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From Doha to Cancún: Agriculture

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> *... without progress on agriculture, there will be no progress on other areas such as services and manufactured goods. This is not a threat, or an attempt to hold the Doha Round hostage to farming interests. It is simply a statement of fact – a negotiating and political reality.*
>
> The Hon. Mark Vaile, MP, Australian Minister for Trade, 4 March 2003

> *For societies from Mauritius to Malta, from Bangladesh to Sri Lanka, from South Korea to Sweden, farming also concerns the environment, food safety, safeguarding the food supply and protecting the rural way of life. Strong exporting countries flatly refuse to accept these concerns, conveniently ignoring the Doha declaration, which clearly states they have to be taken into account.*
>
> EU Commissioners Franz Fischler (Agriculture) and Pascal Lamy (Trade), 1 April 2003

The agriculture negotiations that are underway in the Doha Development Agenda were first mandated by Article 20 of the Agreement on Agriculture, signed at Marrakesh in April 1994;[1] and to a considerable extent current debates are coloured by the participants' perceptions of their negotiating successes, or failures, in the Uruguay Round. Furthermore, any new agreement is likely to adopt, and adapt, the architecture of the existing Agreement on Agriculture. Thus, this chapter begins by referring back to the aspirations expressed in the early 1990s before moving on to an examination of the negotiating proposals currently on the table and an assessment of the likely outcome. It is written from a policy-maker's perspective, in that it explores the extent to which WTO Agreements limit governments' ability to frame national farm policies and exchange market access 'gains' for 'concessions' in trade negotiations, rather than from a neo-classical economist's perspective that would predict domestic gains from unilateral tariff reduction.[2]

1 The Legacy of the Uruguay Round Agreement on Agriculture

Prior to 1995 agriculture had acquired, largely *de facto*, a special place in the GATT legal system. On the whole, import barriers were much higher on agricultural products than they were for other goods, very few tariffs were bound and a plethora of non-tariff barriers applied. Foreign suppliers jostled to gain preferential access to highly

protected (and thus lucrative) markets. In many developed, and some developing, economies, protected markets and direct subsidies encouraged production, thus reducing imports or promoting exports to the disadvantage of trading partners. Export subsidies, expressly permitted on 'primary products' by GATT Article XVI, went largely unchecked despite the provision that they should 'not be applied in a manner which results in that contracting party having more than an equitable share of the world export trade in that product'. And although GATT Dispute Settlement panels found against a number of farm policies, some important reports remained unadopted (and hence unenforced) because of the pre-1995 'consensus to accept' rule that determined the outcome of panel findings (Swinbank, 2003b). This really was 'world agriculture in disarray' (Johnson, 1973).

Post-1995, it might be argued, little changed. Countries that subsidised exports in the 1980s can still do so, albeit to a reduced extent (and the introduction of export subsidies on new product lines was prohibited). Domestic subsidy programmes are still in place, and there have been only marginal improvements in market access.

Thus, despite the process of tariffication, and the binding of most tariffs on agricultural goods, many import barriers remain prohibitive. There are a number of reasons for this. In part it stems from the choice of base period (1986–1988) for tariffication which meant that historically low world market prices were locked-in to the tariffs. In other instances, as a result of domestic policy reform, internal support prices were reduced without offsetting reductions in tariffs (Swinbank, 1999: 397). Undoubtedly, in some cases, 'dirty tariffication' occurred, in that countries deliberately widened the gap between 'domestic' and 'world' prices to maximise the size of the tariff applied.[3]

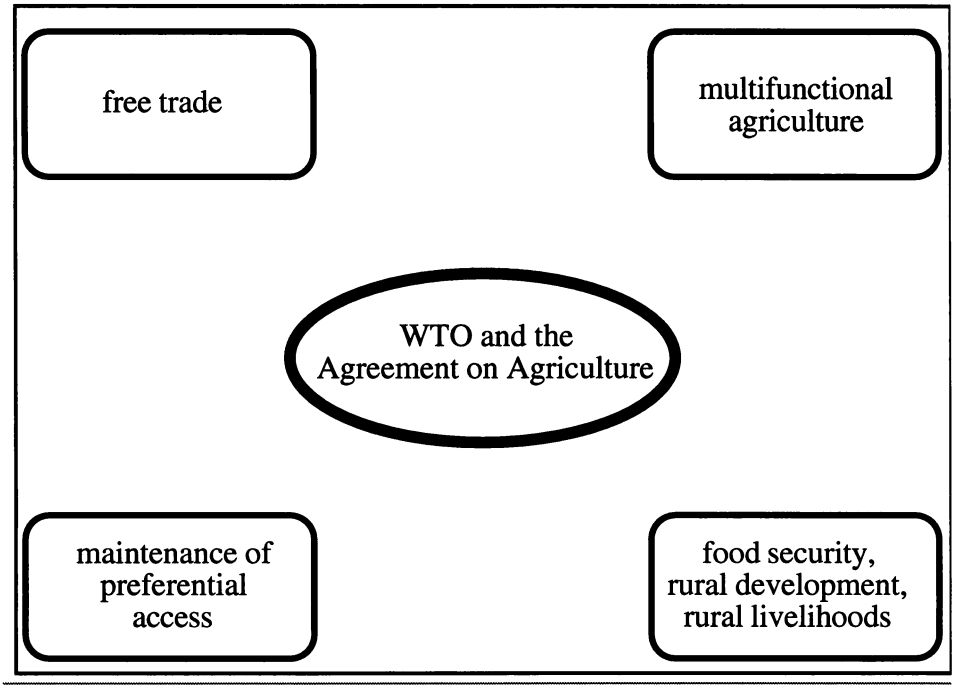
But a further important factor is the continued operation of the Special Safeguard Provisions (Article 5 of the Agreement on Agriculture). These provisions are not widely available: they apply only on tariff lines which had undergone tariffication, and where the letters 'SSG' had been written into the country's tariff schedule. But where they do apply, they allow a country to charge an additional import duty either following an import surge, or – on a consignment basis – when imports are offered at less than a trigger price which is basically the country's average cif (cost, insurance, freight) price over the period 1986–1988 for the product concerned. Consequently, if a country's imports in 1986–1988 were dominated by supplies from a preference-receiving partner, with cif prices well in excess of world market prices, then that will be reflected in the trigger price. For example, as Noble (2003: A/1) points out, 'because of the way the system was set up' most favoured nation imports of sugar into the EU face additional duties 'virtually continuously'. The EU's imports of sugar in the base period, of course, had been dominated by shipments from the African, Caribbean and Pacific (sub-Saharan) states under the sugar protocol of the then Lomé Convention (for details see McQueen *et al.*, 1998: 143–145).

All this led India to conclude: 'It is by now well established that despite reduction commitments, the level of distortions in agricultural trade continues to be high. The anticipated benefits [of the Uruguay Round agreements] in terms of an increase in exports for developing countries have consequently not materialized' (WTO, 2001a: paragraph 13). Of course, India went on to say: 'On the other hand to maintain the income entitlement of people engaged in agriculture it is imperative that the developing countries are allowed to maintain tariffs commensurate with their development and trade needs while at the same time undertaking relevant measures to enhance productivity and improve the quality of output' (WTO, 2001a: para. 13).

2 Alternative Policy Perspectives (and Emerging Alliances?)

WTO Members, and indeed members of the Commonwealth, have a range of complex aspirations on farm policy, that are not easily categorised. Figure 4.1 represents in stylised, and highly simplified, fashion four perspectives.

Figure 4.1: Alternative Perspectives on Farm Trade Liberalisation



Commonwealth countries can be found in each of these four groupings

Australia and other members of the Cairns Group, broadly speaking, would fall into the 'free trade' camp. Their view would be that agriculture is an economic activity like

any other and that market forces will lead to efficient production worldwide. Importing countries gain from trade liberalisation, as do exporting states. As efficient agricultural producers wishing to see their exports expand (and world market prices increase), Cairns Group members are strong supporters of trade liberalisation. Moreover, this view of the world extends to developed *and* developing economies. As Australia notes: 'high tariffs and other import restrictions in ... developing countries will harm efforts to make food more accessible and affordable for their populations. ... With developing countries increasingly trading with each other – roughly half of exports from developing countries go to other developing countries – dismantling trade barriers will contribute to food security and economic development throughout the developing world' (WTO, 2001b: 3).

European states (including the EU), Japan and South Korea would argue, broadly speaking, that agriculture is not like other industries. Agriculture has multifunctional characteristics valued by society that cannot easily be separated from farm production. These beneficial externalities (landscape, fauna and flora, and cultural and social identity), together with other non-trade concerns (food security in the case of Japan and South Korea, food safety, animal welfare, the integrity of traditional production methods, etc.), need to be borne in mind in defining WTO rules for this special sector (see Swinbank, 2002, for a discussion of multifunctionality).

Many developing countries, also, have non-trade concerns, including food security. They argue that in largely agrarian societies, rural development is an essential component of the development process. Mechanisms to protect domestic market prices from downward pressure brought about by imports in receipt of export subsidies from elsewhere,[4] and flexible green box measures to allow developing countries to develop their rural sectors, are seen as crucial by this group. However, if it might be thought that this represented a confluence of interests between the group represented in the top right-hand corner of Figure 4.1 and those in the bottom right-hand corner, this compact is illusive. India, for example, remarks: 'In this context, it should also be noted that the "Food Security and Livelihood Concerns" of developing countries are on a totally different plane and should not be confused or equated with the non-trade concerns advocated under "Multifunctionality of Agriculture" by a few developed countries with a view to provide legitimacy to and thereby perpetuate their trade distorting subsidies' (WTO, 2001a, paragraph 13). In short, the trade-distorting policies of developed countries should be curbed, while developing countries should be given more flexibility to pursue their own domestic policy concerns. This begs the question – *what is a developing country?* – to which we return below.

But if developed countries are to reduce market prices and trade barriers, who gains market access, and at whose expense? Swaziland captured these concerns in its comment: 'There are many developing countries that are exporting to the developed countries under preferential arrangements. They are able to develop and diversify

their economies precisely as a result of the preferential arrangements that are intertwined with domestic support measures in the developed countries. Accordingly, energies should be focused on a gradual and orderly reduction rather than substantial down-payment [*i.e. the proposal for an early and substantial reduction*] and prohibition' (WTO, 2000: 1). Understandably, such a view accords with the EU's, and others', wish to see support for the farm sector retained for some little while longer. Indeed, the EU has attempted to capitalise on this perspective in its 'Everything but Arms' initiative, which will eventually result in duty and quota free imports into the EU for the 49 least developed countries (Page and Hewitt, 2002). When Stuart Harbinson released his first draft modalities in February 2003 (see below), the EU's Farm Commissioner is reported to have said that 'Proposed sweeping import tariff reductions, and increased tariff quotas, would benefit developed nations and the most advanced developing countries, not the poorest states in the world' (reported in *Agra Europe*, No. 2042, 21 February 2003: EP/1).

Furthermore, although a number of developing countries (and others) have voiced worries about subsidised exports disrupting domestic markets, concerns are also expressed by Net Food-Importing Developing Countries (NFIDCs) that agricultural trade liberalisation will result in an increase in world market prices and jeopardise their capacity to import. Their particular complaint is that little has come of the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries, adopted at the conclusion of the Uruguay Round.

3 Developed and Developing

The perception that developing countries felt short-changed by the outcome of the Uruguay Round, despite claims that 'special and differential treatment for developing countries' had been 'an integral element of the negotiations',[5] and had felt threatened in Seattle, is not really disputed in trade policy circles. A major lesson from Seattle was that, in the new WTO, rules are made by consensus, and developing countries discovered that they could influence the outcome of the debate by threatening to withhold their assent. In launching a new round of trade negotiations, the Doha Development Agenda, negotiators were mindful of the need to capture the commitment of developing countries (Laird, 2002). Thus, in the section dealing with agriculture, the Doha Ministerial Declaration asserted that 'special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development' (see Box 1).

Box 4.1: Extract from the Doha Ministerial Declaration – Agriculture

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 Members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.

14. Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.

Source: WTO, 2001c

The existing Agreement on Agriculture refers to developed and developing countries, and – in the developing country group – further reference is made to the least developed countries and to net food-importing countries. Longer implementation periods, and smaller reduction commitments, were demanded of developing as compared to developed countries, while the LDCs were not obliged to undertake reduction commitments, and other special and differential treatment was available to developing countries with respect to domestic support programmes. For example, although the Uruguay Round formula for tariff reductions for developed countries was 36 per cent on average over six years, with a minimum reduction of 15 per cent per tariff line, this

was reduced to 24 per cent over ten years, with a minimum reduction of 10 per cent per tariff line, for developing countries.

When the WTO was established, countries themselves decided whether they would declare themselves to be developed or developing; the WTO's website reports that over three-quarters of its 146 Members are developing countries.[6] The WTO has taken from UNCTAD the LDC classification. Of the 49 LDCs in UNCTAD's list, 30 were WTO Members on 1 January 2002. In addition, the WTO has recognised a further 23 WTO Members as NFIDCs.[7] At the margin, the boundaries between groupings can appear quite arbitrary. The difference between a very poor developing country not quite poor enough to qualify as an LDC (or NFIDC) and an LDC might be slight, but it results in different treatment in the WTO. Similarly, some developing countries have a profile of agricultural production and exports that raises questions about why they need SDT. Indeed, in its submission to the WTO negotiations on agriculture, the EU suggested that both developed *and advanced developing countries* should offer 'duty-free and quota-free access' for all agricultural imports from LDCs (European Commission, 2003). The category 'advanced developing countries' was not, however, defined.

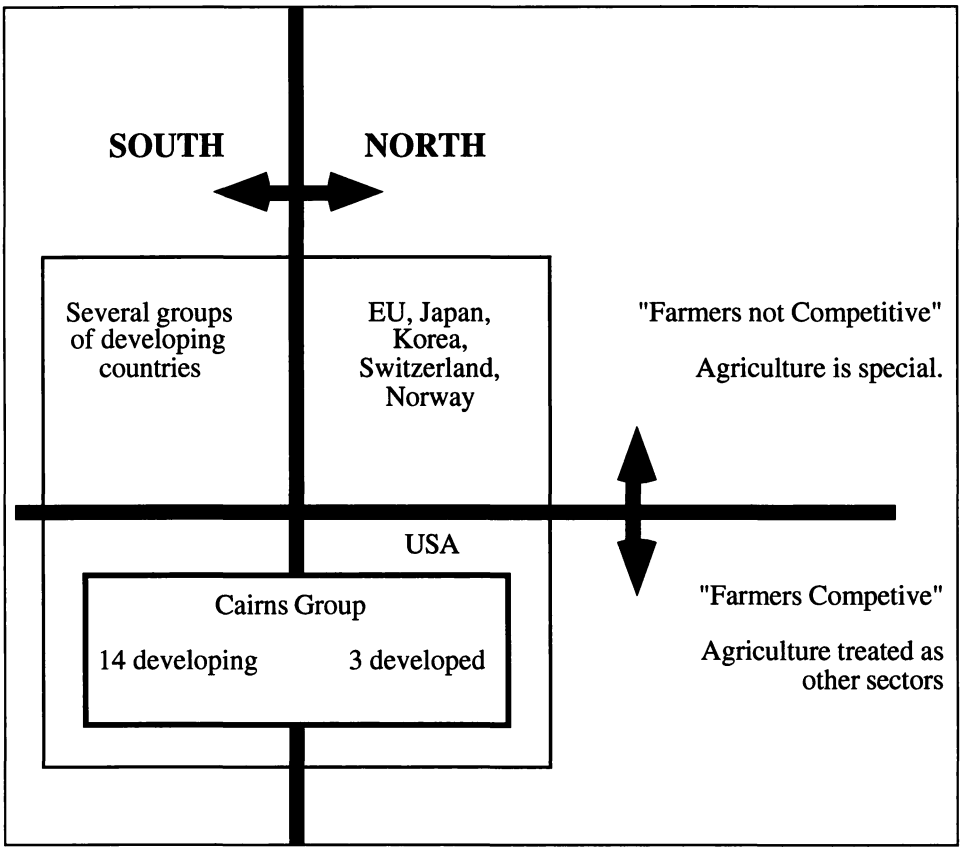
In short, 'developing countries' are a highly diverse group of countries with different interests, reflecting their comparative advantage in agricultural production, their net trade position and existing trade preferences, and their focus on temperate or tropical products. In Figure 4.1, developing countries can be found in each of the four quadrants. Thus a key premise of the Doha Agenda – that there should be special and differential treatment of developing countries – is not reflected in the various combinations of groupings one could easily extract from Figure 4.1.

Diaz-Bonilla *et al.* (2003) grapple with the same issue in Figure 4.2. In their analysis they show 'four main groups in the negotiations, presenting divisions along two main axis: South/North and whether countries considered their agricultural sectors competitive or not in world markets, and whether agriculture is 'special' or not. In the upper left quadrant there is a variety of developing countries, which see their agricultural sector as vulnerable, and consider that agriculture is special and require some sort of special treatment in the WTO' (p. 14). However, 14 members of the Cairns Group are developing countries, in the bottom left quadrant, and their negotiating perspective differs from those in the top left quadrant.

EU Commissioners Fischler and Pascal (2003: 19) suggested yet another way of viewing the groupings when they claimed there were

> *at least four main operators: the EU, which argues – along with others – that agriculture is more than just a matter of economics; the big exporting countries, led by the Cairns Group, which reject any support for the farm sector; the US, which is interested in opening other countries' markets but which spends as much as the EU on farm support, if not more; and –most importantly– the developing countries, which recognise the importance of the non-economic aspects of farming but have little money to support the sector.*

Figure 4.2: Different Negotiating Positions (Diaz-Bonilla *et al.*, 2003)



Adapted from Diaz-Bonilla *et al.* (2003: Chart 1)

4 Dispute Settlement and Evolution of the Rules

The Uruguay Round Accords also introduced a new Understanding on Rules and Procedures Governing the Settlement of Disputes which overturns the pre-1995 'consensus to accept' approach and replaces it with a 'consensus to reject' rule. While the new system doubtless has its imperfections, and there is always the danger that WTO Members might, in the extreme, withdraw from the WTO system rather than accept its rulings, there is a growing number of instances in which agricultural policies are being shaped by the dispute settlement procedures. Thus, even if there were no Doha Agenda, it would be wrong to conclude that the mosaic of agricultural policies across the world seen in the post-1995 period was a stable set that fully reflected implementation of the Agreement on Agriculture and GATT 1994. Policies are being challenged and changed. Furthermore, if the peace clause (discussed below) is allowed to lapse at the end of 2003 the judicial process could be enlivened.

Space does not permit a full discussion. Three instances will be cited to recall the importance of the dispute settlement procedure in the evolution of farm policy.

Two points, from many, can be drawn from the EU's attempts to defend its preferential import regime for bananas (Reid, 2001). First, the EU decided that the trade preferences encapsulated in the Lomé Convention would not be acceptable in the WTO, which led the EU to seek an interim solution – the Cotonou Agreement and the associated waiver of these tariff preferences until 31 December 2007 agreed in Doha – and the EU's current attempts to negotiate GATT-compatible Economic Partnership Agreements with the ACP States, and to the EU's decision to extend tariff- and quota-free access to *all* LDCs in the form of 'Everything but Arms'. Second, it is extremely difficult to allocate country-specific tariff quotas in a manner that does not infringe GATT Article XIII on non-discriminatory administration of quantitative restrictions. Thus from 1 January 2006 the EU's import regime for bananas will be a tariff only system (Reid, 2001: 277). At the very least, the outcome of this saga raises questions about the sustainability of other country specific tariff quotas to be found in the Schedules of many WTO Members.

Canada has had difficulty convincing the WTO that its exports of dairy products do not benefit from cross-subsidisation. If government delegates regulatory authority, as it did in the Canadian dairy industry, and then a dual-price system is applied under which exports are lower-priced than domestic sales, 'Allocation of production costs toward the higher of the two prices in order to cross-subsidize the lower one can be regarded as an export subsidy' (Mussell, 2003: 10). In particular, as Mussell (2003: 3) points out, the Appellate Body 'determined that industry average costs were the relevant benchmark', rather than marginal costs, in determining whether in such circumstances exports were subsidised. Presumably Australia, Brazil and Thailand, in claiming that the EU's C sugar exports (on which no export subsidy as such is paid) 'effectively benefit from the EU's main quota regime, and are therefore in contravention of the EU's WTO commitments on subsidised sugar exports' (*Agra Europe*, No. 2047, 28 March 2003: EP/3), were mindful of the outcome in the Canadian dairy case.

On a number of occasions it has been suggested that one way in which developing countries could counter a surge in cheap imports disrupting domestic producers' investment plans is to have in place a variable import tax regime: if world market prices fall, the import tax can be increased up to the level of the tariff binding. Chile had such a scheme, but it was challenged by Argentina. The Appellate Body has ruled that the Chilean 'price band system is a border measure that is similar to variable import levies and minimum import prices' and as such is 'inconsistent with Article 4.2 of the Agreement on Agriculture' and needs to be amended (WTO, 2002a, paragraphs 288(c)(i) and (iii), and 289).

It is clear from this brief review that countries need to be careful in designing their agricultural policies to ensure they are in conformity with WTO rules; and further-

more it suggests that a number of existing farm policies may yet be challenged by trading partners.

5 The Mandate and the Timetable

Further negotiations on agriculture were mandated by Article 20 of the Agreement on Agriculture. Article 20 is worth quoting in full, as WTO Members have an understandable tendency to place different emphasis on its constituent parts. Article 20, headed 'Continuation of the Reform Process' reads:

> *Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:*
> *(a) the experience to that date from implementing the reduction commitments;*
> *(b) the effects of the reduction commitments on world trade in agriculture;*
> *(c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and*
> *(d) what further commitments are necessary to achieve the above mentioned long-term objectives.*

The 'other objectives and concerns mentioned in the preamble to this agreement' presumably refers in particular to the paragraph in the preamble that reads:

> *... that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries.*

The agreement had also established a Committee on Agriculture that has met regularly in Geneva to monitor the implementation of the agreement. Mindful of the commitment in Article 20, and at the suggestion of the Committee on Agriculture, the Singapore ministerial conference of November 1996 established a process of analysis and information exchange that became an informal part of the committee's work (the AIE process). Thus many ideas and concerns had been voiced in the non-papers and discussions that constituted the AIE process, and the WTO Secretariat had prepared a number of detailed background papers. The AIE process was concluded in preparation for the Seattle ministerial conference. Equally, before the Seattle meeting, a number of

position papers were circulated. The agriculture negotiating group in Seattle made quite good progress in reconciling the interests of *developed* economies, although in developing his compromise paper the group's chairman is reported to have said he was walking a tightrope between the various concerns of WTO Members (*Agra Europe*, 3 December 1999: EP/1).

Following the failure of the Seattle ministerial conference to launch a Millennium (or Seattle) Round, it was quickly agreed that the Article 20 negotiations would proceed within the framework of the existing Committee on Agriculture, with the special sessions formally separate from the regular business of the committee, but held 'back-to-back' with the regular meetings of the committee. At the first meeting of the special session in March 2000 it was agreed that Members would submit their negotiating proposals by the end of December 2000, with a stock-taking of all the proposals submitted at the March 2001 meeting of the special session. At the March 2001 special session a further work programme through to March 2002 was agreed, at which time a further 'review of progress' would be undertaken. However participants did not yet have a common vision of how and when the process would end. Some argued that Article 20 provided a mandate for a 'stand-alone' negotiation on agriculture to be undertaken and concluded, and considered that the demise of the peace clause at the end of 2003 set the natural end-date for the process. Others argued that they could not accept a deal on agriculture alone, and wished to see the agriculture negotiations subsumed into a larger round in which trade-offs between sectors would be possible. In the event, the negotiations were engulfed in the Doha Development Agenda.

The Doha Declaration set new deadlines. First, as seen in Box 4.1, the modalities (i.e. the detailed rules) of the new agreement were to be established by 31 March 2003, and Members' draft schedules, incorporating the reduction commitments agreed in the modalities, were to be tabled by the time the fifth ministerial conference convenes in Mexico in September 2003. The entire Round was to be concluded by 31 December 2004, but as this is a 'single undertaking' nothing can be agreed until everything is agreed. There is some inconsistency in this framework: if the Doha Agenda is a single undertaking, with nothing agreed until everything is agreed, how can the modalities (i.e. the new Agreement on Agriculture) be agreed before the rest?

With a new mandate from the Doha Declaration, the special session of the Committee on Agriculture set out a new timetable of meetings to comply with the 31 March 2003 deadline. In particular, it mandated the chairman of the special session, Stuart Harbinson, to circulate an overview paper, based on discussions to date, by 18 December 2003. That document was published on time (WTO, 2002b). The purpose of this was to inform the January 2003 meeting of the special session which was to undertake a comprehensive review of the negotiations to date. Harbinson was then to prepare a first draft modalities document for the February meeting of the special session. This was officially published on 17 February 2003 (WTO, 2003a), but it had

been made widely available the previous week prior to an informal meeting of trade and agriculture ministers from 22 WTO Members, and the WTO Secretariat, in Tokyo. In due course the text was discussed at the special session on 22–28 February 2003.

Stuart Harbinson's mandate was now to produce a second draft for consideration by the special session at its March meeting, with the rather forlorn hope that final agreement could be reached before the Doha deadline of 31 March 2003. In the event, this text reports:

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

Not unsurprisingly, this text failed to cement agreement between the participants, and the 31 March deadline was not met. Delegates did, however, agree to continue their discussions over the summer, in an attempt to agree the modalities prior to the Cancún Ministerial, and put the Doha Agenda back on track (*Financial Times*, 1 April 2003: 11).

6 The Issues

As indicated above, the formal and informal negotiations for the new agreement began as soon as the Uruguay Round was concluded. At an official level, the AIE process was launched in 1996 and the Article 20 negotiations in March 2000, and a stream of papers and conference presentations has emerged from international organisations, NGOs and academics. The difficulty Harbinson saw in 'building bridges between widely divergent positions and ... the consequent lack of guidance on approaches to solutions' (WTO, 2003a: paragraph 3), and the failure to reach agreement on the modalities by the agreed deadline of 31 March 2003, is perhaps, therefore, a little surprising. One interpretation could be that WTO Members have set themselves an impossible task and that the divergent views are irreconcilable, however deft the diplomacy.

An alternative explanation might focus on Members dragging out the process to the last possible moment because of an unwillingness to face domestic constituencies hostile to reform. Thus, in his December overview, Harbinson commented that 'While

a number of participants have submitted fully-fledged possible modalities for further commitments in the areas of market access, export competition and domestic support, opponents of these proposals have not yet specified their counter-proposals at a corresponding level of quantitative detail. This has made it difficult to move the process forward' (WTO, 2002b: paragraph 9). The EU had been unable to table its proposals in 'quantitative detail' until 27 January 2003 (European Commission, 2003); Japan had still failed to do so by 31 March 2003.

To add to the mountains of WTO documents and other papers, publication of the Harbinson texts triggered a rash of new reports (see for example Diaz-Bonilla *et al.*, 2003; Ruffer and Swinbank, 2003; Agricultural Policy Research Division, 2003). All three reports concluded that the Harbinson text was a genuine attempt to bridge the gaps between participants, but recognised that the gulf was wide. Others took a more hostile view; Das (2003), for example, suggested that the text was 'grossly inadequate in tackling the main problems' faced by developing countries, and suggested the preparation of 'an altogether new text as an alternative' to the tabled document.

The negotiations have proceeded thus far on the assumption that there will be an agreement on agriculture in place following the Doha Round, whether it ends in success or failure. The existing agreement on agriculture would simply prevail if the WTO cannot command a consensus to amend, or repeal, the existing agreement, although a key element – the peace clause – would lapse at the end of 2003. The potential demise of the peace clause in itself raises questions about the stability of the system post-2003 in the absence of an agreement in Cancún, which we explore below.

As far as this author is aware, no-one has suggested that the existing agreement should simply be repealed, leaving agriculture to be governed by GATT 1994 and the other WTO Agreements. The Harbinson text proposed a series of *amendments* to the existing agreement, with its present structure basically intact. Thus it refers to market access, domestic support and export competition; it contains proposed drafting amendments to specified articles of the present Agreement; and, broadly speaking, it takes as its base the tariff and other commitments bound at Marrakesh. Despite the set-back of 31 March 2003, this seems to be the most likely structure of any new agreement on agriculture, and the remaining comments in this section are arranged accordingly. Only partial coverage of the proposed modalities is attempted here (see Chapter 6 of Ruffer and Swinbank, 2003, for a more complete overview). Lack of space precludes discussion of the (non)-treatment of non-trade concerns in the draft modalities.

Import Access

A large number of issues arise under this heading, including the treatment of state trading import enterprises, the potential incorporation of non-trade concerns (e.g. animal welfare), the problems associated with tariff escalation, preferential access for exports from LDCs, etc. These are non-trivial issues, each of which would warrant a

detailed evaluation, but two key questions seem to be: to what extent will *developed* countries be required to reduce their trade barriers and increase market access, and how will special and differential treatment for developing countries be built into this?

On tariff reductions for developed countries, three propositions seem to be on the table. First the US and the Cairns Group have advocated sweeping cuts, using an arithmetic formula known as Swiss-25. Under this formulation the new tariff T_1 is a function of the old tariff T_0 and a coefficient a (= 25 in the US proposal), according to the expression

$$T_1 = (T_0 \times a)/(T_0 + a)$$

The effect is to reduce larger tariffs (tariff peaks) by a proportionally greater amount than smaller tariffs, and the maximum tariff will never exceed a. Thus, if T_0 is 1,000 per cent, then T_1 becomes 24.4 per cent. The formula is immediately applicable for *ad valorem* tariffs; but specific tariffs (i.e. those expressed in money, e.g. €100 per tonne) would first have to be converted into an *ad valorem* format.

To the EU, the Swiss-25 formula is unacceptable. Instead they have proposed a repeat of the Uruguay Round format. For developed countries this would involve an average reduction in tariffs of 36 per cent, with no tariff line being reduced by less than 15 per cent. However, it is slightly disingenuous to present this as a repeat of Uruguay, for it is 36 per cent of a lower base. To maintain the momentum of the tariff reductions agreed in the Uruguay Round would imply a 50 per cent reduction now (Swinbank and Tanner, 1996: 147). Furthermore, given the perceived need to reduce tariff peaks, it would be unfortunate if countries were able to opt for a minimum reduction for any particular product in both agreements. Applying the minimum cut in both rounds would result in an overall tariff reduction of almost 28 per cent from the 1986–88 base, compared with an average tariff reduction of 59 per cent. A preferable outcome would be a cumulative approach, insisting for example on a minimum tariff cut of 40 per cent over the two rounds.

Harbinson's draft modalities adopt the middle ground. A banded approach is proposed, under which a Uruguay Round-like formula would apply within each tariff band (see Table 4.1). Thus, for developed countries, any *ad valorem* tariff of more than 90 per cent would have to be reduced by at least 45 per cent, with an average tariff reduction of 60 per cent for all tariffs in this tariff band (over 90 per cent). Clearly, where *specific* tariffs apply, they have to be converted into their *ad valorem* equivalent to determine which tariff band to use. It would seem to be a lost opportunity, having undertaken this exercise, not to then insist that all *specific* tariffs be re-expressed in *ad valorem* terms in Members' new commitments. Figure 4.3, which maps out the new tariff against the old tariff for developed countries, clearly demonstrates the power of the Swiss-25 formula to reduce peak tariffs, compared with the rather limited impact of the Uruguay Round formula and the middle ground occupied by the draft modalities.

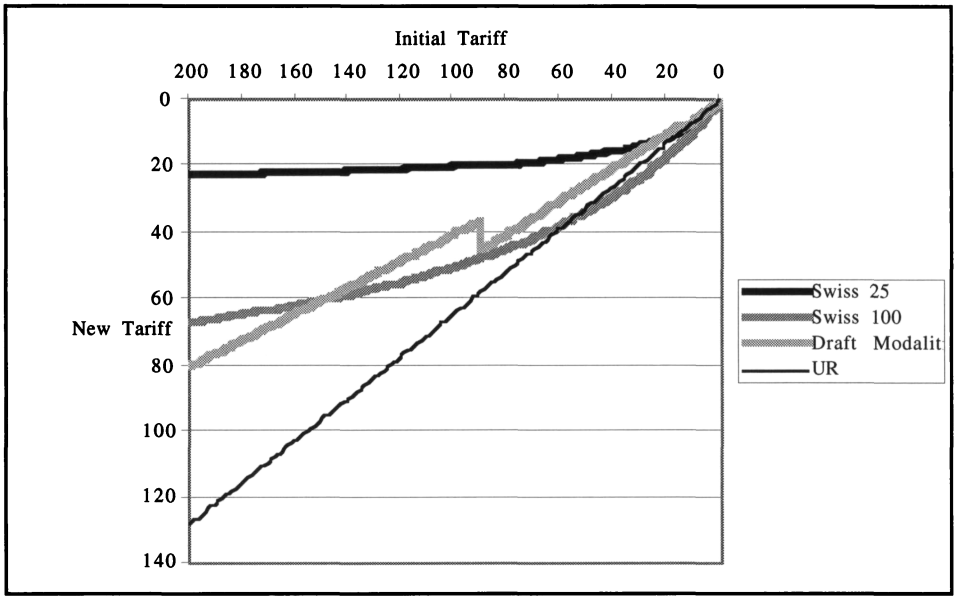
Table 4.1: Draft Modalities Proposals for Tariff Reductions

	Tariff Band		Reduction Commitment		Implementation Period	
	Developed	*Developing*	*Developed*	*Developing*	*Developed*	*Developing*
Tariff bands	> 90 %	> 120 %	60/45 %	40/30 %	5 years	10 years
	> 15 – ≤ 90 %	> 60 – ≤ 120 %	50/35 %	35/25 %	5 years	10 years
	≤ 15%	> 20 – ≤ 60 %	40/25 %	30/20 %	5 years	10 years
		≤ 20 %		25/15 %		10 years
'SP' products				10/5 %		10 years

SP products refers to the proposal in paragraph 11 that developing countries can designate an unspecified number of special products 'with respect to food security, rural development and/or livelihood security concerns'. The reduction commitments show the average and minimum reductions proposed.

Source: WTO, 2003b, paragraphs 8–15; as presented in Ruffer and Swinbank, 2003: 20

Figure 4.3: The Impact of Various Tariff Reduction Formula



Four alternatives are shown: the proposed Swiss-25 formula, a hypothetical Swiss-100, the proposal in the draft modalities for *average* tariff reductions for developed countries and a linear 36 per cent average reduction as in the Uruguay Round. See also Ruffer and Swinbank, 2003: 22.

It is easy to imagine an alternative Swiss formula. With Swiss-25 the curve asymptotically approaches the maximum tariff of 25 per cent. With higher reduction coefficients (e.g. a = 100 in Swiss-100) the curve is pulled lower in the diagram; so Swiss-100 would produce bigger cuts than would the draft modalities for initial tariffs in excess of 150 per cent, and lower cuts for initial tariffs lower than 150 per cent.

Clearly, many formulations are possible. It has been said by some that the proposals in the draft modalities lack ambition in that the proposed reductions are too modest. Others have claimed they are too sweeping, with, it is said, a majority of WTO Members (75, counting the EU as 16) in favour of the Uruguay Round approach of a linear reduction (*Agra Europe*, 28 March 2003: EP/2). Thus it appears that a further 36 per cent average reduction in tariffs for developed countries could readily be agreed by WTO Members – in itself an impressive achievement compared with the situation that prevailed prior to the Uruguay Round – but it does not yet meet the aspirations of many WTO Members. It is doubtful, however, that the proposition that 'no deal is better than a bad deal' applies in this context. Thus, a final agreement that lies somewhere between the Harbinson text and the linear 36 per cent cut agreed in the Uruguay Round would seem to be the most likely outcome.

However large the tariff cuts finally agreed, their effect is likely to be muted unless there are comparable reductions in the trigger prices that WTO Members established for products subject to the special safeguard provision (Article 5 of the existing Agreement on Agriculture). The draft modalities drawn up by Stuart Harbinson are silent on this issue (WTO, 2003b). As noted earlier in this chapter, in some instances (e.g. sugar for the EU) trigger prices were based on the cif price of preferential imports which means that high 'additional' duties could apply even if the MFN tariff was reduced to zero.

Harbinson's draft modalities document contains many examples of special and differential treatment, as illustrated by Table 4.1. The LDCs, as in the Uruguay Round, would be exempt from any reduction commitments. Developing countries would enjoy a longer implementation period (ten as opposed to five years), and face a smaller reduction commitment (reflected in both lower percentage reductions and wider tariff bands) than would developed countries. In addition they could designate a number of special products (SP products) – those related to food security, rural development, and rural livelihood concerns – which would enjoy three 'concessions'. First, there would be smaller tariff reductions on these products, as detailed in Table 4.1; second, they would not be subject to increased tariff rate quotas; and third, an extension of Article 5-like special safeguard provisions to these products (and perhaps others) is envisaged (Ruffer and Swinbank, 2003: 19).

6.2 Export Competition

There are 25 WTO Members (counting the EU as one) that can grant export subsidies

as a result of the Uruguay Round agreements. The EU is by far the most important player, accounting for 89 per cent of export subsidy *expenditure* of all WTO Members in 1995, for example (WTO, 2002c: Table 1). Neither Japan nor South Korea, countries that both wish to retain significant flexibility to protect their farm sectors, have this facility. Some countries on the list, for example Australia and Brazil, have made very limited use of export subsidies. Thus the EU is rather isolated on this issue, and is under strong pressure to agree a substantial reduction, and an eventual elimination, of export subsidies. At Doha it was the drafting of the phrase in the Ministerial Declaration that referred to 'reductions of, with a view to phasing out, all forms of export subsidies' that caused the EU delegation (particularly France and Ireland) so much anguish, and threatened to stall the proceedings (*Agra Europe*, No. 1978, 16 November 2001: EP/1). The EU, for its part, is determined that export credits, which figure much more strongly in US policies, should be subject to international disciplines (see Thompson for a discussion of OECD countries use of export credits in farm trade).

Many developing countries have argued that export subsidies, and domestic subsidies in developed countries that distort trade, must be eliminated before the developing world can be expected to reduce its tariff protection. The Cairns Group has argued for a phased elimination of export subsidies, with a substantial reduction (50 per cent) in year one of the new agreement. For its part, the EU offered to 'scale back' 'all forms of export subsidies by 45%' (European Commission, 2003). Specifically, it proposed that *expenditure* on export subsidies be reduced by 45 per cent, an 'average substantial cut' in the *volume* of subsidised exports, and the elimination of export subsidies 'for certain products' 'provided that no other form of export subsidisation, including export credits and deficiency payments, is given for the products in question by other WTO Members'. A 45 per cent cut in expenditure on export subsidies might seem to be a surprising large 'offer' from the EU, but it reflects the fact that in aggregate (but not on a product-specific basis) the EU has some slack in its export subsidy constraints. In 2000/01, for example, it used only 37 per cent of its overall export subsidy commitment (i.e. expenditure on export subsidies amounted to €2.8 billion compared to a commitment of €7.4 billion) (WTO, 2002d).

Thus, once again, a minimalist agreement can be envisaged. No-one seems to be opposed to the notion that export subsidies should be reduced, and so at the very least the EU's proposal could be adopted, and this again would be a major advance on the situation pre-Uruguay. But many countries argue that this is not sufficient; and Harbinson's draft modalities would deliver more. In particular, disciplines would apply on a product-specific basis on both expenditure and volume, export subsidies for ten of the new agreement and annual reductions would not be linear, as in the Uruguay Round, but instead would be concentrated in the earlier years (in year one, in one grouping, there would be a 30 per cent reduction of the base entitlement, then in year two a further 30 per cent cut in the reduced entitlement, etc.). The few developing

countries that are still allowed to grant export subsidies would have a longer period over which to phase them out. If adopted, the basic parameters would be:

	Developed Countries	Developing Countries
Products accounting for at least 50 per cent of bound budgetary outlay:	reduce by 30% per year, set at zero in year 6	reduce by 25% per year, set at zero in year 11
Remainder:	reduce by 25% per year, set at zero in year 10	reduce by 20% per year, set at zero in year 13

Source: Ruffer and Swinbank, 2003: 28.

6.3 Domestic Support

The existing provisions in the Agreement on Agriculture are complex – and unique. No other sector of the economy has comparable rules written into WTO Agreements. Reference is often made to the Green, Blue and Amber Boxes, but the reality is slightly more complicated. To give the discussion some context, Table 4.2 reports on EU and US declarations of domestic support for 1998. It shows Green and Blue Box expenditure, the bound Aggregate Measurement of Support (AMS) limit for the year, the actual Amber Box AMS support declared for the year (which in both instances were well inside the maximum permitted) and the amount of trade-distorting support that did not have to be included in the Amber Box declaration because it fell within the *de minimis* limits. The final row shows the total value of farm output, which gives some order of magnitude for the earlier numbers.

Green box payments are not subject to reduction commitments. They must meet tightly defined criteria, and have 'no, or at most minimal, trade-distorting effects or effects on production'. They are listed in Annex 2 to the Agreement on Agriculture. On public stockholding for food security purposes, and domestic food aid, developing countries are allowed slightly more flexibility than are developed nations. Many countries are concerned that, despite the injunction that policies have no, or at most minimal, trade-distorting effect, the sheer size of the expenditures in some developed countries must have an impact on production and trade. It is suggested that 'wealth' and 'insurance' effects, which enhance the producer's willingness and capacity to respond to market signals, as well as the fungiblity of transfers leading to cross-subsidisation of activities, leads to this response. Consequently, there have been suggestions that the rules be tightened, and the scope of the Green Box narrowed. Harbinson's draft modalities propose some tightening of the criteria and suggests some additions for developing countries. Thus various concepts that proponents of multifunctionality in developed countries would like to adopt, such as 'Payments to small-scale producers/family farms for the purpose of maintaining rural viability and cultural heritage', would be Green-boxed in developing, but not developed, countries. For developed countries the

fundamental structure of the Green Box would not change, although the text does suggest that payments to meet the 'extra costs or loss of income involved' in complying with a 'clearly-defined ... animal welfare programme' might become a legitimate Green Box measure.

Table 4.2: EU and US Declarations of Domestic Support, 1998

	EU (€ billion) 1998/99	US ($ billion) 1998
Green	20.5	49.8
Blue	19.2	–
AMS Binding	69.5	20.7
Amber (AMS)	46.7	10.4
de minimis	0.5	4.7
Total value of output	213.5	190.9

Source: WTO 2001d, 2001e

Amber Box support does have a trade-distorting effect. Some Amber Box support in developing countries is, however, exempt from any WTO constraint, provided it meets the criteria set out in Article 6(2) of the Agreement on Agriculture: thus 'investment subsidies ... generally available to agriculture' in developing countries, and 'agricultural input subsidies generally available to low-income or resource-poor producers' in developing countries, are exempt. The Harbinson text would further extend this list. As noted elsewhere in this chapter, special and differential treatment for developing countries permeates the proposal; whether this is enough to assuage the demands of developing countries without causing undue alarm to developed country Members is a key unknown.

Other Amber Box support is eliminated from the calculations as a result of a *de minimis* clause (Article 6(4)(a) of the Agreement).[8] Again, special and differential treatment is implicit in the existing Agreement, and would be enhanced by the draft modalities.

Amber Box support that is not in some way or other excluded from the reduction commitments must amount to less than the final bound Aggregate Measurement of Support. For many countries, of course, this is zero (as are their export subsidy constraints), but for those countries that have an AMS entitlement, the draft modalities would reduce this by 60 per cent over five years (40 per cent over ten years in developing countries) (WTO, 2003b, paras 46–50). The EU had suggested a reduction of 55 per cent, but this did not include the product-specific AMS constraints incorporated into Harbinson's draft modalities, and was premised on an unchanged Blue Box. Even more so than with export subsidies, the Blue Box is predominantly an EU concern.[9] The EU declares expenditure on its area and headage payments in the Blue Box, but if the European Commission's current proposals for further decoupling of these pay-

ments were to be adopted the EU would no longer be making use of this provision.[10] The decoupled Farm Income Payment, that would replace area and headage payments, would be declared under the Green Box – and, as can be seen from Table 4.2, Green Box expenditure would double!

Blue Box payments, under production-limiting programmes, are not subject to any constraint under the existing Agreement on Agriculture. If the draft modalities were accepted, they would be subject to limitation; they would either be capped at existing payment levels, and then reduced by 50 per cent over five years, or incorporated into the Amber Box (with presumably no offsetting increase in AMS entitlements) (WTO, 2003b, paras 44–45). Either formulation would mean that no country could introduce new Blue Box payments, and both would encourage the EU to adopt the European Commission's reform proposals.

7 Cancún and Renewal of the Peace Clause?

Although a deal on modalities cannot be precluded in the run-up to Cancún, or even at the ministerial conference, this now seems unlikely. However, the pending expiry of the peace Clause (Article 20 of the Agreement on Agriculture) may well give leverage for change.

The peace clause is complex, untested and difficult to understand.[11] It relates to all domestic subsidy programmes (Amber, Blue and Green Box, as well as the *de minimis* clause and the Article 6(2) exemptions), and export subsidies, in differing degrees. It may be that the legal protection it affords is more apparent than real, but the political context in which Members decide how, and when, to use WTO provisions will doubtless change if the modalities are not agreed at Cancún. An increase in WTO litigation, with Members challenging aspects of their trading partners' agricultural policies is thus likely to ensue with the expiry of the peace clause. The EU, in particular, wishes to see it renewed, but the draft modalities make no mention of the peace clause, and it is the author's understanding that it has not been discussed formally in the special sessions of the Committee on Agriculture.

All Members that make use of Green Box and *de minimis* provisions have an interest in securing an extension of the peace clause for these items. Only those Members that make use of export subsidies and the Blue Box will see a need to extend the Blue Box provisions in this domain. An extension of the peace clause would require the assent of all WTO Members. It will presumably be on the agenda at Cancún.

An agreement on the modalities would seem to be a precondition for extension of the peace clause. The question that then arises is what trade-offs might emerge to secure its extension? Will the Cairns Group be able to exert enough pressure to demand modalities that go beyond the Harbinson text, and will those countries that wish to retain protection for their agricultural sectors be willing to pay the price? Will

developing countries simply accept a roll-over of the peace clause, or will they too exert leverage to ensure that their interests are reflected in the agreed modalities? And given the diversity of views in developing countries, what are their interests?

If agreement cannot be reached at Cancún, or early in 2004, the Doha deadline for completion of the Round by 31 December 2004 will be difficult. But with a probable increase in the number of dispute settlement procedures focused on farm policies following failure to renew the peace clause, and with the US Congress scheduled to vote on a renewal of US membership of the WTO in 2005 and support in Congress somewhat uncertain,[12] the future of the WTO system could be at risk unless WTO Members can learn to agree. This suggests that a WTO package might come together towards the end of 2004, or early in 2005.

A Conclusion?

Thus a possible outcome is an agreement in 2004/05, with an implementation period stretching into the mid-2010s and a set of modalities based on the Harbinson text. Whether those who believe that Harbinson's draft modalities are already over-ambitious or those that believe it lacks ambition will win the day is unclear. But if the gap between them is to be bridged, the Harbinson text does offer a framework around which agreement could coalesce. A minimalist agreement among developed countries is attainable; the EU's offer on the three pillars (export competition, import access and domestic support), but not on non-trade concerns, would in itself continue the reform process initiated by the Uruguay Round, although Japan and some others might need persuading. But there are three problems with this minimalist approach: first, that many countries believe it lacks ambition; second, that a reconciliation of divergent views on non-trade concerns remains illusive; and third, that it is not yet clear whether some developing countries can accept any new package that imposes further reductions in their import tariffs without the prior eradication of export subsidies and Blue and Amber Box support, and tighter constraints on Green Box payments in developed countries. The stakes are high; it is the future of a rules-based system of world trade that is at risk.

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Notes

1 The Uruguay Round of multilateral trade negotiations, under the GATT, was launched at Punta del Este, Uruguay, in September 1996 and concluded in Geneva in December 1993. The agreements were signed in Marrakesh, Morocco, in April 1994, and – following ratification – came into force on 1 January 1995 under the auspices of the WTO. The Uruguay Round Agreements, including that on Agriculture, can be obtained from the WTO web site: www.wto.org. On the Agreement on Agriculture and the negotiations see Josling, Tangermann and Warley (1996), and Swinbank and Tanner (1996).

2 Nor does this chapter attempt to assess the economic impact of any potential Doha package (by contrast the Agricultural Policy Research Division of the Danish Research Institute of Food Economics (2003: 32) has undertaken a GTAP (Global Trade Analysis Project) modelling exercise of the Harbinson draft (the Harbinson draft is outlined and discussed below).

3 Ingco (1996), in particular, has made this claim; but I would caution that her results need should be used with care. Note that with an increase in world market prices between 1986/88 (the base period), and 1 January 1995 (the start of the new trade regime) the fixed import tariff applied on 1 January 1995 could often exceed the variable import levy applied on 31 December 1994.

4 A case that is often cited is disruption to the fresh milk industry in Jamaica attributed to imports of milk powder in receipt of export subsidies from the EU, following trade liberalisation by Jamaica (see Oxfam, 2002:116).

5 As noted in the introduction to the Agreement on Agriculture.

6 http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr04_e.htm (accessed 16 January 2003). Elsewhere the website reports that 'other members can challenge the decision of a member to make use of provisions available to developing countries'. http://www.wto.org/english/tratop_e/devel_e/d1who_e.htm (accessed 16 January 2003).

7 See Annex 1 of Ruffer and Swinbank (2003) for a list of WTO Members, showing LDC and NFIDC status, on 1 January 2002.

8 In 1998 the USA paid out $2.8 billion of emergency aid ('market loss assistance payments') to compensate for the collapse in commodity prices in the period following the enactment of the 1996 FAIR (Federal Agricultural Improvement and Reform) Act and – claiming these payments were not crop specific – declared them to be non-product-specific payments within the 5 per cent *de minimis* franchise allowed to developed countries (WTO, 2001e: 31). See also Ayer and Swinbank, 2002. The Green Box contained $5.7 billion of decoupled 'Production Flexibility Contract Payments' introduced by the FAIR Act, but the biggest Green Box item for the USA is domestic food aid at $33.5 billion.

9 Norway and Japan also declare Blue Box payments (WTO, 2002c).

10 On the mid-term review see Swinbank 2003a.

11 An earlier attempt to outline its provisions is Appendix II of Swinbank, Jordan and Beard (1999).

12 The Republican chairman of the House of Representatives Ways and Means Committee has already suggested withdrawal (*Financial Times*, 14 February 2003: 11).