 93.

¹⁰³ S. LEETMAA, U.S. DEPARTMENT OF AGRICULTURE, THE EFFECTS OF ELIMINATING EU EXPORT SUBSIDIES (2001), available at <http://www.ers.usda.gov/publications/aer802/aer802k.pdf>

¹⁰⁴ *Report of the Working Party on the Accession of Viet Nam*, WTO Doc. WT/ACC/VNM/48 (Oct. 27, 2006) [hereinafter Vietnam], available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/ACC/VNM/48.doc>

¹⁰⁵ Bienen et al., *supra* note 98, at 37; see also *supra* notes 18–21 and accompanying text.

Ethiopian Government's growth strategy - re-affirmed in the Interim Poverty Reduction Strategy Paper (I-PRSP) and in the Federal Government Action Plan. For a country like Ethiopia with a small urban population, agricultural exports provide an opportunity to achieve more rapid agricultural growth than is afforded by reliance on domestic market demand. Besides an increase in demand, there are other benefits from exports. For instance, exporters are exposed to the discipline of world markets as well as to innovations in products and processes. This, together with the development of business networks, favors the flow of knowledge and skills, which increases productivity. Export receipts ease foreign exchange constraints, allowing a country to import capital and intermediate goods that cannot be domestically produced. This can lead to high rates of investment growth within a sustainable balance of payments.¹⁰⁶ Consequently, improving the export sector is very crucial to Ethiopia so that it can achieve rapid economic development. In an effort to improve the sector, the Country might and will necessarily need providing export subsidies. The fact that Ethiopia does not grant export subsidy now does not mean that it won't in the long-term. The commitment Ethiopia undertakes on accession should not have deprived of the country the policy space it might need in the event it becomes necessary to grant export subsidies.

However, the above accession cases together with the rules emerging from the current negotiations (which are focused on eliminating export subsidies ones and for all) indicate that it is actually very unlikely that Ethiopia will be allowed to grant export subsidies. In spite of this state of affairs, the July Package and the HKMD provides that developing countries still continue to benefit from article 9.4 of the AoA which in fact serves Ethiopia's interest.¹⁰⁷ Hence, in its accession negotiation, Ethiopia can reasonably argue at least for the use of such export subsidies for justifiable time in order to achieve its poverty reduction and development goals. For example, the government can help to market a new product which is important to poor farmers, or to cover agricultural transportation costs from remote areas where the incidence of poverty is highest and agriculture is the main source of household income.

¹⁰⁶ COUNTRY DEPARTMENT FOR ETHIOPIA, WORLD BANK, REPORT NO. 23294-ET, THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA: DEVELOPING EXPORTS TO PROMOTE GROWTH ii (Apr, 2002).

¹⁰⁷ See *supra* notes 70-74 and accompanying text.

In addition to the above impact on accession, the elimination of export subsidies has also important implications on Ethiopia whether or not it accedes to the WTO. One of the consequences of the removal of export subsidies will most likely be reduction of global production. This puts upward pressure on prices of exports currently receiving the subsidies which includes the most basic food such as wheat, beef, coarse grains, dairy products and sugar. Hence, in the short-term, the elimination of export subsidies could be harmful to the development interests of many African countries (especially for the net food importers) as well as Ethiopia.¹⁰⁸

During the conclusion of the Uruguay Round in 1994, WTO member states signed the Marrakesh Decision which provides for assistance to the net food importing developing countries (NFIDCs) and least developed countries (LDCs). The Decision arose due to a concern that the implementation of the Agreement on Agriculture would cause negative impacts on NFIDCs and LDCs largely through increases in food import bills due to the expected increase in food prices.¹⁰⁹ The reduction of export subsidies by the US and EU under the AoA commitments were of most concern for the LDCs and NFIDCs, which they have relied on as a significant source of cheap food and often related to concessional food aid.¹¹⁰ High prices affect the food aid system in a way which is counter-cyclical, that is to say, when food prices are high food aid declines. To some extent this is because food aid is used as a way to get rid of excess from northern markets.¹¹¹ The reduction in export subsidies was expected to increase the world commercial prices of basic foodstuffs and reduce the price concessions LDCs and NFIDCs had become used to receiving.¹¹²

However, given the long-term effect of cheap food imports as a disincentive to domestic production, it is wrong to assume that LDCs and NFIDCs were against establishing a discipline on the use of export subsidies. Their main concern for them was not the

¹⁰⁸ ISABELLA MAMATY, ICTSD, RESOURCE PAPER NO 3, AFRICAN COUNTRIES AND THE AGREEMENT ON AGRICULTURE: WHAT SCOPE FOR SUSTAINABLE DEVELOPMENT? 20 (2002).

¹⁰⁹ ACTION AID, THE MARRAKESH DECISION I, [hereinafter The Marrakesh Decision], available at <http://trade.ec.europa.eu/doclib/html/122239.htm> (last visited Aug. 28, 2008).

¹¹⁰ *Id.*

¹¹¹ AMY BARRY, OXFAM INTERNATIONAL, OXFAM INTERNATIONAL POSITION ON FOOD PRICES (Apr. 2008), available at http://www.oxfam.org/.../bpoxfam_food_prices_briefing_April2008

¹¹² The Marrakesh Decision, *supra* note 109, at 1.

reduction of export subsidies per se. but rather to ensure that there would be adequate measures in place to assist them with the adjustment costs.¹¹³ In the short run, LDC's like Ethiopia will not necessarily be the beneficiaries of large scale reductions in the level of export subsidization. The elimination of export subsidies will likely benefit primarily big agricultural products exporting countries such as the US and Cairns group.¹¹⁴ In fact several studies on the impact of the AoA commitments explained that even though the world would gain as a whole, the LDCs and NFIDCs, however, would be the major losers. Until now, despite calls by affected countries the Marrakesh Decision has not been sufficiently implemented for various reasons.¹¹⁵

LDCs and some designated Sub-Saharan African countries were acknowledged by the WTO as net food-importing developing countries (NFIDC) entitled for assistance under the Marrakesh Decision.¹¹⁶ That is the very reason why most African countries stressed the need to eliminate all forms of export subsidies on condition that there is an operational mechanism to assist net food importers to support the possible negative effects.¹¹⁷ As a solution to this problem they Calls for the immediate implementation of the Marrakesh Decision on NFIDCs and LDCs.¹¹⁸

As Ethiopia is one of the SSA LDC's which is frequently affected by draughts, it is very likely that the elimination of export subsidy without any safeguard mechanism might harmfully affect its economy in the short-run since it would not be able to buy products like wheat at a relatively cheaper price. Moreover, it is to be expected that the more expensive agricultural products become the less prepared donor countries will be to provide food aid at least to the previous extent.

¹¹³ *Id.* at 1-2.

¹¹⁴ Bienen et al., *supra* note 98, at 49.

¹¹⁵ The Marrakesh Decision, *supra* note 109, at 2.

¹¹⁶ MAMATY, *supra* note 108, at 19.

¹¹⁷ *Id.* at 20.

¹¹⁸ *State of Play in Agriculture Negotiations: Country Groupings Positions-Export Competition Pillar*, South Centre Doc. SC/AN/TDP/AG/1-3 (Nov. 2006).

3.3.2.2. Other measures of export support

a. Export credit practices

The economic policy adopted by the Government of Ethiopia is ADLI where agriculture plays the leading role in the growth of the economy. The immediate need for the agricultural development is to enhance food security. However, when the food security of the Country is improved, the surplus agricultural products would be more and more oriented towards exports owing to the limited domestic market.¹¹⁹ To achieve this goal the strategy recognizes the role of the private sector in processing agricultural products and in agricultural marketing. As a result, the Government's reform policies and programs are aimed at facilitating and expanding this sector's activity so as to make it internationally competitive.¹²⁰ Ethiopian exporters indeed "need to compete on an equal footing with other exporters in increasingly competitive foreign markets and satisfy foreign buyers' requirements." It is also "necessary that exporters with bona-fide export orders should not lose the export opportunity due to inability to get bank credit." In line with this objective an Export Credit Guarantee Scheme has been established by the National Bank of Ethiopia (NBE).¹²¹ The scheme plays a significant role in supporting the export sector by facilitating exporters' access to bank credit for pre and post-shipment of exports. It aims to encourage banks to provide non-coffee exporters with short-term credit for working capital requirements relating to exporting of all products other than coffee.¹²²

According to the 2007 directive of the National Bank of Ethiopia on Export Credit Guarantee Scheme, the credit granted is equivalent to the total value of the previous year export proceeds without any collateral requirement for existing exporters and with 40% and 50% collateral requirement for new producer exporters and new exporters

¹¹⁹ IMF, COUNTRY REPORT NO. 04/37, THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA: POVERTY REDUCTION STRATEGY PAPER-ANNUAL PROGRESS REPORT 20 (Feb. 2004).

¹²⁰ *Id.* at 87.

¹²¹ *Directives to Transfer Duties and Responsibilities Related to Establishment and Operation of Export Credit Guarantee Scheme from the National Bank of Ethiopia to Development Bank of Ethiopia*, preamble, Directive No. SBB/41/2007 (Feb. 1, 2007).

¹²² *See generally Id.*

respectively.¹²³ The post-shipment guarantees are provided to a maximum of 180 days which is compatible with what is agreed in Hong Kong. The pre shipment guarantees, on the other hand, are provided for a maximum of 365 days which contrary to what WTO Members have agreed in the July Package and the Hong Kong Ministerial Declaration.¹²⁴ However, one must take note of the fact that members have also reached an agreement in that they will “ensure that the disciplines on export credits, export credit guarantees or insurance programs to be agreed will make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries” as provided for in paragraph 4 of the Marrakesh Decision.¹²⁵ In the May 2008 RDMA, LDCs and NFIDCs are allowed to grant allowances for a repayment period of between 360 days and 540 days as long as the program is used for the acquisition of basic foodstuffs.¹²⁶ Thus, as a country with a very low level of economic development Ethiopia can and should avail itself of the S&D provisions in this regard to its benefit in the forthcoming accession negotiation.

Last but not least, it is important to note that cereals account for almost half of the subsidy element of all used export credits.¹²⁷ This fact implies that countries with serious food security problems like Ethiopia may be able to import cereals at relatively attractive financial arrangements. This is particularly important in situations when food prices suddenly rise as Ethiopia has experienced for the year 2007-2008. Therefore, it should as well be kept in mind that, irrespective of its accession to the WTO, the elimination of the subsidy element in export credits would hurt Ethiopia in the short-term.

b. STEs

In Ethiopia the sugar industry has been under state ownership for almost three decades with heavy centralization of resources and decision-making by central government. It is the Government that fixes the factory gate price of sugar for the domestic market and nearly all the revenue from this monopoly right is taken by the Sugar Development Fund

¹²³ *Id.* arts. 2 (1) 5-2 (1) 6.

¹²⁴ *Id.* arts. 1(14) -1 (15)

¹²⁵ The July Package, *supra* note 66, para. 24; The HKMD, *supra* note 69, para. 6.

¹²⁶ The May 2008 RDMA, *supra* note 72; annex J, para. 5.

¹²⁷ Training Tool, *supra* note 3, at 56.

(SDF) on which enterprises have no authority. In addition all activities related to marketing of the industry are carried out by the Ethiopian Sugar Development Agency.¹²⁸

Unlike the AoA the Doha Round negotiations seem to bring stringent disciplines on exporting STEs.¹²⁹ Thus, the monopoly power exercised by the Government of Ethiopia in the purchase and sale of sugar can indeed be a subject of contention in the accession negotiation. It should be noted that STE's have an important food security role in developing countries and as most developing countries are small trading nations, STEs can also provide them with the economies of scale to compete effectively in international markets.¹³⁰ Thus, it would be unfortunate if the accession negotiations led to binding provisions that circumscribed the ability of Ethiopia to effectively operate agricultural exporting STEs.

However, in recognition of the significance of STEs in preserving domestic consumer price stability and ensuring food security, the July Package asserts that developing country members will receive special consideration for maintaining the monopoly status of STEs.¹³¹ Accordingly, the May 2008 RDMA provides:

Where a developing country Member has an agricultural exporting state trading enterprise with export monopoly powers, that enterprise may continue also to maintain or use those powers, even if the purpose for which that enterprise has such privileges could not be deemed to be characterized by the objective: 'to preserve domestic consumer price stability and to ensure food security',¹³²

The text goes even further and allows LDCs to maintain or use monopoly powers of agricultural exporting state trading enterprises whether or not they enjoy such special privileges to preserve domestic consumer price stability and to ensure food security.¹³³

¹²⁸ 2 ETHIOPIA: TRADE AND TRANSFORMATION SYNTHESIS DIAGNOSTIC TRADE INTEGRATION STUDY-FINAL VERSION 78 (2004), available at http://www.integratedframework.org/files/ethiopia_dtis-vol2_july04.pdf; See also generally *A Proclamation for the Establishment of the Ethiopian Sugar Development Agency*, FEDERAL NEGARIT GAZETA. Proclamation No. 504/2006.

¹²⁹ See *supra* notes 85-86 and accompanying text.

¹³⁰ PEARCE & SHARMA, *supra* note 49, at 12.

¹³¹ The July Package, *supra* note 66, para. 25.

¹³² The May 2008 RDMA, *supra* note 72; annex k, para. 5.

¹³³ *Id.* annex k. para. 6.

Consequently, Ethiopia can reasonably request for the ability to maintain the monopoly status of the government in the purchase and sale of sugar at least for some time.

Moreover, any commitment Ethiopia undertakes on accession must reflect the Country's long-term interests. The Country might be faced in a situation where it might be necessary to use agricultural exporting STEs other than that of the sugar sector. Thus, Ethiopia should also request for the capacity to keep monopoly powers of agricultural exporting state trading enterprises in other sectors too. This will allow the Country to have the required policy space in case a need arises in the future.

It should also be emphasised that even if Ethiopia will not join the WTO, the elimination of subsidy elements in developed countries exporting STEs is beneficial to Ethiopia's agricultural sector in the long-term.

c. Food aid

Ethiopia has always been a major recipient of humanitarian food aid till to date. In January 2009, the Ethiopian Government with its humanitarian partners identified a total of 4.9 million beneficiaries that require emergency assistance in the year through the joint needs assessment conducted in November/December 2008. Out of the total needy population 68% are from Somali, SNNPR and Amhara Regions. A total of 591,503MT of food is required to address the needs of the identified beneficiaries. Out of this amount 140,892 MT was already available as a carryover stock from 2008, bringing the net food requirement to 450,611MT.¹³⁴

In addition, provision of supplementary food to children less than five years of age and pregnant women need to be considered and will continue since cases of malnutrition continued to be reported from various regions. Accordingly, 1.2 million beneficiaries that would require special attention will be provided with 30,327 MT of supplementary food with an estimated cost of USD 26,202,528. In response to the 2009 humanitarian requirements document, donors contributed a total of 275,978 MT of food, including

¹³⁴ *Review of the 2009 Humanitarian Interventions*, DRMFS: DPPC-FORTNIGHT BULLETIN. Vol. 1, No. 2, May 29, 2009, at 1.

EOS/TSF, as at May 26, 2009. The contribution is worth USD 168,519,016. (See table 1 for details). This includes 87,910 MT given by USAID to NGOs for a joint emergency operation.¹³⁵

Table 1: Confirmed Donor Contributions for the 2009 Humanitarian Requirements
[Revised May 29, 2009]

Ser. No	Donor	value (USD)	Quantity MT					Implementer	Region	Remarks
			Cereal	Pulses	B.food	Oil	Total			
1	USAID	56,565,000	56,750	10,729	7,781	2,400	77,660	WFP/DMFSS CRS/IEOP		
		50,000,000	71,180	7,120	7,470	2,140	87,910			
2	Spain	11,927,577	21,591				21,591	WFP/DMFSS WFP/TSF		
		2,000,000	7,126				7,126			
3	DFID	9,685,673	17,825				17,825	WFP/DMFSS		
4	Germany	9,186,351	16,629				16,629	WFP/DMFSS		
5	EMMA	5,350,000	9,474				9,474			
6	Ukraine	580,000	1,000				1,000	WFP/DMFSS		
7	Canada	6,441,223	10,965				10,965	WFP/DMFSS		
8	EC	2,269,279			1,420	100	1,520	CCM	Somalia	
9	Japan	9,052,000	16,385				16,385	WFP/DMFSS		Estimated Qty
10	Ireland	273,020	500				500	Christian Aid	SNNP	Estimated Qty
11	CERF	2,996,943			2,464	627	3,091	WFP/TSF UNICEF/EOS	SNNP	Estimated Qty Estimated Qty
		2,123,950			2,192		2,192			
12	CFGB	2,066,000	1,718	172	180	40	2,110	FHI	B.Gumuz Oromia	
	Total	168,519,016	231,143	18,021	21,507	5,307	275,978			

Source: DRMFSS-DPPC

The table shows that the USA supplies over half of the food aid Ethiopia received.¹³⁶ As we have seen in the previous sections, the sort of issues to be discussed in the current negotiations mainly relate to the role of international organizations and provision of food aid in grant form. Since countries like USA are accused of disposing food surpluses through general development aid programs, it seems that these disciplines would aim at targeting US food aid programs.¹³⁷

¹³⁵ *Id.* at 1-2.

¹³⁶ *Id.*

¹³⁷ *See supra* notes 90-93 and accompanying text.

There is already a reasonable fear shared by many countries that the new rules on food aid may not allow countries from providing the necessary amount of food aid.¹³⁸ It is true that the current negotiation makes a distinction between emergency and non-emergency food aid and establishes a safe box for emergency food aid.¹³⁹ But still, after the coming in to effect of these new disciplines, donor countries (counting USA as one) would not have sufficient policy space to grant food aid to countries like Ethiopia at least to the previous extent. Thus, although the new rules that are appearing out of the current negotiations would benefit Ethiopia in the end, it is also undeniable that they will have a negative influence to the Country's economy in the short-term.

¹³⁸ Training Tool, *supra* note 3, at 59.

¹³⁹ *See supra* notes 94-95 and accompanying text.

1. Introduction

a. Background of the problem

The original GATT 1947 has given agriculture a special status which sheltered it from the full impact of GATT disciplines. This trend continued to date in the WTO where trade in agricultural products is still covered by a separate agreement.¹

The Uruguay Round agreements, however, limited the scope of the traditional agricultural exception. WTO Members reach a consensus on a set of principles and disciplines that were designed to help liberalise international trade in agricultural products.² Even though the provision of GATT covered trade in agricultural products, before the WTO there were quite a few important differences with regard to the rules that applied to agricultural primary products as opposed to industrial products.³ Although the original GATT did apply to agricultural trade, it contained loopholes. For instance, its provisions allowed countries to use some non-tariff measures such as import quotas, and to subsidize.⁴ The existence of physical import barriers did make market access for agricultural products to be limited. Moreover, the presence of substantial domestic subsidies in the developed countries led to overproduction of temperate crops. Together with the declining demand for temperate crops in these countries the overproduction in turn led to excess supply, and consequently export subsidies were used to dump the surplus agricultural output in international markets. This makes the prices of agricultural products to be very low in the international market. Consequently, although developing countries are low-cost producers of agricultural products, they were unable to compete with the subsidized exports from developed countries.⁵

¹ *Dispute Settlement: 3.15 Agriculture*, at 3, UNCTAD Doc. UNCTAD/EDM/Misc.232/Add.32 (2003).

² *Id.*

³ WTO, AGRICULTURE: EXPLANATION-INTRODUCTION [hereinafter Introduction], available at http://www.wto.int/english/tratop_e/agric_e/ag_intro00_contents_e.htm

⁴ WTO, UNDERSTANDING WTO 26 (3rd ed. 2007), available at <http://www.wto.org >trade topics > goods > agriculture>.

⁵ PARTHAPRATIM PAL, IMPLEMENTATION ISSUES OF THE AGREEMENT ON AGRICULTURE AND ITS IMPLICATIONS FOR DEVELOPING COUNTRIES 1 (2002), http://www.networkideas.org/themes/agriculture/sep2002/ag09_AOA.htm

During the Uruguay Round negotiation, it has become more and more evident that the causes of disorder in world agriculture went beyond import access problems which had been the traditional focus of GATT negotiations. To solve the core of the problems, disciplines concerning all measures affecting trade in agriculture, including domestic and export subsidies, were considered to be vital.⁶ The AoA was an attempt to impose discipline on global agricultural trade by removing trade distortions resulting from unrestricted use of production and export subsidies and import barriers, both tariff and non-tariff.⁷ Its “long-term objective” is to “establish a fair and market-oriented trading system through a program 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.”⁸

Despite considerable progress, however, empirical evidence shows that the actual impact of AoA on agricultural policies has been far less than expected. In short the URAA leaves much to be desired.⁹

In the face of protectionism left mostly unresolved by the URAA, the Doha Ministerial Declaration of 2001 launched new negotiations on a range of subjects, including agriculture, on which negotiations had begun earlier under the “built-in agenda” of the Uruguay Round.¹⁰ The Agreement on Agriculture incorporated in Article 20 the mandate to continue the reform process to achieve “the long-term objective of substantial progressive reductions in support and protection.” At the fourth WTO Ministerial Conference in Doha, this mandate was reaffirmed and trade ministers committed the WTO 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.”¹¹

⁶ Introduction, *supra* note 3.

⁷ PAL, *supra* note 5, at 1-2.

⁸ The Agreement on Agriculture, Apr. 15, 1994, pmble. [hereinafter the AoA], available at http://www.wto.org/english/docs_e/legal_e/14-ag.pdf.

⁹ Cody A. Thacker, *Agricultural Trade Liberalization In The Doha Round: The Search For A Modalities Draft* 33 Ga. J. Int'l & Comp. L. 721, 733(2005).

¹⁰ *Training Tool for Multilateral Trade Negotiations on Agriculture*, at 7, UNCTAD Doc. UNCTAD/DITC/TNCD/2006/7 (Mar. 2007) [hereinafter Training Tool].

¹¹ *Ministerial Conference: Fourth Session Doha, Ministerial Declaration*, para. 14, WTO Doc. WT/MIN(01)/DEC/1 (Nov. 20, 2001), available at http://docsonline.wto.org/gen_search.asp?searchmode=simple.

After the Doha Ministerial meeting, the negotiations went into the phase for establishing the “modalities”, namely the establishment of mechanisms that determine the new concessions and commitments for further agricultural liberalization.¹² In July–August 2004, the WTO General Council agreed on a “Framework for Establishing Modalities in Agriculture” that provides a basis for the further negotiations of full modalities in the next phase.¹³ At the Hong Kong Ministerial meeting in December 2005 further details to the framework were added.¹⁴

Even though the July Package brought the negotiations back on track and set out roadmaps and key benchmarks for the conduct of agricultural negotiations, details of formulas, targets and criteria were not specified and therefore the “modalities” were still left for further negotiations. WTO Ministers agreed on some additional issues at Hong Kong in December 2005, but again, there was no agreement on the most controversial aspects.¹⁵

Doha Round negotiations were anticipated to end with a single undertaking in December 2006 among 149 WTO Members. Nevertheless, negotiations were suspended in July 2006 mainly as a result of differences in agriculture with major trading partners. The Doha-Round negotiations were resumed in all negotiating groups in January/February 2007 despite the fact that there has been little or no evidence that the impasse has been settled.¹⁶

b. Statement of the problem

Agriculture is the lifeblood of the economy and livelihood of a substantial number of the population of Ethiopia. For thousands of families, farming is not an occupational choice; it is the only means of survival. The sector accounts presently for about 45% of the GDP and 85% of employment. It also plays a crucial role in providing raw materials to the local industry. The Ethiopian agriculture is basically comprised of smallholder farming which accounts for more

¹² Training Tool, *supra* note 10, at 8.

¹³ *Doha Work Program: Decision Adopted by the General Council on 1 August 2004*, WTO Doc. WT/L/579 (Aug. 2, 2004) [hereinafter the July Package], available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

¹⁴ *Ministerial Conference: Sixth Session Hong Kong, Ministerial Declaration*, WTO Doc. WT/MIN(05)/DEC (Dec. 18, 2005).

¹⁵ Training Tool, *supra* note 10, at 8-9.

¹⁶ *Id.*

than 90% of the agricultural production and 95% of the total area under crop.¹⁷ Similar to other Least Developed Countries (LDCs) in Africa, Ethiopia's exports to the international market is also dominated by commodities that are mainly primary goods. Actually, currently, around 90% of the total foreign exchange earnings and 80% of total exports comprised of agricultural products.¹⁸

Agriculture should and can provide the first step on the development ladder. A sustainable, fair system of farming and farm labor can feed poor families, generate income, put children through school and create dynamic internal markets, laying the foundations for a better future for a large proportion of Ethiopians. For a very poor country like Ethiopia other sources of growth may exist, but few can match agriculture in its ability to reduce poverty and fuel wider economic development. Without the increasing incomes and affordable food that a dynamic agricultural sector provides, economic transformation will be sluggish and economies will remain trapped in a cycle of low growth and poverty.

As a result, and because Ethiopia is presently in the process of acceding to the WTO, the Agreement on Agriculture (AoA) and mandated negotiations under the agreement are of great importance. As an acceding country, Ethiopia needs to follow progress in the Doha Round. This helps, firstly, to measure how the eventual Doha outcome of reforms by WTO members will benefit its economy and, secondly, to anticipate how the Doha agreements will increase WTO member expectations of the commitments currently-acceding countries should make.¹⁹

The Doha negotiation is expected that it would lead to the reduction in the imbalances resulting from the AoA and to an improvement in market access. It is primarily in the interest of Ethiopia if WTO members fully address its development concerns while negotiating new agreements. Unfortunately however, international trade rules in agricultural remain hugely imbalanced. The implementation of the Agreement on Agriculture, whose aim was to "establish a fair and market-

¹⁷ AGRICULTURE: BACKGROUND OF THE AGRICULTURE SECTOR, http://www.ethiomarket.com/eic/opportunities_agriculture1.htm

¹⁸ *Id.*

¹⁹ 'The Doha Development Agenda: Progress and Prospects' (a paper presented in 4-day course on "Agricultural Trade Policy and WTO" Tehran 15-18 May 2005), http://www.google.com/search?sourceid=navclient&ie=UTF8&rlz=1T4RNWN_enUS228US231&q=The+Doha+Development+Agenda%3a+Progress+and+Prospects+Agricultural+Trade+Policy+and+WTO+Tehran+2005 (last visited Nov. 3, 2008).

oriented trading system”, has been disappointing to many African countries. The expected expansion of market access opportunities has not been forthcoming. Developed countries are still known to make extensive use of Agricultural subsidies resulting in an imbalance in the international market.²⁰ In fact, the levels of producer support in rich countries increased from 1986 to 2001. Farmers in developed countries received a total of around \$260 billion subsidy per year which is fifty times greater than the GDP of the Central African Republic. The EU alone provides about \$100 billion per year to its domestic producers, or twice the entire GDP of Ethiopia.²¹

Recognizing that global trade rules have been failing poor countries, the current round of world trade negotiations put development at its heart when it began in Doha several years before. However, the more powerful countries appear to have forgotten the development agenda in their negotiations and the fear is that the Doha Round will create new inequities against developing countries.²²

A recent study by the World Bank indicates that the benefit from Doha round goes only to a few large developing countries such as Argentina, Brazil, and India while “Bangladesh and many African countries benefiting from preferences are likely to face losses.”²³ Similarly, the Carnegie study by Sandra Polaski affirmed that the losers in agricultural liberalization comprise many of the world’s LDCs, including Bangladesh and the countries of East Africa and the rest of Sub-Saharan Africa.²⁴

The realization of these predictions will make small farmers in Africa continuing to suffer from rich-countries dumping. In the absence of substantial reductions in domestic support and

²⁰ ISABELLA MAMATY, ICTSD, RESOURCE PAPER NO 3, AFRICAN COUNTRIES AND THE AGREEMENT ON AGRICULTURE: WHAT SCOPE FOR SUSTAINABLE DEVELOPMENT? 2 (2002).

²¹ JENIFFER BRANT, OXFAM INTERNATIONAL, BRIEFING PAPER 80, AFRICA AND THE DOHA ROUND 13 (2005).

²² MATTEW GRIFFITH & DEBBLE WAINWRIGHT, CAFOD, WHOSE ROUND IS IT ANYWAY? AN IMBALANCING ACT – THE WTO, AGRICULTURE AND THE NEED TO PROTECT SMALL-SCALE FARMERS 3, www.cidse.org/docs/200609041133459543.pdf (last visited Apr.20.2008).

²³ AILEEN KWA, FOCUS ON THE GLOBAL SOUTH, RECENT ASSESSMENTS: AFRICA TO LOSE OUT FROM WTO NEGOTIATIONS, EVEN IN AGRICULTURE (2006), http://wto.tralac.org/pdf/20060704_Recent_Assessments_Africa.doc (last visited May 10, 2008).

²⁴ SANDRA POLASKI, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, WINNERS AND LOSERS: IMPACT OF THE DOHA ROUND ON DEVELOPING COUNTRIES 32 (2006).

effective market access, many small farmers will be unable to survive and will have to leave their land.²⁵

The challenge of the Doha Round is to reach a fair settlement that narrows the gaps – especially between developed and developing countries. This entails responsible leadership by the world’s richest and most powerful countries. A reasonable settlement requires affluent and powerful partners to make concessions relative to their ability to bear the burdens involved.²⁶ Unless preference dependent countries are given special consideration by the current trade liberalization process, the ensuing costs to them may be larger than the benefits.²⁷ The record so far is not good. A tilted agenda and inadequate attention to development needs meant that the last round of WTO negotiations created outcomes profoundly imbalanced against the interests of developing countries. Nowhere is this inequity severe than in agriculture.²⁸

c. Objective of the study

The objective of the paper is to identify the contentious issues in the current Doha negotiations on agricultural products and examine their implications on its accession negotiations and also their probable impact on the Ethiopian economy irrespective of the Country’s accession to the WTO. These include all the three pillars of AoA i.e. areas of market access, domestic support and export subsidies. In line with this objective the study attempts to:

- evaluate the salient elements of the AoA in relation to market access, domestic support and export competition and examines the difficulties encountered during its implementation. This is because the current negotiation on agricultural products is based on problems observed in the implementation of AoA.
- analyze the various negotiating positions and discusses the provisions in the July Package and Hong Kong Ministerial Declaration as well as proposals in the May 2008 RDMA and

²⁵ BRANT, *supra* note 21, at 14.

²⁶ GRIFFITH & WAINWRIGHT, *supra* note 22, at 4.

²⁷ FAO, TRADE POLICY BRIEF NO.7, NON-RECIPROCAL AGRICULTURAL TRADE PREFERENCES 7
<<ftp://ftp.fao.org/docrep/fao/008/j5424e/j5424e00.pdf>>

²⁸ GRIFFITH & WAINWRIGHT, *supra* note 22, at 4.

examine their likely impact, if implemented, on Ethiopia regardless of its accession to the WTO and their implications in its forthcoming accession negotiations.

- draw recommendations and strategies for the formulation of position of the Government of Ethiopia in accession negotiation.

d. Significance of the study

As Ethiopia is currently in the process acceding to the WTO, the proposed research paper will be a timely contribution to the on going accession processes. The researcher of this study believes that the study conducted will trigger further investigations in this area so that more problems will be identified along with more solutions as the findings of this study are by no means final.

e. Scope and limitations of the study

The domain of this study is solely confined to the Doha agricultural negotiations with respect to the AoA in the areas of market access, domestic support and export Competition. However the research does not attempt to provide an exhaustive account in connection with this but rather to shed light on the main pillars of the AoA. Furthermore, since different factors pose constraints to the successful Achievement of any research this study is subjected to a number of limitations. These are among others lack of relevant and topical reference materials, page limitations time and financial constraints.

f. Methodology and chapter overview

The study will be a library based with different views given greater scrutiny. The study will rely both on primary and secondary sources. On primary sources, regard will be given to the AoA and other covered agreements of the WTO, the 2004 “Framework for Establishing Modalities in Agriculture” the Hong Kong Ministerial Declarations and the May 2008 Revised Draft Modalities for Agriculture. As regards secondary sources, reference will be made to different books, background papers, discussion papers, scholarly articles and various internet sites. Reports from different organizations engaged in the area will also be considered.

The paper will embrace six chapters. The first chapter will give a general introduction and will state the problem. The second, third and fourth chapters will discuss respectively the main pillars of AoA-market access, domestic subsidy, export competition and other provisions of the AoA which includes the peace clause and export restrictions. Each of these chapters begins by examining the provision of the AoA and how they are implemented. This is because the current negotiations on agriculture are based on problems encountered during the implementation of the AoA. As such, it is imperative to know these problems for the proper understanding of the proposals of reform in the current negotiations. Then, the various proposals of the current Doha negotiations in relation to the AoA and their implications on Ethiopia, regardless of its accession to the WTO and on the negotiation for accession, will be discussed in each of these chapters. Lastly, conclusion will be given on the issues discussed in previous chapters.

4. Market Access

4.1. Background

Market access in agriculture “refers to the terms and conditions under which agricultural products could be imported into WTO member countries.”¹ The various forms of barriers established by countries against the importation of goods and services are generally of two types: tariffs and non-tariff barriers (NTBs).²

GATT has always been preferred tariffs over NTBs and Article XI prohibits NTBs with only very few exceptions.³ However, this has not deterred countries from resorting to quantitative restrictions. Indeed, non-tariff barriers of the sort prohibited under Article XI and not justified by either the agriculture-specific or general exceptions of GATT were the major obstacles to international agricultural trade. Bringing some discipline into this widespread use of non-tariff barriers was an important challenge in the area of agricultural trade.⁴

4.2. Market Access under the Agreement on Agriculture

4.2.1. Tariffication and Tariff Reduction Commitments

As NTBs were often maintained in violation of GATT rules, the logical outcome in the Uruguay Round should have been their elimination.⁵ However, the most that the Uruguay Round could do was introducing the process of tariffication through Article 4 of the Agreement on Agriculture (AoA) which prohibits members from using any of the

¹ Melaku G. Desta, *The Bumpy Ride towards the Establishment of “A Fair and Market-Oriented Agricultural Trading System” at the WTO: Reflections Following the Cancun Setback*, 8 DRAKE J. AGRIC. L. 489, 498 (2003).

² *Id.* at 498-499.

³ The General Agreement on Tariffs and Trade, Oct. 30, 1947, art. XI, [hereinafter GATT], available at http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47; Desta, *supra* note 1, at 499.

⁴ Desta, *supra* note 1, at 500.

⁵ *Id.*

measures of the kind which have been required to be converted to ordinary customs duties.⁶

Tariffication refers to a process by which non-tariff import barriers are converted in to their tariff equivalents regardless of whether such measures were maintained consistently with GATT rules. The tariff equivalents are created in such a way that the old levels of protection given through non-tariff barriers would still be guaranteed but through ordinary customs duties.⁷

The exceptions to this process are Article 5 and Annex 5 of the AoA which deals with the Special Agricultural Safeguard and Special Treatment respectively. While the former allow countries, in exceptional circumstances, to raise tariffs above the level stipulated in their Schedules, the latter permits a country to retain NTBs for certain sensitive products.⁸ The prohibited NTBs are quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing; non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties.⁹ These various forms of border measures have one thing they share in common in that “they restrict the volume or distort the price of imports of agricultural products.”¹⁰

The obligation to convert NTBs into tariff equivalents applies to all member states, including developing and least-developed countries. Converting the average rate of protection provided by NTBs during the base period (1986-88) into a tariff equivalent results in a base rate of duty for each product covered by the agreement.¹¹

⁶ The Agreement on Agriculture, Apr. 15, 1994, art. 4, [hereinafter the AoA], available at http://www.wto.org/english/docs_e/legal_e/14-ag.pdf

⁷ MELAKU G. DESTA, THE LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS: FROM GATT 1947 TO THE WTO AGREEMENT ON AGRICULTURE 67 (2002).

⁸ The AoA, *supra* note 6, art. 5 & annex 5.

⁹ *Id.* at n.art. 4(2).

¹⁰ *Chile: Price Band System and Safeguard Measures Relating to Certain Agricultural Products-Report of the Appellate Body*, para. 63, WTO Doc. WT/DS207/AB/R (Sept. 23, 2002).

¹¹ *Modalities for the Establishment of Specific Binding Commitments under the Reform Program*, paras. 4-5, GATT Doc. MTN.GNG/MAIW/24 (Dec. 20, 1993) [hereinafter Modalities].

The resulting tariffs from tariffication (acting as a base rate of duty for individual agricultural product) were also bound against any future increase and then subjected to reduction commitment.¹² Developed countries committed themselves to a 36% minimum reduction on the average tariff levels (and a 15% minimum per tariff line) over a six year implementation period.¹³ For developing countries, the reduction rate is two-thirds of the above percentages over a ten-year implementation period.¹⁴ Least-developed countries are not required to cut the base rate of duty.¹⁵

The base rate of duty for products which are previously subjected to ordinary customs duties only is established as follows. If a product that was already subject to a bound tariff (i.e. with an upper ceiling) during the base period that bound rate acts as the base rate of duty. For products with unbound tariffs, on the other hand, the tariff rates prevailing on 1 September 1986 were served as the starting point.¹⁶

Developing countries which had unbound ordinary customs duties was given the option of offering ceiling bindings on these products.¹⁷ A significant proportion followed this course of action.¹⁸

4.2.2. Dirty Tariffication and Tariff Peaks

The aim of tariffication was to improve market access through the introduction of bound tariffs which were not more protective than the non-trade barriers that existed in the base period.¹⁹ Nevertheless, a study by the Organization for Economic Co-operation and Development (OECD) on border protection indicated that in eight of the ten OECD countries (EC as one) the actual border protection to agriculture was higher in 1996

¹² ECONOMIC RESEARCH SERVICE, U. S. DEPARTMENT OF AGRICULTURE, EUROPEAN UNION: ISSUES AND ANALYSIS: MARKET ACCESS COMMITMENTS, *available at* <http://www.ers.usda.gov/Briefing/archive/EuropeanUnionpre2008/EuropeanUnionBriefingRoom2001-07.pdf> (last visited Oct. 27, 2008).

¹³ Modalities, *supra* note 11, para. 5.

¹⁴ *Id.* para. 15.

¹⁵ *Id.* para. 16.

¹⁶ *Id.* para. 3.

¹⁷ *Id.* para. 14.

¹⁸ FAO, THE IMPLICATIONS OF THE URUGUAY ROUND AGREEMENT ON AGRICULTURE FOR DEVELOPING COUNTRIES, *available at* <http://www.fao.org/docrep/005/Y4632E/y4632e04> (last visited June 02, 2008).

¹⁹ DESTA, *supra* note 7, at 67.

compared to 1993.²⁰ The high tariff rate in the agricultural trade is a result of what is known as “dirty tariffication”. It becomes a common practice for countries to intentionally overestimate equivalent tariffs by inflating the gap between domestic and international prices. Countries usually resort to dirty tariffication in order to set the base tariffs for certain sensitive commodities at levels that provided greater protection than had existed in 1986-88.²¹

In addition, even though the average tariff in the developed countries is low, a majority of these countries have managed to maintain a very high level of tariff rates on sensitive products using the considerable flexibility in interpretation they are allowed in the AoA.²² The commitment of developed countries to reduce tariffs by 36% was based on a simple average.²³ Accordingly, these countries have managed to achieve the 36% average reduction simply by making rather large cuts in tariffs for commodities that do not compete with domestic production or large percentage cuts in tariffs that were already very low with minimal cuts in politically sensitive products.²⁴ As a result many OECD countries have managed to impose tariff peaks going up to 500%!! on commodities such as beef, dairy, vegetables, fresh fruits, cereals, sugar, prepared fruits and vegetables, wine, spirits and tobacco.²⁵

4.2.3. Tariff Escalations

Tariff escalations refer to a situation where tariff increases with the advancement of the processing chain. Depending on the share of value-added in the final output this practice can result in a significant and effective protection to processed products²⁶ thereby

²⁰ PARTHAPRATIM PAL, IMPLEMENTATION ISSUES OF THE AGREEMENT ON AGRICULTURE AND ITS IMPLICATIONS FOR DEVELOPING COUNTRIES 11(2002), http://www.networkideas.org/themes/agriculture/sep2002/ag09_AOA.htm.

²¹ DESTA, *supra* note 7, at 75-76.

²² PAL, *supra* note 20, at 10.

²³ Modalities, *supra* note 11, para. 5.

²⁴ PAL, *supra* note 20, at 10.

²⁵ Alexander Werth, *OECD Policies, Poverty and Agricultural Development in SSA*, 16, www.egdi.gov.se/word/EGDI_presentation.ppt (last visited oct.21, 2008)

²⁶ COMMODITY POLICY AND PROJECTIONS SERVICE, FAO, AGREEMENT ON AGRICULTURE: OPTIONS TO SUPPORT FOOD SECURITY IN SUB-SAHARAN COUNTRIES 8.

discouraging exports of value-added commodities.²⁷ In a submission to the WTO some developing countries have made clear the problems of tariff escalation in the following words:²⁸

As a trade barrier, tariff escalation is becoming more and more of an issue since trade is rapidly shifting to processed products. Furthermore, this is also a major obstacle for developing countries interested in escaping from the cycle of producing and exporting primary products and earning less and less given the deteriorating terms of trade for primary commodities.

Tariff escalation prohibits diversification, which is very important for developing countries' economies, particularly as most of the value-added is created at the latter stages of production. Unfortunately, to date, due to the tariff structures in OECD countries, the value-added from processing is largely captured by the developed countries.

As trade is rapidly shifting to processed products, SSA countries have a strong interest on this matter because they are trying to escape from the circle of producing and exporting primary products.²⁹

Elimination of all OECD market distortions could increase SSA incomes by full 57% (subsidies only mere 5%). So far, most SSA countries are beneficiaries of zero-/low-duty market access under OECD preferential trading arrangements, for instance, Cotonou & EBA (EU), AGOA (US), Japanese or Canadian LDC schemes. Consequently, it is important to note that market distortions such as those created by tariff escalation and tariff peaks are a problem only when these schemes exempt certain sensitive products from their application.³⁰

However, protectionist OECD countries are under immense pressure at the WTO to substantially reduce tariff barriers in agriculture. The margins between MFN and preferential tariffs will gradually decrease as WTO Members such as Japan, EU and US reduce their tariffs.³¹ Even if the implementation of market access commitments did not

²⁷ PAL, *supra* note 20, at 11.

²⁸ *Market Access: Submission by Cuba, Dominican Republic, El Salvador, Honduras, Kenya, India, Nigeria, Pakistan, Sri Lanka, Uganda, Zimbabwe*, WTO Doc. G/AG/NG/W/37 (Sept. 28, 2000), available at http://commerce.nic.in/wto_sub/Agri/sub_g37.htm.

²⁹ FAO, *supra* note 26, at 8.

³⁰ Werth, *supra* note 25, at 17.

³¹ *Id.*

lead to considerable changes in tariff protection in term of tariff cuts, this should be regarded as the foundation for deeper cuts in agricultural protection in the future. Therefore, in the long-term, the market access commitments under the AOA have the effect of narrowing the margin between the preferential tariff rates granted under preferential schemes to developing countries particularly most African countries and the tariffs paid by other countries that are subject to reduction.³²

4.2.4. Complex Tariffs

Contrary to the UR's promise of a simple "tariff-only" regime, the post-UR agriculture tariff structure of several major developed countries is also complex. In addition to the in-quota and above-quota duties, non-*ad valorem* tariffs are used quite frequently.³³

Whereas *ad valorem* tariffs are expressed as a fixed percentage of the value of the goods (e.g. 5%), specific tariffs are fixed charges per unit of imported products (e.g. US\$ 2 per pound). There are also additional types of duties such as mixed tariffs (US\$3 per pound plus 7%) and alternative tariffs (e.g. 10% or, if higher, US\$3 per pound). Tariffs can as well be based on technical factors, for instance, alcohol or sugar content or on time of the year, that is to say seasonal tariffs which are raised or reduced regularly depending on the growing season of the importing country.³⁴

A specific rate is more practicable than an *ad-valorem* rate in valuing an import consignment for a customs purpose, e.g. in the case of live animals. It is also more predictable than an *ad-valorem* rate in calculating the amount of duties on agricultural products which are usually affected by market price fluctuations. However, in terms of tariff protection, a specific rate has a built-in effect of protecting against cheaper imports in such a way that the *ad-valorem* equivalent (AVEs) of a specific rate becomes higher, as

³² PAL, *supra* note 20, at 12.

³³ FAO, *supra* note 26, at 8.

³⁴ *Training Tool for Multilateral Trade Negotiations on Agriculture*, at 21, UNCTAD Doc. UNCTAD/DITC/TNCD/2006/7 (Mar. 2007) [hereinafter Training Tool].

the unit import price of a consignment gets lower.³⁵ Non-*ad valorem* tariffs are used more frequently in the agricultural sector than in other sectors.³⁶

Non-*ad valorem* tariffs create a difficulty in determining the exact protection levels that in turn have very severe market access-limiting effects.³⁷ Non-*ad valorem* tariffs are obviously less transparent than *ad valorem* tariffs which complicate the comparison of trade restrictiveness across products and countries, which is essential for trade negotiations. Complicating it further, the “entry price” system applied by the EC on fruit and vegetables, for instance, also uses seasonal tariffs³⁸ to protect domestic production of fruit and vegetables during the growing season.³⁹ The EU's highly complex import tariff regime aims several African countries which have lately gone into the production of non-traditional fruits and vegetables of temperate origin so as to diversify their agricultural exports and augment their hard currency earning. Rising costs of greenhouse heating and labor in developed countries and the fact that some African countries like Ethiopia, Kenya, and Uganda are located in high altitude regions suitable for growing cool season crops requiring mild temperatures have made tropical countries a favored alternative.⁴⁰ All through 1990s, imports of fresh fruits and vegetables by European Union countries have exceeded all other types of agricultural products. A number of African countries have seized advantage of this opportunity by diversifying their agriculture into the production of crops preferred by the EU.⁴¹

Therefore, since the developing countries including several SSA countries are becoming progressively more competitive in these products, the complex tariff regime is seen by many as a source of disguised protection.⁴²

³⁵ MIHO SHIOTORI, UNCTAD, WTO NEGOTIATIONS ON AGRICULTURE ASSESSMENT OF NON-AD VALOREM TARIFF AS A TRADE BARRIER 2-3 (2002).

³⁶ *Id.* at 3.

³⁷ Werth, *supra* note 25, at 18.

³⁸ FAO, *supra* note 26, at 8-9.

³⁹ DAVID HALLAM ET AL., FAO, THE MARKET FOR NON-TRADITIONAL AGRICULTURAL EXPORTS 28 (2004), available at <ftp://ftp.fao.org/docrep/fao/007/y5445e/y5445e00.pdf>.

⁴⁰ B.P. SINGH, NONTRADITIONAL CROP PRODUCTION IN AFRICA FOR EXPORT (2002), <http://www.hort.purdue.edu/newcrop/ncnu02/v5-086.html>.

⁴¹ *Id.*

⁴² FAO, *supra* note 26, at 8-9.

4.2.5. Minimum and Current Access Commitments: Tariff Rate Quota (TRQ)

Tariffication led to the concern that it could result in high bound tariffs which, if applied, could be prohibitive for any trade to take place. This gave rise to the concepts of minimum and current market access opportunities, whereby WTO Members were required to maintain the importation of certain minimum amounts of tariffied products in to their domestic market.⁴³ Current access commitments are intended to ensure that the tariffication process would not affect historic levels of imports. On the other hand minimum access commitments are envisaged to create access in situations where historic levels of imports are below 5% of the value of domestic consumption in the year 1986-1988.⁴⁴ In cases of insignificant imports, countries are required to provide minimum access opportunities so that exporters of tariffied products supply at least 3% of domestic consumption at the beginning of the implementation period (in 1995), rising to 5% at the end of the implementation period (2004).⁴⁵ This implies that a quantity of the imports of a commodity which had not previously been subject to NTBs would be allowed into the importing country at a reduced tariff rate.

Members expressed their minimum and current access commitments through the introduction of tariff rate quota (TRQ), which is a two-level tariff with a rate charged depending on the volume of imports. A lower tariff is charged on imports to ensure minimum market access or the quota volume; a higher tariff is charged on imports in excess of the quota volume.⁴⁶

The current access provisions are somewhat unclear and have been subjected to different interpretation.⁴⁷ The question of whether tariff rate quotas should be made on a country specific or an MFN basis is indeed one of the most complicated problems resulted from

⁴³ PAL, *supra* note 20, at 9.

⁴⁴ Desta, *supra* note 7, at 77.

⁴⁵ Modalities, *supra* note 11, para. 5.

⁴⁶ PAL, *supra* note 20, at 9.

⁴⁷ FAO, *supra* note 18.

this arrangement.⁴⁸ According to the Modalities, minimum access quotas are supposed to be available in line with the MFN principle in that it prohibits an importing country from discriminating between different exporters.⁴⁹ There is no such express provision, however, regarding current access opportunities. Since the intention behind current access provisions of the agreement was the protection of the exports of existing exporters (i.e. to safeguard current access) it seems that this omission is not a result of mere negligence. Current access to developed country markets by developing country exporters has frequently been provided under bilateral trade arrangements in which specified countries are offered market access at preferential tariff rates.⁵⁰ As such, it appears that the obligation to maintain current access opportunities was meant particularly for the benefit of those countries.⁵¹

Although TRQs have potentially increased new market access opportunities, the fill rate of tariff quotas has remained very low.⁵² A study by WTO shows that between 1995 and 1998, the simple average fill rate for all quotas fell from 66% to 62%.⁵³ This low fill rate can be attributed to the high level of certain in-quota tariff rates as well as the lack of transparency in their administration which has created problems for market access.⁵⁴ The following table describes the principal methods used for the administration of the TRQs.

Table 1: Categories of the principal methods used for the administration of the TRQs⁵⁵

Description of the method	number of tariff quotas	
	1995	1996
Applied tariffs - no shares are allocated to importers. Imports are allowed in unlimited quantities at the in-quota tariff rate or below	650	637
First-come, first-served - no shares are allocated to importers. Imports are permitted entry at the in-quota rate until such a time as the tariff quota is filled; then the higher tariff automatically applies. The physical importation of the good determines the order and hence the applicable tariff.	102	104

⁴⁸ Desta, *supra* note 7, at 79.

⁴⁹ Modalities, *supra* note 11, annex 3 para. 14.

⁵⁰ DESTA, *supra* note 7, at 79.

⁵¹ *Id.*

⁵² PAL, *supra* note 20, at 11.

⁵³ Training Tool, *supra* note 34, at 23.

⁵⁴ PAL, *supra* note 20, at 11.

⁵⁵ *Tariff Quota Administration Methods and Tariff Quota Fill*, at 2-3, WTO Doc. G/AG/NG/S/8 (May 26, 2000) (Background Paper by the Secretariat).

Licenses on demand - importers' shares are generally allocated, or licenses issued, in relation to quantities demanded and often prior to the commencement of the period during which the physical importation is to take place. This includes methods involving licenses issued on a first-come, first-served basis and those systems where license requests are reduced <i>pro rata</i> where they exceed available quantities.	314	323
Auctioning - importers' shares are allocated, or licenses issued, largely on the basis of an auctioning or competitive bid system.	32	30
Historical importers - importers' shares are allocated, or licenses issued, principally in relation to past imports of the product concerned.	47	61
Imports undertaken by state trading entities - import shares are allocated entirely or mainly to a state trading entity which imports (or has direct control of imports undertaken by intermediaries) the product concerned.	22	22
Producer groups or associations - import shares are allocated entirely or mainly to a producer group or association which imports (or has direct control of imports undertaken by members) the product concerned.	8	8
Other - administrations which do not clearly fall within any of the above categories.	20	21
Mixed allocation methods - administrations involving a combination of the methods as set out above with no one method being dominant.	55	57
Non-specified - tariff quotas for which no administration method has been notified.	9	10

Most of the TRQs have been administered by "applied rates" which accounts 49%, followed by "licenses on demand" and "first come, first served" accounting 24% and 10% respectively. Some countries have put to the principal administration methods supplementary conditions such as domestic purchase requirements or past trading performance.⁵⁶

The AoA does not provide a guideline on the preferred nature of the TRQ administration methods. Since certain administration methods could effectively block imports under TRQs, minimization of the trade-distorting implications of TRQs would require the use of transparent and impartial methods for the allocation of import licenses. The trade-distorting TRQ administration methods are those which do not reflect the market demand or the purchase decision of importers, such as discretionary import licensing, involvement of state trading enterprises in the purchase or sale of import quotas or import licenses conditional on concurrent purchase of domestic products. Automatic import licensing or first come first served, on the other hand, are considered as a more open and market-oriented administration methods.⁵⁷ In this regard it is important to note that

⁵⁶ Training Tool, *supra* note 34, at 22-23.

⁵⁷ *Id.*

allocating quotas based on historical precedent underlines the maintenance and strengthening of trading relationships previously established thereby preserving current access arrangements.⁵⁸

4.2.6. Special Agricultural Safeguards (SSG)

As we have pointed out earlier, as a result of the Uruguay Round, countries were required to bind those tariffs resulting from the tariffication process in that they were not allowed to increase the tariffs in excess of those incorporated in the schedules of concessions. There is a fear among countries that this situation may have the effect of “attracting the inflow of unduly low priced products or simply a surge in imports in a manner disruptive of domestic production of competing products.” The SSG provisions were introduced to accommodate such fears.⁵⁹

The Special Agricultural Safeguard (SSG) can be applied firstly, when there is a large surge in the volume of imports; or, secondly, when a sharp fall in import prices occurs.⁶⁰ In both cases, additional duties may be added to normal tariffs when actual import volumes rise above a specified trigger level⁶¹, or when import prices, denominated in domestic currency, fall below a certain trigger level.⁶² A particular commodity must be marked in the Country Schedule with the symbol "SSG" for the application of this concession.⁶³

The Special Agricultural Safeguard is only preserved to those members (mostly developed countries) that went through the tariffication formula.⁶⁴ Unlike developed countries, the tariffication procedure has given developing countries an option of declaring ceiling bound rates without the obligation of going through the tariffication formula.⁶⁵ Accordingly, most developing countries exercised the option and declared

⁵⁸ R. PEARCE & R. SHARMA, FAO, MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE-RESOURCE MANUAL MARKET ACCESS II: TARIFF RATE QUOTAS (2000).

⁵⁹ DESTA, *supra* note 7, at 86.

⁶⁰ The AoA, *supra* note 6, art 5(1).

⁶¹ *Id.* art 5(1) a.

⁶² *Id.* art 5(1) b.

⁶³ *Id.* art 5(1).

⁶⁴ Modalities, *supra* note 11, para. 4.

⁶⁵ *Id.* para.14.

bound rates thereby renouncing the right to use SSG. Hence, only 36 of the 140 WTO Members have the right to use the SSG. The SSG allowed developed countries to activate a protectionist measure if there is an import surge in the concerned country.⁶⁶

Tariff systems in most African countries include tariff duties and other duties and charges for sensitive products mainly food products. Nevertheless, a situation may arise where a high bound rate might not be sufficient due to the volatility of world markets.⁶⁷ This is especially true when considering that several EU agricultural products are heavily subsidized.⁶⁸ For instance, in December 1997, the world market price of raw sugar fell from 12.3 US cents per pound to 7.2 US cents per pound in September 1998. If a country wished to stabilize the domestic market price at the level of December 1997, this would have required a tariff rate of 70% in case the initial tariff was zero or a tariff of 105% if the initial tariff was already 20%. How is import surges supposed to be dealt then by LDC's??⁶⁹ For instance, East African countries Kenya, Zimbabwe, Sudan, Uganda, Comoros, Ethiopia, and Rwanda experienced import surges which are defined as 30% price deviation from 3-year moving average between 1982 and 2003.⁷⁰

The currently available instruments under WTO for dealing with disruptive increases in imports are the Agreement on Safeguards (ASG), Article XIX of the GATT 1994 and the Special Agricultural Safeguards of the Agreement on Agriculture.⁷¹ Under the ASG, safeguards can be applied only after detailed investigation has been conducted to substantiate the presence of significant injury or threat of serious injury. Furthermore, a

⁶⁶ PAL, *supra* note 20, at 12.

⁶⁷ ISABELLA MAMATY, ICTSD, RESOURCE PAPER NO 3, AFRICAN COUNTRIES AND THE AGREEMENT ON AGRICULTURE: WHAT SCOPE FOR SUSTAINABLE DEVELOPMENT? 17 (2002).

⁶⁸ *Trade Negotiations in the Eastern and Southern African Region: Issues for Consideration*, at 10, South Centre Doc. SC/AN/TDP/EPA/5 (Mar. 2007).

⁶⁹ MAMATY, *supra* note 67, at 17.

⁷⁰ COMMODITIES AND TRADE DIVISION, FAO, Brief on Import Surges-ISSUES NO 2, IMPORT SURGES: WHAT IS THEIR FREQUENCY AND WHICH ARE THE COUNTRIES AND COMMODITIES MOST AFFECTED? (2006), [hereinafter Brief on Import Surges], available at www.fao.org/es/esc/en/378/406/highlight_423.html

⁷¹ The AoA, *supra* note 6, art. 5; GATT, *supra* note 3, art. XIX; the Agreement on Safeguards, Apr. 15, 1994, art. 2(8), [hereinafter The ASG] available at http://www.wto.org/english/docs_e/legal_e/25-safeg.pdf; see also COMMODITIES AND TRADE DIVISION, FAO, Brief on Import Surges-ISSUES NO. 5, INSTITUTIONAL REQUIREMENTS FOR THE IMPLEMENTATION OF A SPECIAL SAFEGUARD MECHANISM (SSM) 1 (2006), available at http://www.fao.org/es/esc/en/378/406/highlight_420_p.html

causal link needs to be established between the claimed damage and the import surge.⁷² Generally, these rules are cumbersome and difficult to establish particularly as regards causality to the damage.⁷³ On the other hand, a member can resort to the SSG under the AoA by satisfying only the requirements on the quantity and price trigger levels regardless of injury consideration.⁷⁴ Hence, the difficulty involved for invoking the provisions in the Agreement on Safeguards can make the non-availability of SSG provision to SSA LDC'S a problem.⁷⁵

4.3. The Doha Agricultural Negotiations on Market Access: Issues and Implications for Ethiopia

4.3.1. Negotiations on Modalities-General

While all countries have market access barriers, only some have export subsidies or Amber or Blue Box domestic supports; making market access generally the most complicated of the three pillars to negotiate. The majority of countries are under pressure to protect their farmers whereas many others want to export and see others' markets open up. Regarding developing countries, those that are less confident about importing and exporting take a defensive position, whilst the more confident ones want to see more South-South trade as well as increased exports from poorer to richer countries.⁷⁶

The Doha Ministerial Declaration calls for “substantial improvements in market access” and also provide for special and differential treatment for developing countries.⁷⁷ Negotiations on modalities for further commitments on tariffs and tariff rate quotas aim to elaborate a comprehensive approach to address market access improvements by building on existing rules and/or developing new ones as well.⁷⁸

⁷² The ASG, *supra* note 71, art. 2(8).

⁷³ FAO, *supra* note 70.

⁷⁴ DESTA, *supra* note 7, at 87.

⁷⁵ MAMATY, *supra* note 67, at 17.

⁷⁶ WTO, WTO AGRICULTURE NEGOTIATIONS: THE ISSUES, AND WHERE WE ARE NOW 45 (2004) [hereinafter Backgrounder], available at http://www.wto.org/english/tratop/ e/agric/ e/negs_bkgnd00_contents_e.htm.

⁷⁷ Ministerial Conference: Fourth Session Doha, Ministerial Declaration, Nov. 20, 2001, para. 13, WTO Doc. WT/MIN (01)/DEC/1, available at http://docsonline.wto.org/gen_search.asp?searchmode=simple

⁷⁸ Training Tool, *supra* note 34, at 27.

The major elements in the negotiations on market access are the degree of liberalization and the degree of special and differential treatment. The special and differential treatment propagates for lesser commitments by developing countries. The degree of liberalization, on the other hand, has two dimensions i.e. the level of ambition (measured for example by the average tariff reduction) and the level of flexibility (exemptions from the formula to protect specific products). The greater the flexibility the better it could provide negotiators with an improved ability to trade off lesser tariff reductions in some cases for greater cuts elsewhere.⁷⁹

4.3.1.1. Tariff Reduction

Finding a tariff reduction formula that is balanced with regard to level of ambition, level of flexibility and degree of special and differential treatment is the main challenge in the negotiations on modalities regarding the market access pillar. Even though the structure of the formula was agreed in the July Package and the Hong Kong Ministerial Declaration, the specific numbers that will determine the exact shape of the formula and the corresponding cuts have yet to be negotiated.⁸⁰ The following table describes the possible tariff reduction formulas in some detail.

Table 2: Possible tariff reduction formulas⁸¹

Linear Cut	According to this formula all tariff lines are reduced by the same percentage, e.g. 60%, no matter whether the starting tariff is high or low. Hence, tariff peaks do not change
Uruguay Round Formula	This formula results in average reduction with minimum reduction for each tariff line. Even though all tariffs are reduced, tariff peaks may be worsened
Swiss Formula	New tariffs are calculated applying the formula: $t1 = (a * t0 / (a + t0))$ Where t0 is the initial tariff (bound tariff rate), t1 is the final tariff rate (new bound tariff rate) and a is a chosen coefficient value. The smaller a is, the greater the level of ambition, i.e. the lower are the new tariffs. The coefficient a will also be the new maximum tariff, e.g. after applying the Swiss formula no tariff will be higher than this coefficient. Being a harmonizing approach, the Swiss formula is the only formula which reduces peak tariffs by reducing very high tariffs proportionately more than lower tariffs. Thus, tariffs come closer together and tariff peaks are effectively addressed.

⁷⁹ *Id.*

⁸⁰ *Id.* at 28-29.

⁸¹ The contents of the table are taken from Training Tool, *supra* note 36, at 30 & MAMATY, *supra* note 68, at 34-35.

Blended formula	This formula is a mixture of the Uruguay Round and the Swiss approach and a reduction of tariffs to zero. A pre-specified share of tariff lines is subject to one of the three components. Countries would have the flexibility to decide which tariff line is subject to which component.
Tiered approach	Under the tiered approach, bands that depend on the initial tariff are defined and the reduction approach for each band may be different. The major difference to a blended approach is that it depends on the initial tariff in which band / component each tariff line falls and that it is not up to the countries themselves to choose.

The July Package adopted a tiered approach.⁸² However, its content does not identify the specific type of tariff reduction formula to be used in each of the bands; rather, it sets out roadmaps and key benchmarks for the conduct of agricultural negotiations. It provides that the formula must take account of members' different tariff structures.⁸³ To ensure that such a formula will lead to substantial trade expansion, the Package spells out the following key principles that will guide its further negotiation:⁸⁴

Single approach: with the exception of least-developed countries, which are not required to undertake reduction commitments, everyone has to contribute by improving market access for all products.

Tiered and progressive: the formula will be based on tiers in such a way that tariffs in higher tiers have deeper cuts.

Reductions from bound rates: tariff reduction are based on bound rates i.e. ceilings that members have committed in the WTO, rather than the actual or "applied" rates. This is important for developing countries where the applied rates are often lower.

Special and differential treatment: Operationally effective special and differential provisions for developing country members will be an integral part of all elements of the negotiation.

Sensitive products: all countries are to be allowed some flexibility in the way these products are treated. However, Substantial improvements in market access will be achieved for all products including those sensitive.

⁸² Doha Work Program: Decision Adopted by the General Council on 1 August 2004, Aug. 2, 2004, paras. 28-30, WTO WT/L/579 [hereinafter the July Package], available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

⁸³ *Id.* para. 28.

⁸⁴ *Id.* paras. 28-29.

The July Package left “the number of tiers, the thresholds for defining the bands and the type of tariff reduction in each band” for further negotiation.⁸⁵ As regards the number of tiers, however, the Hong Kong Ministerial agreed that there would be four bands for structuring cuts from bound tariffs.⁸⁶ Least-Developed Countries are exempted from undertaking reduction commitments.⁸⁷ The May 2008 RDMA proposes the following tiered reduction formula for both developed and developing countries.⁸⁸

Table 3: Tiered formula for tariff reduction

Developed countries		Developing countries-general	
Thresholds	Reduction	Thresholds	Reduction
> 75%	[66%-73%]	> 130%	2/3 rd of [66%-73%]
75% > X > 50%	64%	130% > X > 80%	2/3 rd of 64%
50% > X > 20%	57%	80% > X > 30%	2/3 rd of 57%
20% > X > 0%	50%	30% > X > 0%	2/3 rd of 50%

The instrument also introduces the following elements in relation to tiered formula for tariff reduction.

- A minimum average cut of 54% was introduced in the formula for developed countries. In addition, if the application of the formula, inclusive of the treatment of Sensitive Products (SePs) results in a cut below 54%, an additional cut should be made proportionately across all bands.⁸⁹
- The range for maximum average reduction in the formula for developing countries was limited to one figure: 36%.⁹⁰

⁸⁵ *Id.* para. 30.

⁸⁶ Ministerial Conference: Sixth Session Hong Kong, Ministerial Declaration, Dec. 18, 2005, para. 7, WTO Doc. WT/MIN(05)/DEC [hereinafter the HKMD].

⁸⁷ The July Package, *supra* note 82, para. 45.

⁸⁸ *Revised Draft Modalities for Agriculture*, paras. 61-70, WTO Doc. TN/AG/W/4/Rev.2 (May19, 2008) [hereinafter the May 2008 RDMA].

⁸⁹ *Id.* para.62.

⁹⁰ *Id.* para.64.

- Several elements were introduced in the formula for Recently Acceded Members (RAMs). For instance, they are entitled to moderate the cuts they would otherwise have been required to make under the tiered formula by up to 10 *ad valorem* percentage points in the top two bands and 5 *ad valorem* points in the bottom two bands. In addition, very recently-acceded Members (Saudi Arabia, the Former Yugoslav Republic of Macedonia, Viet Nam and Tonga) and small low-income RAMs with economies in transition (Albania, Armenia, Georgia, Kyrgyz Republic and Moldova), are not required to undertake reductions in final bound tariffs.⁹¹
- The concept of Special Products has been included in the formula for Small and Vulnerable Economies (SVEs) in the sense that they are entitled to moderate the cuts as per the tiered formula by a further 10 *ad valorem* percentage points in each band.⁹²
- Regarding the implementation period it adds provisions indicating that developed countries will reduce their bound tariffs in equal installments over five years and developing countries over eight years.⁹³ In contrast, during the Uruguay Round the implementation period for developed countries' commitments was six years and ten years, in the case of developing countries.⁹⁴

4.3.1.2. Sensitive Products (SePs)

The July Package provides that Members may designate an appropriate number of tariff lines to be treated as sensitive, taking account of existing commitments for these products.⁹⁵ The concept of sensitive products has been inserted in the Package on insistence by Europe and Japan.⁹⁶ Consequently, "an appropriate" number of developed countries' heavily protected farm goods would be categorized as sensitive and such

⁹¹ *Id.* paras. 66-67.

⁹² *Id.* para. 65.

⁹³ *Id.* paras. 61-63.

⁹⁴ The Modalities, *supra* note 11, para. 5 & para. 15.

⁹⁵ The July Package, *supra* note 82, para 31.

⁹⁶ M. GRIFFITH, CAFOD, ANALYSIS OF THE WTO FRAMEWORK AGREEMENT (2004), <http://www.cafod.org.uk/var/storage/original/application/php1d1AF5.pdf>.

products would enjoy special treatment deviating from the reduction that would otherwise have been required by the tiered reduction formula.⁹⁷

The designation and treatment of sensitive products, however, cannot undermine the objective of the tiered approach.⁹⁸ That is, the treatment of sensitive products could and would deviate from the formula, but it cannot be completely delinked. Completely detaching the treatment of sensitive products from the tiered formula would undermine the value of the tiered approach by allowing developed countries to shield tariff peaks from substantial tariff reductions. The extent of the deviation, for example, has to be limited to a proportion of the cut that the formula would require for any particular product or there should be a limit to the percentage of tariff lines within each band that could be designated as sensitive products.⁹⁹

Although there is no doubt that the sensitive products category can be used theoretically by developing countries, the primary reason for carving out this category was, however, to enable the developed countries to protect their interests.¹⁰⁰ There are, rightly, fears among developing countries that this is a concept designed by the EU to prevent or limit market access of developing-country agricultural exports and potential exports to the developed-country markets.¹⁰¹ As far as Africa is concerned, products that are of interest to it can be designated as sensitive thereby making it difficult for them to have efficient market access.¹⁰² However, it is important to note that this is true only in situations where such designated products are not covered by the preferential market access arrangements. While ACP countries request that “products relating to long-standing preferences shall be designated as sensitive products” in order to allow developed countries to lessen the scope of preference erosion the G-20’s, on the other hand, suggests that developed

⁹⁷ Inaamul Haque & Majid Ali, *WTO's July Package and Developing Countries: Preferring Pragmatism to Ideology*, INT’L TRADE L.J. 34, 44 (2004).

⁹⁸ The July Package, *supra* note 82, para. 31.

⁹⁹ *Detailed Analysis of Annex A to the General Council Decision July 2004 “Framework for Establishing Modalities in Agriculture”*, pt. II, p. 19 South Centre Doc. SC/TADP/AN/CC/2.2 (2004) [hereinafter Detailed Analysis].

¹⁰⁰ Haque & Ali, *supra* note 97, at 44.

¹⁰¹ GRIFFITH, *supra* note 96.

¹⁰² SEATINI, *WTO’S JULY PACKAGE AND AFRICA’S NEGOTIATING LEVERAGE* (Jan. 2005), [http:// www.seatini.org/publications/epas/julyPackage.htm](http://www.seatini.org/publications/epas/julyPackage.htm).

countries should be prohibited from listing tropical products as sensitive.¹⁰³ The fine print carefully strikes a balance between different positions by providing for the application of the principle of “substantial improvement” in each product designated as sensitive through combinations of tariff reductions and tariff quota commitments which may include quota expansion and intra and out-of quota tariff reductions.¹⁰⁴ Any expansion of TRQs negotiated accordingly has to be done on an MFN-basis open to all members.¹⁰⁵

It is relevant to note as well that the rules to be developed with respect to the TRQ expansion for sensitive products will take into account the deviation from the formula suggesting, as was discussed during the negotiations of the July Package, that the larger the deviation of the tariff cut on sensitive products from what would result by applying the banded formula, the larger the expansion of TRQ.¹⁰⁶

The May 2008 RDMA suggests a certain movement towards more ambition on SePs. These includes, for instance:

- The fact that the minimum average cut under the formula applicable for developed countries shall take into account tariff reduction undertaken on SePs.¹⁰⁷
- The first installment of implementation of commitments related to SePs shall occur on the first day of the implementation.¹⁰⁸
- Use of consumption data as a basis for the expansion of quotas.¹⁰⁹

With respect to the numbers and treatment of SePs developed countries will have the possibility to select [4-6] of tariff lines and they will be allowed to:¹¹⁰

- Deviate by one third of the reduction required by the tiered formula, with increased market access opportunities (through tariff quota expansion) equivalent of [4-6%] of domestic consumption.¹¹¹

¹⁰³ 4 ICTSD & IISD, DOHA ROUND BRIEFING SERIES: HONG KONG UPDATE 8 (Nov. 2005).

¹⁰⁴ The July Package, *supra* note 82, paras. 32-33; Detailed Analysis, *supra* note 99, pt. II, p. 19.

¹⁰⁵ The July Package, *supra* note 82, para. 34.

¹⁰⁶ Detailed Analysis, *supra* note 99, pt. II, p. 20.

¹⁰⁷ The May 2008 RDMA, *supra* note 88, para. 62.

¹⁰⁸ *Id.* para. 78.

¹⁰⁹ *Id.* paras. 74-77.

¹¹⁰ *Id.* para. 71.

- Deviate by two thirds of the reduction required by the tiered formula with increased market access opportunities (through tariff quota expansion) equivalent of at least 1% of domestic consumption.¹¹²
- Deviate by one half of the reduction required by the tiered formula with increased market access opportunities (through tariff quota expansion) equivalent of at least 0.5% of domestic consumption.¹¹³

On the other hand developing countries shall have the right to designate up to one-third more tariff lines (i.e.: [5-8] of tariff lines) and shall expand quotas by two thirds of the amount for developed, excluding consumption of subsistence production.¹¹⁴

4.3.1.3. Other Issues

a. Tariff Escalation

Regarding the problem of tariff escalation the July Package simply states that it “will be addressed through a formula to be agreed.”¹¹⁵ The tariff escalation problem would be properly addressed if tariffs on processed products are reduced faster and deeper than tariffs on inputs. Since tariff escalation may be more pervasive in some sectors than others, it would be critical that developing countries should identify the sectors of their interest and make proposals regarding the approach to be used for eliminating tariff escalation.¹¹⁶ The May 2008 RDMA proposed to address tariff escalation in such a way that the processed product will be subjected to a cut that would, according to the tiered formula, otherwise be applicable to the tariffs that fall in the next highest band.¹¹⁷ In addition, the text provides that the tariff escalation treatment shall not be applicable on products that are declared to be sensitive.¹¹⁸

¹¹¹ *Id.* para. 74.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* paras. 72 & 77.

¹¹⁵ The July Package, *supra* note 82, para. 36.

¹¹⁶ Detailed Analysis, *supra* note 99, pt. II, p. 22.

¹¹⁷ The May 2008 RDMA, *supra* note 88, para. 81.

¹¹⁸ *Id.* para. 84.

It is notable to observe that some developing countries use escalating tariff structures to encourage further processing of raw materials before exporting or generate local value-added. As such, any provision “on tariff escalation must recognize the differences in levels of development between WTO members and provide for appropriate SDT for developing countries.”¹¹⁹ The May 2008 RDMA notes that only those “developing countries in a position to do so” are required to undertake the tariff escalation treatment.¹²⁰ Nevertheless, it is not clear whether this will be voluntary or whether there will be specific criteria to assess if a country is in position to provide such treatment.¹²¹

b. Tariff Simplification

Another issue of the current negotiation on the subject of tariff structures is the type of tariff.¹²² Non-*ad valorem* tariffs should be converted to simple percentages of the value (“*ad valorem*”) so that they can be reduced according to the type of formula (“tiered”) that was agreed in the July Package. Otherwise, it would be impossible to put products charged specific duties into their appropriate categories (the “tiers”).¹²³ This conversion is also tremendously important to assess the extent to which members are really complying with the agreed tariff reduction commitments.¹²⁴

However, task of calculating the *ad valorem* tariff equivalents of complex tariff structures is not easy.¹²⁵ AVEs are the tariff values expressed as a percentage of the c.i.f. value of imports. A problematic element in the calculation is estimating the unit import price which is not straightforward, as it is subject to several variations and several different methods exist. On top of this, the unit import price of the same product could differ from one source of imports to another and AVEs can also vary over time as prices change.¹²⁶

¹¹⁹ Detailed Analysis, *supra* note 99, pt. II, p. 22.

¹²⁰ The May 2008 RDMA, *supra* note 88, para. 85.

¹²¹ *South Centre Comments on Draft Modalities for Agriculture*, at 6, South Centre Doc. SC/AN/TDP/AG/5 (Feb. 2008) (Analytical Note) [hereinafter *Comments on Draft Modalities*].

¹²² Training Tool, *supra* note 34, at 21.

¹²³ Backgrounder, *supra* note 76, at 47.

¹²⁴ Detailed Analysis, *supra* note 99, pt. II, p. 22.

¹²⁵ *Id.*

¹²⁶ Training Tool, *supra* note 34, at 21.

As far as developing countries are concerned they should be firm on “negotiating a common methodology for calculating the *ad valorem* tariff equivalent of non-*ad valorem* tariffs and binding tariffs in *ad valorem* terms. If the elimination of non-*ad valorem* tariffs is not feasible, developing countries should insist at least, on a common and verifiable methodology for calculating the *ad valorem* equivalent of non-*ad valorem* tariffs.”¹²⁷

In the chairman’s May 2008 RDMA the suggestion is that no tariff should be bound in a form more complex than the current binding and the most highly complex forms of bound tariffs are to be converted to *ad valorem* or specific tariffs.¹²⁸ According to this document least-developed country Members are not required to effect any such changes.¹²⁹ On the other hand, the revised NAMA text¹³⁰ expects LDCs to substantially increase their level of tariff binding commitments. The text requires the new tariff binding commitments to be on *ad valorem* basis. However, in cases where existing tariff bindings are not on *ad valorem* basis the text merely states that LDCs are encouraged to convert them to *ad valorem* equivalents.¹³¹

c. Tariff Quotas

i. Bound-in-quota tariffs

Contrary to the proposal for the elimination of in-quota tariffs as supported by the Cairns and the G-20, the proposed provision in the May 2008 RDMA refers to reduction of in-quota tariffs. Elimination is contemplated in cases of low level of tariffs, for example, those below 10% *ad valorem*. The instrument also differentiates existing bound in-quota tariffs from those new or resulting from the current negotiations.¹³²

¹²⁷ Detailed Analysis, *supra* note 99, pt. II, p. 22.

¹²⁸ The May 2008 RDMA, *supra* note 88, paras. 98-100.

¹²⁹ *Id.* para.101.

¹³⁰ The revised NAMA text is applicable to LDCs through paragraph 138 of the May 2008 RDMA which states that the provisions in the revised NAMA text are applicable to LDCs.

¹³¹ *Fourth Revision of Draft Modalities for Non-Agricultural Market Access*, para. 14, WTO Doc. TN/MA/W/103.Rev.3 (Dec. 6, 2008) [hereinafter the Fourth Revised NAMA Text].

¹³² Comments on Draft Modalities, *supra* note 121, at 7; the May 2008 RDMA, *supra* note 88, para. 103.

ii. Tariff Quota Administration

The chairman's May 2008 RDMA suggests tariff quota administration to be an instance of "import licensing" within the meaning of the Uruguay Round Agreement on Import Licensing Procedures.¹³³

In *EC - Bananas III*, the Appellate Body has already ruled that import licensing procedures for tariff quotas are within the scope of the Licensing Agreement.¹³⁴ It is notable to note that the Licensing Agreement does not deal with import licensing rules per se.¹³⁵ In other words; the substantive provisions of a country's import (and distribution) regime are of no relevance to the Licensing Agreement which is concerned with the administrative rules of import licensing systems.¹³⁶

d. Special Agricultural Safeguard (SSG)

The future of the current safeguard, including whether it should be discontinued, and if so, over what timeframe and for what products, remains to be one of the contentious issues under negotiation.¹³⁷ The May 2008 RDMA offer a clear option between eliminating developed country SSG's (either at the beginning or at the end of the implementation period) or reducing the number of SSG's to 1.5% of scheduled tariff lines.¹³⁸ This is a balancing item within the market access negotiations - the greater the ambition, the greater the pressure for the second option to be chosen.¹³⁹ Concerning developing countries, however, the suggestion is towards reducing the SSG coverage to no more than [3%] of tariff lines and the URAA terms and conditions of the SSG shall remain unchanged.¹⁴⁰

¹³³ The May 2008 RDMA, *supra* note 88, para.104.

¹³⁴ Appellate Body report *EC - Bananas III*, paras. 193-95 [hereinafter Appellate Body report *EC - Bananas III*], available at <http://docsonline/wto.org/imrd/director.asp?DDFDocuments/t/WT/DS/27ABR.wpf>. (last visited sept.12, 2008)

¹³⁵ *Id.* paras. 197-98.

¹³⁶ *Id.* para. 197.

¹³⁷ Detailed Analysis, *supra* note 99, pt. II-22.

¹³⁸ The May 2008 RDMA, *supra* note 88, para.115.

¹³⁹ MIKE GIFFORD & RAUL MONTEMAYOR, ICTSD, AN OVERVIEW ASSESSMENT OF THE REVISED WTO DRAFT MODALITIES FOR AGRICULTURE 10 (2008).

¹⁴⁰ The May 2008 RDMA, *supra* note 88, para.116.

4.3.1.4. Special and Differential Treatment

a. Special Products (SPs)

The concept of SPs (Special Products) is introduced to shield some products mostly cultivated by the rural populations of developing countries from the potential negative impacts of trade liberalization. Since these products are unlikely to become competitive in the short run, they would be negatively affected by greater exposure to foreign competition.¹⁴¹ Only products that are deemed essential for food security, livelihood security or rural development, but which would not endure under competitive conditions, are granted this protection in the form of minimal tariff cuts over a longer transition period.¹⁴² In Hong Kong, WTO Members reaffirmed this principle.¹⁴³

One of the main concerns regarding the designation of SPs had been whether each country can decide what those products would be, or there will be specific conditions to be met for a particular product to be so designated.¹⁴⁴ The July Package takes the former position by giving developing countries the flexibility to self designate an appropriate number of products as SPs.¹⁴⁵ Food and livelihood security needs are different across countries and even regions. As a result, “each government is best suited to decide and take responsibility for the selection of the products to be protected under these provisions in a way that is meaningful for its farmers and rural and poor population.”¹⁴⁶

The Package stipulates that “the criteria and treatment” of SPs will be further specified in the negotiations.¹⁴⁷ The G-33 had always been pushing for developing countries to be allowed to designate at least a fifth of their agricultural tariff lines as special with half of these exempt from liberalization. On the other hand, exporting countries have continued

¹⁴¹ ICTSD, ISSUE PAPER NO. 6, SPECIAL PRODUCTS AND THE SPECIAL SAFEGUARD MECHANISM: STRATEGIC OPTIONS FOR DEVELOPING COUNTRIES 4-6 (2005), available at <http://ictsd.org/downloads/2008/03/sp-ssm.pdf>

¹⁴² The July Package, *supra* note 82, para. 41.

¹⁴³ The HKMD, *supra* note 86, para. 7.

¹⁴⁴ Detailed Analysis, *supra* note 99, pt. II, p. 24.

¹⁴⁵ The July Package, *supra* note 82, para. 41.

¹⁴⁶ Detailed Analysis, *supra* note 99, pt. II, p. 25.

¹⁴⁷ The July Package, *supra* note 82, para. 41.

to argue that no products should be completely exempt from tariff cuts.¹⁴⁸ According to the proposals in the May 2008 RDMA:

There shall be [a maximum entitlement of 20 per cent and a minimum entitlement of] 8 per cent of tariff lines available for self-designation as Special Products. Within this entitlement, [forty per cent of those] [no] tariff lines shall be eligible for no cut. For the remaining tariff lines, there shall be an overall average cut of 15 per cent achieved with a minimum cut of 12 per cent and a maximum cut of 20 per cent on each tariff line.¹⁴⁹

In addition, the text also provides that Members would have the opportunity of transferring any unused SePs entitlement to obtain additional SPs subject to the following conditions: (a) that the maximum entitlement for transfer cannot be more than one third of its sensitive product entitlement; and (b) that the tariff reduction treatment for the tariff lines concerned shall be 20%.¹⁵⁰

b. Special Safeguard Mechanism (SSM)

Multilateral trade in agricultural products is generally cyclical and subject to wide fluctuations. Given the absence of non-tariff barriers today, the set of policy instruments available for developing countries to provide protection to their farmers is essentially limited to tariffs that are constrained, and now face further reduction.¹⁵¹

The SSG that presently exists in the Agreement on Agriculture has been criticized by developing countries.¹⁵² Only twenty two developing countries that converted their non-tariff restrictions into tariffs (tariffication) during the Uruguay Round are entitled to use it. Many developing countries that opted for ceiling tariff rates are not allowed to use the SSG. Between 1995 and 2004, even in those twenty two countries the SSG is in fact invoked only in 1% of the cases in which it can potentially be applied.¹⁵³

¹⁴⁸ *Ag Chair to Issue Revised Draft Text by End January Bridges*, vol. 12 no. 1, ICTSD Weekly Main Digest, Jan. 16, 2008, <http://www.ictsd.org/weekly/08-01-16/story1.htm>.

¹⁴⁹ The May 2008 RDMA, *supra* note 88, para.118.

¹⁵⁰ *Id.* para.118 n.17.

¹⁵¹ ICTSD, *supra* note 141, at xi.

¹⁵² Training Tool, *supra* note 34, at 24.

¹⁵³ ICTSD, *supra* note 141, at xxi.

This is not because they did not want to use it. Rather, many of these countries unable to fulfill the technical conditions necessary to use the mechanism. The trigger price for these countries (which is calculated based on the average price of imports during the 1986-1988 period where international prices were very depressed and the currencies of many developing countries were strongly over valued) turns out to be very low in comparison with any current prices. Several others feared that using the SSG might prompt affected members to initiate WTO disputes, charging erroneous application. Importers have also done well in persuading their government not to use the SSG.¹⁵⁴ In recognition of this problem the July Package speaks of a Special Safeguard Mechanism (SSM) that will be established for use by developing country members,¹⁵⁵ something that rich countries currently enjoy but most poor countries do not.¹⁵⁶ In Hong Kong, WTO Members confirmed the decision permitting developing countries the right to have recourse to SSM based on import quantity and price triggers.¹⁵⁷

The SSM would allow developing “countries to raise tariffs above their bound levels for a limited duration to protect import competing sectors against price depression and/or import surges.”¹⁵⁸ Even though some products are competitive by themselves or which because of SP flexibility could compete with imports, they might still be vulnerable to price fluctuation and revenue-related risks. That is when SSM comes in to the picture.¹⁵⁹

The May 2008 RDMA provides that the SSM can be invoked for all tariff lines in principle. However, it shall not be invoked for more than (3)-(8) products in any given twelve-month period.¹⁶⁰ A “product” is defined as [4-8] tariff lines at the 6 digit level of the Harmonized System (HS).¹⁶¹ In contrast, the architecture for the revised SSG

¹⁵⁴ ECONOMIC AND SOCIAL DEPARTMENT, FAO, WTO AGREEMENT ON AGRICULTURE: THE IMPLEMENTATION EXPERIENCE, available at <http://www.fao.org/docrep/005/Y4632E/y4632e00>; see also ICTSD, *supra* note 141, at xxi.

¹⁵⁵ The July Package, *supra* note 82, para. 41.

¹⁵⁶ AMY BARRY, OXFAM INTERNATIONAL, BRIEFING PAPER 87, A RECIPE FOR DISASTER: WILL THE DOHA ROUND FAIL TO DELIVER FOR DEVELOPMENT? 11-12 (2006), available at http://www.oxfam.de/download/recipe_for_disaster.pdf

¹⁵⁷ The HKMD, *supra* note 89, para. 7.

¹⁵⁸ ICTSD, *supra* note 141, at 4-6.

¹⁵⁹ *Id.*

¹⁶⁰ The May 2008 RDMA, *supra* note 88, para. 121.

¹⁶¹ *Id.* para. 121 n.19.

indicates its applicability to percentage of tariff lines (1.5%).¹⁶² Although a price-based and a volume-based SSM shall be available, a product cannot simultaneously be subjected to the application of both the price- and volume-based safeguards. In addition, these safeguards won't be applicable if a measure is available under the SSG provisions, GATT Article XIX, or the Agreement on Safeguards.¹⁶³

c. Tropical products

The term tropical products refers to those products of export interest of developing countries produced in the tropical regions of Africa, Latin America and the Caribbean, and Asia such as rubber, tea, cocoa, coffee, etc. The main difficulty arises because the very same products can also be produced in the temperate zones such as cotton, sugar, banana, etc. Moreover, the main barriers to market access for a number of the tropical products such as cocoa and coffee, affect processed products rather than products in their primary form. Consequently, it would be important to keep in mind that provisions on tariff escalation and the formula for tariff reductions finally agreed will impinge on the issue of tropical products as well.¹⁶⁴

For some Latin American countries of the Cairns group the fullest liberalization of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops is a critical issue. The G-20 even calls for developed countries not to designate products of export interest to developing countries (tropical products) as sensitive. Many African and ACP countries, on the other hand, stresses that decisions regarding tropical products and products related to the diversification from illicit narcotic crops should not have a negative impact on existing preferences.¹⁶⁵

¹⁶² *Id.* para. 115.

¹⁶³ *Id.* para. 122.

¹⁶⁴ Detailed Analysis, *supra* note 99, pt. II-27.

¹⁶⁵ *State of Play in Agriculture Negotiations: Country Groupings' Positions-Market Access Pillar*, at 28-29, South Centre Doc. SC/AN/TDP/AG/4-1 (Jan. 2008) (Analytical Note) [hereinafter *State of Play*].

Identifying the issue is unsettled; the July Package provides that it will be addressed effectively in the market access negotiations.¹⁶⁶ The matters to be resolved are the meaning of "fullest liberalization" and the selection of products to be covered. In the May 2008 RDMA two lists are attached to identify these products: the indicative list used during the Uruguay Round and the new proposed list of tropical and alternative products. Two options are provided for these products:¹⁶⁷

1. Tariffs at or below 25% to be reduced to zero and where tariffs are above 25% the cut would be 85%. No sensitive product treatment will be given for any of the products appearing on the annexed list and the tariff cuts shall be implemented in four equal annual steps for all developed country Members.
2. Tariffs above 10% shall be reduced by [66-73] %, except for tariffs in the top band which shall be reduced by the tariff escalation tariff cut for that band increased by 2% and tariffs below 10% shall be reduced to zero. Developed country Members are required to implement the cuts in accordance with the general tariff reduction implementation period while those developing country Members declaring themselves in a position to do so are encouraged to make additional efforts on tropical products beyond what would be required under the tiered formula.

d. Long-Standing Preferences and Preference Erosion

Several African and ACP countries stresses the need to strengthen the existing preferential schemes, hence wish to moderate tariff reduction on products that are receiving preferential treatment, where these exist.¹⁶⁸

Recognizing the importance of long-standing preferences to some developing countries, the July Package states that the issue will be addressed in the negotiations.¹⁶⁹ With respect to the definition of products that will receive preferential treatment, the May 2008

¹⁶⁶ The July Package, *supra* note 82, para. 43.

¹⁶⁷ The May 2008 RDMA, *supra* note 88, para. 135.

¹⁶⁸ State of Play, *supra* note 165, at 23.

¹⁶⁹ The July Package, *supra* note 82, para. 44.

RDMA proposes two alternatives.¹⁷⁰ The first option is that there shall be no tariff cuts on the items listed in Annex H for 10 years and the tariff cuts commence only after that point which would be implemented over five years in equal annual installments thereafter.¹⁷¹ According to the second alternative products from Annex H may be selected only in the case of the following concurring conditions:¹⁷²

1. Where pre-Doha MFN bound tariff is greater than 10% *ad valorem*,
2. over the most recent three-year period, the total value of trade from long-standing preference receiving country Members exceeds US\$ 50,000 or is 3% of any long-standing preference receiver's total agricultural trade to the market concerned, and
3. There is unlimited long-standing preference eligibility in the market concerned.

The implementation of tariff cuts on those selected products by long-standing preference granting country Members would be in equal annual installments steps over a period that is two years longer than the implementation period for developing country Members for tariff cuts under the tiered formula.¹⁷³

Many countries that export tropical products are also the countries that receive preferential treatment in developed countries' markets. Accordingly, in cases where the exported tropical products receive preferential treatment, full liberalization on such products does mean elimination of preferential treatment for the product concerned.

The May 2008 RDMA has recognized the possibility of an overlap between provisions related to preference erosion, tariff escalation and tropical products. In the case such overlap occurs, the text suggests: the provisions on tariff escalation and tropical products will take precedence over those on preference erosion. Although the text provides that

¹⁷⁰ The May 2008 RDMA, *supra* note 88, para. 136.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

this discipline won't be applicable to a certain list of products, such products have not been identified yet.¹⁷⁴

4.3.2. Market Access: Ethiopian Context

4.3.2.1. Tariff Reductions

In Ethiopia the current simple average of applied tariffs on agri-food has been calculated at 17.7%.¹⁷⁵ Even though Ethiopia will go to the WTO negotiating table with an extremely liberal tariff system, the experience from past accession cases indicate that it will undoubtedly be faced with pressures to bind tariffs at low rates, or to lower its applied tariffs even further.¹⁷⁶ For instance, the simple-average agricultural tariff rates for Vanuatu, Cambodia and Nepal were bound at 43%, 30% and 44% respectively.¹⁷⁷ Thus, Ethiopia should focus on resisting this pressure because any trade regime which is significantly liberal would be a disaster in the long-term for the country's small producers by increasing the flood of cheap imports.

Instead, the Government of Ethiopia should retain the right to set tariffs at levels appropriate for each sector, thus encouraging agricultural and industrial development. The ability to maintain the necessary policy space to use tariffs to support their development priorities is essential for developing countries. Binding tariffs at low levels early in a country's development can compromise its capability to attain policy objectives linked to poverty reduction.¹⁷⁸

¹⁷⁴ *Id.*

¹⁷⁵ Derk Bienen et al., *Programme to Support the Integration of the ACP States into the Multilateral Trading System of the WTO: Support to Ethiopia in its Accession Process to the WTO (contract no. 7 ACP-RPR-753 project n°39b) Impact Study on WTO Accession*, 29 (Sept. 10, 2005).

¹⁷⁶ H.E. Sok Sephana, *Cambodia Country Case Study*, in THE PREPARING FOR WTO ACCESSIONS: INSIGHTS FROM DEVELOPING COUNTRIES 6, 14 n.10 (Simon J. Evenett ed., 2005).

¹⁷⁷ *The Least Developed Countries Report 2004 Part One: Chapter 3 Selected Recent Policy Trends: Accession of LDCs to the WTO*, at 57, UNCTAD Doc. UNCTAD/LDC/2004 (2004) [hereinafter *The Least Developed Countries Report*].

¹⁷⁸ MARY KIRKBRIDE, OXFAM INTERNATIONAL, BRIEFING PAPER 92, GETTING THE FUNDAMENTALS RIGHT: THE EARLY STAGES OF AFGHANISTAN'S WTO ACCESSION PROCESS 22 (2007), available at http://www.oxfam.org.uk/resources/policy/trade/downloads/bn_vietnam.pdf

As regards reduction commitment, given that existing least developing country members of the WTO are not required to make further tariff reduction commitments under the Uruguay Round, it is unconscionable that acceding Least Developed Countries should have to do so. In line with this view, the July Package exempted Least-Developed Countries from undertaking reduction commitments which is a welcome move to Ethiopia.¹⁷⁹ It is with this understanding the revised NAMA text proposes for LDCs to be exempted from tariff reductions.¹⁸⁰ However, LDCs are also expected to increase their level of tariff binding commitments although it is left with each LDC's to determine the extent and level of such commitments in accordance with their development objectives.¹⁸¹ Several provisions are also proposed in the May 2008 RDMA which are of importance to acceding LDCs like Ethiopia. For instance, RAMs are entitled to moderate tariff cuts they would otherwise have been required to make under the tiered formula by up to 10 *ad valorem* percentage points in the top two bands and 5 *ad valorem* points in the bottom two bands. In addition, small low-income RAMs with economies in transition (Albania, Armenia, Georgia, Kyrgyz Republic and Moldova), are not required to undertake reductions in final bound tariffs.¹⁸²

The concept of Special Products has also been incorporated in the formula for Small and Vulnerable Economies (SVEs) in the sense that they are entitled to moderate the cuts as per the tiered formula by a further 10 *ad valorem* percentage points in each band.¹⁸³ It appears Ethiopia will not be confronted with difficulties in the negotiation for accession in categorizing itself as an LDC or an SVE. As a result, the above proposals will expectedly facilitate any of the Country's claims for reasonable tariff cuts or to be exempted from reduction commitments.

¹⁷⁹ The July Package, *supra* note 82, para. 45.

¹⁸⁰ The revised NAMA text is applicable to LDCs through paragraph 138 of the May 2008 RDMA which states that the provisions in the revised NAMA text are applicable to LDCs.

¹⁸¹ The May 2008 RDMA, *supra* note 88, para. 138; the Fourth Revised NAMA Text, *supra* note 131, para. 14.

¹⁸² The May 2008 RDMA, *supra* note 88, paras. 66-67.

¹⁸³ *Id.* para. 65.

4.3.2.2. Sensitive Products (SePs)

The introduction of the concept of sensitive products might endanger the market access opportunities for products that are of interest to Ethiopia. This is true, however, in so far as exports from Ethiopia do not receive preferential treatment. If the exports from preference receiving countries are designated as sensitive, the preference erosion will be mitigated. The July Package stipulates that the expansion of the tariff quota for a Sensitive Product is to be applied on an MFN basis only.¹⁸⁴ This shows that, at least the in-quota tariffs are not apportioned on the MFN basis which gives preference granting countries the policy space needed to allocate the in-quota tariffs to exports from LDCs like Ethiopia. Thus, preference receiving countries are well advised in insisting that products relating to long-standing preferences to be designated as sensitive in order to allow developed countries have the flexibility to lessen the scope of preference erosion.

4.3.2.3. Other Issues

a. Tariff Escalations

Food processing industries occupy a major share of Ethiopia's manufacturing sector and agro-processing is indeed one of the areas in which the government encourages foreign direct investment.¹⁸⁵ Ethiopia may be forced to use escalating tariff structures to encourage further processing of raw materials before exporting or generate local value-added. This kind of tariff structures can in reality protect the growing domestic food processing industries which are indispensable for the country's economic development. In the final analysis a rule on tariff escalation which recognizes the variations in the levels of economic development across countries would be significant to Ethiopia. According to the May 2008 RDMA only those developing countries in a position to do so are required to apply the tariff escalation treatment.¹⁸⁶ As a country with a very low level

¹⁸⁴ The July Package, *supra* note 82, para. 34.

¹⁸⁵ I ETHIOPIA: TRADE AND TRANSFORMATION SYNTHESIS DIAGNOSTIC TRADE INTEGRATION STUDY-FINAL VERSION 69 (2004); *An Investment Guide to Ethiopia*, at 14, UNCTAD Doc. UNCTAD/ITE/IIA/2004/2 (Mar. 2004) [hereinafter *Investment Guide*].

¹⁸⁶ The May 2008 RDMA, *supra* note 88, para. 85.

of economic development, disciplines like this would indeed make easier Ethiopia's claims to use escalating tariff structure in the accession negotiation. Moreover, since tariffs on processed products are subjected to a more stringent cut than otherwise would have been according to the tired formula,¹⁸⁷ the tariff escalation treatment would further advance the entry of such products from Ethiopia, at least, to other non-preference granting countries.

b. Tariff Simplification

The Government of Ethiopia has adopted a six-band tariff structure in 2003 which is based on the Harmonized System. Both import and export tariffs are *ad valorem*.¹⁸⁸ According to the proposal in the May 2008 RDMA, no tariff should be bound in a form more complex than the current binding and the most highly complex forms of bound tariffs are to be converted to *ad valorem* or specific tariffs.¹⁸⁹ Least-developed country Members, on the other hand, are not required to effect any such changes.¹⁹⁰ However, the revised NAMA text anticipates LDCs to considerably increase their level of tariff binding commitments and requires the new tariff binding commitments to be on *ad valorem* basis.¹⁹¹ In cases where existing tariff bindings are not on *ad valorem* basis the text simply states that LDCs are encouraged to convert them to *ad valorem* equivalents.¹⁹² As previously indicated, since the import tariffs in Ethiopia are in *ad valorem* terms, it appears the Country would not be faced with a difficult challenge in this respect in the upcoming accession negotiation.

In addition, it is also important to keep in mind that the elimination of complex form of tariffs in countries of destination to Ethiopian exports has a significant positive impact to the Country irrespective of its accession to the WTO. For instance, the "entry price"

¹⁸⁷ *Id.* para. 81.

¹⁸⁸ Bienen et al., *supra* note 175, at 19.

¹⁸⁹ The May 2008 RDMA, *supra* note 88, paras. 98-100.

¹⁹⁰ *Id.* para.101.

¹⁹¹ The May 2008 RDMA, *supra* note 88, para. 138; the Fourth Revised NAMA Text, *supra* note 131, para. 14.

¹⁹² The Fourth Revised NAMA Text, *supra* note 131, para. 14.

system applied by the EC on fruit and vegetables uses seasonal tariffs¹⁹³ to protect domestic production of fruit and vegetables during the growing season.¹⁹⁴ The EU's highly complex import tariff regime aims several African countries including Ethiopia which have lately gone into the production of non-traditional fruits and vegetables of temperate origin so as to diversify their agricultural exports and augment their hard currency earning. Rising costs of greenhouse heating and labor in developed countries and the fact that some African countries like Ethiopia, Kenya, and Uganda are located in high altitude regions suitable for growing cool season crops requiring mild temperatures have made tropical countries a favored alternative.¹⁹⁵ The aggregation calculation based on trade data obtained from the Ethiopian Customs Authority indicate that in 2003 Ethiopia's export of vegetables to the EU have accounted 0.39 % of the total export share.¹⁹⁶

Table 4: Regional destination of top Ethiopian exports, 2003 (% of total export value)

Product (HS_CODE, HS_LABEL)	Zone	Export share
09011100 coffee not roasted or decaffeinated	EU	15.65%
	Japan	6.72%
	Arab Countries	5.16%
	USA	1.74%
	RoW	1.74%
	COMESA	0.12%
	China	0.02%
	Total	31.15%
14049000 vegetable products nes	COMESA	19.25%
	Arab Countries	7.57%
	EU	0.39%
	USA	0.12%
	RoW	0.05%
	China	0.00%
	Japan	0.00%
	Total	27.37%
12074000 sesame seeds	RoW	3.71%
	Arab Countries	2.83%
	EU	0.76%
	Japan	0.45%
	COMESA	0.39%
	China	0.10%
	USA	0.02%
	Total	8.26%

Source: Aggregation calculation from trade data (Customs Authority)

¹⁹³ FAO, *supra* note 26, at 8-9.

¹⁹⁴ HALLAM ET AL., *supra* note 39, at 28.

¹⁹⁵ SINGH, *supra* note 40.

¹⁹⁶ Bienen et al., *supra* note 175, at 16.

Therefore, since developing countries like Ethiopia are becoming progressively more competitive in these products, the complex tariff regime is seen by many as a source of disguised protection.¹⁹⁷ Ethiopia, being one of the exporters of fruits and vegetables to the EU it is undeniable that the existence of complex tariff structures in developed countries is indeed a problem of concern. Thus, the conversion of other countries' complex form of tariff regimes to a more simpler *ad valorem* or specific tariffs alleviate any market access restriction of this kind Ethiopia's exports may encounter in those countries.

c. Tariff Quota Administration

The absence of quantitative import restrictions will make it hard for Ethiopia to get the right to use tariff rate quota in the accession negotiation.¹⁹⁸ However, if the country is allowed to make TRQ commitments, it should be its anticipation that historical suppliers WTO members which have export interests may demand "country-specific allocation of TRQs, as 'current' market access opportunities."¹⁹⁹

In addition, the chairman's May 2008 Draft proposes tariff quota administration to be an instance of "import licensing" within the meaning of the Uruguay Round Agreement on Import Licensing Procedures.²⁰⁰ In *EC - Bananas III*, the Appellate Body has already rules that import licensing procedures for tariff quotas are within the scope of the Licensing Agreement.²⁰¹ The substantive provisions of a country's import (and distribution) regime are of no relevance to the Licensing Agreement which is concerned with the administrative rules of import licensing systems.²⁰² Therefore, if at all Ethiopia is permitted for the right to use TRQs on accession; it should be the Country's expectation that it would be required of making the internal administration of TRQs to be compatible with the disciplines of the Agreement on Import Licensing Procedures.

¹⁹⁷ FAO, *supra* note 26, at 8-9.

¹⁹⁸ See *infra* notes 212-217 and accompanying text.

¹⁹⁹ Bienen et al., *supra* note 175, at 32.

²⁰⁰ The May 2008 RDMA, *supra* note 88, para.104.

²⁰¹ Appellate Body report *EC - Bananas III*, *supra* note 134, paras. 193-95.

²⁰² *Id.* para. 197.

d. Special Agricultural Safeguard (SSG)

As discussed earlier, the URAA introduced the SSG to allow countries to additional duties to normal tariffs when actual import volumes rise above a specified trigger level²⁰³, or when import prices, denominated in domestic currency, fall below a certain trigger level.²⁰⁴

East African countries including Ethiopia experienced import surges which are defined as 30% price deviation from 3-year moving average between 1982 and 2003.²⁰⁵ A study by FAO indicated that import surges, particularly in low-income food deficit countries (LIFDCs), have been associated with negative effects on domestic production. In fact, during the period 1984-2000, Jamaica saw twenty eight cases of import surges accompanied by twenty six cases of production shortfall.²⁰⁶ Products such as onions, potatoes, and vegetable oil, were almost entirely replaced by more competitive imports. In Honduras, which used to be self-reliant in rice, locally-produced rice was undercut by cheaper imports from Southeast Asia accounting almost half of domestic consumption. Similarly, after liberalization in 1994, tomato paste imports sharply increases in Senegal while domestic production fell by half.²⁰⁷

Since Ethiopia may not be allowed to use non-tariff barriers when it accedes to the WTO, the set of policy instruments available for the Country to provide protection to its farmers will essentially be limited to tariffs. Although Ethiopia will go to the WTO negotiating table with an extremely liberal tariff system, the experience from past accession cases indicate that it will undoubtedly be faced with pressure to bind its tariffs at low rates, or to lower its applied tariffs even further.²⁰⁸ For instance, the simple-average agricultural tariff rates for Vanuatu, Cambodia and Nepal were bound at 43%, 30% and 44% respectively.²⁰⁹

²⁰³ The AoA, *supra* note 6, art 5 (1) a.

²⁰⁴ *Id.* art 5 (1) b.

²⁰⁵ Brief on Import Surges, *supra* note 70.

²⁰⁶ ICTSD, *supra* note 141, at xii.

²⁰⁷ *Id.*

²⁰⁸ See *supra* notes 177-78 and accompanying text.

²⁰⁹ The Least Developed Countries Report, *supra* note 177, at 57.

The SSG provisions are preserved only to those members (mostly developed countries) that went through the tariffication formula.²¹⁰ According to the proposals in the May 2008 RDMA, other than being required to reduce the SSG coverage to no more than [3%] of tariff lines, developing countries are still allowed to invoke the SSG under the same URAA terms and conditions.²¹¹

Ethiopia does not have any quantitative import restrictions and import quotas on agricultural goods and there are no NTB's that would be replaced by tariff (tariffication). The absence of quantitative import restrictions will make it difficult for Ethiopia to secure right of using tariff rate quota in the accession negotiation.²¹² Previous accession cases shows that acceding countries were not automatically granted the right to SSG actions particularly when there are no non-tariff measures that have been converted into ordinary customs duties in accordance with the tariffication provisions.²¹³ For instance, although Vanuatu, an LDC, demand for the rights to use SSG provisions after having tarifficated its quantitative restrictions in potatoes, the request was denied by WTO Members. Actually, it was prohibited from joining the WTO if it insisted on using Special Agricultural Safeguards. The argument was that the Uruguay Round methodologies were not available to acceding countries.²¹⁴ A similar argument is forwarded by some Working Party Members during Viet Nam's accession process. Consequently, when it accedes to WTO, it is a looming possibility that Ethiopia might not be allowed to use the TRQ's. However, it should be observed that the rights and obligations of new members must be based on development indicators.²¹⁵ Here, it is equally important for Ethiopia to note that there is no example of a country getting TRQs within its accession deal if it did not already have them in place. As such, to secure right of tariff rate quota, Ethiopia must guarantee that they are in place now, if it is to have any

²¹⁰ Modalities, *supra* note 11, para. 4.

²¹¹ The May 2008 RDMA, *supra* note 88, para. 116.

²¹² Bienen et al., *supra* note 175, at 31.

²¹³ *Id.* at 32.

²¹⁴ CELINE CHARVERIAT & MARY KIRKBRIDE, OXFAM INTERNATIONAL, CAMBODIA S ACCESSION TO THE WTO: HOW THE LAW OF THE JUNGLE IS APPLIED TO ONE OF THE WORLD S POOREST COUNTRIES.

²¹⁵ MARY KIRKBRIDE, OXFAM INTERNATIONAL, BRIEFING PAPER 74, THE UNFAIR TERMS FOR VIET NAM'S ENTRY TO THE WTO 10 (2005), available at

http://www.oxfam.org.uk/resources/policy/trade/downloads/bn_vietnam.pdf

chance of maintaining them post-accession. Having seen its six years battle for the right to use TRQs are futile, Russia, for instance, decided in 2002 to introduce TRQs unilaterally on beef, pork, and sugar. Even though negotiations are currently underway it is likely that these will be accepted within Russia's membership package.²¹⁶ Therefore, Ethiopia may still negotiate for the right to resort to the AoA's SSG provisions on certain key products that are indispensable for domestic food security, though this is not an easy task as it is expected to provide a sound justification.²¹⁷

4.3.2.4. Special and Differential Treatment

a. Special Products (SPs)

The introduction of the concept of Special Products may further facilitate any of Ethiopia's request in the accession negotiation either to be exempted or for lesser reduction commitments. It must also be noted that LDC's have been exempted from tariff reduction commitments by the AoA and in the proposals of the July Package as well.²¹⁸ The May 2008 RDMA also reaffirms this position.²¹⁹

b. Special Safeguard Mechanism (SSM)

As discussed in the previous sections, the SSM would allow developing "countries to raise tariffs above their bound levels for a limited duration to protect import competing sectors against price depression and/or import surges."²²⁰

The SSM is indeed one example of a potential gain that Ethiopia should not renounce in the accession negotiations. As pointed out in earlier sections, although it appears tariff is the only protection available to Ethiopia's agricultural sector, it is a very looming possibility that the Country might be requested to bind its tariff on sensitive products at a

²¹⁶ KIRKBRIDE, *supra* note 215, at 9-10.

²¹⁷ Bienen et al., *supra* note 175, at 32.

²¹⁸ The July Package, *supra* note 82, para. 31; *See also supra* text accompanying note 18.

²¹⁹ The May 2008 RDMA, *supra* note 88, para. 138; the Fourth Revised NAMA Text, *supra* note 131, para. 14.

²²⁰ ICTSD, *supra* note 141, at 4-6; for more on SSM *see supra* text accompanying notes 151-63.

very low level.²²¹ For instance, 40% is not a very high bound rate should Cambodia need protection against import surges in their most important agricultural commodity.²²²

As Ethiopia will be placed in direct competition with the largest agro-exporters, use of an SSM could be of vital importance. For instance, the surtax on coffee was imposed in the past to serve a similar purpose.²²³ Ethiopia should be able to use the newly introduced SSM available to other developing country WTO members to protect its vulnerable agricultural sector. As already stated, the rights and obligations of new members must be based on development indicators.²²⁴ Thus, Ethiopia may negotiate for the right to resort to SSM on certain key products that are indispensable for domestic food security.

c. Tropical Products and Preference Erosion

Ethiopia is eligible for preferential access to European markets under the EU's Everything-But-Arms (EBA) initiative and to US markets under the African Growth and Opportunities Act (AGOA). Moreover, a wide variety of Ethiopian exports are entitled to preferential access under the Generalized System of Preference (GSP) in Austria, Canada, Finland, Japan, Norway, Sweden, USA and most countries in the EU.²²⁵ For the year 2005/06, for instance, 35.6 % of Ethiopia's exports goes to European countries while Japan and the USA each accounting 7.8% and 4.7% respectively.²²⁶ The following tables and figures describe the main exports of Ethiopia and their destination for the year 2005/06.

²²¹ See *supra* notes 176-78, 205-09 and accompanying text.

²²² CHARVERIAT & KIRKBRIDE, *supra* note 214.

²²³ Bienen et al., *supra* note 175, at 45.

²²⁴ KIRKBRIDE, *supra* note 215, at 10.

²²⁵ Investment Guide, *supra* note 185, at 8.

²²⁶ PUBLICATION OF PLANNING AND RESEARCH SERVICE, ETHIOPIAN CUSTOMS AUTHORITY, TOWARDS MODERN CUSTOMS BY THE NEW ETHIOPIAN MILLENNIUM? (Nov. 2006), available at <http://www.ethiomarket.com/ecua/>

Table 5 Value of Export by Major Product Category (2003/04 - 2005/06)

No	Product Category	Value of Export in million Birr			Annual growth rate in %	
		2003/04	2004/05	2005/06	2004/05	2005/06
1	Bee Wax	12.0	10.2	13.3	-14.5	29.8
2	Cereals	78.6	73.0	121.0	-7.1	65.7
3	Chat	759.0	725.1	774.3	-4.5	6.8
4	Coffee	1795.6	2922.4	3204.7	62.8	9.7
	<i>Raw</i>			3204.7		
	<i>Processed</i>			0.015		
15	Cotton	93.8	16.1	59.7	-82.9	271.9
6	Flower	43.5	72.1	192.6	65.7	167.1
7	Fruits and Vegetables	59.2	138.3	111.0	133.6	-19.8
	<i>Fruits</i>			18.1		
	<i>Vegetables</i>			92.8		
8	Gold	474.0	385.7	566.9	-18.6	47.0
9	Hides	33.9	85.5	63.6	152.6	-25.7
10	Leather and Leather Products	7.4	38.2	84.6	416.9	121.5
	<i>Finished Leather</i>			67.1		
	<i>Leather Products</i>			17.5		
11	Live Animals	20.5	113.9	238.9	456.3	109.7
12	Meat and Meat Products	54.6	135.9	160.3	149.0	18.0
13	Natural Gum	37.6	43.1	47.0	14.5	8.9
14	Oil Seed	784.2	1106.0	1838.8	41.0	66.3
15	Pulse	214.5	307.8	324.3	43.5	5.4
16	Skin	329.6	458.8	510.5	39.2	11.3
	<i>Sheep, Goat Skin</i>			510.4		
	<i>Crocodile Skin</i>			0.1		
17	Spice	59.0	94.9	86.4	60.8	-8.9
18	Tantalite Ore	43.2	34.4	38.1	-20.3	10.7
19	Tea	18.1	16.0	7.3	-11.7	-54.1
20	Textile and Garment	80.6	62.5	97.3	-22.5	55.7
21	Goods not elsewhere classified	142.8	243.8	293.4	70.7	20.3
Total		5141.7	7083.8	8834.2	37.8	24.7

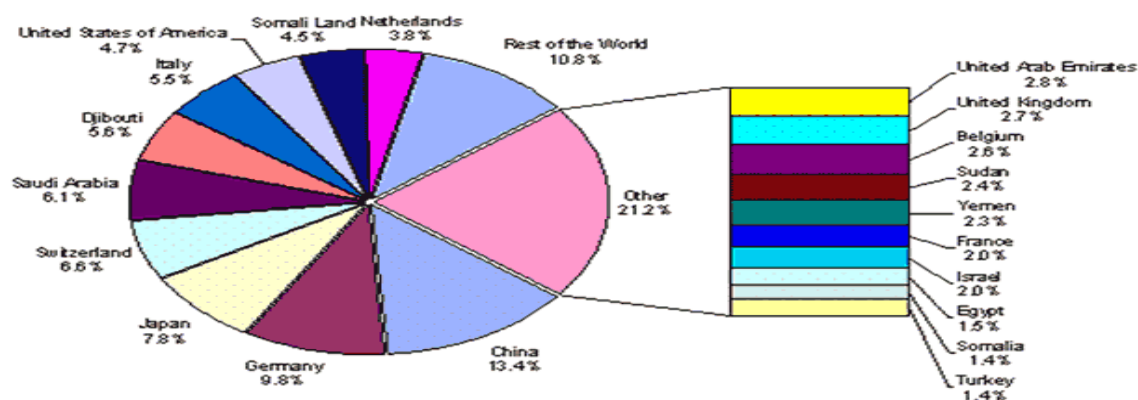
Source: Ethiopian Customs Authority

Table 6 Share of Different Commodity Groups in Total Annual Export in %

No	Product Category	2003/04	2004/05	2005/06
1	Coffee	34.9	41.3	36.3
2	Oil Seed	15.3	15.6	20.8
3	Chat	14.8	10.2	8.8
4	Gold	9.2	5.4	6.4
5	Skin	6.4	6.5	5.8
6	Pulse	4.2	4.3	3.7
7	Live Animals	0.4	1.6	2.7
8	Flower	0.8	1.0	2.2
9	Meat and Meat Products	1.1	1.9	1.8
10	Cereals	1.5	1.0	1.4
11	Fruits and Vegetables	1.2	2.0	1.3
12	Textile and Garment	1.6	0.9	1.1
13	Spice	1.1	1.3	1.0
14	Leather and Leather Products	0.1	0.5	1.0
15	Hides	0.7	1.2	0.7
16	Cotton	1.8	0.2	0.7
17	Natural Gum	0.7	0.6	0.5
18	Tantalite Ore	0.8	0.5	0.4
19	Bee Wax	0.2	0.1	0.2
20	Tea	0.4	0.2	0.1
21	Goods not elsewhere classified	2.8	3.4	3.3
Total		100.0	100.0	100.0

Source: Ethiopian Customs Authority

Figure. 2 Share of Different Countries in Total Value of Export of Ethiopia (2005/06)



Source: Ethiopian Customs Authority

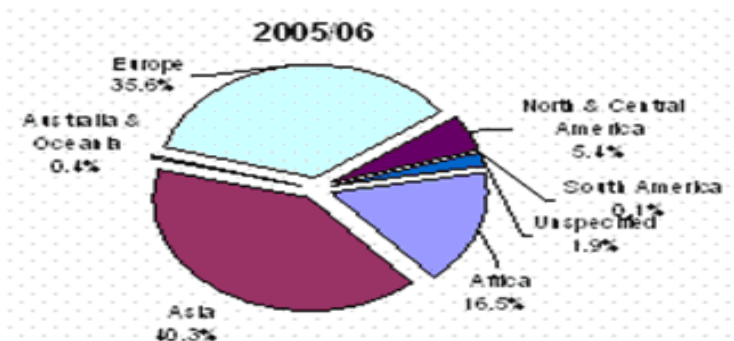
Table 7 Top 20 Export Trading Partners of Ethiopia

Value in 000 Birr

Country of Destination	2004/05		2005/06		Growth Rate in 2005/06 in %	Change in Ranking in 05/06 Compared to 04/05
	Value	Rank	Value	Rank		
						-3
China	396,816.6	4	1,180,679	1	197.5	
Germany	1,144,796.9	1	867,147	2	-24.3	+1
Japan	529,582.3	2	692,476	3	30.8	+1
Switzerland	287,786.7	8	583,218	4	102.7	-4
Saudi Arabia	422,142.6	3	541,619	5	28.3	+2
Djibouti	361,562.2	7	497,593	6	37.6	-1
Italy	381,323.8	6	484,556	7	27.1	+1
United States of America	385,182.5	5	417,775	8	8.5	+3
Somali Land	229,452.0	12	399,851	9	74.3	-3
Netherlands	256,301.6	9	335,850	10	31.0	+1
United Arab Emirates	248,890.1	10	248,407	11	-0.2	+1
United Kingdom	213,728.4	13	238,391	12	11.5	-1
Belgium	211,380.4	14	233,954	13	10.7	-1
Sudan	137,306.6	19	214,005	14	55.9	-5
Yemen	156,513.7	17	200,721	15	28.2	-2
France	141,732.1	18	179,152	16	26.4	-2
Israel	175,029.1	16	175,586	17	0.3	+1
Egypt	50,042.1	23	134,209	18	168.2	-5
Somalia	245,221.9	11	126,756	19	-48.3	+8
Turkey	108,677.5	20	124,056	20	14.2	0

Source: Ethiopian Customs Authority

Figure 3 Exports by Continent of Destination



Source: Ethiopian Customs Authority

Table 8: Export to EU Countries

Value in 000 Birr

Country of Destination	2004/05	2005/06	Growth Rate in %
Austria	44	3	-92.6
Belgium	211,380	233,954	10.7
Cyprus	1,069	429	-59.8
Czech Republic	4,595	3,668	-20.2
Denmark	31,379	16,700	-46.8
Finland	3,986	5,982	50.1
France	141,732	179,151	26.4
Germany	1,144,796	867,147	-24.3
Greece	44,448	31,903	-28.2
Hungary	4,484	854	-80.9
Ireland	1,039	3	-99.7
Italy	381,323	484,556	27.1
Lithuania	238	-	-100.0
Luxembourg	191,490	-	-100.0
Malta	14	-	-100.0
Netherlands	256,301	335,850	31.0
Poland	4,424	5,732	29.6
Portugal	4,514	75,170	1565.0
Slovakia	0.1	10	7574.2
Slovenia	1,666	22	-98.7
Spain	25,469	19,707	-22.6
Sweden	31,597	18,793	-40.5
United Kingdom	213,728	238,390	11.5
Total	2,699,725	2,518,033	-6.7

Source: Ethiopian Customs Authority

However, since Ethiopia is presently a beneficiary of zero or low duty market access in Quad countries, market distortions such as those created by dirty tariffication and tariff escalation are not significant problems to Ethiopia's economy. It should be stressed, however, that these market distortions will be harmless as long as the preferential regimes do not exempt Ethiopia's agricultural exports from their application.

Nevertheless, protectionist OECD countries are under immense pressure at the WTO to substantially reduce tariff barriers in agriculture. The margins between MFN and

preferential tariffs will gradually decrease as WTO Members such as Japan, EU and US reduce their tariffs.²²⁷ This is because the higher the cut in developed countries, especially in the EU, the higher the preference erosion for the beneficiaries.²²⁸ Even if the implementation of market access commitments under the AoA did not lead to considerable changes in tariff protection in terms of tariff cuts, it establishes the foundation for deeper cuts in agricultural protection in the future. Consequently, in the long-term, the market access commitments under the AOA would narrow the margin between the preferential tariff rates granted under preferential schemes to developing countries such as Ethiopia and the tariffs paid by other countries that are subject to reduction.²²⁹ Hence, the gradual erosion of the preferential treatment due to the market access commitment of AOA is one of the negative impacts which the Ethiopian economy is expected to encounter in the near future regardless of the Country's accession to the WTO.

The outstanding question is how does the Doha negotiation attempts to resolve the erosion of preferences that is already began thorough the market access commitment of the AoA? So as to maintain the preferential market access, it is certainly Ethiopia's interest if developed country members to whom it has preferential market access be exempt from the obligation to reduce tariffs for certain products of interest to Ethiopia.²³⁰

The July Package acknowledges the significance of long-standing preferences to some developing countries and states that the issue will be addressed in the negotiations.²³¹ According to the May 2008 RDMA only a selected list of products in Annex H shall receive preferential treatment.²³² The indicative list of preference erosion products includes Ethiopia's main agricultural exports such as meat and meat products, cereals, fruits and vegetables, flowers, pulses, oilseeds, roasted coffee and raw cane sugar. As a result, disciplines of this kind may mitigate the scope of preference erosion in relation to preference receiving export products of Ethiopia. However, the current negotiation on the

²²⁷ *Id.*

²²⁸ Training Tool, *supra* note 34, at 36.

²²⁹ PAL, *supra* note 20, at 12.

²³⁰ *Id.* at 40.

²³¹ The July Package, *supra* note 82, para. 44.

²³² The May 2008 RDMA, *supra* note 88, para. 136.

complete liberalization of trade in tropical products has a bearing on the negotiation related to preference erosion. As well known, many LDCs that export tropical products are also the very same countries that receive preferential treatment in developed countries markets. Accordingly, in cases where the exported tropical products receive preferential treatment, full liberalization on such products does mean elimination of preferential treatment for the product concerned. That is why many African and ACP countries stresses that decisions regarding tropical products and products related to the diversification from illicit narcotic crops should not have a negative impact on existing preferences which is certainly shared by Ethiopia.²³³ The May 2008 RDMA has recognized such possibility of an overlap between provisions related to preference erosion, tariff escalation and tropical products. In cases where such overlap occurs, the text suggests: the provisions on tariff escalation and tropical products will take precedence over those on preference erosion. Although the text provides that this discipline won't be applicable to a certain list of products, such products have not been identified yet.²³⁴ Thus, in the final analysis, it is the inclusion of preference receiving export products of Ethiopia in the excepted list that will help the Country to cope up with the negative effects of preference erosion on its economy.

²³³ State of Play, *supra* note 165, at 28-20.

²³⁴ The May 2008 RDMA, *supra* note 88, para. 136.

7. References

1. Books, Pamphlets and Other Non Periodic Materials

- ACTION AID, THE MARRAKESH DECISION, *available at* <http://trade.ec.europa.eu/doclib/html/122239.htm> (last visited Aug. 28, 2008).
- ASARECA, RESPONDING TO THE FOOD PRICE CRISIS IN EASTERN AND SOUTHERN AFRICA: POLICY OPTIONS FOR NATIONAL AND REGIONAL ACTION (2008), *available at* http://www.ilri.org/regionalplan/.../Responding%20to%20Food%20Price%20Crisis-%20Draft%20Report2_.pdf
- BARRY, AMY, OXFAM INTERNATIONAL, OXFAM INTERNATIONAL POSITION ON FOOD PRICES (Apr. 2008), *available at* http://www.oxfam.org/.../bpoxfam_food_prices_briefing_April2008
- BARRY, AMY, OXFAM INTERNATIONAL, BRIEFING PAPER 87, A RECIPE FOR DISASTER: WILL THE DOHA ROUND FAIL TO DELIVER FOR DEVELOPMENT? (2006), *available at* http://www.oxfam.de/download/recipe_for_disaster.pdf
- CHARVERIAT, CELINE & KIRKBRIDE, MARY, OXFAM INTERNATIONAL, CAMBODIA S ACCESSION TO THE WTO: HOW THE LAW OF THE JUNGLE IS APPLIED TO ONE OF THE WORLD S POOREST COUNTRIES.
- COMMODITY POLICY PROJECTIONS SERVICE, FAO, AGREEMENT ON AGRICULTURE: OPTIONS TO SUPPORT FOOD SECURITY IN SUB-SAHARAN COUNTRIES.
- COMMODITIES AND TRADE DIVISION, FAO, BRIEF ON IMPORT SURGES-ISSUES NO 2, IMPORT SURGES: WHAT IS THEIR FREQUENCY AND WHICH ARE THE COUNTRIES AND COMMODITIES MOST AFFECTED? (2006), *available at* http://www.fao.org/es/esc/en/378/406/highlight_423.html
- COMMODITIES AND TRADE DIVISION, FAO, BRIEF ON IMPORT SURGES-ISSUES NO. 5, INSTITUTIONAL REQUIREMENTS FOR THE IMPLEMENTATION OF A SPECIAL SAFEGUARD MECHANISM (SSM) (2006), *available at* http://www.fao.org/es/esc/en/378/406/highlight_420_p.html
- COUNTRY DEPARTMENT FOR ETHIOPIA, WORLD BANK, REPORT NO. 23294-ET, THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA: DEVELOPING EXPORTS TO PROMOTE GROWTH (Apr. 2002).
- DESTA, MELAKU G., THE LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS: FROM GATT 1947 TO THE WTO AGREEMENT ON AGRICULTURE (2002).
- DIXIT, PRAVEEN M. & JOSLING, TIM, INTERNATIONAL AGRICULTURAL TRADE RESEARCH CONSORTIUM, WORKING PAPER NO. 97, STATE TRADING IN AGRICULTURE: AN ANALYTICAL FRAMEWORK (July 1997).
- ECONOMIC AND SOCIAL DEPARTMENT, FAO, WTO AGREEMENT ON AGRICULTURE: THE IMPLEMENTATION EXPERIENCE, *available at* <http://www.fao.org/docrep/005/Y4632E/y4632e00> (last visited Dec 28, 2007).
- ECONOMIC RESEARCH SERVICE, U. S. DEPARTMENT OF AGRICULTURE, EUROPEAN UNION: ISSUES AND ANALYSIS: MARKET ACCESS COMMITMENTS, *available at* <http://www.ers.usda.gov/Briefing/archive/EuropeanUnionpre2008/EuropeanUnionBriefingRoom2001-07.pdf> (last visited Oct. 27, 2008).

- 1 ETHIOPIA: TRADE AND TRANSFORMATION SYNTHESIS DIAGNOSTIC TRADE INTEGRATION STUDY-FINAL VERSION (2004).
- FAO, THE IMPLICATIONS OF THE URUGUAY ROUND AGREEMENT ON AGRICULTURE FOR DEVELOPING COUNTRIES, *available at* <http://www.fao.org/docrep/005/Y4632E/y4632e04> (last visited June 02, 2008).
- FARM SECURITY AND RURAL INVESTMENT ACT (2002), *available at* <http://www.ers.usda.gov/Features/farbill/2002Farm Act.pdf>
- GIFFORD, MIKE & MONTEMAYOR, RAUL, ICTSD, AN OVERVIEW ASSESSMENT OF THE REVISED WTO DRAFT MODALITIES FOR AGRICULTURE (2008).
- GRIFFITH, M., CAFOD, ANALYSIS OF THE WTO FRAMEWORK AGREEMENT (2004), <http://www.cafod.org.uk/var/storage/original/application/php1d1AF5.pdf>
- HALLAM, DAVID ET AL., FAO, THE MARKET FOR NON-TRADITIONAL AGRICULTURAL EXPORTS (2004), *available at* <ftp://ftp.fao.org/docrep/fao/007/y5445e/y5445e00.pdf>
- 4 ICTSD & IISD, DOHA ROUND BRIEFING SERIES: HONG KONG UPDATE (Nov. 2005).
- ICTSD, QUARTERLY INTELLIGENCE REPORT NO. 12, AGRICULTURE NEGOTIATIONS AT THE WTO: THE JULY PACKAGE AND BEYOND, *available at* <http://www.e-alliance.ch/media/media-5713.pdf> (last visited Oct. 13, 2008).
- ICTSD, ISSUE PAPER NO. 6, SPECIAL PRODUCTS AND THE SPECIAL SAFEGUARD MECHANISM: STRATEGIC OPTIONS FOR DEVELOPING COUNTRIES (2005), *available at* <http://ictsd.org/downloads/2008/03/sp-ssm.pdf>
- IMF, COUNTRY REPORT NO. 04/37, THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA: POVERTY REDUCTION STRATEGY PAPER-ANNUAL PROGRESS REPORT (Feb. 2004) [hereinafter IMF Country Report No. 04/37].
- INGO, MERLINA & NG, FRANCIS, THE WORLD BANK, POLICY RESEARCH WORKING PAPER 1915, DISTORTIONARY, EFFECTS OF STATE TRADING IN AGRICULTURE: ISSUES FOR THE NEXT ROUND OF MULTILATERAL TRADE NEGOTIATIONS (Apr. 1998).
- KIRKBRIDE, MARY, OXFAM INTERNATIONAL, BRIEFING PAPER 74, THE UNFAIR TERMS FOR VIET NAM'S ENTRY TO THE WTO (2005), *available at* http://www.oxfam.org.uk/resources/policy/trade/downloads/bn_vietnam.pdf
- KIRKBRIDE, MARY, OXFAM INTERNATIONAL, BRIEFING PAPER 92, GETTING THE FUNDAMENTALS RIGHT: THE EARLY STAGES OF AFGHANISTAN'S WTO ACCESSION PROCESS (June 2007), *available at* <http://www.oxfam.org/sites/www.oxfam.org/files/Getting%20the%20fundamentals.pdf>
- KHOR, MARTIN, PRELIMINARY COMMENTS ON THE WTO'S GENEVA JULY DECISION, THIRD WORLD NETWORK, <http://www.ifg.org/analysis/wto/MartinsComments.html> (last visited Aug. 20, 2008).
- LEETMAA, S., U.S. DEPARTMENT OF AGRICULTURE, THE EFFECTS OF ELIMINATING EU EXPORT SUBSIDIES (2001), *available at* <http://www.ers.usda.gov/publications/aer802/aer802k.pdf>
- MAMATY, I., ICTSD, RESOURCE PAPER NO 3, AFRICAN COUNTRIES AND THE AGREEMENT ON AGRICULTURE: WHAT SCOPE FOR SUSTAINABLE DEVELOPMENT? (2002).
- MIHO, SHIOTORI, UNCTAD, WTO NEGOTIATIONS ON AGRICULTURE ASSESSMENT OF NON AD VALOREM TARIFF AS A TRADE BARRIER (2002).
- OECD, AN ANALYSIS OF OFFICIALLY SUPPORTED EXPORT CREDITS IN AGRICULTURE, <http://www.agradepolicy.org/output/resources/OECD.pdf> (last visited July 19, 2008).

- PAL, PARTHAPRATIM, CENTAD, AGRICULTURAL SUBSIDIES AND NEGOTIATIONS: STRATEGIES AND OPTIONS (2005).
- PAL, PARTHAPRATIM, IMPLEMENTATION ISSUES OF THE AGREEMENT ON AGRICULTURE AND ITS IMPLICATIONS FOR DEVELOPING COUNTRIES (2002),
http://www.networkideas.org/themes/agriculture/sep2002/ag09_AOA.htm
- PEARCE, R. & SHARMA, R., FAO, MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE RESOURCE MANUAL: EXPORT SUBSIDIES (2000).
- PEARCE, R. & SHARMA, R., FAO, MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE-RESOURCE MANUAL MARKET ACCESS II: TARIFF RATE QUOTAS (2000).
- PETERS, RALF, UNCTAD, ROADBLOCK TO REFORM: THE PERSISTENCE OF AGRICULTURAL EXPORT SUBSIDIES (2006), *available at*
<http://www.unctad.org/TEMPLATES/Download.asp?docid=7048&lang=1&intItemID=1397> –
- PUBLICATION OF PLANNING AND RESEARCH SERVICE, ETHIOPIAN CUSTOMS AUTHORITY, TOWARDS MODERN CUSTOMS BY THE NEW ETHIOPIAN MILLENNIUM? (Nov. 2006), *available at*
<http://www.ethiomarket.com/ecua/>
- SEATINI, WTO'S JULY PACKAGE AND AFRICA'S NEGOTIATING LEVERAGE (Jan. 2005),
<http://www.seatini.org/publications/epas/julyPackage.htm>
- SINGH, B.P., NONTRADITIONAL CROP PRODUCTION IN AFRICA FOR EXPORT (2002),
<http://www.hort.purdue.edu/newcrop/ncnu02/v5-086.html>
- Sephana, H.E. Sok, *Cambodia Country Case Study*, in THE PREPARING FOR WTO ACCESSIONS: INSIGHTS FROM DEVELOPING COUNTRIES (Simon J. Evenett ed., 2005).
- WTO, AGRICULTURE: EXPLANATION-INTRODUCTION, *available at*
http://www.wto.int/english/tratop_e/agric_e/ag_intro01_intro_e.htm
- WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: UPDATE PHASE 2: DOMESTIC SUPPORTS-AMBER, BLUE, AND GREEN BOXES, *available at*
http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd14_ph2domest_e.htm (last visited July 20 2008).
- WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: PHASE 1: EXPORT SUBSIDIES, COMPETITION AND RESTRICTIONS (2002), *available at*
http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd06_export_e.htm
- WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: DOMESTIC SUPPORT: AMBER, BLUE AND GREEN BOXES (2004), *available at* http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_boxes_e.htm
- WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: DOMESTIC SUPPORT: AMBER, BLUE AND GREEN BOXES (2004), *available at* http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_boxes_e.htm
WTO, WTO
- WTO, AGRICULTURAL NEGOTIATIONS: THE ISSUES, AND WHERE WE ARE NOW (2004), *available at*
http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd00_contents_e.htm
- WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: PHASE 1: THE PEACE CLAUSE (Oct. 10, 2002), *available at* http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_peace_e.htm
- YOUNG, LINDA M. & ABBOTT, PHILIP C., ICTSD, COMMENT BRIDGES NO 5, THE WTO NEGOTIATIONS AND DISCIPLINES FOR FOOD AID (2005),
http://www.agradepolicy.org/output/ictsd/bridges95_FoodAid_Young_Abbott.pdf

- ZEDILLO, EMESTO, UNCERTAIN FUTURE FOR FREE TRADE, <http://www.forbes.com/columnist/buisness/global/2004/0920/018.htm> (last visited Aug. 20, 2008)
- ZUNCKEL, H., ADEQUATELY BOXING AFRICA IN THE DEBATE ON DOMESTIC SUPPORT AND EXPORT SUBSIDIES, [http://www.tralac.org/pdf/TB_2-04 - Agricultural negotiations by African countries.doc](http://www.tralac.org/pdf/TB_2-04_-_Agricultural_negotiations_by_African_countries.doc) (last visited Aug. 20, 2008).

2. Periodical Materials and Unpublished Non Print Sources

- *Ag Chair to Issue Revised Draft Text by End January Bridges*, vol. 12 no. 1, ICTSD Weekly Main Digest, Jan. 16, 2008, <http://www.ictsd.org/weekly/08-01-16/story1.htm>.
- Bienen, Derk et al., *Programme to Support the Integration of the ACP States into the Multilateral Trading System of the WTO: Support to Ethiopia in its Accession Process to the WTO (contract no. 7 ACP-RPR-753 project n°39b) Impact Study on WTO Accession*, (Sept. 10, 2005).
- Bokhari, Ashfak, *WTO farm accord unlikely before 2006*, <http://www.dawn.com/2004/11/08/abr7.htm> (last visited Aug. 21, 2008).
- Desta, Melaku G., *The Bumpy Ride towards the Establishment of "A Fair and Market-Oriented Agricultural Trading System" at the WTO: Reflections Following the Cancun Setback*, 8 DRAKE J. AGRIC. L. 489 (2003).
- ENA, *Bringing down Rising Cost of Living Urgent Gov't Agenda: Meles*, THE ETHIOPIAN HERALD, May 13, 2008, (Addis Ababa).
- ENA, *Curbing High Cost of Living Hinges on Ensuring Rapid Sustainable Dev't: Ministry*, THE ETHIOPIAN HERALD (Addis Ababa), Aug. 16, 2008.
- Haque, Inaamul & Ali, Majid, *WTO's July Package and Developing Countries: Preferring Pragmatism to Ideology*, INT'L TRADE L.J. 34, (2004).
- *Review of the 2009 Humanitarian Interventions*, DRMFSS: DPPC-FORTNIGHT BULLETIN. Vol. 1, No. 2, May 29, 2009.
- Werth, Alexander, *OECD Policies, Poverty and Agricultural Development in SSA*, www.egdi.gov.se/word/EGDI_presentation.ppt (last visited oct.21, 2008)

3. International Materials

a. Treaties and Other International Agreements

- Agreement on Agriculture, Apr. 15, 1994, *available at* http://www.wto.org/english/docs_e/legal_e/14-ag.pdf

- Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, available at http://www.wto.org/english/docs_e/legal_e/tokyo_scm_e.doc (last visited Oct. 27, 2008).
- Agreement on Safeguards, Apr. 15, 1994, available at http://www.wto.org/english/docs_e/legal_e/25-safeg.pdf (last visited Aug. 25, 2008).
- Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, available at http://www.wto.org/english/docs_e/legal_e/24-scm.pdf
- Doha Work Program: Decision Adopted by the General Council on 1 August 2004, Aug. 2, 2004, WTO Doc. WTO WT/L/579 available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf
- General Agreement on Tariffs and Trade, Oct. 30, 1947, available at http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47
- Ministerial Conference: Fourth Session Doha, Ministerial Declaration, Nov. 20, 2001, WTO Doc. WT/MIN(01)/DEC/1, available at http://docsonline.wto.org/gen_search.asp?searchmode=simple
- Ministerial Conference: Sixth Session Hong Kong, Ministerial Declaration, Dec. 18, 2005, WTO Doc. WT/MIN(05)/DEC.
- Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, available at http://www.wto.org/english/docs_e/legal_e/08-17.doc (last visited Aug. 25, 2008).

b. Materials of Intergovernmental Organizations

i. South Centre

- *Detailed Analysis of Annex A to the General Council Decision July 2004 “Framework for Establishing Modalities in Agriculture”*, South Centre Doc. SC/TADP/AN/CC/2.2 (Aug. 2004).
- *From Doha to the July 2004 framework package: a content analysis*, South Centre Doc. SC/TADP/AN/CC/2 (Sept. 2004), available at http://www.southcentre.org/index.php?option=com_content&task=view&id=290&Itemid=67
- *South Centre Comments on Draft Modalities for Agriculture*, South Centre Doc. SC/AN/TDP/AG/5 (Feb. 2008) (Analytical Note).
- *South Centre Comments on Draft Modalities for Agriculture*, South Centre Doc. SC/AN/TDP/AG/2 (Aug. 2007) (Analytical Note).
- *State of Play in Agriculture Negotiations: Country Groupings’ Positions-Domestic Support Pillar*, South Centre Doc. SC/AN/TDP/AG/4-2 (Jan. 2008) (Analytical Note).
- *State of Play in Agriculture Negotiations: Country Groupings Positions-Export Competition Pillar*, South Centre Doc. SC/AN/TDP/AG/1-3 (Nov. 2006)
- *State of Play in Agriculture Negotiations: Country Groupings’ Positions-Market Access Pillar*, South Centre Doc. SC/AN/TDP/AG/4-1 (Jan. 2008) (Analytical Note).

- *Trade Negotiations in the Eastern and Southern African Region: Issues for Consideration*, South Centre Doc. SC/AN/TDP/EPA/5 (Mar. 2007).

ii. UNCTAD

- *An Investment Guide to Ethiopia*, UNCTAD Doc. UNCTAD/ITE/IIA/2004/2 (Mar. 2004).
- *Dispute Settlement: 3.15 Agriculture*, UNCTAD Doc. UNCTAD/EDM/Misc.232/Add.32 (2003).
- *The Least Developed Countries Report 2004 Part One: Chapter 3 Selected Recent Policy Trends: Accession of LDCs to the WTO*, UNCTAD Doc. UNCTAD/LDC/2004 (2004).
- *Training Tool for Multilateral Trade Negotiations on Agriculture*, UNCTAD Doc. UNCTAD/DITC/TNCD/2006/7 (Mar. 2007).

iii. WTO

- *Export Credits and Related Facilities*, WTO Doc. G/AG/NG/S/13 (June 26, 2000), <http://www.agradepolicy.org/output/resources/ExpC.Doc>
- *Fourth Revision of Draft Modalities for Non-Agricultural Market Access*, WTO Doc. TN/MA/W/103.Rev.3 (Dec. 6, 2008).
- *Market Access: Submission by Cuba, Dominican Republic, El Salvador, Honduras, Kenya, India, Nigeria, Pakistan, Sri Lanka, Uganda, Zimbabwe*, WTO Doc. G/AG/NG/W/37 (Sept. 28, 2000), available at http://commerce.nic.in/wto_sub/Agri/sub_g37.htm.
- *Report of the working party on the accession of Cambodia*, WTO Doc. wt/acc/khm/21/add.1 (Sept. 11, 2003), available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/ACC/KHM21.doc>
- *Report of the Working Party on the Accession of Viet Nam*, WTO Doc. WT/ACC/VNM/48 (Oct. 27, 2006), available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/ACC/VNM/48.doc>
- *Revised Draft Modalities for Agriculture*, WTO Doc. TN/AG/W/4/Rev.2 (May 19, 2008).
- *Tariff Quota Administration Methods and Tariff Quota Fill*, WTO Doc. G/AG/NG/S/8 (May 26, 2000) (Background Paper by the Secretariat).

iv. GATT-WTO Cases

- *EC - Bananas III- Appellate Body report*, available at <http://docsonline/wto.org/imrd/director.asp?DDFDocuments/t/WT/DS/27ABR.wpf>. (last visited sept. 12, 2008).
- *Chile: Price Band System and Safeguard Measures Relating to Certain Agricultural Products-Report of the Appellate Body*, WTO Doc. WT/DS207/AB/R (Sept. 23, 2002).

- *Production Aids Granted on Canned Peaches, Canned Pears, Canned Fruit Cocktail and Dried Grapes*, EEC Doc. L/5778 (Feb. 20, 1985), available at <http://www.worldtradelaw.net/reports/gattpanels/eccannedfruit.pdf>
- *Australia: The Australian Subsidy on Ammonium Sulphate*, GATT Doc. GATT/CP. 4/39 (Apr. 3, 1950), available at <http://ielaw.info/gatt/8.pdf>.

4. Other Materials

- MOFED, *WT/ACC/4-Ethiopia*.
- *Directives to Transfer Duties and Responsibilities Related to Establishment and Operation of Export Credit Guarantee Scheme from the National Bank of Ethiopia to Development Bank of Ethiopia*, Directive No. SBB/41/2007 (Feb. 1, 2007).
- *A Proclamation for the Establishment of the Ethiopian Sugar Development Agency*, FEDERAL NEGARIT GAZETA. Proclamation No. 504/2006.

5. Other Provisions in the Agreement on Agriculture and the Doha Agricultural Negotiations

5.1. The Peace Clause

The “peace clause” refers to Article 13 of the AoA that regulates the application of other WTO agreements to subsidies in respect of agricultural products. The “peace clause” is an eleventh-hour compromise of the Blair House Accord, by which the European Communities and the United States agreed to provide protection to agricultural subsidies against challenge under certain conditions.¹

The peace clause fully protect Green Box domestic support measures that are provided in compliance with the AoA against unilateral countervailing action as well as multilateral challenge under the SCM Agreement and GATT 1994, including challenge under the non-violation nullification and impairment provisions of GATT Article XXIII:1(b).²

The application of this immunity also extended to all domestic subsidies which comply with Article 6 of the AoA including the Blue Box and *de minimis* domestic support, but with important modifications.³ First, these two forms of support remain countervailable just like all other types of subsidies if a determination of injury or threat thereof is made and due restraint is shown in initiating investigations.⁴ Secondly, their exemption from the SCM Agreement and the non-violation nullification and impairment provisions of Article XXIII:1(b) of GATT is qualified by the requirement that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year.⁵

Export subsidies which are in full conformity with the Agreement on Agriculture are not prohibited by the SCM Agreement. Hence, are not actionable multilaterally, i.e. through the

¹ WTO, AGRICULTURE NEGOTIATIONS: BACKGROUNDER: PHASE 1: THE PEACE CLAUSE (Oct. 10, 2002), available at http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_peace_e.htm.

² The Agreement on Agriculture, Apr. 15, 1994, art. 13, [hereinafter the AoA], available at http://www.wto.org/english/docs_e/legal_e/14-ag.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

WTO dispute settlement procedures (they cannot be subject to actions based on non-violation nullification or impairment of tariff concessions under the GATT). However, export subsidies are not protected and remain countervailable if there is proof of injury and due restraint has been shown in initiating investigations.⁶ The peace clause is set to remain in effect for a period of nine years (until the end of 2003).⁷ Some argue:

It is notable that the argument over the peace clause is looking more like an extension of the argument over the blue box. To the extent some countries want to maintain the blue box, they also want to keep the peace clause. The fact that the one was intended to be temporary, and the other not so, doesn't seem to matter in the current negotiations. Indeed, although the peace clause applies to other forms of agricultural domestic support, and even export subsidies as well, the fact that blue box measures are used by only a few members indicates that these measures will be vulnerable to legal challenge more than others after the peace clause expires.⁸

The peace clause has become one of the most contentious issues in the current negotiations. Whereas a majority of member countries want to do away with this protection, still many others desire to keep it.⁹ The US requests (which is supported by the EU) the re-introduction of the peace clause for subsidy programs that stay within the allowed levels and conform to the Green Box criteria. The G-20 and the African group, on the other hand, oppose any request for re-introducing the peace clause.¹⁰

Even if the July Package does not mention the Peace Clause, this is likely to be reintroduced into negotiations at the insistence of the US and some EU member states. However, whether there is a need to duplicate the "peace clause" of the Uruguay Round is less certain.¹¹ Recent WTO cases such as the *US upland cotton* shows that without the protection under the peace clause, most

⁶ *Id.* art. 13; see also *Dispute Settlement: 3.15 Agriculture*, at 39, UNCTAD Doc. UNCTAD/EDM/Misc.232/Add.32 (2003).

⁷ The AoA, *supra* note 2, art. 13.

⁸ Melaku G. Desta, *The Bumpy Ride towards the Establishment of "A Fair and Market-Oriented Agricultural Trading System" at the WTO: Reflections Following the Cancun Setback*, 8 DRAKE J. AGRIC. L. 489, 534 (2003).

⁹ *Id.* at 533.

¹⁰ *State of Play in Agriculture Negotiations: Country Groupings' Positions-Domestic Support Pillar*, at 16, South Centre Doc. SC/AN/TDP/AG/4-2 (Jan. 2008) (Analytical Note).

¹¹ Mike Gifford & Raul Montemayor, ICTSD, *An Overview Assessment of the Revised WTO Draft Modalities for Agriculture 19* (2008); see also generally *Doha Work Program: Decision Adopted by the General Council on 1 August 2004, Aug. 2, 2004, WTO WT/L/579* [hereinafter the July Package], available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf

subsidies currently used by the US and other developed Members of WTO would have been actionable under the SCM Agreement.¹² The continual of this kind of immunity would allow wealthy countries to keep on granting large scale subsidies to their farmers which in effect have a negative impact to the economy of Ethiopia in the long run regardless of its accession to the WTO.

5.2. Export Restrictions

Export restrictions are restraints on the amount of goods exported to a particular country or countries by a government. An export restriction is mainly imposed to prevent a shortage of goods in the domestic market because it is more profitable to export.¹³

The AoA requires WTO Members, intending to institute new export prohibition restrictions on foodstuffs in accordance with Article XI: 2(a) of the GATT 1994, to abide by the following conditions. In particular:¹⁴

- to give due consideration to the effects of such restrictions on importing Members' food security;
- to give notice as far in advance as practicable to the Committee on Agriculture, including the measure's nature and duration and, consult upon request, with any other Member having a substantial interest as an importer regarding the measure in question and, on request, give it necessary information.

This rule applies to developing countries only to the extent that they are net exporters of the foodstuff for which the export restriction or prohibition is to be imposed.¹⁵

Some WTO members have long insisted that there should be a balance in the AoA between the interests of exporters and importers and that this provision should be modified to limit the

¹² *Training Tool for Multilateral Trade Negotiations on Agriculture*, at 73, UNCTAD Doc. UNCTAD/DITC/TNCD/2006/7 (Mar. 2007).

¹³ EXPORT RESTRICTION, available at [Export restriction - Wikipedia, the free encyclopedia.mht](#)

¹⁴ The AoA, *supra* note 2, art. 12.

¹⁵ *Id.*

discretion of net exporting countries to restrict exports.¹⁶ These countries want to dispose of measures that get in the way of exports with the intention of improving their food security and strengthening their confidence in ability to secure supplies for importing¹⁷. Fearing that their food supplies could be disrupted if exporting countries restrict or tax exports, several importing countries such as Japan propose disciplines for the conversion of export restriction to taxes that would then be reduced (similar to “tariffication” of import restrictions). Switzerland even proposes eliminating these completely with the exception of some flexibility for developing countries.¹⁸

So far as developing countries are concerned the use of export restrictions may be necessary under certain circumstances to guarantee food availability and encourage the production of local value-added commodities. These measures are regarded as representing a response to tariff escalation in developed countries.¹⁹ That is why the Cairns Group of net exporters linked their proposals in relation to export restrictions to reductions in tariff escalation.²⁰

The July Package only provides that disciplines regarding export restrictions are to be strengthened leaving the details for further negotiations.²¹ Many have expressed their worry that since the new disciplines may be applicable to all developing countries (not only net exporters), all developing countries should be involved in these negotiations and avoid disciplines that would limit their policy options in this area.²²

To their dismay, it appears the suggested proposals in the May 2008 RDMA do not include this kind of S&D treatment.²³ Moreover, in comparison to the AoA, the May 2008 RDMA incorporates stringent proposals such as:

¹⁶ *Detailed Analysis of Annex A to the General Council Decision July 2004 “Framework for Establishing Modalities in Agriculture”*, pt. II, p. 29 South Centre Doc. SC/TADP/AN/CC/2.2 (2004) [hereinafter Detailed Analysis].

¹⁷ WTO, WTO AGRICULTURE NEGOTIATIONS: THE ISSUES, AND WHERE WE ARE NOW 29 (2004) [hereinafter Backgrounder], available at http://www.wto.org/english/tratop/e/agric/e/negs_bkgnd00_contents_e.htm

¹⁸ *Id.*

¹⁹ Detailed Analysis, *supra* note 16, pt. II, p. 29.

²⁰ Backgrounder, *supra* note 17, at 29

²¹ The July Package, *supra* note 11, para. 50.

²² Detailed Analysis, *supra* note 16, pt. II, p. 29.

²³ *Revised Draft Modalities for Agriculture*, paras. 154-160, WTO Doc. TN/AG/W/4/Rev.2 (May19, 2008) [hereinafter the May 2008 RDMA].

- Existing export prohibitions and restrictions in foodstuffs and feeds under Article XI.2 (a) of GATT 1994 shall be eliminated by the end of the first year of implementation.²⁴
- Any new export prohibitions or restrictions under Article XI.2 (a) of GATT 1994 should not normally be longer than 12 months, and shall only be longer than 18 months with the agreement of the affected importing Members.²⁵

One of the mechanisms the Government of Ethiopia has been using to tackle the current rise of the prices of basic food stuffs in the country is export restrictions in some agricultural products.²⁶ Since the Country might need to limit exports of some basic agricultural products in the future for the purpose of guaranteeing food security, the lack of S&D provisions in this regard might indeed be a problem of concern in the accession negotiation.

²⁴ *Id.* para. 159.

²⁵ *Id.* para. 160.

²⁶ ASARECA, RESPONDING TO THE FOOD PRICE CRISIS IN EASTERN AND SOUTHERN AFRICA: POLICY OPTIONS FOR NATIONAL AND REGIONAL ACTION 18 (2008), available at http://www.ilri.org/regionalplan/.../Responding%20to%20Food%20Price%20Crisis-%20Draft%20Report2_.pdf