

The Standstill in Subsidies *Update*

Matthew Wall and Damon Vis-Dunbar

November 2005



© 2005 International Institute for Sustainable Development (IISD)

Published by the International Institute for Sustainable Development

The International Institute for Sustainable Development contributes to sustainable development by advancing policy recommendations on international trade and investment, economic policy, climate change, measurement and assessment, and natural resources management. Through the Internet, we report on international negotiations and share knowledge gained through collaborative projects with global partners, resulting in more rigorous research, capacity building in developing countries and better dialogue between North and South.

IISD's vision is better living for all—sustainably; its mission is to champion innovation, enabling societies to live sustainably. IISD is registered as a charitable organization in Canada and has 501(c)(3) status in the United States. IISD receives core operating support from the Government of Canada, provided through the Canadian International Development Agency (CIDA), the International Development Research Centre (IDRC) and Environment Canada; and from the Province of Manitoba. The institute receives project funding from numerous governments inside and outside Canada, United Nations agencies, foundations and the private sector.

International Institute for Sustainable Development
161 Portage Avenue East, 6th Floor
Winnipeg, Manitoba
Canada R3B 0Y4
Tel: +1 (204) 958-7700
Fax: +1 (204) 958-7710

E-mail: info@iisd.ca
Web site: <http://www.iisd.org/>

Table of Contents

Introduction	1
Agriculture	3
Aggregate Measure of Support	4
Amber Box	5
Blue Box and <i>de minimis</i>	5
Green Box	5
Fisheries	8
Top-down approach.....	8
Bottom-up approach.....	9
Special and Differential Treatment.....	10
The Thin Green Line.....	10
Common ground?.....	10
Services	11
The “chicken and egg” problem	11
Information exchange.....	12
The complexity of services.....	13
The Agreement on Subsidies and Countervailing Measures (SCM)	14
The Anti-Dumping Agreement (ADA).....	15
Serious prejudice and export subsidies.....	15
The green exception in Article 8 (Non-Actionable Subsidies)	15
Special and Differential Treatment.....	16
Acronyms	18
Negotiating Alliances	18
Glossary	19
Annex:	24
Relevant Articles from the General Agreement on Trade in Services.....	24
Relevant Articles from the Agreement on Subsidies and Countervailing Measures	24

Introduction

A previous version of this paper concluded that the six months following the July 2004 framework agreement must be considered a disappointment for those seeking ambitious, cross-sectoral subsidy reform in the Doha Round. This update finds little reason for more optimism. Overall, progress has been slow, and subsidies have received relatively little attention. Fisheries remain the exception, and present the best hope for stronger disciplines. But in services and WTO rules, where the Agreement on Subsidies and Countervailing Measures (SCM) is being re-negotiated, subsidies have taken a back seat to other items on the agenda. Meanwhile, in agriculture, which sits at the heart of these negotiations, talks as a whole have been stalled for much of the past year, and recent attempts to kick-start them have largely been frustrated.

This paper summarizes the WTO negotiations on subsidies from the July Framework Agreement to the eve of the Sixth Ministerial Conference in December. The negotiations are taking place in three negotiating bodies: the Special Session of the Committee on Agriculture; the Working Party on GATS Rules; and the Negotiating Group on Rules. Besides the discussion of SCM within the Rules Group, there is also the “special” topic of fisheries, which has received so much attention that it merits consideration on its own.

Substantive discussions on subsidies have occurred only in agriculture and fisheries. Yet even here the focus has been on technicalities, and the most contentious issues remain unresolved. In services and rules, subsidies have not been a priority for most members and, as a result, the discussions have not progressed far. At this point, members and Secretariat officials concur that an agreement on subsidy reform in these sectors is extremely unlikely by December 2005, and perhaps even unlikely within the life of this Round. The issues are sensitive, priorities are elsewhere (for most) and technical difficulties are far from being resolved.

Expectations for agriculture were greater, as the July 2004 framework agreement explicitly directed members to negotiate modalities to eliminate export subsidies, discipline export competition practices, reduce domestic support, review Green Box criteria, and incorporate Special and Differential Treatment. Yet even in those areas where commitments seemed most clear-cut, such as the elimination of export subsidies, consensus remains elusive. Somewhat surprising has been the united front presented by the G-20 in recent months, as evidenced by its numerous detailed submissions on export subsidies, the Amber, Green and Blue Boxes, and market access. These, to a significant extent, have set the agenda for the negotiations for the autumn. Nonetheless, until the EU and the United States each makes concessions in key areas, particularly market access and domestic support, the negotiations as a whole will make little headway.

In fisheries, the negotiations have made relative progress, although movement has been uneven. In July 2004, the Council reported that the discussion was no longer about whether subsidy disciplines were needed, but about “the nature and extent of the subsidies.”¹ That, for the most part, remains the issue. For much of the last 12 months, members have been

¹ TN/RL/W/164 (Argentina, Chile, Ecuador, New Zealand, Peru, Philippines: 2003).

preoccupied with comparing the merits of the two suggested frameworks: New Zealand's top-down approach, with a general prohibition on subsidies and a Green Box for exceptions; and Japan's bottom-up approach, which would have three boxes: red, amber and green. While this debate remains unresolved, members have moved on to explore what types of subsidies will be placed in these boxes under either framework. This is promising. Yet the significant job of defining these subsidies still remains, and some influential members would prefer that the issue of fisheries subsidies was left out of the draft agreement for Hong Kong.² Whether fisheries makes it into a draft agreement for Hong Kong is thus in doubt; to a large extent its fate hinges on the progress made in agriculture, as is true for the other areas of negotiation.

There is much less to report for the negotiations on subsidies to services. Despite proposals from a few countries—namely China, Hong Kong and Chile—discussion overall has been limited and sporadic. The same is true of negotiations on the Agreement on Subsidies and Countervailing Measures (SCM) in the Rules Group. Proportionately, subsidies have received little attention.

The debate in services remains at its most basic stage, as it has since 1996. It continues to founder upon the so-called “chicken and egg” problem: without a definition, members cannot provide information to the WTO about their service subsidies; yet without this information, members cannot make a definition. And without either, creating subsidy disciplines is impossible. This problem is perceived by some members as an excuse for some developed countries to avoid disciplines.

In the Rules Group, subsidies have been left aside for members' more pressing concerns about anti-dumping and countervailing measures. Of the detailed proposals that have been submitted as of last summer, less than 15 per cent have directly addressed subsidies. Moreover, these few proposals have generated little response, especially from key members, despite presenting what some say are interesting ideas. The chair of the Rules Group urged members this summer to pursue their interests in this area quickly. The technical nature of subsidies within the SCM virtually guarantees that negotiations will be time-consuming.³

The lack of time and energy devoted to services and the SCM will not come as a surprise to those who have followed these issues over the past decade. Indeed, based upon recent history, little progress on subsidies reform should have been expected in the Doha Round. The technical complexities of designing disciplines for the four modes in services, according to those involved in the negotiations, has been partly responsible for the slow progress in that area. The major cause of the impasse in Rules is said to be the outstanding dispute between Boeing and Airbus. A further possibility may be that countries are focusing on anti-dumping with the intention of adapting its solutions to the SCM.⁴

² Communication with WTO Secretariat official.

³ TN/RL/13.

⁴ Communication with Chinese official.

Nevertheless, the repeated failure to resolve longstanding differences, a growing trend to seek looser disciplines in the SCM⁵ and the neglect of Article 8 on Non-Actionable Subsidies are matters of concern, especially from environmental and developmental perspectives. Since Article 8 lapsed at the end of 1999, “green upgrades” and regional development programs are no longer non-actionable.⁶ Another concern is the scant interest demonstrated by developing countries. At least at a formal level, they have made few proposals and have chosen to remain silent on domestic support. This could be because they are wary of ceding any sovereignty over their national economic policies. Or it may be that they believe the gains from stronger subsidies are not worth the concessions they would have to make elsewhere.⁷ Whatever the reason, there has been little initiative on their part.

Agriculture

In the first meetings of the Special Session of the Committee on Agriculture in September and November 2004, Chairman Tim Groser from New Zealand proposed that members concentrate foremost on solving technical issues, leaving aside the more political decisions for politicians to make at a later stage, unencumbered by the technicalities. Enforcing this in practice led to the creation of three rooms: the First Reading Room—open to all, informal, used as a scoping stage; Room D—again open to all, informal but held in a smaller room, used to discuss more technical issues; and Room F—limited to a small number of members chosen by the chairman, informal, used to discuss the most technical details. The chairman chooses members to whom the issue is important, who represent a larger group or who are major players. A Room F discussion is not necessarily the final word on an issue. It may return to Room D afterwards. Some issues have so far only reached a first reading, while others such as the Green Box have already progressed to Room F. While there are many issues in the agriculture negotiations, those relevant to subsidies⁸ are: domestic support; Amber Box; *de minimis* and Blue Box reductions; Green Box disciplines and criteria; and export subsidies and export credits.

It was hoped that negotiations would produce a “first approximation” by the end of July 2005. Essentially, this would have been an extended version of the July 2004 framework agreement. It would not, for example, include actual tariff reductions, which would be hammered out in Hong Kong. Despite a flurry of meetings in the months before the August break, members failed to create this preliminary document. Returning in September, the new Chairman, Crawford Falconer, suggested that a first approximation be abandoned. Citing the “manifest sense of increased urgency,” negotiators would now work directly on modalities.

With time clearly on everyone’s mind, the first meetings in September began with talk about the level of ambition for the round. Switzerland said the Doha mandate calls for different levels of ambition, with the highest reserved for export competition, and more moderate

⁵ John R. Magnus, “World Trade Organization subsidy discipline: is this the ‘Retrenchment Round?’” *Journal of World Trade* 38 (6): 985-1047, 2004.

⁶ Members may still use these subsidies but the subsidies are now subject to countervailing measures, if another member can prove that the subsidies cause it adverse effects.

⁷ Communication with WTO Secretariat official.

⁸ Subsidies as defined in Article 1 (Definition of a Subsidy) of the Agreement on Subsidies and Countervailing Measures.

goals for market access, which is proving the most contentious of the three pillars.⁹ This position was firmly rejected by the Cairns Group and the G-20.¹⁰ The U.S. agreed that a high level of ambition should be maintained, especially for market access, but that talk should move towards specific outcomes.

Aggregate Measure of Support

Deciding upon a reduction formula for domestic support has become a lengthy and complicated procedure. As set out in the July Framework Agreement, the Aggregate Measure of Support (AMS) must have an overall tiered reduction formula, with individual formulas for reduction and capping in the Amber Box, *de minimis* and Blue Box. For the AMS reductions, members debated whether to use an absolute formula, which would put countries into hierarchical tiers based on their total levels of support, with those on top subject to the highest reductions; or a relative formula, which would slot countries into tiers based on their support relative to the country's production value.

Canada was the first to propose a detailed plan for an “absolute” formula. The EU, with the highest absolute share at 41 per cent, would be by itself in the top tier. In the second would be Japan (19 per cent) and the U.S. (18 per cent). Next, in the third tier, would be the other developed countries, and in the fourth and last would be developing countries. However, the absolute formula has divided members in the G-10, since the G-10 members that are high per capita subsidizers but small in absolute terms, such as Switzerland and Norway, would have to make smaller cuts with the absolute reduction formulas, while Japan would have to make more. The EU, meanwhile, is opposed to it, since it wants to ensure that its reductions are commensurate with those of the United States.¹¹

More recently, the G-20 has recommended an alternative four-band formula, with countries providing more than US\$25 billion in the highest band; those providing between US\$12 and 25 billion in the second tier; and countries providing US\$2–12 billion in the third. The lowest band would be reserved for subsidies of US\$2 billion or less. Although the size of the cuts was not defined, it was stated in the proposal that developing countries would make less than two-thirds of the cuts required by developed countries. Importantly, this structure would allow some developing countries to increase their subsidies, since their AMS would be higher than the subsidies they actually provide.

Members have also debated methods to ensure that the reductions are harmonized and substantial. While members agreed in the July agreement to make an immediate 20 per cent cut from bound support levels, the Cairns Group and the G-20 want to see more cuts. The 20 per cent cut, they have said, would only bring the bound support levels to the applied levels, and would not represent a substantial cut. Switzerland argued that deeper cuts would penalize countries that voluntarily liberalized, though New Zealand pointed out that the gap between the two levels was the result of the abnormally high base periods used for setting the bound levels during the Uruguay Round.

⁹ Communication with WTO Secretariat official.

¹⁰ Communication with WTO Secretariat official.

¹¹ Communication with Canadian official.

Amber Box

Negotiations originally began comparing an “Olympic average,” which would eliminate the years with the highest and lowest amounts of support and average the rest, and a tiered approach, with greater cuts for higher levels of support. Members have since focused on the latter, but this has opened up the problem of how to measure a country’s level of support. Two options are currently on the table: the EU supports a three-tier formula that would see it making the largest cuts, followed by Japan and the U.S. in the second tier; the U.S., however, wants Japan placed in a higher tier because of its relatively greater level of support in terms of a percentage of total value of production. What those cuts would be under either structure has not been determined. Before leaving the chairmanship in August 2005, Tim Groser made clear that the debate over the two structures had run its course — it is time, he stated simply, for a decision.

Blue Box and *de minimis*

For the Blue Box and *de minimis* reductions, finding a reduction formula has been a bit more difficult. Since neither category has bound rates, it is difficult to decide from which rate to begin cuts. Australia suggested using the same base period for both categories as used for the Amber Box. Although the July 2004 framework agreement established an overall cap of five per cent for Blue Box subsidies, the G-20 and some Cairn members want to see caps on specific payments and limits to supports based on commodity prices. In March, the G-20 provided two options for product-specific caps: either a percentage of the production value of each product, or a percentage of the average benefit given to a product during the Uruguay Round implementation period. The EU however, has warned that caps on specific products were not part of the July 2004 framework agreement and pushing this issue would jeopardize the chances of making an agreement for the Hong Kong ministerial.

A central concern for the G-20 within this debate is what has been termed “box-shifting”: the movement of subsidies from the Amber to the Blue Box without significant changes in the nature of the subsidy. If the Blue Box is to be “a real instrument of reform,” the G-20 has said candidates must be completely transformed before gaining access. The group’s recommendations on product-specific caps have been designed with this in mind. For this same reason, the G-20 has called for tougher criteria on so called decoupled payments. This comes as a challenge to the United States and its hope to shield its counter-cyclical payments in the Blue Box. The July 2004 framework agreement includes a new category of Blue Box measures for “direct payments that do not require production,” and the U.S. has interpreted this as allowing counter-cyclical payments. At the very least, the G-20 maintains that members making these direct payments to farmers should have to prove that production has not gone up as a result.

Green Box

On the Green Box, members are divided into two camps. According to the July 2004 framework agreement, “Green Box criteria will be reviewed and clarified,” which members have interpreted in ways to push their own agendas. The EU and the G-10 have interpreted this to mean a “health check-up”. In other words, members would undertake a review of the Green Box, but would not push for substantive reforms. The G-20, the Cairns Group and,

to some extent, the United States, argue it calls for significant changes to the Green Box: otherwise the review is a purposeless exercise.¹² As in the past, Brazil has led the call for greater disciplines. Many members seem prepared to settle for clearer guidelines on “minimally distorting” or “non-distorting” of trade, although negotiators acknowledge that there is a lack of empirical data to help them define the parameters of a “minimally” distorting subsidy.¹³

Canada and the G-20 have been the most active in proposing tighter restrictions for the Green Box. Canada has suggested simpler calculations for baselines and reference periods, and assurances that environmental payments are related to the costs of compliance with specific government-imposed environmental regulations. The G-20 has proposed more comprehensive reforms of the Green Box, arguing that some of these subsidies may be trade-distorting, particularly decoupled programs in the United States and the EU. This is in part because of their sheer size (some US\$4–5 billion in the U.S. for 2000–2001, according to its WTO notification); but also due to the fact that these subsidies are, in some cases, not fully decoupled. The G-20 has gained leverage here following Brazil’s victory in the Cotton Case against the United States, in which subsidies the U.S. claimed were decoupled were found to be significantly trade-distorting. The U.S. will likely use these negotiations on the Green Box to bring itself into line with the changes the WTO panel has demanded, thereby getting something in return for the changes it will need to make to its subsidies program.¹⁴

Sub-committee on Cotton

Established in November 2004, the Sub-committee on Cotton held its first meeting in mid-February 2005. Charged with addressing “all trade distorting policies affecting the sector in all three pillars of market access, domestic support, and exported competition,” members disagreed initially on the broadness of this agenda. The U.S. called for a wide scope, including areas outside of agriculture, such as industrial market access for textiles. This, however, did not receive much support from other members. Most said they expected a focus on agriculture and, specifically, export subsidies and domestic support.

A submission in April by the African Group was the first to move away from procedural issues. Among its proposals were an end to all trade-distorting subsidies by September 2005, and an end to cotton export subsidies by July 2005. Obviously this has not happened. Since then meetings have fallen into an almost repeating pattern. The African Group complains about the lack of written responses to their April submission. The EU responds that it has made a “front loading” proposal, in which tariffs, quotas and export subsidies would be eliminated and domestic support would be substantially reduced, starting once the results of the current negotiations are implemented. The U.S. maintains that an outcome in cotton will only be achieved when progress is made within the agriculture negotiations as a whole. Meanwhile, the WTO Secretariat confirmed the assessment by the African Group that cotton prices and average revenues per hectare continue to fall globally.¹⁵

¹² Communication with WTO Secretariat official and UNCTAD official.

¹³ *Ibid.*

¹⁴ “Agriculture Negotiations at the WTO”, ICTSD, April 2005.

¹⁵ Communication with WTO Secretariat official.

Export competition: export subsidies, food aid and state trading enterprises (STEs)

Export subsidies are considered to be one of the most straightforward issues in the agriculture negotiations. Since all members have committed to eliminating them, the work that remains is to choose an end date and the rate of reduction, which are more political issues than technical ones. Most recently, the G-20 has called for an end to export subsidies within a maximum of five years, with a 60 per cent reduction at the end of the first year, an additional 20 per cent at the end of the third year and the remaining 20 per cent by the end date. Other members, including the United States, have supported the five-year end date. That said, an end date has not been agreed upon, and is unlikely before concessions are made on food aid and state trading enterprises, particularly by the U.S. The EU is pushing these issues since it wants to ensure that its reductions in export subsidies, which will be the largest of any member, will be matched by parallel reductions (or disciplines) on these issues. Members began the discussions using the Harbinson text as a foundation and are adapting it to meet the new commitments in the July agreement. It has been revised once, and is said to be a “well-developed draft.”¹⁶

EU and U.S. Domestic Policy

It is expected that this Round will come to an end in June 2007, when the U.S. loses its trade-negotiating (fast-track) authority. This would also leave time for an agreement to be implemented with the 2007 U.S. Farm Bill. Already, the Congressional agriculture committee has begun holding field hearings on the upcoming Farm Bill, and the message from farmers and their lobby groups has been clear: they would like a repeat of the 2002 Farm Bill, a package widely vilified in the international trade community for increasing trade-distorting farm subsidies.

While the conditions that will shape the 2007 Farm Bill are fluid, proposals for the 2006 federal budget expose a political climate that is unwilling to cut deeply into existing agricultural support. The President’s 2006 budget proposal called for a US\$5.7 billion reduction in Farm Bill outlays over five years. It would, by most estimates, have little impact on commodity payments which are expected to reach US\$94 billion this year alone. Nonetheless, these cuts have been scaled down in proposals coming from Congress and the Senate. Overall cuts are now expected to be around US\$3 billion over five years, a significant chunk of which would come from the federal food stamps program.

Unlike the U.S. Farm Bill which comes up for renewal every five years, the EU’s Common Agricultural Policy (CAP) is fixed until the European Commission proposes legislative change. The last major reform took place in 2003, and in contrast to the 2002 U.S. Farm Bill, EU farm policy is significantly less trade-distorting as a result. Recently, however, debate on agricultural spending has stalled attempts to reach an agreement on the 2007–2013 EU framework budget. France and Germany have called for agricultural spending to remain steady in the enlarged EU15, amounting in real terms to a significant budget cut. The U.K., seeking deeper cuts, rejected this proposal. This has developed into a significant stumbling block, as the EU failed last June to reach an agreement on its preliminary budget agreement.

¹⁶ Communication with WTO Secretariat official.

These domestic pressures threaten the entire Round. This October Senate Agriculture Committee Chair Saxby Chambliss sent letters to USDA Secretary Mike Johanns and U.S. Trade Representative Rob Portman warning both not to submit to a net reduction in the farm safety net in a Doha Round agreement. Meanwhile, EU Agriculture Commissioner Marianne Boel Fischer received a letter of protest from 13 EU agriculture ministers stating that the CAP had already made significant reforms, and further cuts to domestic support should only come after the U.S. moves first. France, in particular, has threatened to veto any agreement that goes beyond the commitments made to the CAP in 2003.

Fisheries

Paragraph 28 of the Doha Declaration calls for negotiations to “aim to clarify and improve WTO disciplines of fisheries subsidies, taking into account the importance of this sector to developing countries.” As the negotiations stand now, they have progressed far beyond those modest aims, with a general prohibition on subsidies, as proposed by several members of the Friends of Fish,¹⁷ beginning to seem like the final outcome. This situation has worried countries like Japan, South Korea and Chinese Taipei, who have complained the negotiations have begun to go beyond the Doha mandate.

Top-down approach

The proposal from Argentina, Chile, Ecuador, New Zealand, Peru and the Philippines calls for a “top-down” approach, or a blanket prohibition of all subsidies to the fishing industry, allowing only exceptions. All subsidies that benefit the fishing industry would be placed in a Red Box. Exceptions to the prohibition would be placed in a “Yellow” Box that may or may not be actionable (still undecided). The proposal contained a non-exhaustive list of exceptions. These would include subsidies for resource management (including research), for general infrastructure, for access fees, for social insurance programs and for decommissioning. These exceptions have been endorsed by the United States.¹⁸ Importantly, the scope of these exceptions was not presented in great detail. Japan, for instance, spends 70 per cent of its subsidies on infrastructure.¹⁹ Would all of that be exempt?

The benefits of the blanket prohibition, according to its proponents, are that it would provide simplicity, transparency and still allow for a number of subsidies. Transparency, for New Zealand, is one of the biggest problems that must be resolved if any disciplines are to be effective. It has pointed to the failure of the SCM to ensure that countries comply with their subsidy notification requirements, and the harmful consequences this would have on fisheries if it continued. To assuage the fears of those who want to retain subsidies, it has also clearly said that, “It is apparent from discussions so far that a wide variety of existing

¹⁷ TN/RL/W/166 (Japan: 2004). Originally, Friends of Fish (FOF) comprised Australia, Chile, Iceland, New Zealand, Peru, and the United States. The existence of the group has not stopped its members from submitting its own proposals, and the group’s composition has changed depending upon the proposal. In TN/RL/W/166, for instance, Australia, Iceland and the U.S. were not part of the group, but Argentina and Ecuador were. Using the moniker Friends of Fish can therefore be misleading; it is done here for simplicity’s sake.

¹⁸ TN/RL/W/166.

¹⁹ Communication with Japanese official.

subsidy programmes on fisheries will not be prohibited as a result of this round of negotiations.”

This is an important point, since it may encourage Japan, South Korea and Chinese Taipei to make a compromise. Indeed, there was some talk in late 2004 that the opponents of the Friends of Fish approach, mainly Japan, South Korea and Chinese Taipei, were beginning to agree that the blanket prohibition might lead to similar results as the “bottom-up” approach.²⁰ However, this now appears to have been mistaken. When questioned on this, Japan has emphatically said it does not believe the approaches would lead to similar results.²¹ It does not consider the exceptions that the Friends of the Fish have proposed are significant, since they are already exceptions in the SCM under (lapsed) Article 8 on Non-Actionable Subsidies.

Bottom-up approach

At the beginning of the negotiations, Japan said the discussion on fisheries subsidies should focus solely on trade distortions. The WTO, it said, was not competent to deal with resource issues. In October 2004, it reversed that position, and proposed a “bottom-up” approach that would allow for any subsidies that do not lead to over-capacity and over-fishing. Focusing on resource issues was now the most important matter, according to this proposal. Though Japan did not explicitly point it out, this approach would allow for trade-distorting subsidies. This does not mean Japan’s proposal would contravene the SCM. While “not denying” that there are trade distortions, it has consistently maintained that there is no proof that fisheries subsidies cause trade distortions. The discussion, it argued, should therefore focus on subsidies that have adverse affects on fishery resources. Any discussion of the trade distortions of fisheries subsidies, Japan has argued, should be done in a cross-sectoral manner as part of the SCM negotiations. Korea has argued the same point. Trade distortions in subsidies, both have said, are not unique to fisheries and should not be treated as if they are.

In defending its October proposal, Japan emphasized that the bottom-up approach was in the spirit of the SCM, and asserted that the “top down approach” was not. It meant by this that the top-down prohibition imposed stronger disciplines and notification requirements than the bottom-up approach, which was neither within the Doha mandate nor was a fisheries-specific discussion the best approach way to strengthen the SCM; such a move would have ramifications for other sectors. Japan also said that its approach would allow members to determine the direct links between subsidies and over-fishing problems. However, during the discussion of Japan’s proposal, some members complained that Japan’s proposal would exempt many of Japan’s current subsidies, and would not solve over-fishing problems.

Japan had not decided in its proposal whether the subsidies would be actionable or non-actionable. Since then, its position is that some subsidies that benefit resource management should be non-actionable.²² In contrast, the United States said in its November 2004

²⁰ Communication with WTO Secretariat official.

²¹ Communication with Japanese official.

²² *Ibid.*

proposal that if the blanket prohibition is adopted, any exceptions should be actionable.²³ In this regard, it suggested the negotiations committee examine SCM Article 6 on Serious Prejudice and see how it could be adapted to the specific characteristics of fisheries. The SCM calculates prejudice based on a loss of market share, which may be impossible or unduly difficult to calculate for fisheries. There are possible solutions to this,²⁴ but they have not been discussed during the negotiations.

Special and Differential Treatment

The proponents of both the top-down and bottom-up approaches have said their approaches can accommodate Special and Differential Treatment (SDT). But they have also argued that all countries with major fishing industries, whether developing or not, should be bound by the disciplines. Some developing countries want to ensure that the list of exceptions to the blanket prohibition include subsidies necessary for their special needs, such as artisanal fisheries, access fees and economic development assistance.²⁵ The most substantive recommendations for SDT came from Brazil last summer.²⁶ Developing countries should be allowed subsidies that increase capacity, Brazil suggested, so long as they are members of a regional fisheries management organization (RFMO) and the subsidies maintain a sustainable level of exploitation. This recommendation did not elicit objections, though the issue will be to determine who qualifies for them.

The Thin Green Line

With its October proposal, Japan introduced the concept of a “properly managed fishery,” which would serve as a standard for judging the harmfulness of a subsidy. A “properly managed fishery,” it said, is one managed in accordance with “UNCLOS, regional fishing agreements and national regulations.” In doing so, Japan has gone very close to stepping over the “thin green line”—the undefined boundary separating the WTO’s sphere of authority from environmental issues.²⁷ The Friends of Fish have warned that the WTO does not have the competence to judge what is a “properly managed fishery.” Yet the Friends of Fish proposal may itself require some environmental judgments in establishing criteria for exceptions. It is trying to avoid doing so, but is not in principle against it, if both sides agree on its necessity.²⁸

Common ground?

In February 2005, Japan submitted a proposal with Korea and Chinese Taipei that, despite renewed criticism of broad prohibitions promoted by the Friends of Fish, was nonetheless greeted by members as a significant step forward.²⁹ There was no mention of the previous

²³ TN/RL/W/166 (Japan: 2004).

²⁴ See David K. Schorr, *Healthy Fisheries, Sustainable Trade: Crafting new rules on fishing subsidies in the World Trade Organization*, World Wildlife Fund, Washington, 2004.

²⁵ TN/RL/W/136 (Antigua and Barbuda, Belize, Fiji Islands, Guyana, the Maldives, Papua New Guinea, Solomon Islands, St. Kitts and Nevis: 2003).

²⁶ TN/RL/GEN/56.

²⁷ See Schorr, *op. cit.*

²⁸ Communication with New Zealand official.

²⁹ *Bridges Trade BioRes*, 22 July 2005.

demand that only in the case of poorly managed fisheries would capacity-related subsidies be banned. The submission also noted a number of areas for consideration for the Green Box, including social security, welfare, and research and development. Since then, the negotiations have opened up considerably, avoiding for the most part the debate on a top-down versus a bottom-up approach. Of late Brazil has been one of the most active participants, tabling a detailed list of SDT provisions for developing countries, rules for greater transparency through notification requirements, and a comprehensive list of non-trade-distorting subsidies for the Green Box.³⁰ However, deep divisions remain, as was evident in July when Brazil recommended a prohibition on all subsidies not falling in the Green Box, which brought immediate objections from Chinese Taipei.

Services

Numbers tell the story of the lack of progress being made in services. As of July 2005, 55 developing and least-developed countries had yet to submit an initial offer, and 24 members had not submitted a revised offer. Moreover, those offers that have been tabled have not actually offered very much. It has become clear that the request-offer approach, in which members offer sectors for liberalization, and request sectors from other members, is proving cumbersome and resource-intensive. In response, a number of developed countries have suggested that members commit to opening up a minimum number of sectors, although several developing country members replied that this would undermine their flexibility and lead to further imbalance.³¹

Within this scenario, subsidies have received relatively little attention. At the moment, more pressing concerns have been identified by members, such as improving market access, negotiating offers for the four modes of supply³² and setting parameters for domestic regulation. Yet there are certain members who blame the standstill on the intransigence of some countries, most notably the United States and the EU, to put service subsidies on the negotiating table. China, Hong Kong and Chile have been the most active in addressing the two main tasks at hand: forming a definition of subsidies within GATS and suggesting steps for information exchange. For these countries, along with the ASEAN members and Brazil, addressing services subsidies is recognized as the key means of levelling the playing field in services, and some observers expect subsidies, more than safeguards, to become their primary focus.³³

The “chicken and egg” problem

There was little guidance within the July framework to direct or speed progress on subsidies. It simply encouraged members to “intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI: 4, 10, 13 and 15 in accordance with their respective mandates and deadlines.” This was largely owing to the fact that negotiations were then still

³⁰ TN/RL/W/174, TN/RL/56.

³¹ *Ibid.*

³² Mode 1 refers to cross-border supply; Mode 2 refers to consumption abroad; Mode 3 refers to commercial presence; and Mode 4 refers to the movement of natural persons.

³³ Communication with ICTSD and UNCTAD officials.

at a basic stage, especially on subsidies (Article XV), where no progress has occurred since discussions started in 1996. The “chicken and egg” debate has effectively circumscribed most attempts to advance the negotiations: without a definition of a subsidy, some members say, they cannot provide information to the WTO about their service subsidies; others say that without this information, they cannot make a definition; and without either, creating subsidy disciplines is impossible. Proposals since the July agreement have not escaped this conundrum. They can be divided between those that provide criteria for a definition, those that suggest sectors to initiate the information exchange, and those that suggest doing both at once. All of these proposals have been informal, i.e., restricted; it is a telling indication of the sensitivity of the discussions.

The most common suggestion is that the SCM’s definition of a subsidy be adapted to the GATS, with allowances for GATS’ unique characteristics. Singapore, for example, has suggested that specific phrases from the SCM—such as “benefit,” and “income or price support”—could be analyzed for their relevance to the GATS. Singapore’s proposal was intended to direct the Committee towards settling these technical details. This, it said, would be more profitable than trying to have information exchanges on many sectors at once, since any exchanges would inevitably become encumbered by the absence of a definition.

This was not breaking new ground, however, as even last autumn the chair of the Working Party on GATS Rules reported that most members could agree that the SCM provided a useful basis for a subsidy definition in services. Nonetheless, some members remarked that the Singapore proposal was “thought-provoking” and “useful.”³⁴

Information exchange

Both GATS Article XV on subsidies and the Guidelines and Procedures for the Negotiations on Trade in Services mandate an information exchange on subsidies.³⁵ Since 1996, only four members have complied.³⁶ While some have blamed this on the lack of a definition, many believe that some members are reluctant to share information on sectors they subsidize. Hong Kong has argued that Article XV requires members to share information on subsidies on all service sectors. The EU and the U.S. both strongly object to this approach. The EU has disputed the notion that a notification of subsidies is equivalent to exchanging information. The U.S., meanwhile, said the WTO Secretariat was not capable of handling all the information such an information exchange would produce and would be overwhelmed.³⁷

The United States’ stance—which a few members say is purely a delay tactic—is clearly reflected in its February 2005 proposal. This presented a plan to improve the information exchange by taking one sector at a time, starting with tourism. Adopting the U.S. approach would inevitably postpone discussions on other sectors that are more important to

³⁴ Communication with Thai official.

³⁵ S/L/93 (Guidelines and Procedures for the Negotiations on Trade in Services: Adopted by the Special Session of the Council for Trade in Services on 28 March 2001).

³⁶ S/WPGR/M/49 (Report of the Meeting of 20 September, 2004: Note by Secretariat).

³⁷ *Ibid.* The U.S. delegate has not returned calls asking for an explanation of their proposal.

developing countries. While tourism is a heavily subsidized sector,³⁸ it is also a sector that developing countries normally subsidize. A focus on tourism at the expense of others would therefore be in conflict with both the aims of the Doha Round and with GATS Article XV itself, which states, "... negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area."

Developing-country members made a similar, more oblique point during the proposal's discussion.³⁹ While they have said they do not object to discussing tourism, since it is true there is available information for this sector,⁴⁰ they would like to see simultaneous information exchanges on the more-heavily subsidized service sectors in developed countries, such as air transport and energy.

During the same Working Party on GATS Rules meeting, Thailand gave an oral presentation of subsidies it gives to its tourism sector. It used the SCM's definition of a subsidy for its analysis. Thailand found that its subsidies did not distort trade, because of the nature of the sector. Tax waivers for hotels, for instance, would not affect the decision of foreign tourists to visit to Thailand, who would use other factors in making their decision, it said. It concluded that its subsidies for Mode 2, consumption abroad, were likely outside the scope of the GATS.⁴¹ Thailand also made clear that while it was presenting an illustrative "test case" as part of the information exchange process, it wants to see information exchange on other sectors as well.

The complexity of services

To many observers, the standstill cannot solely be blamed on a lack of will. A large factor is the complexity of services as a sector. The four modes of supply may not be able to be disciplined by one general principle, for instance. It is also much harder to determine adverse effects in services, partly because the financial transactions in the four modes of supply cannot easily be quantified. The other factor is the lack of reliable statistics. This has hamstrung the negotiating hand of countries like Hong Kong who believe that the "huge amount of subsidies" being provided by other countries must be having some effect on its companies' competitiveness.⁴² It has also prevented in-depth analyses that could determine which subsidies distort trade and which do not. Notably, no proposal has tried to identify which subsidies are trade-distorting and should be prohibited.

Another problem remains with the structure of the GATS itself. It is distinct from GATT in that it requires a member to give National Treatment (NT) treatment to other members *in the sectors in its schedule*. In theory, this acts as an indirect subsidy discipline since a member would be required to give foreign companies the same subsidies it gives to domestic ones.

³⁸ Little information is available on service subsidies, but the WTO's Trade Policy Review reports have been one reliable, if limited, source for information.

³⁹ Communications with Singaporean, Hong Kong (China) and Thai officials.

⁴⁰ Information on this comes from the WTO's Trade Policy Review reports, one of the few sources that provide (limited) information on subsidies used by members. This source is often referred as a rebuttal to those who say there is a lack of information.

⁴¹ Communication with Thai official.

⁴² Communication with Hong Kong (China) official.

However, members can choose which sectors they want to exempt from national treatment. In reality, then, many members have availed themselves of this option and imposed numerous restrictions that are sector and mode specific or horizontal (i.e., listed at the beginning of the members' Schedules of Specific Commitments). This in effect negated the national treatment's potential to discipline subsidies.

These differences may become moot points in the run-up to Hong Kong. Some negotiators involved do not believe a resolution will be needed for the December ministerial. Others, such as Hong Kong and Singapore, have said they want at the very least some preliminary results about what might be achievable, or a provisional definition that can be built upon and refined. But these members may decide, given how much they have to concede in other sectors, that subsidy disciplines are unattainable in this round.

The Agreement on Subsidies and Countervailing Measures (SCM)

Of the major topics under the mandate of the Negotiating Group on Rules, the SCM has by far received the least amount of attention, and only a small fraction of that has been on subsidies disciplines.⁴³ Only about 40 countries are actively participating in the SCM discussions. Most of these are developed countries; except for Brazil and India, developing countries have shown little initiative.

When negotiations first began in 2000, the first proposals members submitted were ambitious in scope and depth.⁴⁴ These dealt with either subsidy disciplines or the agreement's countervailing measures. Some have interpreted these proposals as regressive since the implications of their suggested amendments could lead to "looser" disciplines.⁴⁵ For instance, India proposed to extend the developing countries' exemption from Article 3.1.b, which prohibits the use of subsidies that are contingent upon using domestic over imported goods. However, another possibility may be that these initial proposals were exploratory since they have not been followed up, expanded upon or subsequently defended in meetings. It may be that these countries are not set on obtaining the amendments.⁴⁶ Notably, few of these issues re-appeared in the post-Cancun (2nd generation – TN/GEN) proposals or papers.⁴⁷

⁴³ Fisheries are an exception to this, but it should be considered as a special case.

⁴⁴ Communications with Canadian and WTO Secretariat officials.

⁴⁵ See for instance, Magnus (2004), *op. cit.*

⁴⁶ Communication with WTO Secretariat official.

⁴⁷ Australia has elaborated its initial proposal on "Contingency" for export subsidies in TN/RL/GEN/22, and Canada has done the same for its proposal on "like products". As Magnus (2004), *op. cit.*, notes, these proposals are efforts by these members to change the ASCM and reverse the findings of the trade settlements with which both were unhappy.

The Anti-Dumping Agreement (ADA)

What has occurred is that members in the Rules Group have focused on the Anti-Dumping Agreement (ADA).⁴⁸ One delegate suggested this strategy was adopted with a view to adapting its technical solutions to the SCM.⁴⁹ Many of the ADA proposals have explicitly mentioned that its suggestions could be linked to specific articles in the SCM. While the two agreements are different on a mechanical level, they are perceived by these members to be conceptually the same. The concept of “injury,” and the procedures for investigation, transparency and confidentiality, may be adapted without having to consume too much time and political capital.

Serious prejudice and export subsidies

There is a limit to this strategy. It is only the countervailing articles of the SCM that share a conceptual basis with the ADA. Subsidy disciplines are unique to the SCM, and there have been to date very few elaborate proposals on these. Canada has been the most active member of late.⁵⁰ Its proposal on the lapsed Article 6, “Serious Prejudice,” is judged to have merit by members and outside observers.⁵¹ The proposal called for the reinstatement of the serious prejudice categories in Article 6.1 with modifications. Canada has also suggested changing the current cost-to-government subsidy calculation in Annex IV (Calculation of the Total Ad Valorem Subsidization) to benefit-to-recipient. With the old formula some subsidies could slip through, while the new one attempts to eliminate these loopholes.

Canada’s proposals have not generated any substantial discussion in subsequent meetings. Part of the reason given for this reticence is the daunting technical task of calculating “displacement” (Article 6.3.a. and 6.3.b.), i.e., how much market share a country loses because of another country’s subsidized exports or imports. Brazil, in its cotton dispute with the U.S., was the first country to successfully prove a case of serious prejudice. But while Brazil successfully proved in the Appellate Court that the U.S.’s cotton subsidies resulted in a loss of market share or potential market share, it had to expend an enormous amount of time, research and money. In doing so, it has set a high standard which may be difficult to replicate, especially for small and developing countries.

The green exception in Article 8 (Non-Actionable Subsidies)

A second, and perhaps more significant, reason given by members and observers is the Boeing-Airbus dispute between the U.S. and the EU. Most believe that until this is resolved, negotiations on subsidies will remain fixed where they are. Two issues are involved here. One is the fact that neither the U.S. nor the EU will want to change the rules of the SCM while they are in a trade dispute. The second issue is the SCM’s subsidy exemption for research and development (Article 8.2.a.), an article that is of significant importance both for developing countries and for environmental protection. In the Boeing-Airbus dispute, both

⁴⁸ Its technical name is the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

⁴⁹ Communication with Chinese official.

⁵⁰ TN/RL/GEN/26, TN/RL/GEN/21, TN/RL/GEN/14.

⁵¹ Communication with WTO Secretariat official. Also, Magnus (2004), *op. cit.* The proposal referred to is TN/RL/GEN/14 (Canada: September 2004).

countries accuse the other of providing research and development subsidies, which became prohibited when Article 8 lapsed in 1999.

Article 8 provides a list of non-actionable subsidies—research and development, assistance to disadvantaged regions and “environmental upgrades”—that are the equivalent of agriculture’s Green Box. Unlike the Green Box, though, the SCM’s non-actionable subsidies were only meant to be provisional; the article was to last five years, and lapsed in 1999. Negotiations to extend the deadline were to occur just before it lapsed, at the Seattle Ministerial Conference. Several developing countries intended to have Article 8 extended then. When the ministerial collapsed, so did their opportunity.

Apparently there has been very little discussion of re-activating Article 8 in this round, and none since the July agreement. In 2002, Venezuela proposed a new category for Article 8 for subsidies to assist developing countries diversify their economies.⁵² While this would be a “loosening” of the disciplines, it could be considered as a Special and Differential provision for developing countries, and therefore within the Doha mandate.⁵³ This proposal, however, generated little discussion, though Australia and Canada both showed some support, perhaps out of self-interest, since they are countries that would like to re-activate Article 8. Both countries agree that the lapsing of Article 8 “compromised” the SCM’s traffic-light approach, which categorized subsidies based on their trade distortions: prohibited (red), actionable (yellow) and non-actionable (green).

In two earlier proposals from 2002, Canada and the EU⁵⁴ mentioned their interest in discussing “green” subsidies for such purposes as environmental research and incentives to reduce pollution. While this generated little discussion and no specific proposals on the issue, both members may raise the issue again if the negotiations reach a more advanced stage and they feel they can obtain the exceptions.⁵⁵ Any initiative would have to come from the EU, since Canada has less commitment to this issue than the EU. Even the EU, though, may decide that the current subsidy regime is “doing fine” without the green exception.⁵⁶

Special and Differential Treatment

Re-activating Article 8 now will require substantial trade-offs. In the Uruguay Round negotiations, members who wanted the exceptions only obtained them by acquiescing to the U.S.’s demand for stronger disciplines. Hence both Article 8 and Article 6.1 (Serious Prejudice) were given the same expiry dates (1999). As well, since the request for an environmental carve-out would be coming from developed countries, developing countries in turn would likely ask for more Special and Differential exceptions.⁵⁷ In this regard, one very important issue to some developing countries such as Brazil is export credits. India and Brazil have strongly criticized the “safe haven” for export credits in Annex 1 (Illustrative List

⁵² TN/RL/W/41 (Venezuela: 2002).

⁵³ Some have suggested one reason for its cold reception may have been that it was supported by Cuba.

⁵⁴ TN/RL/W/30 (EU: 2002), TN/RL/W/112 (Canada: 2003).

⁵⁵ Communications with EU and Canadian officials.

⁵⁶ Communication with EU official.

⁵⁷ Communication with Canadian official.

of Export Subsidies), which is based on OECD standards and thereby denies developing countries the equal use of them.

Another issue that is important for developing countries is the “export competitiveness” definition in Article 27.6 on SDT. The SCM is said to be one of the more innovative WTO agreements on SDT. Under the SCM, a product is considered to have “export competitiveness” if a country maintains a share of 3.25 per cent of world trade for that product during two consecutive years. It also allows (in Article 3.1.a. on Prohibited Subsidies and Annex 7) developing country members that have a per capita GDP of less than US\$1,000 to provide export subsidies. One of the SCM’s faults, however, is that it does not have any remedies if a member loses export competitiveness, or its per capita GDP falls below US\$1,000.

There is talk that the developing-country members who have obtained extensions on their phase-out periods for export subsidies will use the Hong Kong ministerial to request a second extension.⁵⁸ This has been pointed out as another instance of developing countries failing to take the initiative in the negotiations, and acting in a short-sighted, reactive manner, either because they lack knowledgeable staff, or because their concerns lie elsewhere. It would be in their best interests, according to these observers, to propose a general exemption that suits their specific needs, e.g., export processing zones for countries like Panama.

Although Article 8 is important for both developed and developing countries, most members and observers have few hopes that it will be discussed in any great detail in future discussions. In the small amount of discussion on subsidies, it has received little attention. Considering the amount of attention subsidies as an issue in its own right is being given within the Negotiating Group on Rules, Article 8 stands little chance of being re-activated in the Doha Round.

⁵⁸ Among the countries whose transition period ends in 2005 are: Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, and Uruguay.

Acronyms

AOA	Agreement on Agriculture
ADA	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)
AMS	Aggregate Measure of Support
FOF	Friends of Fish
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade 1947
OECD	Organisation for Economic Co-operation and Development
SCM	Agreement on Subsidies and Countervailing Measures
STEs	State Trading Enterprises
UNCLOS	United Nations Convention on the Law of the Sea
WTO	World Trade Organization

Negotiating Alliances

Cairns Group

Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

Friends of Fish

Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, the Philippines and the United States.

G-10

Bulgaria, Chinese Taipei, Republic of Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway and Switzerland.

G-20

Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, Tanzania, Venezuela and Zimbabwe.

G-33

(“Friends of Special Products,” understood to comprise 42 countries): Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Côte d'Ivoire, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Republic of Korea, Mauritius, Madagascar, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe.

G-90

(African, ACP and Least-Developed Countries – currently 64 members of the WTO): Angola, Antigua-Barbuda, Bangladesh, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Fiji, Gabon, Ghana, Grenada, Guinea (Conakry), Guinea Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Papua New Guinea, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, The Gambia, Togo, Trinidad and Tobago, Tunisia, Uganda, Zambia and Zimbabwe.

Glossary

Absolute formula

A reduction formula proposed by Canada to cut Total Aggregate Measure of Support. It places countries in hierarchical tiers based on their absolute amount of subsidies, with the higher the tier, the steeper the cut. The EU (41 per cent) would be in the top tier. In the second tier would be Japan (19 per cent) and the U.S. (18 per cent). In the third tier would be most other developed countries. In the bottom tier would be developing countries.

Actionable subsidy

According to the Agreement on Subsidies and Countervailing Measures (SCM), this is any subsidy that is not prohibited but is countervailable. To impose a countervailing measure, a country must first demonstrate adverse effects, i.e., a loss of market share caused by another member's subsidies.

***Ad valorem* tariff**

A tariff rate charged as percentage of the price.

Adverse Effects

“According to Article 5 (items a-c), ‘adverse effects’ can be caused by: (i) injury to the domestic industry of another Member; (ii) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of the GATT 1994; and (iii) serious prejudice to the interests of another Member.”⁵⁹

(Total) Aggregate Measure of Support (AMS)

All product-specific support and non-product specific support. This total does not include Blue Box or Green Box support.

Amber Box

Supports considered to distort trade and therefore subject to reduction commitments (WTO).

⁵⁹ Pietro Poretti, “Some Thoughts on Export Subsidies from a Developing Country Perspective”, unpublished draft, 2005.

Base period

A period of time measured in years used as a base from which to make reductions to the Total AMS. Also used in establishing decoupled payments. For the Uruguay Round, the base period for AMS reductions was 1986–1988. In the Doha Round, the base period is supposed to be updated; members are debating what period should be used, with some advocating the currently notified subsidies and others pushing for a more recent period, since some members have not notified the WTO in over six years.

Benefit

A legal term in the Agreement on Subsidies and Countervailing Measures (SCM) that most members agree lacks precision. It is not explicitly defined in the SCM and needs clarification; in *Canada-Measures Affecting the Export of Civilian aircraft*, the WTO Appellate Body “decided that in order to assess the existence of a ‘benefit,’ the financial contribution provided to a recipient by a government has to be compared with what the recipient in question would have received under normal market conditions.”⁶⁰

Blue Box

Permitted supports linked to production, but subject to production limits, and therefore minimally trade-distorting (WTO).

Bottom-up approach

A subsidy regime for fisheries based on a “traffic-light” system: a red prohibited box, a yellow actionable box and a green non-actionable box. Red subsidies would be those that contributed to overfishing and overcapacity. Yellow subsidies are those that Japan has yet to describe but would be actionable, though likely uncapped. Green subsidies would be those that reduce overfishing and overcapacity, provide assistance for socio-economic development to fishing villages and fund research for sustainable fishing. Members would have to make an illustrative list of “green” exceptions. Proposed by Japan, supported by South Korea and Chinese Taipei. See **top-down approach**.

“Chicken and Egg” problem

In services, members have neither a definition of a subsidy nor the information to make a definition. Without a definition, some say, they can’t provide information on the subsidies they provide to service sectors. Without information, others say, they can’t make a definition.

Counter-cyclical payment

A payment that is based on a historical period of agricultural production rather than current agricultural production, and only available to farmers if the market price is less than the target commodity price. In the 2002 U.S. Freedom to Farm Bill, the historical period used is 1998–2001. The counter-cyclical payment attempts to decouple (see below) agricultural production from the government subsidy. A decoupled payment qualifies in the WTO as a Green Box payment. Counter-cyclical payments, however, may not receive the same treatment, since some members question the extent to which a counter-cyclical payment is

⁶⁰ *Ibid.*

decoupled, since it is based upon market prices and advance knowledge of what base period will be used in the past affected agricultural producers' market behaviour.

Decoupled payment

A payment to an agricultural producer that is not contingent upon the current production levels, prices or resources. It is considered "least-trade-distorting and therefore these payments fall within the Green Box and are not subject to limitations.

de minimis

Level of Amber Box (i.e., trade-distorting) product-specific and non-product specific support that can be exempted from the AMS reductions, if neither category exceeds five per cent of total agricultural production value. For developing countries, the *de minimis* levels are 10 per cent.

First Reading

In the agriculture negotiations, this is the first reading of an issue from the August 1, 2004 framework. It is meant to be a scoping stage. The purpose is for members to hear each other's positions, to gauge reactions and to determine how to pursue a subject. Eventually all issues in the "framework" will have a first reading. This normally takes place in the big Council Room, in "informal special sessions."

Green Box

Supports considered not to distort trade and therefore permitted with no limits (WTO).

Harmonizing

Used in tariff negotiations for much steeper reductions in higher tariffs than in lower tariffs, the final rates being "harmonized" i.e., closer together.

Information Exchange

Article 15.1 of the Agreement on Subsidies and Countervailing Measures requires members to "exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers." The scope of the information exchange is under debate in the negotiations. Hong Kong argues that Article 15 calls for information on "all subsidies"; the EU and the U.S. argue that an information exchange is not equivalent to a subsidy notification, and the information is only required "for the purpose of the negotiations," and is not in its own right.

Injury

The material harm to a domestic industry caused by subsidized imports in the territory of the complaining member. (WTO) The legal interpretation is one issue of the negotiations for both the Anti-Dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (SCM).

July Framework Agreement

Technically called the "July Package, the July Framework Agreement is the text adopted by General Council on August 1, 2004. It provides a framework for members to work towards modalities on the topics under negotiation.

Modes of supply

How international trade in services is supplied and consumed. Mode 1: cross border supply; Mode 2: consumption abroad; Mode 3: foreign commercial presence; and Mode 4: movement of natural persons.

Non-actionable subsidy

A subsidy that is allowed and therefore cannot be countervailed. The equivalent to agriculture's Green Box. The three allowable categories are: research and development; aid to disadvantaged regions; and assistance for environmental upgrades. Article 8 lapsed in 1999, and hence these subsidies are prohibited.

Parallelism

A term used by the EU to denote reductions or stronger disciplines on all export competition subsidies that are similar (parallel) to the reductions being made on export subsidies. As one of the biggest users of export subsidies, the EU will have to make the biggest cuts as it eliminates the subsidies; it therefore wants to see similar reductions, or stronger disciplines, on export credits, food aid and State Trading Enterprises.

“Properly Managed” Fishery

A concept used by Japan in its **bottom-up approach**. Japan defines a “properly managed” fishery one that is managed in accordance with UNCLOS (United Nations Convention on the Law of Seas) guidelines, national policies and regional fishing agreements. This is not a WTO concept and some members in the fishing subsidies negotiations have warned introducing it may cross the **Thin Green Line**.

“Olympic Average” Formula

This reduction formula eliminates the highest and lowest subsidy levels in a historical period before making an average, representative subsidy level.

Relative formula

A reduction formula for the Total Aggregate Measure of Support. It places countries in hierarchical tiers based upon their per capita subsidization rate (to agricultural producers). Those who are high per capita subsidizers would have to make the most cuts.

Room D

The second reading of agricultural issues, and based on the first reading. Some of the issues are discussed in greater technical detail during a subsequent agriculture week in “Room D.” This is a smaller room but the meeting is open to all interested delegations. Sometimes issues are returned to “First Reading” after a specialist consultation.

Room F

Certain highly complex agricultural issues, after passing First Reading and Room D, are discussed in Room F. This is a smaller group representing all the interested members. The results of these discussions are resubmitted to all participants.

Serious Prejudice

“Serious prejudice usually arises as a result of adverse effects (e.g., export displacement) in the market of the subsidizing Member or in a third country market. Thus, unlike injury, it

can serve as the basis for a complaint related to harm to a Member's export interests.” (WTO)

Subsidy

A financial contribution by a government is not a subsidy unless it confers a **benefit**. (WTO) There are two general types of subsidies: export and domestic. An export subsidy is a benefit conferred on a firm by the government that is contingent on exports. A domestic subsidy is a benefit not directly linked to exports. (WTO) “In the SCM, a measure is defined to be a subsidy if (i) it is a financial contribution, (ii) the contribution is made by a government or any public body within the territory of a Member, and (iii) the contribution confers a benefit to the receiving party.”⁶¹

Thin Green Line

The undefined boundary separating the WTO’s sphere of authority from environmental issues. Requiring the WTO to judge whether a subsidy is environmentally harmful is one instance that may be a crossing of the Thin Green Line.

Top-down approach

A subsidy regime for fishing subsidies that has a general prohibition on all fishing subsidies with a Yellow Box (or perhaps green, still undecided) for subsidies that would qualify as exceptions. Proposed categories for a yellow category are subsidies for resource management (including research), access fees, general infrastructure and commissioning vessels. This is advocated by the **Friends of Fish**, and partly supported by the U.S. In the opinion of the Friends of Fish, a top-down approach would ensure greater transparency, since it would require countries who want their subsidies to qualify for the yellow to notify other members and request their permission to use it. Japan, South Korea and Chinese Taipei have criticized it for placing too much of a burden on the notifying countries.

TN/GEN, or 2nd Generation Series

The submissions received from members in the Negotiating Group on Rules since Cancun.

⁶¹ Ibid.

Annex

Relevant Articles from the General Agreement on Trade in Services

Article 15

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.¹ The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

Relevant Articles from the Agreement on Subsidies and Countervailing Measures

Article 1.1.

Definition of a Subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

- (a) (1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:
 - (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
 - (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)²;
 - (iii) a government provides goods or services other than general infrastructure, or purchases goods;
 - (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of

¹ A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

² In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a) (2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

Article 3.1.

Prohibition

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

- (a) subsidies contingent, in law or in fact³, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I⁴;
- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Article 6.1.

Serious Prejudice

6.1 Serious prejudice in the sense of paragraph (c) of Article 5 shall be deemed to exist in the case of:

- (a) the total *ad valorem* subsidization⁵ of a product exceeding 5 per cent⁶;
- (b) subsidies to cover operating losses sustained by an industry;
- (c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;
- (d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.⁷

³ This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

⁴ Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.

⁵ The total *ad valorem* subsidization shall be calculated in accordance with the provisions of Annex IV.

⁶ Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the threshold in this subparagraph does not apply to civil aircraft.

⁷ Members recognize that where royalty-based financing for a civil aircraft programme is not being fully repaid due to the level of actual sales falling below the level of forecast sales, this does not in itself constitute serious prejudice for the purposes of this subparagraph.

Article 6.3.

6.3 Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

- (a) the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member;
- (b) the effect of the subsidy is to displace or impede the exports of a like product of another Member from a third country market;
- (c) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market;
- (d) the effect of the subsidy is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity⁸ as compared to the average share it had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

Article 27

Special and Differential Treatment of Developing Country Members

27.1 Members recognize that subsidies may play an important role in economic development programmes of developing country Members.

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

- (a) developing country Members referred to in Annex VII.
- (b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.

27.3 The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement.

27.4 Any developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies⁹, and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing

⁸ Unless other multilaterally agreed specific rules apply to the trade in the product or commodity in question.

⁹ For a developing country Member not granting export subsidies as of the date of entry into force of the WTO Agreement, this paragraph shall apply on the basis of the level of export subsidies granted in 1986.

country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

Article 31

Provisional Application

The provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period.

Annex VII

DEVELOPING COUNTRY MEMBERS REFERRED TO IN PARAGRAPH 2(A) OF ARTICLE 27

The developing country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

- (a) Least-developed countries designated as such by the United Nations which are Members of the WTO.
- (b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached \$1,000 per annum¹⁰: Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

¹⁰ The inclusion of developing country Members in the list in paragraph (b) is based on the most recent data from the World Bank on GNP per capita.