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Some Suggestions for Modalities in Agriculture Negotiations

Bhagirath Lal Das

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1 Introduction

THE first round of the World Trade Organization (WTO) negotiations on agriculture has taken place in special sessions of the Committee on Agriculture in the areas of market access, domestic support and export subsidy. The trend of discussions gives rise to the apprehension that the negotiations on modalities for commitments may broadly proceed along the same lines as those adopted in the Uruguay Round.

This course is likely to be harmful for the developing countries. In the Uruguay Round, the modalities were primarily in the form of percentage reductions in tariffs, domestic support and export subsidies. The special treatment to the developing countries was mainly in the form of lesser percentages of reduction spread over longer periods.

This pattern of modalities has not been beneficial to the developing countries. In fact it has had adverse effects on them. The developed countries have retained prohibitively high tariffs, high domestic support (sometimes even enhancing them) and high export subsidies in various forms. The developing countries, in contrast, are not able to provide domestic support even if they are permitted up to some extent, because they do not have adequate financial resources. Their domestic production faces severe competition from the highly subsidized products of the developed countries. Also, their prospects of export to the developed countries and other areas are hurt by competition from the subsidized exports from the developed countries.

Some facts brought out in this connection in a study by the UN Food and Agriculture Organization (FAO), published in two volumes (one in 2000 and the other in 2001), give a disturbing picture (*Agriculture, Trade and*

Food Security, Vol. I and Vol. II. Rome: Food and Agriculture Organization). This study was conducted on the basis of a survey of experiences in 14 developing countries during 1995-98.

The study shows that increases in food imports in most of these countries have been greater than increases in their overall agricultural exports. Food imports had been rising rapidly in most of these countries, but there was no improvement in agricultural exports. Import surges in some products were quite common, particularly dairy products and meat. Import surges have undermined domestic production in several countries.

Some other studies conducted by some non-governmental organizations (NGOs) in the EU and the US have given specific instances of the agricultural products from these areas being exported to the developing countries at much below the cost of production. This has been done with the help of high subsidies. The studies have indicated that such exports have severely affected the domestic production in the developing countries.

Clearly the pattern and the structure of the guidelines followed in the Uruguay Round will not be appropriate for the ongoing negotiations on modalities. This pattern will be iniquitous and unbalanced, even if the differences in the percentages and time periods as between the developed and developing countries are wider than in the Uruguay Round. An entirely different pattern and structure are needed for the guidelines for commitments in agriculture in the current negotiations.

With the experience of the problems emerging out of the current WTO Agreement on Agriculture, it is advisable for the developing countries to suggest a new set of elements for the guidelines that are being worked out in the ongoing negotiations. Some suggestions are given in the subsequent sections for the guidelines for market access, domestic support and export subsidy commitments.

2 Some Suggestions for Modalities in the Area of Market Access

THREE aspects of market access in agriculture are important, viz.:
(A) tariff levels,
(B) special safeguards (SSG) and
(C) tariff rate quotas (TRQ).

(A) TARIFF LEVELS

Reduction of tariffs is normally expected to improve the prospect of market access for imported products in a country. The prospect is, however, hampered if the country provides subsidies to the domestic producers. If two countries subsidize their respective domestic producers to the same extent, mutual reduction of tariffs may bring the benefit of enhancing market access to both of the countries. But if one country provides heavy subsidies to its producers while the other is not able to do so, mutual reduction of tariffs according to some usual formula will bring much more benefit to the former compared to the latter in terms of enhanced exports. Even if there is heavy reduction of tariffs, the market access in a country remains hindered so long as the producers continue to get high subsidies. Subsidies, direct or indirect, enable the producers to keep the domestic prices artificially low in order to compete with the imports, even when the cost of production is higher.

At present, many developed countries provide very high subsidies to their farmers in several forms, while the developing countries do not provide subsidies except to a small extent. Even if the developing countries are permitted to provide subsidies, they will not be able to do so in a significant manner, because they do not have adequate financial resources for this purpose. The guidelines for negotiations on market access in agriculture should be set up keeping in view this basic asymmetry.

The guidelines for market access adopted in the Uruguay Round stipulated average total reduction of tariffs by 36% for the developed countries over a period of six years, with a minimum reduction of 15% in each tariff line. The corresponding percentages for the developing countries respectively were 24 and 10 over a period of 10 years. As mentioned earlier, this pattern of market access commitments will not be beneficial to the developing countries. High subsidies in the developed countries make their tariff reduction much less useful for the market access of the products from the developing countries. At the same time, the developing countries, by reducing their own tariffs, are exposing their domestic production to the double risk of less barriers at the border and artificially reduced prices of imports. This is a clear negation of the "level playing field" principle and is highly iniquitous and unbalanced.

Apart from inequity and imbalance, there are also the basic objectives of food security and rural development in the developing countries which have been clearly identified in the Doha Ministerial Declaration as development needs of the developing countries. The Ministers have "agreed" that "special and differential treatment for developing countries ... shall be embodied as appropriate in the rules and disciplines to ... enable the developing countries to effectively take account of" these needs.

Modalities in market access which merely give the developing countries the facility of lesser percentages of reduction in tariffs and longer periods for such reduction will be grossly inadequate to tackle the problems of inequity and imbalance and to foster the development needs mentioned above. The modalities have to be based on totally different elements, criteria and approaches.

Some suggestions for the modalities for market access obligations in agriculture are given below.

(a) Reducing current distortions in rights and obligations

(i) Option of direct import control in developing countries

To reduce the current severe imbalance caused by the domestic support and export subsidies of the developed countries given in various forms, the modalities should clearly lay down that the developing countries may take direct import control measures, e.g., quantitative restrictions, on imports of agricultural products from the developed countries, until domestic support of all types (including those included in paragraphs 5 to 13 of Annex 2 to the Agreement on Agriculture and Article 6.5 of the Agreement on Agriculture, i.e., the so-called "green box" and "blue box" subsidies) and export subsidies in all forms in the developed countries are eliminated.

A developing country undertaking such direct import control measures should notify such measures immediately after taking them.

A question may arise that a uniform import control operating in respect of all imports may not be fair to those exporting countries that are not using subsidies. The remedy will lie in taking direct import control measures specifically in respect of the products from those developed countries that are providing domestic support and export subsidies.

A further question may arise as to why the route of countervailing duties should not be taken in defence against subsidies, instead of taking the import-control route. There are many reasons why countervailing duties will not be adequate and practical in this case. The countervailing-duty route is generally meant to provide defence against specific and occasional cases of subsidies, whereas the developing countries are faced with a structural problem of widespread use of subsidies in agriculture in the developed countries within the framework of the existing rules. Besides, proving injury is an essential condition for imposing countervailing duties and, as is explained later, it will be extremely difficult to prove injury to domestic production in agriculture on the basis of the usual norms, since the production is generally highly dispersed throughout the country. This approach to relief will be too cumbersome to be of any practical utility.

There may be a suggestion that an easier alternative route for relief is through raising tariffs up to the bound ceiling levels, wherever currently applied tariffs are lower than these levels. This can certainly be useful but is not adequate. Raising of tariffs is naturally not as effective as direct import control. The effects are not as certain and definite as in the case of direct import control and, in any case, the results may be delayed. It will be risky to depend on the tariff route for defence in such an uneven and iniquitous situation, particularly in a sector as sensitive as agriculture.

(b) Special and differential (S&D) treatment for developing countries

(i) Food security

To ensure food security in the developing countries, it is essential to encourage domestic production of food products for domestic consumption, if the country has domestic production capacity or a potential for such capacity. To ensure continued domestic production for domestic consumption, it may be necessary to protect the domestic producers from imports. Accordingly, the modalities should clearly lay down that the developing countries, in pursuing the objective of food security, may take the following steps.

A developing country, in pursuing the objective of food security, may take direct import control measures in respect of food products. A country shall notify such measures to the WTO Secretariat immediately after taking the measures and shall be prepared to enter into consultation with other countries if a request for consultation is made.

A developing country, in pursuing the objective of food security, shall not be required to lower its bound tariffs on food products. Also, when a developing country finds that the bound tariff on a particular food product is not adequate to protect its domestic production of that product, it may raise the bound tariff after entering into consultations with the countries having principal supplying interest. No compensation shall be required to be given by the developing country for raising the bound tariff in such cases. Consultations shall be limited to the needed higher level of binding.

A question may arise as to how it will be ensured that a country uses this facility only for production for domestic consumption and not for export. One way may be to limit this facility to the developing countries that have had no export or only *de minimis* export (say, up to a maximum of ... percent of production of that product) in the previous three years. If, in future, the export of the product exceeds the *de minimis* level continuously in three years, the country shall enter into consultation with other countries having principal supplying interest for lowering the bound level.

(ii) Rural development

To facilitate rural development, especially to protect the small farmers, in the developing countries, the modalities should clearly lay down that a developing country, in pursuing this objective, may take the following steps.

A developing country, in pursuing the objective of rural development, may take direct import control measures, e.g., quantitative restrictions on the import of agricultural products.

A developing country, in pursuing the objective of rural development, shall not be required to lower its bound tariffs on agricultural products.

If a developing country perceives that the current bound level of tariff on an agricultural product is not adequate to protect the small farmers, it may enter into consultations with the countries having the principal supplying interest and increase the bound tariff. No compensation shall be required to be given by the developing country for raising the bound tariff in such cases. Consultations shall be limited to the needed higher level of binding.

Again, a question may arise as to how it will be ensured that these provisions are adopted only in pursuance of the objective of protecting the small farmers. One way may be to limit this facility to countries where farming forms a significant part of the economy, i.e., where the share of agriculture in the gross domestic product is above a minimum prescribed level, say ... percent. Also it should be limited to those products where the production share of the small farmers is above a critical minimum level, say ... percent. A rational definition of "small farmer" can be worked out based on the socioeconomic situation of a country.

(c) General tariff reduction

Tariffs in agriculture are generally high. There are extremely high tariffs on specific products in different countries. Hence mere reduction of average tariff by some percentage will not be adequate. There should be a ceiling on tariff levels, along with the requirement of reduction in the average and reduction in each tariff level. Some suggestions for the modalities for general tariff reduction in agriculture are given below.

(i) Tariff reduction process

In the case of the developed countries, the maximum tariff on any product must not exceed ... percent. In respect of the developing countries (in so far as not covered by the provisions mentioned above under food security and rural development), the ceiling on maximum tariff shall be ... (three times the level prescribed for the developed countries) percent.

A developed country shall be required to reduce its average agriculture tariff at least by ... percent over a period of five years. A developing country, in so far as not covered by the above provisions on food security and rural development, shall be required to reduce its average agriculture tariff at least by ... (half of the percentage applicable to the developed countries) percent over a period of 10 years. In all cases, the commitment of maximum ceiling on tariffs on agricultural products as stipulated above shall be fulfilled, even if it requires higher reduction of the average. A developed country shall reduce each tariff level at least by ... percent. A developing country (in so far as not covered by the above provisions on food security and rural development) shall reduce each tariff level by ... (half of the percentage applicable to the developed countries) percent, except in the specific cases of exclusion as mentioned immediately hereafter.

A developing country, even if not covered by the exceptions relating to food security and rural development, shall have the option of excluding some specific products from the obligation of tariff reduction. The number of products shall not be more than ... at any time. The share of production of such products in the total domestic production shall not be more than ... percent at any time.

The developed countries shall have only *ad valorem* tariffs.

(B) SPECIAL SAFEGUARDS (SSG)

A country can take special safeguard measures in agriculture without proving injury or threat of injury to domestic production. But the conditions have been so fixed in the current agreement that this facility is generally available to only the developed countries, and not to the developing countries, except a very few. Only the countries that converted their non-tariff measures to equivalent tariffs have the right to use special safeguard measures. The developing countries, except a very few, did not have such non-tariff measures to be converted to tariffs; hence this special facility is not available to them. It is one of the biggest ironies in the current agreement that those distorting the trade through non-tariff measures were given the advantage of special protection for their farmers, whereas those that did not distort trade were denied this advantage.

The special safeguard is relevant in agriculture as the general safeguard provisions of the WTO may be very difficult to apply. The existence of injury or threat of injury to domestic production, as is required for applying the general safeguard, may be difficult and cumbersome to prove in the agriculture sector in developing countries, particularly because of the highly dispersed nature of the production units. However, it is the developed countries which have been having the benefit of the use of the special safeguard that does not require proof of injury; whereas the developing countries have been denied this facility. This is an example of gross inequity in the current agreement. The modalities should correct this situation, as suggested below.

Correction of inequity in special safeguard

The modalities should lay down that the developing countries that have been denied the facility of the special safeguard in agriculture will now have this facility. They may take special safeguard measures. Also, the criteria for triggering the special safeguard are at present very complex. The criteria should be simplified for the developing countries. One way may be to prescribe that a developing country may take SSG if the import in a year exceeds ... (100 + ...) percent of the average of the previous three years' imports. Similarly, for the price trigger, it may be prescribed that a developing country may take SSG if the price of the product falls below ... percent of the previous years' average price.

(C) TARIFF RATE QUOTAS (TRQ)

The current agreement allows countries to specify some quantities of specific products to be imported at zero tariff or nominal tariff. Imports above this quantity in a year are to be levied high tariff rates. In most of the cases, the tariffs beyond the TRQ are prohibitive; hence imports beyond the quota levels are practically stopped. In several cases, the quotas are assigned to specific exporting countries; this blocks the export prospects of other countries in these markets. The situation needs to be corrected.

The agreement also requires countries to undertake commitments of some minimum market access opportunity, i.e., commitment to allow certain minimum level of import. In practice, it was applicable only to very few countries that did not apply tariffication in respect of some products. But the concept of allowing minimum level of import itself appears to be improper. Besides, the language of the current agreement is such that it can create confusion about its applicability to all countries. It will be highly improper to extend this concept to the developing countries in general in the new negotiations. Hence a specific clarification to this effect is needed.

Some suggestions for the modalities in this area are given below.

Improvement of TRQ

Several TRQs in the developed countries are earmarked on a preferential basis for specific countries, following some earlier bilateral arrangements. These are not available to other countries. As the tariff levels for imports beyond the TRQ are prohibitively high, the prospect for export of that particular product to that country is practically blocked for others. This needs to be corrected. One way may be that there should be adequate additional TRQ beyond the levels earmarked for specific countries, and it should be available to all other countries.

The TRQ should be available to the exporting countries on a non-discriminatory basis. A transparent and rational basis should be followed in utilization of the TRQ by the importing countries.

The developing countries shall not be required to undertake the commitment of minimum market access opportunity.

3 Some Suggestions for Modalities in the Area of Domestic Support

DOMESTIC support is divided into two categories: (i) those which have to be reduced (reducible) and (ii) those which are exempted from reduction (exempted). The reducible support was to be reduced by 20% by the developed countries in six years. The required reduction in the case of the developing countries was 13.3% over a 10-year period. Generally the developing countries, except a very few, did not have reducible support; hence they did not have to effect any reduction. But they were prohibited from providing subsidies in future beyond the *de minimis* level, i.e., 10% of the value of production. Thus the developed countries, which had high reducible domestic support, continued with them up to 80% of their original level, whereas the developing countries could not use domestic support beyond the *de minimis* level. There is a clear imbalance and inequity in this situation.

But much greater imbalance and inequity as well as distortion occurred by exempting some types of domestic support used by the major developed countries from reduction. These are listed in paragraphs 5 to 13 of Annex 2 to the Agreement on Agriculture (commonly known as "green box" subsidies) and one part is listed in Article 6.5 of the agreement (commonly known as "blue box" subsidies). The major developed countries adopted a clever method of enhancing the Annex 2 ("green box") subsidies while keeping their commitment to reduce the reducible support. Thus, in effect, they increased their overall domestic support. The real trap lay in allowing an escape route by exempting the Annex 2 subsidies from reduction.

This was done on the assertion that the subsidies listed in Annex 2 were not trade-distorting. It is a fallacious assertion. These subsidies are in the form of direct payments to producers (para 5, Annex 2), income support (para 6, Annex 2), income insurance and income safety net programmes (para 7, Annex 2), relief from natural disasters (para 8, Annex 2), subsidies for retirement of production and resources (paras 9, 10, Annex 2), investment aids (para 11, Annex 2), payment under environmental programmes (para 12, Annex 2) and regional assistance (para 13, Annex 2). These payments are made specifically to farmers and not to those pursuing other occupations. The payments are thus not a part of the general welfare programme of the country, but limited to infusing strength to farming. These subsidies would naturally result in enhancing the staying capacity of farmers even though their farming is not commercially viable. In fact, it is very much a myth to claim that these payments are not trade-distorting. There is absolutely no reason to exempt them from reduction commitment.

The same applies to the domestic support under Article 6.5 of the Agreement on Agriculture ("blue box" subsidies). Of course, in this case there is no assertion of these subsidies being non-trade-distortive; and yet they were exempted from reduction. There is no rationale for exempting these from reduction commitment.

Also, the "green box" subsidies are immune from countervailing-duty action. The normal relief against them in the form of countervailing duties is not available. The exemption of some types of support from reduction and the stipulation of only a small reduction (20%) of the reducible subsidies provide an iniquitous and unfair advantage to the developed countries, particularly because the developing countries are in no position to pay high subsidies even if they are allowed to do so. The limitation of their financial resources would prevent them from doing so. The modalities on domestic support have to take this basic inequity into account.

Besides, the modalities must also include the special and differential elements which are incorporated in the Doha Ministerial Declaration, viz., food security and rural development.

It is also important to keep in view the problem of getting relief against subsidies in agriculture, even if the normal rules of the WTO's Agreement on Subsidies are made applicable in this sector. It will be extremely difficult or even impossible for developing countries to prove injury to domestic production in the case of agriculture because of the highly dispersed nature of production in these countries. It is necessary to have some special provisions to tide over this problem and to make relief attainable by the developing countries.

Keeping all this in view, some suggestions are given below for modalities in the area of domestic support.

(a) Reducing current distortions in rights and obligations

(i) Reduction of "green box", "blue box" subsidies

The "green box" subsidies and "blue box" subsidies must be treated similarly to the existing reducible subsidies and must be subjected to the discipline of reduction and elimination (see below) as in the case of reducible subsidies.

The developed countries shall notify their current domestic support covered by the "green box" to the WTO Secretariat within one month of the coming into force of the new set of provisions emerging out of these negotiations.

(ii) Timeframe for elimination

All subsidies in the developed countries, including the ones currently included in the so-called "green box" and "blue box", shall be eliminated by.... To fulfill the target of elimination, the developed countries shall reduce their domestic support, including those in the "green box" and "blue box", by ... percent per year. There shall be no immunity for the domestic support from counteraction through the dispute-settlement route or through the countervailing-duty route. There shall be a presumption that the subsidy on an agriculture product exceeding 5% of production in a developed country causes serious prejudice to other countries, including injury to their domestic production.

(b) S&D for developing countries

(i) Food security

In pursuance of the objective of facilitating domestic production of food products for domestic consumption, the developing countries may provide subsidies for domestic production of food products for domestic consumption. Such subsidies shall not be subjected to the dispute-settlement process or countervailing-duty process.

To ensure that it is used only for domestic production for domestic consumption and not for export, this facility will be available to a developing country in respect of food products which had not been exported or exported only within a *de minimis* limit (... percent of production) in the previous three years.

(ii) Rural development

In pursuance of the objective of protecting small farmers, the developing countries may provide subsidies to small farmers. Such subsidies shall not be subjected to the dispute-settlement process or countervailing-duty process.

The definition of small farmers will be worked out in the context of the socioeconomic conditions of a developing country.

4 Some Suggestions for Modalities in the Area of Export Subsidies

DEVELOPED countries were expected to reduce the budgetary outlay for their export subsidies by 36% and the coverage of export quantity by 21% in six years. The corresponding requirement for the developing countries was reduction by 24% and 14% respectively in 10 years. Very few developing countries were using export subsidies and thus they did not have to give a commitment schedule for reduction. A country that did not give a schedule for reduction could not maintain or introduce export subsidies in future. In this manner, the developing countries have been prohibited from giving any export subsidies in future. The situation now is that the developed countries continue to have the entitlement for export subsidies to a substantial extent, whereas the developing countries are prohibited from providing export subsidies. This amounts to a clear imbalance and inequity.

Besides, there are some measures which have similar effects to export subsidies in artificially boosting exports, e.g., export credit, export credit guarantee and export insurance. There is no commitment for reduction of such measures. It is possible for a developed country to reduce its export subsidies according to its commitment but increase export credit at the same time. Hence, like with domestic support, there is an escape route here too for effectively circumventing the obligation of reducing export subsidies.

The developing countries do not have adequate financial resources to provide export subsidies, export credit or similar facilities. Hence they cannot use these export-enhancing facilities even if they are allowed to do so. This feature adds to the imbalance and inequity in the system of export subsidies. It needs to be corrected. Some suggestions are given below for the modalities on export subsidies.

(a) Correcting inequity and imbalance

Export subsidies, including export credit, export credit guarantee and export insurance, must be eliminated immediately, say within one year, i.e., not later than ....

All countries shall notify their current export credit, export credit guarantee and export insurance programmes and measures to the WTO Secretariat, so that the obligation of elimination is monitored effectively.

(b) S&D for developing countries

In order that the exporters and export producers in the developing countries are enabled to overcome their structural handicaps, the developing countries may provide export subsidies, especially for adoption of higher technology and adaptation to product and process standards as well as for compensating for various handicaps, e.g., those in financing, guarantees and insurance, in respect of export production and export. There shall be a ceiling on the export subsidy on a product of ... percent of the export price.

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SOME SUGGESTIONS FOR MODALITIES IN AGRICULTURE NEGOTIATIONS

The first round of the WTO negotiations on agriculture has taken place in special sessions of the Committee on Agriculture in the areas of market access, domestic support and export subsidy. Discussions are focusing on the "modalities" which will define the principles and design on which the rest of the negotiations will be based.

The trend of discussions gives rise to the apprehension that the negotiations on modalities for commitments may broadly proceed along the same lines as those adopted in the Uruguay Round. Clearly the pattern and the structure of the guidelines followed in the Uruguay Round will not be appropriate for the ongoing negotiations on modalities. This pattern will be iniquitous and unbalanced, even if the differences in the percentages and time periods as between the developed and developing countries are wider than in the Uruguay Round.

With the experience of the problems emerging out of the current WTO Agreement on Agriculture, an entirely different pattern and structure are needed for the guidelines for commitments in agriculture in the current negotiations. It is advisable for the developing countries to suggest a new set of elements for the guidelines that are being worked out in the ongoing negotiations, so as to save themselves from the current dangers and to promote their development interests.

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