Committee on Agriculture, Special Session 12 April 2006
Domestic Support

Chair's Reference Paper

GREEN BOX

Background

Paragraph 5 of the Hong Kong Ministerial Declaration states that:

> "... Green Box criteria will be reviewed in line with paragraph 16 of the Framework, *inter alia*, to ensure that programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered."

Paragraph 16 of the Agreed Framework (Annex A of WT/L/579) states, inter alia, that:

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

Structure for Discussion

Introduction

In the Hong Kong Ministerial Declaration, Ministers reaffirmed their commitment to review and clarify Green Box criteria in line with paragraph 16 of the Agreed Framework. Consistent with that, I have detected genuine engagement by Members post Hong Kong in trying to see what can be done to review and clarify the existing provisions without undermining ongoing reform. It is also true that there is, at this point, a strongly held view on the part of some Members at least that this should not entail what could be described as major changes. But this has not precluded a preparedness to look at some less far-reaching changes on their merits. We are now productively in that zone, albeit there are also more ambitious proposals where Members remain well apart. In addition, I have not detected any fundamental opposition to the idea that monitoring and surveillance of Green Box measures can and should be improved.

As noted in my report to the TNC (Annex A of WT/MIN(05)/DEC refers) as well as in my non-exhaustive list of questions (JOB(06)/26 refers) and in line with the Hong Kong Ministerial Declaration, there has been some tangible openness to include appropriate changes to ensure that the Green Box is more "development-friendly", i.e. better tailored to meet the realities of developing country agriculture, provided that the fundamental requirement of at most minimal trade distortion is respected.

Drawing on the negotiations and consultations held thus far along with various text-based proposals made by Members (including the most recent proposals by the African Group (TN/AG/GEN/15) and the United States (JOB(06)/80)), the following structure for discussion of the Green Box is outlined. This follows the structure of Annex 2 of the Agreement on Agriculture and notes possible elements for amendment. It is not suggested that specific wording should be used or that a particular amendment should be made. Rather, the intention here is only to highlight areas where changes have been suggested by Members and to include reactions, where available, to those changes.

ANNEX 2

DOMESTIC SUPPORT: THE BASIS FOR EXEMPTION FROM THE REDUCTION COMMITMENTS

General issues with respect to direct payments under Annex 2

Participants in the negotiations have made proposals to modify the text of certain direct payments to state that base periods, areas and animal numbers should be fixed and unchanging (this would apply to direct payments under paragraphs 5, 6, 11 and 13 but not to payments for income loss and disaster/animal/crop insurance and animal/crop destruction under paragraphs 7 and 8).

It has also been proposed to explicitly state that developing country Members who have not made use of the provisions of Annex 2, have the right to introduce new programmes under this Annex. Where such programmes require a base period, an appropriate period can be established which will then be fixed and unchanging. It has been suggested however that developing countries' base periods for time-limited experimental or pilot programmes need not be taken as the fixed and unchanging base period. I would not want to overstate the situation, but I have detected a general openness to trying to find a way to move to make the basic concept of "fixed and unchanging" base periods operationally effective. There is, I believe, a genuine concern that the existing wording should not lend itself to be construed as a means to permit (or even encourage) constant and/or unpredictable updates of base periods. For that reason there is, in some cases, a real attraction to going to the fixed and unchanging concept and, in others, at least a genuine openness to see if this can in fact work recognizing the genuineness of concern that lies behind it. At the same time, there is an

understandable concern that this should not end up functioning, paradoxically, in a counter-productive manner, e.g. as a deterrent to moving more and more support into the Green Box. There is, for instance, a genuine "newcomer" issue which would need to be worked through. It has also been suggested that there may also be more complications in a paragraph 13 situation.

Government Service Programmes

2. General services

With respect to general services in paragraph 2 of Annex 2, suggestions have been made that an additional sub-paragraph (h) be added with a view to covering settlement, land reform and any programme related to food and livelihood security and rural development in developing country Members.

Generally, I feel that participants are open to specification of programmes that would cover the special needs of developing country Members, provided that such programmes would not cause more than minimal trade distortion. More specifically in this case I can see no fundamental objection to finding the right form of words that captures the additional specificity sought by developing country Members. Indeed there is openness not only to capturing this for developing countries but potentially more generally. Between the African, US and G-20 language - where there is considerable overlap - we should be able to capture the concept effectively. Indeed there is already effectively consensus on agrarian, land and institutional reform, including related services which would include at least such matters as settlement programmes, issuance of property titles, employment assurance, nutritional security, poverty alleviation, soil conservation and resource management, and drought management and flood control.

The remaining areas of divergence here relate to whether, for developing countries, there is a case for a still broader concept of any programme related to food and livelihood security and rural development and infrastructure provision. On the former, I think it is now a matter of finding a way to ensure that this is not seen as overly open-ended in legal terms as the concept is hardly inherently contradictory to the governing chapeau of paragraph 2, while on the latter, much is already covered by item (g) - indicating, again, that we are not inherently in radically new territory. It seems likely to me that, if we have a more specific discussion on what is more precisely sought in these areas, it should be feasible to bridge differences here also.

3. Public stockholding for food security purposes

There have been suggestions to amend footnote 5 of this provision to exclude from the AMS the acquisition costs of stocks of foodstuffs by developing countries or at least as regards supporting low-income or resource-poor producers. Some Members have however raised concerns with respect to this proposal. In their view, this change could permit support that does not meet the fundamental criteria of Annex 2.

It is worth recalling that developing country Members are, pursuant to Article 6.4 of the Agreement on Agriculture, generally entitled not to include in their AMS calculations up to 10 per cent of product-specific and non-product-specific support. However, it is also true that this particular provision in footnote 5 to Article 3 of Annex 2 constitutes, as a more specific provision, a seeming departure from this general rule. As it presently stands, if the circumstances described in that footnote are present, there is an unconditioned requirement that the expenditure concerned be included in the AMS calculation full stop. This is irrespective of what is the level of that expenditure, as this provision omits any such qualification. In this way, the effect of this footnote in this context is to specify that in this situation a developing country Member does not have what would otherwise be its entitlement to at least modulate this via the application of a *de minimis* consideration (to the extent that, for the Member concerned, it had that overall entitlement at its disposal).

This is not the place to consider what the rationale for this distinction would have been. But, it is, in my view at least, surely legitimate to thoroughly test whether this is something that we really wish to persist with this time around. I think a further, crucial, consideration here (and, of course, the same general point is applicable elsewhere but it seems particularly pertinent here) is that we do everything possible to ensure that we give meaning to the explicit direction in the Hong Kong Ministerial Declaration. It is clearly stated there that "Green Box criteria will be reviewed in line with paragraph 16 of the Framework, inter alia, to ensure that programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered." In this spirit, could we not at least be prepared to take the view that, where such expenditures would still mean a developing country Member was under its *de minimis* of 10 per cent, they would not, independently, be notifiable under their AMS commitment. If that was to be something that could be provisionally at least considered possible, we could then focus on whether, or the precise extent to which, as a practical matter, there is in fact a remaining practical substantive problem for developing countries concerned. Put another way, if there would now be unambiguous clarification that this could be freely accommodated within a full 10 per cent *de minimis* allowance is there likely to be a real practical need to go above this in any real world scenario? If so, we would at least be in a position to have a more practical discussion.

4. Domestic food aid

Suggestions have also been made to amend footnotes 5 & 6 (related to paragraphs 3 and 4) to cover the acquisition of foodstuffs at subsidized prices when generally procured from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural poverty.

It is difficult to see that there would be any inherent difficulty with the concept that there should be provision made for the "objective of fighting hunger and rural poverty". In its own right this is already effectively enshrined (albeit that the language is slightly different) in footnote 5 and 6 itself. What seems to be at issue is a concern that this would amount to an effective departure from the present provision that "food aid purchases by the government shall be made *at current market prices*".

As with other elements, it may be helpful to get a more precise sense of the dimension or extent of the financial expenditures envisaged in these kinds of situation. This may, after all, help provide a sense of perspective on what is practically at issue. Again, and in order to gain perspective, it is perhaps also worth reflecting on what the conceptual framework is so that we do not start from an overly abstract premise when we enter into these discussions still more intensively. In a situation, for instance, where a developing country government effectively is the main (if not sole) purchaser of products from producers for provision at less than the purchase price to the needy, what is the effective meaning of a "market price" in the first place? In that situation - and it can surely not be denied that footnotes 5 and 6 provide very precisely for that situation - how can it be said meaningfully that the effective standard to govern that is a "current market price"? In that situation there isn't a "market price". There is a purchase price from the government. There is a (subsidized) price to consumers. And, by definition, that purchase price is higher than the sale price. It is, in that sense, subsidized, but seemingly legitimate through the existing provisions.

5. Direct payments to producers

It has been proposed that paragraph 5 should explicitly state that direct payments should not be linked to production levels, including input levels therein. Also, details of notification requirements concerning direct payments have been elaborated.

There has been opposition to the former proposal. There is, it seems to me, openness to the direction of the latter, albeit it is an open question whether this would be more appropriately handled in a more general notification and surveillance section. Suffice to say that I have detected no fundamental disagreement with the idea that such elements specified in the G-20 paper could be given more detailed consideration.

Another suggestion has been to amend the last sentence of paragraph 5 thereby requiring that direct payments exempt from reduction commitments conform to (a revised) criterion 6(a) in addition to criteria 6(b) through (e) of paragraph 6. This has been met by a firm view from some Members that the current paragraph 5 should be maintained as is. But while this is formally related to paragraph 5 it is in fact essentially all about the proposed change in paragraph 6(a) – see below.

6. Decoupled income support

Changes have been suggested to constrain some of the eligibility criteria for developed countries and to make the indicative list in 6(a) a closed list. At the same time it has been proposed, however, to make allowance for the situation of developing country Members not previously users of the Green Box. Also, some participants favoured the addition of the criteria that land, labour or any other factor of production should not be required to be in 'agricultural use' in order to receive payments. It was also proposed that an additional sub-paragraph (f) be added to paragraph 6 to reflect that direct payments under paragraph 6 should not be made along with Amber Box or Blue Box support if the total value of support exceeds a certain percentage of the annual value of production of a given product.

There has been firm resistance to altering the criteria in those ways that might be described as "constraining" in nature, particularly as regards the proposal on sub-paragraph (f).

Consistent with the comments in the general section above, I have discerned an openness to deal with the issue of new users of the Green Box. Indeed the point has been made that this may not only be an issue for developing countries but also for some developed countries too. It should be feasible to develop an approach that deals with this situation consistent with a preferred orientation of moving to a fixed and unchanging concept. It may well be that notification and surveillance will be particularly helpful in this regard.

Paragraphs 7 through 13

There have been various technical proposals made in respect of these paragraphs. To this point it would be fair to say there has not been an exhaustive technical discussion of these. It would also be fair to say that this has at least in part been a reflection of a more generally expressed concern on the part of some Members that there not be the appearance of a more generalized set of changes to the Green Box. So we have not gone down into real detail. It is for consideration whether there should now be, without prejudice to where we come out on this, a more specific technical review of these proposals. If so, we would find an appropriate time for an expert review. Pending a procedural decision on that, it is not at this point proposed to orient our discussion on those points immediately but to focus on the elements noted above.