

Options for the WTO Modalities for Agriculture

David Blandford and Tim Josling¹

Introduction

The WTO's Doha Round negotiations are at a crucial stage. Though there has been some progress towards convergence of different views, many of the key elements of an agricultural agreement are still to be decided. The deadline of April 30 established by Ministers in Hong Kong for the agreement on modalities has been missed, and such an agreement may not come for several weeks. Without the agricultural modalities in place it will be impossible to move ahead with the other discussions that are necessary to bring the Round to a conclusion.

This paper will focus on the key operational issues that remain to be addressed in the agricultural modalities.² Many of these issues have been the subject of intense discussion in the past few weeks in Geneva. Some of them have not yet reached the negotiating table. We begin with the technical and operational aspects relating to the three pillars of the Uruguay Round Agreement – domestic support, export competition and market access – and then turn to some other elements that may have to be included in a final agreement to achieve a balanced outcome, such as a Geographical Indications, and Monitoring and Surveillance. We also offer comments on two issues that are likely to influence the acceptability of the final package of modalities, the Peace Clause, and a Continuation Clause.³

¹ David Blandford is Professor in the Department of Agricultural Economics and Rural Sociology at Pennsylvania State University. Tim Josling is Senior Fellow at the Freeman Spogli Institute for International Studies at Stanford University. We acknowledge the contributions of Ann Tutwiler, Mario Jales, Mike Gifford and David Abler, but they are not to be held responsible for any errors. This report was prepared for the IPC in connection with its ongoing work on monitoring the progress in the Doha Round, but statements cannot be attributed to individual IPC members. The opinions expressed should be attributed solely to the authors. The authors are grateful for comments from IPC members at their Spring Meeting in Budapest, May 2006.

² We follow the order of the issues as they were raised by Ambassador Crawford Falconer, Chair of the Agricultural Negotiating Committee, in a list of questions presented on February 9, 2006 in order to focus the final stages of negotiations on modalities (JOB(06)/26). We refer to this list as "the Chairman's Questions". In addition, the Chair has circulated several reference papers for the mid-April negotiating session containing further ideas on some of the topics.

³ The components of the modalities considered below will need to be combined in a package that is acceptable to all members. We have not discussed the range of political constraints that govern whether such a package meets the criteria for acceptance. Our focus is on the desirability of particular aspects of the package, though we believe that we have stayed within the realm of broad acceptability.



I. DOMESTIC SUPPORT

Overall reduction

The Hong Kong Ministerial Declaration states that for domestic support, there will be three bands for reductions in Final Bound Total AMS and in the Overall Trade-Distorting Domestic Support (OTDS – defined as the sum of Total AMS, *de minimis* and Blue Box support), with higher linear cuts in higher bands. In both cases, the Member with the highest level of permitted support [EU] will be in the top band, the two Members with the second and third highest levels of support [US, Japan] will be in the middle band and all other Members, including all developing country members will be in the bottom band.

The Chairman's report to the Ministers at Hong Kong (Annex A of WT/MIN(05)/DEC) summarizes the proposed reductions for each of the three bands for each category of support (Table 1).

Band	Overall trade-distorting	Total AMS
3	70 - 80%	70 - 83%
2	53 - 75%	60 - 70%
1	31 - 70%	37 - 60%

Note: the bands for each of the two categories of support are defined with respect to different US dollar thresholds.

Source: WT/MIN(05)/DEC Annex A.

In his list of questions, Chairman Falconer asked whether the cut-off points between the bands for OTDS could be set at \$10 and \$60 billion. To the extent that this gives the allocation of countries already agreed at a political level, this seems to be uncontroversial.

The OTDS is a new concept, and it has the potential to be effective in reducing allowable levels of domestic support. But broadening the definition of support to the OTDS substantially increases the base from which reductions will be made. If the cuts in level of the OTDS are small, agreed reductions would require minimal changes in the domestic support programs of most countries. Our examination of the current support levels would suggest that **a reduction percentage of 60 percent or more in the OTDS would be required to impose any effective restrictions on the use of trade-distorting domestic programs for the three countries in the top two OTDS bands.**

Proposed reduction percentages for OTDS range from 70 to 80 percent for band 3, 53-75 percent for band 2, and 31-70 percent for band 1 (see Table 1). For the reasons outlined above, **values of the order of 70 percent for band 3, 60 percent for band 2 and 50 percent for band 1 would seem to be necessary if the domestic support provisions of a new agreement are to make an effective contribution to reducing future distortions created by domestic support programs.**

De Minimis

Reductions of 50 and 80 percent have been proposed for the product-specific and non product-specific *de minimis* components of domestic support for developed countries. The *de minimis* allowances are currently set at 5 percent of the relevant production values (value of production for an individual commodity for the product-specific *de minimis* and the total value of agricultural production for the non product-specific *de minimis*). A cut of at least 50 percent in these *de minimis* components will be required to reduce them in line with the reductions in the OTDS. Band 2 and 3 countries may need to make additional reductions in their *de minimis* components in order to satisfy their OTDS limit. The application of tiered reductions in the OTDS would imply band-specific reduction percentages

for the *de minimis*, such as a 65 percent cut for the lower band and up to an 80 percent cut for the highest band.

The smaller cuts in the *de minimis* that are implied by placing developing countries in the lowest band for OTDS reductions appear to be a satisfactory way to provide some additional flexibility for development policies. However, it should be noted that developing countries could be allowed to claim exemption from *de minimis* cuts even if they have AMS commitments.

Final Bound Total Aggregate Measurement of Support

The domestic support measures for which an AMS is calculated (the measures included in the Total AMS and *de minimis*) are a primary target in disciplining domestic support. Along with adequate reductions in the *de minimis*, as suggested above, the Total AMS also needs to be cut substantially. The use of a tiered approach to reductions in the Total AMS will go a long way to achieving a harmonized effect of reductions. The specific reduction percentages applied to each of the bands will be critical to the amount of harmonization achieved. The greater the difference between the percentages applied to the upper and lower bands, the larger the harmonizing effect.

The suggested cut-off points for the three bands for the purposes of the AMS reductions, at levels of notified Total AMS of \$12 and \$20 billion, are consistent with the agreement on the distribution of countries into the bands – placing the EU in the top band, the US and Japan in the second and all other countries in the lowest band.

In terms of broader harmonization in the total amount of support, the relationship between the percentage reductions applied to the OTDS bands and those applied to the Total AMS bands will be critical. In order to ensure that real reduction occurs, the reduction percentages for the AMS components need to be at least as great as the percentage applied to the OTDS. In the light of this, we suggest that cuts of **75, 65, and 55 percent in the Total AMS for the three bands would provide a balance to the required level of cuts in the OTDS by band.** The rates of reduction within these bands (see Table 1) also appear within the realm of political compromise. A large reduction percentage in the OTDS might seem to force additional reductions in total Amber Box support (Total AMS plus *de minimis*), but countries might choose to absorb the additional reduction by cutting the Blue Box. Since many countries do not actually use their Blue Box component, this would result in no actual reduction in support. Deep cuts in the Total AMS and *de minimis* components are therefore more likely to result in a real reduction in the amount of trade-distorting support.

Of the 35 countries that have a bound Total AMS under the Uruguay Round agreement, 14 are developing countries. Developing countries with no bound Total AMS will be exempt from reductions in the OTDS and in *de minimis*. Those that allocate support primarily to subsistence and resource-poor farmers will be able to exclude that support under any overall reduction commitment. Consequently, a low reduction percentage for the third band would exempt many developed countries and developing countries with AMS commitments (support not directed to subsistence and resource-poor farmers) from significant disciplines on domestic support. Nevertheless an element of special and differential treatment could be introduced by requiring lower cuts, say 2/3 of the 55 percent, for developing countries. Modest reduction percentages would also provide flexibility for developing countries that do not currently exploit the *de minimis* and Blue Box components to provide some support to their farmers in the future.

The choice of base period for product-specific AMS caps is still unresolved. There would be a natural preference in any individual country to use a period during which its actual Total AMS was high. Thus, a period that included the early years of the implementation of the Uruguay Round Agreement (URA) would be advantageous to the European Union and, especially, to Japan (Table 2). A period that centered on the later years of URA implementation, for example, 1999-2001, would be advantageous to the United States. In order to provide a balanced approach, data spanning the period 1995 or 1996

to 2001 could be used. An alternative approach would be to **use a base period that reflects the completion of the implementation of the URA commitments** (at least for developed countries). For example, an average of 2000 to the most recent year that data are available for all countries, perhaps 2004. This would require most countries to update their notifications and that would have the additional advantage of increasing the transparency of the WTO process. However, the provision of a large volume of more recent data may not be possible at this late stage in the negotiations.

<i>Year</i>	European Union	Japan	United States
	Billions ECU/EURO	Billions Yen	Billions Dollars
1995	47.5	3507.5	6.2
1996	51.0	3329.7	5.9
1997	50.2	3170.8	6.2
1998	46.7	766.5	10.4
1999	47.9	747.8	16.9
2000	43.7	708.5	16.8
2001	39.3	666.7	14.4
2002	N.A.	730.0	N.A.

Source: WTO Notifications.

Blue Box

The Chairman's Questions also include a number of issues relating to the "new" Blue Box category of support. Chief among these is the nature of the agreed constraints on this box. The initial ceiling is to be 5 percent of the value of production in a base period, and the Chairman asks whether this should be reduced to 2.5 percent. Such a reduction would tighten the discipline on Blue Box payments. In the absence of such a reduction requirement, these payments might only be reduced if the OTDS reduction percentage exceeds those for the Total AMS and the *de minimis*. This may be an unlikely outcome. Consequently, **a specific reduction requirement of 50 percent for the Blue Box (from 5 to 2.5 percent of the value of production) would have the advantage of imposing a broad-based reduction in all the components of trade-distorting support.**

Some countries that use the Blue Box extensively may have difficulty in meeting even the 5 percent production limitation. **These countries could be allowed an extended transition period (to parallel the extended period which is likely to be granted to developing countries for the implementation of their commitments) at the end of which all countries would have to meet the applicable Blue Box binding.**

The Chairman also asks whether further disciplines are required on the conditions attached to Blue Box payments. The original category of payments was exempted from reductions under the URA because they were made under production-limiting programs. Payments must be based on fixed bases and yields; on 85 percent or less of a base level of production; or on a fixed number of livestock. The Framework Agreement extends the definition to payments that do not require production and includes the stipulation that the base upon which payments are made must be fixed and unchanging. This would eliminate the rebasing of payments. But the level of direct payments under this new definition can be linked to changes in market conditions, such as low prices.

Is it worthwhile to discipline explicitly the “new” Blue Box payments that are linked to prices? That would apply to modified deficiency payment schemes, such as that operated by the United States (counter-cyclical payments). Some countries argue that such schemes are likely to be production and trade distorting. As the change in the Blue Box definition was made primarily in order to include such policies, it would not seem feasible to exclude them altogether. But a higher reduction percentage on the OTDS than on the Amber Box components could provide some discipline on the size of counter-cyclical Blue Box payments. Or, product-specific caps on Blue Box payments could be used to provide additional constraints, with such caps defined using the same approach as that for product-specific AMS caps. Such refinements are going to be difficult to negotiate but may add credibility to the final agreement. Consequently, **in addition to reducing the size of the Blue Box it may be desirable to impose additional disciplines on payments qualifying for this category of support as a result of the change in definition.**

Countries employ different approaches to estimate the value of production, relevant for the allowable size of the Blue Box, but a workable approach would seem to be to use the same values that are calculated for the evaluation of whether non product-specific support satisfies the *de minimis* criterion. There would also be an operational advantage in setting the base period production value for the same period used in the calculation of the product-specific AMS bindings.

Green Box

The July Framework (Annex A of WT/L/579) is explicit on the issue of reviewing the criteria for policy payments that qualify for inclusion under the Green Box:

“Green Box criteria will be reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production. Such a review and clarification will need to ensure that the basic concepts, principles and effectiveness of the Green Box remain and take due account of non-trade concerns. The improved obligations for monitoring and surveillance of all new disciplines foreshadowed in paragraph 48 below will be particularly important with respect to the Green Box.”

Relatively little negotiating effort, however, has been put into this aspect of the talks. Progress in this area will be needed as a part of a broader package, but a hasty “last minute” deal on the Green Box definition could undermine the clarity of the URAA agricultural subsidy classification and lead to years of controversy on the consistency of the regulation of domestic support payments.

The main questions raised by the Chairman in this area are how to ensure that developing country policies that do not cause significant trade distortion are not inadvertently excluded by the definition of the Green Box, and “what, if any, other criteria need to be added and / or amended to ensure that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production?” In the draft circulated on April 12, the Chairman identified the issue of developing countries that had not made use of the Green Box in the past (“newcomers”) and who therefore could not comply with the requirement to fix a base period for direct payments. It is consistent with the notion that Green Box policies are only minimally trade-distorting that technical issues should not bar countries (developed and developing) from making use of such measures.

The applicability of the Green Box to developing countries is an extension of a broader debate about the need for a “development box,” a safe haven for development policies that might otherwise seem to violate WTO rules. There should be general agreement that additions to the text of Annex 2 could make it clear that certain policy instruments common in developing countries (and not markedly trade distorting) are included. As they do not change the reality of the situation greatly, such modifications should be acceptable to developed countries.

The resolution of all the Green Box issues will be extremely difficult to achieve if a swift conclusion is to be reached to the Doha Round. *Ad hoc* modifications or extensions of the existing conditions that are made in haste run the risk of creating more problems than solutions. **Steps should be taken to improve timely notification, monitoring and surveillance of Green Box payments (in line with more timely notification of all elements of domestic support).** However, probably the only practical option would be to require that any major review and clarification of Green Box criteria be completed during a designated period following the conclusion of the round, for adoption at a specified date in the future. Given the other critical issues on which closure is needed and the likelihood that insufficient time will be available to deal in depth with Green Box issues, **an agreed process of review and clarification that addresses the interests of both developed and developing countries would seem to be the most practical option.**

II. EXPORT COMPETITION

The Hong Kong Declaration reads “We agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013. This will be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realized by the end of the first half of the implementation period.”

Substantial agreement has thus been reached on the phased elimination of export subsidies and export credits, credit guarantees or insurance programs with repayment periods beyond 180 days. Disciplines are to be imposed on programs with repayment periods of 180 days and below. But the Chairman’s Questions raise issues about the timing and method of making such reductions.

Export Subsidies

Given the established date for the elimination of export subsidies, and the parallel removal of similar measures, the issue is how to phase these out to conform with the decision that a substantial part of the reductions should fall in the first half of the period. **A “substantial part” of the reductions could be reflected in across the board cuts in export subsidies of, say, 60 percent in the first three years.** This broad cut would not therefore focus on particular products. The reductions could be in both expenditure and in the volume of products subsidized, with the latter having the most direct effect on trade and the advantage that compliance is easier to monitor. **Sixty percent of the payments on export credits over 180 days could also be eliminated by that time to ensure parallel processes, as could 60 percent of the subsidy payments that are channeled through state trading exporters.** However, there are likely to be significant problems of measurement in the latter case.

Export Credits and Credit Guarantees (Short term)

The basic requirement for removing the element of subsidy in export credits of less than 180 days is that remaining programs should be self-financing, reflect market consistency and not circumvent commercially-oriented disciplines. The Chairman’s Questions identify this as an issue that remains to be resolved: the subsequent reference papers attempt some draft language. The Chairman also raised the issue of protecting Least Developed Countries (LDCs) and Food Importing Developing Countries (FIDC) from the problems that might be caused by lack of credit.

The simplest way to achieve the aims of moving to a non-subsidized base for export credits would be to eliminate government expenditures on these programs, including financing for exporting state trading entities. **This would require that by the end of the elimination period (2013), export financing should be provided through commercial entities operating on a commercial basis or on equivalent commercial terms (at market rates of interest and insurance premia) by exporting state trading entities.**

The issue of LDCs and FIDCs requires coordination with financial institutions. The WTO itself could recognize the involvement of those bodies as indicating the need for financing at certain times, and this would create a presumption that bilateral financing was a contribution to genuine credit needs.

Exporting State Trading Enterprises

In the July 2004 “Framework Agreement” there was a consensus that government financial support for export STEs should be phased-out, over the same time frame as the phase-out of export subsidies. However, there was no agreement on whether the monopoly powers of export STEs should also be eliminated; although the Hong Kong Declaration stated that “as a means of ensuring that trade-distorting practices of STEs are eliminated, disciplines relating to exporting STEs will extend to the future use of monopoly powers so that such powers cannot be exercised in any way that would circumvent the direct disciplines on STEs on export subsidies, government financing and the underwriting of losses.” Developing countries are to receive “special consideration” with respect to the disciplining of exporting STEs.

The Chairman’s Questions raise the issue of the method of imposing disciplines on exporting STEs.⁴ Is it possible to identify a package of disciplines, which could give all countries the necessary confidence that exporting STEs will not undermine the disciplines on export assistance? And since a major part of the concerns regarding exporting STEs will be addressed through the phase-out of government financial assistance, what other disciplines are appropriate?

The matter of the monopoly power of exporting STEs raises issues that go far beyond that of export subsidies. It is likely that a complete resolution will have to wait for further sets of negotiations.⁵ In the absence of an agreement to phase-out the monopoly powers of export STEs, the more tractable issue may be how to prevent circumvention of disciplines. A recent IPC report has suggested that **exporting STEs could be obliged to provide any information a complaining country may request, including details on individual shipments.** Clearly this raises business confidentiality concerns. Providing that such concerns can be addressed, there should be no objection to supplying a dispute settlement Panel with any information it deems appropriate.

While the governance of exporting STEs is likely to vary widely between countries, there should be a provision that requires national governments to ensure that their export STEs operate in a manner that is in full conformity with the country’s WTO obligations. In a manner similar to the “Trade Policy Review” to which each WTO member is subject on a periodic basis, there could be a requirement that **the operations of an exporting STE with monopoly powers would be subject to a thorough review every five years** by the Committee on Agriculture.

Concerns regarding the potential operations of exporting STEs are understandable, as are the concerns of those countries that wish to maintain the option of marketing their exports through a single desk mechanism. These legitimate imperatives should be able to be reconciled on a pragmatic basis as illustrated by the above elements. However, due account should be taken of the position of exporting STEs in developing countries, such as marketing boards for tropical products in West Africa. Though many of these agencies have been privatized in recent years, several remain. It would be unfortunate if conflicts over grain marketing in North America had unintended consequences for producers of tropical products in Africa.

⁴ There is, in addition, the question of the definition of STEs, but this seems to be tractable if the other issues are resolved.

⁵ Many of the concerns about exporting STEs, particularly their monopoly powers, relate to competition policy issues. However, it was agreed at the launch of the Doha Round that competition policy was not part of the agenda of these negotiations. This said, it was also agreed that exports subsidies and other forms of export assistance were an integral part of the negotiations on agriculture. What appears to be a conflicted mandate helps to explain why this issue has become so contentious.

Food Aid

The Hong Kong Declaration states that:

“...on food aid, we reconfirm our commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. To this end, a “safe box” for *bona fide* food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, we will ensure elimination of commercial displacement. To this end, we will agree effective disciplines on in-kind food aid, monetization and re-exports so that there can be no loop-hole for continuing export subsidization.”

The Chairman’s Questions pose the issue of whether the definition used by The World Food Programme (WFP) would be a reasonable way to identify an emergency situation. He also asked how to define a “safe box” and whether to discipline food aid that is in-kind. The subsequent reference papers for the mid-April meeting further explored the issue of “who should declare an emergency?”

The WFP definition provides a set of criteria for determining what aid would qualify under the safe box. It would seem appropriate for use in the WTO, and bilateral emergency food aid should be viewed in the light of similar criteria. **The fundamental criterion used by the WFP is that there be clear evidence that an abnormal event or series of events has occurred which causes human suffering or imminently threatens lives or livelihoods and which the government concerned does not have the means to remedy.** Responses to natural disasters, food shortages resulting from civil conflict or sudden economic shocks are all included under the WFP criteria. In this regard, NGOs and other agencies can play an important part in the identification of problems, though the notification should be from a UN or other intergovernmental agency. It is essential that response to emergency situations be as rapid as possible.

Timely notification of the provision of aid and conformity with the conditions that define the safe box are also desirable.

Non-emergency *bona fide* food aid also raises problems of identification. Should the donor or the recipient be responsible for classifying such aid? Notification, with the chance of challenge or counter-notification seems a possible advance. And the evidence of requests by recipient countries should be taken as a presumption that such aid is *bona fide* though this could still be challenged. **Food aid which did not satisfy the necessary conditions for the safe box or for *bona fide* aid would be required to be counted against the export subsidy commitments during the period of their phased elimination, and should be eliminated by 2013.**

More contentious are the issues of further disciplines on in-kind food aid, the monetization of food aid (selling by the recipient government on the domestic market) and re-exports of food aid. For safe box food aid these issues are clear-cut: in-kind food aid is the most likely to be appropriate, monetization and re-exporting are inappropriate. But to make rules for non-emergency aid is more problematic. Many countries argue that in-kind food aid should be discouraged, arguing for cash-based aid. Others argue that monetization could be appropriate for recipient countries in certain circumstances, and even that re-exporting could be allowed on occasions. But it may not be realistic to focus on changing the nature of food aid in the context of the Doha Round modalities. Other institutions exist for making such changes. **The WTO should be concerned with the export subsidy component of food aid rather than the nature of food aid itself.**

III. MARKET ACCESS

Improved market access is a key element of the negotiations, offering the greatest potential gains from a new agreement but revealing the most diversity of opinions among WTO members. Agreement has been reached on some elements of the modalities but by no means all. This implies that the crucial decision on the “level of ambition” of the Round has not yet been settled. Given the significant link between the agricultural and the non-agricultural price cuts (in NAMA) there is an urgent need to reach such a decision. Moreover, the decisions to be taken in the areas of special and sensitive products as well as in special safeguards are each dependent on the level of cuts agreed and the bands in which certain products will fall. At least, there is greater common understanding of the impact on particular tariff lines of cuts of various magnitudes, as a result of the recent simulations made by some WTO members.

Tiered formula for tariff reductions

The Hong Kong Ministerial agreed that there would be four bands for structuring cuts in bound tariffs. The Framework Agreement specified that reductions would be progressive with deeper cuts in higher tariffs. It appears to be agreeable that linear reductions will be applied at differing rates for developed and developing countries and that the thresholds for the bands will differ for the two groups of countries. These conditions would satisfy the provisions of the Framework Agreement that operationally effective special and differential provisions are to be applied to all elements for developing countries.

The Chairman’s Questions paper lists the many issues that still remain to be resolved: the thresholds for the bands; the cuts within these bands; the cuts for developing countries; and the issue of a tariff cap.

Several proposals have been made on the bands and reduction percentages. The bands for developed countries that are under discussion could be from zero to 20 percent, from 20-50 percent, from 50-75 percent, and above 75 percent. The breakpoints of the bands for developing countries could be at 30, 80, and 130 percent. Proposals for the reduction percentages for the lowest band range from 25 to 70 percent for developed countries and from 15 to 50 percent for developing countries. Proposals for the reduction percentages for the highest band range from 40 to 85 percent for developed countries and 30 to 75 percent for developing countries. There have also been proposals for a cap on the maximum permitted value of tariffs, set at different levels for developed countries (75 or 100 percent) and for developing countries (100 or 150 percent).

The choice of the bands and the percentage cuts are, of course, related. The largest reductions in bound tariffs would result from the application of the highest reduction rates beginning at a relatively low threshold for the topmost band and from the imposition of a fairly low tariff cap. Even under those conditions, the impact of the reduction formula will be diluted by the provisions for sensitive and special products and by differences between bound and applied tariffs. Low tariff caps are unlikely to be introduced. But reductions of less than 75 percent for the highest tariff bands and 45 percent for the lower bands would not constitute an ambitious outcome. So a reasonable approach could entail **cuts of 45, 55, 65 and 75 percent for developed countries and two-thirds of those cuts for developing countries, using band divisions at 20, 50, and 75 percent existing (bound) tariffs for developed and 30, 80, and 130 percent for developing countries.**

The significance of a tariff cap is that it can contribute to the harmonization of tariff rates and offer the possibility of future market access as tariff levels are reduced in future. Although not much additional trade will be generated if tariff caps are set as high as 100 percent for developed and 150 for developing countries, as a means of bringing down some of the tariff peaks such caps would be useful.

Products that are subject to TRQs typically have high over-quota tariffs, but not all such commodities may be included in the sensitive product category. An expansion of tariff-rate quotas (TRQs) could be required for any product that is not declared to be sensitive. But, if this were not to be agreed, it will be

important that a relatively high reduction percentage be used for tariffs in the topmost band if there is to be a real possibility for significant expansion of market access for all TRQ commodities.

Sensitive products

The Hong Kong Declaration recognized the need to agree on the treatment of sensitive products, an appropriate number of which Members will be allowed to designate under the Framework Agreement. Sensitive products (defined by a certain number of tariff lines) will be subject to lower reductions in tariffs, but will require an expansion of any applicable tariff-rate quota (TRQ). The Chairman asks how best to reach convergence on the appropriate number of tariff lines to be treated as sensitive. The proposed coverage of sensitive products ranges between 1 to 15 percent of tariff lines. This could be defined with respect to dutiable lines or all lines. The latter would provide for a larger effective coverage under the sensitive product provision, since countries generally have some zero duty items in their tariff schedules. **A limit on sensitive products of 4 percent of all dutiable tariff lines would provide some market access, but would have to be combined with tariff cuts, substantial TRQ expansion and a relatively low tariff cap to provide significant market openings.**

The particular combination of tariff cuts and TRQ expansion required to lead to a “substantial improvement in market access” is still to be agreed, though several methods of TRQ expansion have been suggested. **The cut in the required reduction in tariffs to be applied to sensitive products could be set at one-half of that for other products.** Even then, over quota tariffs will remain high in many cases, unless they are subject to a tariff cap. A significant increase in the TRQ could have an important impact, particularly if in-quota tariffs are low, even if the reduction in over-quota tariffs is modest. A fixed percentage increase in TRQs (defined in terms of the share of domestic consumption in a base period) would have the greatest impact. Alternatively, if the aim were to have a proportionately greater impact on products for which imports are low, a sliding scale could be applied in which the increase in the TRQs is inversely related to the initial share of domestic consumption. It would be possible to link changes in TRQs to relative changes in over quota tariffs but **an approach which focuses directly on the share of consumption seems to offer the best prospects for increasing market access for TRQ commodities. An increase of five percent of consumption would seem to be a reasonable figure.**

Chairman Falconer raised four other questions relating to market access: reduction or elimination of in-quota tariff rates; tariff escalation; tariff simplification and the future of the special agricultural safeguard (SSG). Tariff escalation could be directly tackled in the way suggested by the Harbinson draft modalities, by requiring a linkage between the tariff cuts on raw materials and those of processed products. But the harmonization of tariffs will in any case reduce the scope for tariff escalation, and any formula approach would appear to be impracticable. Tariff simplification is a desirable end in its own right, and would appear to be relatively straightforward in the light of the agreement on AVEs. But the price that might be paid for this could include smaller tariff cuts, and it is not clear that this is a useful trade-off. The need for an SSG for developed countries should be largely offset by the continued use of TRQs and the designation of several of these products as sensitive. **The SSG therefore has little justification and could usefully be dropped.**

Special Products

Developing countries, by agreement, will have the ability to designate a number of special products, based on criteria of food security, livelihood security and rural development needs; these products will be subject to more flexible treatment. The Hong Kong Ministerial indicated that this will involve the self-designation of an “appropriate” number of tariff lines. The Chairman’s Questions raise the issue of how to define these Special Products and how they should be treated.

Flexible treatment could be made operational by allowing developing countries to apply a lower tariff reduction to special products. One way to do this would be to allow developing countries to define an

equivalent percentage of tariff lines for special products to that applied to sensitive products, and to apply the same reduction coefficient to the tariff cuts for those products. As an example, if up to four percent of tariff lines could be designated as sensitive products, and these were subject to half of the relevant reduction percentage, developing countries would have the ability to designate up to eight percent of their lines as special or sensitive, subject to half of the already lower reduction percentages applicable to developing country tariffs. **The combination of the sensitive and special product categories would then allow developing countries a substantial number of lines for which the cut in bound tariffs would be reduced, but would require the reductions in bound tariffs be applied across the entire tariff schedule.** This would be consistent with the overall objective of increasing market access.

Special Safeguard Mechanism

The Framework Agreement indicated that a special safeguard mechanism (SSM) will be established for use by developing country members of the WTO. The Hong Kong Ministerial Declaration specified that recourse to the SSM be based on import quantity and price triggers, with precise arrangements to be further defined. It is important that the operation of the SSM be transparent. In this regard, it would be useful to set up a system of notification of trigger prices and quantities and the use of the SSM, and to build in a review of the operation of the safeguard mechanism after five years.

A key issue is the scope of operation of the SSM and its relationship with special and sensitive products. A universal SSM for developing countries would be unnecessary, unworkable and possibly undesirable. Making the link between the SSM and the special and sensitive products is a constructive way of limiting its operation to the key commodities of concern to developing countries. If the number of eligible lines were to be restricted it would make sense **that the operation of the SSM be limited to the same tariff lines designated as sensitive and special products by developing countries.**

Preferences

The erosion of preferences is an inevitable result of general reductions in tariffs. However, preference erosion can create adjustment issues for countries that rely for a significant proportion of their export earnings on exports under preference schemes; the Hong Kong Ministerial Declaration reiterates the importance of addressing such preference erosion. To ease the adjustment process for the countries concerned it has been proposed that there be a longer phase-in period for tariff reductions for such commodities. Such a solution may be necessary, but it could prolong adjustment and inhibit investments in other products. The more constructive approach would be to assist countries to adjust. **Preference-granting countries and multilateral lending institutions should provide financial resources to assist countries that are dependent on preferences to diversify production.**

One type of preference seems to be generally agreed to be necessary, though the ideas on how to grant such preferences differs among developed countries. Programs that give duty- and tariff-free access to LDCs are in operation in several countries and the decision has been made to build these preferences in to the agricultural agreement rather than leave them a matter of autonomous policy. In addition, it is agreed that developing countries that are in a position to do so should also grant such privileged access. Such a development is an important step towards fuller integration of LDCs into the trade system. Accordingly, **developed countries, and the more developed developing countries, should provide LDCs with quota and duty-free access for all agricultural products within three years of the date of operation of the agreement.**

Other Market Access Issues

Two additional topics regarding market access were mentioned in the Chairman's Questions: reduction of in-quota tariff rates and tariff quota administration. The former would be beneficial but is likely to be opposed by importers of products subject to TRQs as the main impact would be on tariff revenue. In

those instances where a quota is not being filled, a mandatory reduction in the in-quota tariff could be constructive, but this may be difficult to agree. TRQ administration has been discussed at length by the Agriculture Committee over the years, and agreement on a set of acceptable methods of administration could be reached.

V. COTTON

The question of cotton has considerable significance to several countries that export the commodity, as well as broader importance as an indicator of the willingness of developed countries to react to the concerns of small and low-income countries. It has been agreed that the cotton issue be addressed “ambitiously, expeditiously, and specifically,” within the agricultural negotiations. The issue crosses the boundaries between the three pillars. Commitments have been made to eliminate export subsidies by 2006, to grant immediate quota- and duty-free access for LDCs who export cotton, and to make more ambitious cuts in domestic support, over a shorter period of time.

The removal of export subsidies immediately should not be too much of a problem if the United States fully conforms to the decision in the US-Cotton case brought by Brazil. Duty and quota-free access is also possible within the framework of general preference for LDCs. But the most contentious issue is that of reducing allowable domestic support for cotton in advance of any more general reductions that may be agreed. How ambitious should the cuts be for the AMS for cotton? And how can one implement these in a shorter time period?

One suggested solution is to consider the cotton issue as one of “sectoral negotiations” that can be conducted in parallel with general discussions. Within such talks, a package of tariff cuts, export subsidy reductions and domestic support constraints could be negotiated among the parties most concerned. But there is still opposition to the notion of separate treatment, even though a separate sub-committee exists and the mandate is more specific in respect to cotton. **An agreement to cut the AMS for cotton on an accelerated schedule would seem to be an indispensable part of any outcome of the Doha Round.**

VI. MONITORING AND SURVEILLANCE

The introduction of a continuous process for monitoring the compliance of countries with their obligations was a major innovation of the Uruguay Round Agreement on Agriculture (URAA). The Committee for Agriculture has been a useful body to allow for discussion of the operation of the URAA and a vehicle for identifying and discussing areas where the agreement could be improved. Experience with the Committee has certainly helped in the current negotiations, from the early papers tabled in the analysis and information phase to the use of the Committee meeting in Special Session as the negotiating body. However, in the area of monitoring the picture is less satisfactory. Notification by countries has been dilatory in the past few years and the scrutiny of notifications has been less than thorough.

The July Framework attempts to improve the situation. It includes the statement that:

“Article 18 of the Agreement on Agriculture will be amended with a view to enhancing monitoring so as to effectively ensure full transparency, including through timely and complete notifications with respect to the commitments in market access, domestic support and export competition. The particular concerns of developing countries in this regard will be addressed.”

Few of the proposals in the current negotiations have addressed the issue of monitoring. An exception is the G-20 group that presented a paper on “improving monitoring and surveillance mechanisms” on 19 October 2005. The paper set out their concerns about the current system of notifications and suggested improvements. Specifically, the G-20 suggested the creation of a sub-group of the Agriculture

Committee, the Subcommittee on Notification and Surveillance, which would significantly increase the timeliness and transparency of the notification process and would generate conclusions and recommendations on the adequacy of compliance with the (modified) URAA. Though the G-20 paper emphasizes that monitoring should be improved in all areas, including export competition and special and differential treatment, it is in the area of domestic support that the benefits of such improvements are likely to be most apparent.

Improved timeliness and completeness of notification are vital components for improving the monitoring and surveillance of domestic support. This is clearly evidenced by the current confusion over the extent to which CAP reform has changed the EU's level of trade-distorting support and hence the impact of further limits on support levels. Article 18 of the URAA stipulates that members should notify promptly "any new domestic support measure, or modification to an existing measure, for which exemption from reduction is claimed." If countries would merely adhere to the current rules, this would resolve some of the existing problems. But adding some structure to the process could also help. **A subcommittee dedicated to the overview of the monitoring process could be constructive, if that body were adequately supported by information collected by the Secretariat.** The monitoring process could be coordinated with that used for the Trade Policy Reviews. Advance notification of significant policy changes should not be a problem as such changes are typically the subject of lengthy debate and legislative procedures.

The question of evaluating the compatibility of domestic measures with the URAA could also be referred to the subcommittee. However, the limits of such evaluation need to be made clear. It is not obvious that the Committee on Agriculture, or any subcommittee thereof, could decide on the compatibility of any policy with other aspects of WTO agreements, such as the Agreement on Subsidies and Countervailing Measures (SCM). The legal issues will continue to be the province of the dispute settlement process. But the discussions in the Committee on Agriculture could well influence the decision of countries whether to pursue litigation.

The G-20 proposal also includes a call for annual reports from the Committee on the progress of reform in agricultural trade policies, and a report coordinated with the World Bank, the IMF and other institutions that would review the coherence between trade and development objectives. The process of reform is being monitored by other institutions including the OECD and the FAO, and the WTO should probably restrict its activities to providing up-to-date information to these bodies. High-level debate on policy coherence would be constructive, and the WTO should be closely involved, but the analytical work and the compilation of a report would seem to be best left to other institutions.

V. OTHER ISSUES

Issues of Interest but Not Agreed

Three issues have been relegated to the "of interest but not agreed" category. These are: Sectoral Initiatives, Differential Export Taxes and Geographical Indications. The Chairman posed the question as to whether any or all of these can be promoted from this category. Any of the issues could be brought to the front of the negotiations as a topic that provides a balanced outcome. The prospect of a sectoral initiative for cotton has been discussed above. Differential export taxes are of interest to a few countries that see them as a way that other countries can favor their domestic processing sectors. In that regard, they pose similar issues to tariff escalation. But the status of export taxes and quantitative restrictions deserves greater scrutiny and further negotiation. It should be put on the agenda for future discussions.

Geographical Indications

The issue of Geographical Indications (GIs) seems destined to serve in the capacity of a balancing item. Negotiations may have to give further attention to the issue in order to encourage some countries

to agree to the modalities package. The EU, supported by several other countries, continues to insist that the resolution of some of the GI issues is needed to make a final package attractive to their agricultural and food exporting sectors. By framing the issue as one of market access, the EU has attempted to forge a link with the agricultural negotiations.

The July Framework Agreement provides little guidance on the possible shape of an acceptable outcome for GIs. Discussions have been firmly lodged in the TRIPS Council, and the agricultural negotiating group (responsible to the Goods Council) has not engaged in detailed discussions.

Two different issues have been under consideration in the TRIPS Council. One is the agreement on an international register for wines to consolidate the obligation in the TRIPS agreement to protect the GIs in this area. A decision to negotiate such a register was incorporated in the TRIPS agreement (article 23) but no guidance was given on the nature of a regime. Negotiations began in July 1997 but have not yet reached a conclusion. The other issue is the extension of the protection given to wines and spirits to other products.⁶ The General Council has directed the Director General to continue consultations on outstanding issues of implementation of the Uruguay Round including “issues related to the extension of the [enhanced] protection of geographical indications ... to products other than wines and spirits.” (paragraph 1(d)). But there is no agreement on whether such a mandate implies that this issue is part of the Doha Agenda. Without formal instructions from the Trade Negotiating Committee it is difficult to see how negotiations can be expedited.

Negotiations on the multilateral registry for wines have revolved around two proposals. One is to set up a voluntary system through which notified GIs would be entered into a database. The database would be of use for countries establishing their own GI policies. The other is to establish a register that would carry the presumption of protection for all goods registered. Once registered, countries unwilling to protect a particular GI would have 18 months to challenge its inclusion. The gap between a voluntary system and a compulsory system has so far proved unbridgeable.

The significance of a multilateral register depends crucially on its scope and content. A paper by the EU on the broader issue of GIs for wines, cheeses and meat products, listed 41 names that might be candidates for multilateral protection. Agreement to include these as accepted GIs, despite their current use as generic or semi-generic names in many countries, was seen as a significant benefit to EU producers, “clawing back” exclusive rights to use well-known names. This would have been negotiated as a part of the agricultural talks, and become part of the “*quid pro quo*” for EU concessions in other areas, such as export subsidies. So far, other exporters have objected to this link, to the expansion of protection beyond wines and spirits, and indeed to the concept of claw-back itself. **So the task facing negotiators is how to reach agreement on the divisive issue of the register for wines in such a way that it contributes to rather than detracts from the balance struck in other areas and does not prejudge the broader issue of an expansion of GI protection.**

The US and the EU recently reached agreement on trade in wine that could pave the way for a broader deal within the WTO.⁷ The agreement covered more than just GIs and was not specifically related to the issue of a multilateral register, but as the subject matter of the bilateral agreement overlaps that of the TRIPS talks it is difficult not to see the two as linked. The US-EU agreement seeks to phase-out the use of semi-generic names in the US for wines from non-EU sources and therefore offers the possibility of that condition being adopted in the Doha Round.

⁶ Article 22 provides for the protection of all GIs, but links such protection to the need to guard consumers against misleading names. Article 23 goes further and mandates protection for geographically identified wines and spirits regardless of whether consumers might be misled.

⁷ The parties concerned were keen to stress that the bilateral deal was not intended to solve the issues facing the WTO negotiators.

VII. ISSUES NOT YET RAISED IN NEGOTIATIONS

Peace Clause

The Peace Clause (Article 13 of the URAA) expired in 2003. The Clause may have been responsible for the relative lack of challenges to domestic policy instruments since 1995. In the Uruguay Round it was considered to be a necessary part of the bargain that introduced disciplines on domestic support. However, little time has been spent so far on the question as to whether the Peace Clause should be reinstated. The Framework Agreement was silent on the re-introduction of a Peace Clause.⁸ The October papers from the EU and the G-20 also made no mention of the issue.

The silence was broken by the US proposal of October that called for the establishment of a Peace Clause “to protect farm programs if a country keeps trade-distorting support below agreed levels.” It is not clear how extensive such litigation protection would be or whether it would be permanent. The G-20, in particular, will not be enthusiastic about the return of the Peace Clause, and there is likely to be considerable discussion over limits to its coverage if it is reinstated.

The main argument in favor of the Peace Clause is that it keeps the sensitive issues of domestic policy reform in the “political” rather than in the “legal” arena. Members can negotiate limits on domestic support and then set up a system for notification and counter-notification. The counter-notifications are essentially strategic decisions to challenge or accept the notifications of others. But acceptance, tacit or even explicit, does not represent a legal decision. Members can still be held accountable through the dispute settlement process for actions that conflict with WTO rules. Challenges, under such provisions as “non-violation nullification or impairment” and “serious prejudice” to trading partners, could proceed regardless of the notifications made to the Committee for Agriculture. And, by implication, the distinction between Green and Amber Boxes, and indeed between export and domestic subsidies, would become irrelevant to the question of multilateral accountability. The Peace Clause attempted to make such challenges more difficult by narrowing the application of general rules on subsidies to agricultural programs. Without it there is the risk of the WTO dispute settlement process becoming, in effect, a substitute for negotiations in constraining domestic support.

The argument for a new Peace Clause is, however, even stronger if it is restricted to Green Box measures. Trade-distorting support, at least by the large countries, is by definition potentially actionable under the SCM. Green Box measures are less likely targets. So restricting the Peace Clause to Green Box measures may in effect remove much of its practical impact. But that may still be enough to give confidence to domestic politicians to move their agricultural policies in that direction. It would become a backup shelter for subsidies that are not constrained by agreement and could otherwise be challenged by competitive exporters and countries with low support levels. Panels would not have to establish through a series of cases which policies are truly trade-neutral. The issue would be whether they were consistent with the definition of the Green Box.⁹

The decision on whether to restore the Peace Clause will be part of the final stage of the negotiations. Countries that wish to shelter their domestic support policies from challenge will have to accept deeper cuts in those policies. Those that are seeking deeper cuts will have to factor in the loss of legal remedies if those policies provoke trade disputes. **Reviving the Peace Clause and limiting it to sheltering the Green Box could prove an acceptable price for tighter constraints on trade-distorting support.**

⁸ Article 13 of the Uruguay Round Agreement on Agriculture (URAA), known as the Peace Clause, protected agricultural subsidies from the operation of the Subsidies and Countervailing Measures Agreement (SCM). It expired in January 2004.

⁹ Indeed, much the same effect could be produced by agreeing that Green Box subsidies are not actionable. This would leave subsidies in the AMS still subject to challenge in the SCM. This is different from the US proposal for a renewed Peace Clause, which only mentions that trade-distorting support be protected.

Continuation Clause

The inclusion in the URAA of a provision in Article 20 for the continuation of the process of reform was a constructive move that deserves emulation in the Doha Round. The call for further reform was hedged by the need to consider non-trade concerns and to learn from the experience of the URAA. Both are sensible, given the concerns of countries that are hesitant about too rapid a movement to completely open markets. But to signal the overall direction is useful and to commit to another set of discussions makes it more difficult for reluctant countries (those that feel they will be asked to make further concessions) to block further talks.

The task of formulating a continuation clause will not be easy, but it could be useful to bring such a clause into the discussions at this stage so that any compromises can be factored into the package. **The objective would be to commit countries to continue reforms by further tariff cuts and tighter constraints on trade distorting domestic support. But the continuation clause could also mandate discussions on some of the topics that are unlikely to be resolved within the next few weeks. Among these are the refinement of the definition of the Green Box; the extent to which monopoly power in state trading should be directly disciplined or banned; the issue of transforming food aid to cash-only transactions; and that of imposing greater disciplines on export taxes (including differential export taxes) and other export restrictions.**

About IPC

The International Food and Agricultural Trade Policy Council (IPC) convenes high-ranking government officials, farm leaders, agribusiness executives and agricultural trade experts from around the world and throughout the food chain to build consensus on practical solutions to food and agricultural trade problems.

An independent group of leaders in food and agriculture from industrialized, developing and least developed countries, the IPC's members are chosen to ensure the Council's credible and impartial approach. Members are influential leaders with extensive experience in farming, agribusiness, government and academia.

The IPC's Members

IPC members represent the geographic diversity of the global food system, and the entire food chain from producer to consumer. IPC members are influential and experienced leaders in agricultural trade policy who are committed to finding solutions to global food and agricultural trade challenges.

Piet Bukman (Chairman), The Netherlands		Marcelo Regunaga (Vice-Chairman), Argentina
Allen Andreas, United States	Tim Groser, New Zealand	Carlos Perez del Castillo, Uruguay
Bernard Auxenfans, France	Jikun Huang, China	Michel Petit, France
Malcolm Bailey, New Zealand	Rob Johnson, United States	Per Pinstrup-Andersen, Denmark
Carl Hausmann, United States	Hans Jöhr, Switzerland	Henry Plumb, United Kingdom
Csaba Csaki, Hungary	Timothy Josling, United Kingdom	Eugenia Serova, Russia
Pedro de Camargo Neto, Brazil	Mike Mack, United States	Hiroshi Shiraiwa, Japan
Luis de la Calle, Mexico	Rolf Moehler, Belgium	Jiro Shiwaku, Japan
H.S. Dillon, Indonesia	Raul Montemayor, Philippines	Jim Starkey, United States
Cal Dooley, United States	Donald Nelson, United States	Jerry Steiner, United States
Franz Fischler, Austria	Joe O'Mara, United States	Robert L. Thompson, United States
Michael Gifford, Canada	Nestor Osorio, Colombia	Ajay Vashee, Zambia