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*Domestic Support Commitments*

1. The domestic support reduction commitments of each Member contained in Part IV of its Schedule shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in this Article and in Annex 2 to this Agreement. The commitments are expressed in terms of Total Aggregate Measurement of Support and "Annual and Final Bound Commitment Levels".

2. In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.

3. A Member shall be considered to be in compliance with its domestic support reduction commitments in any year in which its domestic support in favour of agricultural producers expressed in terms of Current Total AMS does not exceed the corresponding annual or final bound commitment level specified in Part IV of the Member's Schedule.

4. (a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce:

- (i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 percent of that Member's total value of production of a basic agricultural product during the relevant year; and
- (ii) non-product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 percent of the value of that Member's total agricultural production.

(b) For developing country Members, the *de minimis* percentage under this paragraph shall be 10 percent.

5. (a) Direct payments under production-limiting programmes shall not be subject to the commitment to reduce domestic support if:

- (i) such payments are based on fixed area and yields; or

- (ii) such payments are made on 85 percent or less of the base level of production; or
  - (iii) livestock payments are made on a fixed number of head.
- (b) The exemption from the reduction commitment for direct payments meeting the above criteria shall be reflected by the exclusion of the value of those direct payments in a Member's calculation of its Current Total AMS.

## 1.2 Article 6.3

1. In the dispute on *US – Upland Cotton*, the Panel and Appellate Body examined the issue of whether Article 3.1(b) of the SCM Agreement is inapplicable to payments that are consistent with a Member's domestic support reduction commitments under Article 6.3 of the Agreement on Agriculture. The Appellate Body agreed with the Panel that "Article 6.3 does *not* provide that compliance with such 'domestic support reduction commitments' shall necessarily be considered to be in compliance with other applicable WTO obligations. Nor does it contain an explicit textual indication that otherwise prohibited measures are necessarily justified by virtue of compliance with the domestic support reduction commitments."<sup>1</sup>

"Article 6.3 does not explicitly refer to import substitution subsidies. Article 6.3 deals with domestic support. It establishes only a *quantitative* limitation on the amount of domestic support that a WTO Member can provide in a given year. The quantitative limitation in Article 6.3 applies generally to all domestic support measures that are included in a WTO Member's AMS. Article 3.1(b) of the *SCM Agreement* prohibits subsidies that are contingent—that is, 'conditional'<sup>783</sup>—on the use of domestic over imported goods.

Article 6.3 does not authorize subsidies that are contingent on the use of domestic over imported goods. It only provides that a WTO Member shall be considered to be in compliance with its domestic support *reduction commitments* if its Current Total AMS does not exceed that Member's annual or final bound commitment level specified in its Schedule. It does not say that compliance with Article 6.3 of the *Agreement on Agriculture* insulates the subsidy from the prohibition in Article 3.1(b)."<sup>2</sup>

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<sup>1</sup> Panel Report, *US – Upland Cotton*, para. 7.1058, quoted and upheld in Appellate Body Report, *US – Upland Cotton*, para. 545. See also material under Article 3.1(b) in the Chapter on the SCM Agreement.

<sup>2</sup> Appellate Body Report, *US – Upland Cotton*, paras. 544-545.