TRADE IN AGRICULTURE

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Agriculture and WTO

- Agriculture has been a sensitive topic in GATT / WTO:
  - Carefully crafted exceptions for agriculture under GATT

- Uruguay Round (1986-94) was effectively the first comprehensive round of trade negotiations targeting agriculture; it was possible some 40 years after the establishment of GATT

- Agreement on Agriculture (AoA) entered into force in 1995 after successful Uruguay Round: AoA disciplines encompass 3 broad areas or ‘pillars’:
  - Market Access
  - Domestic Support
  - Export Competition

Legal definition of agricultural products (AoA Annex I)
WTO Rules in the area of Agriculture

- **Rule-based commitments**
  - Included in the legal texts (e.g. Agreement on Agriculture (AoA)); applicable to all Members
  - Examples: prohibition on the use of QRs, rules on domestic support, export subsidies etc.

- **Quantitative/numerical commitments**:  
  - Member-specific: inscribed in individual Schedules  
  - Examples: market access concessions (e.g. tariff bindings, commitment on TRQs), commitments on agricultural subsidization (e.g. Total AMS) etc.
Agriculture negotiations during accessions

❖ **Rule-based commitments**
   ❖ Like for all Members, these rules are expected to be followed by the acceding governments upon successful conclusion of accession

❖ **Quantitative/numerical commitments:**
   ❖ These are the subject of negotiations during accession
   ❖ Agreed quantitative commitments (like *tariff* bindings, *TRQ* commitments, domestic support (Total *AMS*)) will be inscribed in the *Schedule*
   ❖ Modalities of negotiations may differ depending on the pillar/area: *market access-* bilateral request-offer track, *agricultural subsidization:* plurilateral/multilateral track
Agricultural Concessions and Commitments in the Schedule

- Agriculture-specific concessions and commitments are inscribed in two distinct parts (out of total four) of the Schedule:

  - **Part I**, Most Favoured Nation Tariff
    - Section I.A – Agricultural tariffs
    - Section I.B – Agricultural tariff quotas

  - **Part IV**, Commitments limiting subsidization
    - Section I – Domestic support (Total AMS)
    - Sections II & III – Export subsidies
AoA Market Access rules

- Comprehensive product scope: bindings on all agricultural products (level of tariff bindings to be negotiated and included in the Schedule)
- Protection to be offered only through tariffs (tariff-only regime)
  - The then existing non-tariff border measures converted into tariff equivalents* (tariffication) which after required reduction were then bound in the Schedule
  - To ensure that there is no recourse to such measures in future; AoA Article 4.2 prohibits Members to maintain, resort to or revert to such measures (illustrative list of such prohibited measures like quantitative restrictions (QRs) included in the legal text)
Tariff Rate Quotas (TRQs)

- Two-tier tariff on a product:
  - A higher tariff [out-of-quota tariff]; and
  - A lower tariff [in-quota tariff] associated with a quantitative limit on imports

![Diagram showing tariff quota]

**A tariff quota** This is what a tariff quota might look like

- **Out-of-quota**
- **In-quota**
- **Charged 10%**
- **Charged 80%**

Tariff rate

80%

10%

Quota limit

1,000 tons

Import quantity
Tariff Rate Quotas (TRQs); contd.

- In contrast to quantitative restrictions (QRs), where imports are prohibited beyond the quota limit, under a TRQ, import market is always open at the higher out-of-quota tariffs: TRQs are lawful under the WTO rules.

- Extensive use of TRQs in Uruguay Round in the context of tariffication & the resulting high out-of-quota tariffs

- Also resulted in some accession negotiations (request-offer):

  - Suppose a tariff of 15% is requested in the negotiations on sugar (but deemed difficult); offer could be a two-tier tariff: 50% generally applicable out-of-quota tariff along with 5% in-quota tariff for a limited quantity (100,000 t).
### Schedule CLXII - Ukraine

#### PART I - MOST-FAVOURED-NATION TARIFF

**SECTION I - B Tariff Quotas**

Note: For information on quota administration and allocation, see paragraph 136 of the Working Party Report.

<table>
<thead>
<tr>
<th>Description of products</th>
<th>Tariff item number</th>
<th>Initial quota quantity and in-quota tariff rate</th>
<th>Final quota quantity and in-quota tariff rate</th>
<th>Implementation period</th>
<th>Initial negotiating right</th>
<th>Other terms and conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw cane sugar</td>
<td>1701.11</td>
<td>250,000 tonne/2%</td>
<td>267,800 tonne/2%</td>
<td>2010</td>
<td>AU, BR, CO, CU</td>
<td>Staging of TRQ quantity: 263,900 tonnes in 2009 and 267,800 tonnes in 2010</td>
</tr>
</tbody>
</table>

#### Schedule CLXII - Ukraine

This Schedule is authentic only in the English language

**PART I - MOST-FAVOURED-NATION TARIFF**

**SECTION I - Agricultural Products**

**SECTION I - A Tariffs**

<table>
<thead>
<tr>
<th>HS</th>
<th>Description</th>
<th>Bound rate at date of accession</th>
<th>Final Bound rate</th>
<th>Implementation Present Concession First Concession First</th>
<th>Earlier Concession First</th>
<th>INR</th>
<th>GATT Schedule</th>
<th>INRs</th>
<th>ODCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1701</td>
<td>Cane or beet sugar and chemically pure sucrose, in solid form:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1701.11</td>
<td>- Raw sugar not containing added flavouring or colouring matter:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1701.11 10 00</td>
<td>- - Cane sugar:</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1701.11 30 00</td>
<td>- - Other</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

AU, BR, CE15, CO, CU, DO, GT, HN, IN, KG, PY, SV

0
TRQs are legal but generally not preferred!

- Presence of “quantity” component in a TRQ introduces the possibility of governmental intervention in the market

- How to administer a TRQ? Two main aspects of TRQ administration:
  1. Allocation of TRQ importing rights domestically
  2. TRQ access among supplying countries

- Allocation of TRQ importing rights domestically:
  - Least-burdensome and transparent procedures

- Access of TRQ quantity among supplying countries
  - Application of non-discrimination principle?
Allocation of TRQ domestically!

- Simple and less-burdensome paperwork expected
- Multiplicity of options to administer a TRQ
- Broadly two choices:
  - Use licensing procedures
  - No licensing procedures (access on first-come first-served basis)
- There are advantages and disadvantages in both choices from an exporter’s perspective
- If licensing is applied: there are obligations in the Agreement on import licensing procedures; further clarified and elaborated in the Bali Ministerial Decision on TRQ administration (WT/MIN(13)/39)
If licensing system used

❖ Possible issues:
  ❖ Transparency: publication and notification requirements?
  ❖ How many agencies involved in approving the license?
  ❖ Who’s eligible to get the license or right to import? STE?
  ❖ Validity period of license?
  ❖ What if licensee doesn’t use the license? Re-allocation?
  ❖ Quantity of licenced import? “economic quantities”?
  ❖ Any relation between licensing procures and TRQ underfill?

❖ Bali Ministerial Decision on TRQ administration (WT/MIN(13)/39):

“Tariff quota administration of scheduled tariff quotas shall be deemed to be an instance of "import licensing" within the meaning of the Uruguay Round Agreement on Import Licensing Procedures and, accordingly, that Agreement shall apply in full, subject to the Agreement on Agriculture and to the following more specific and additional obligations”. 
No Licensing (First-come first-served)

First-come first-served (no licensing):

- Less bureaucratic, freer competition, no involvement of government in administering TRQ

But,

- May be chaotic if small TRQ quantity & heavy demand
- Quota may be filled within hours! *En-route* consignments?
- Uncertainty (whether will pay in-quota or out-of-quota tariff)
- Competitive but distant exporters?
- Production season may be towards the later part of the quota year?
GATT Article XIII: adaptation of MFN principle to quantity allocation

- **Non-discriminatory access** to and participation in TRQ
  - No exclusions; all Members to have an opportunity of participation to access the TRQ.

- **Distribution of TRQ among Members:** aim at distribution of trade corresponding to a free-trade situation (i.e. to mimic Members’ comparative advantage)

- **Specific rules on country-specific allocations** (if so decided by the importing Member):
  - Distinction between substantial and non-substantial suppliers
DOMESTIC SUPPORT/SUBSIDIES

- Two separate agreements in UR dealing with subsidies:
  - Agriculture Agreement (AoA) and Subsidies Agreement (ASCM)

- Different thrusts in the two agreements with regard to domestic subsidies (both apply simultaneously)*:
  - ASCM: how to deal with negative **effect** of harmful subsidies (**trade remedies** available to **affected** countries)
  - AoA: How to **use** subsidies (Binding guidance to the subsidizing governments);

*Limited applicability of ASCM for the first nine years through Peace Clause (now expired)*
Domestic Support

- One of the most innovative aspects of AoA
- To facilitate a change in the design of agricultural support policies so as to contain their negative spill-over effect on others
- Categorization of a support measure: (depends on policy designs/implementation criteria)
  - To be deemed as non or minimally distorting (exempt i.e. no monetary ceiling)
  - To be deemed as distorting or with potential negative effects for others (non-exempt, i.e. subject to annual monetary limit or reduction commitment)
- Detailed policy criteria were agreed for exempt policies
- Numerical annual limit on non-exempt domestic agricultural subsidies (nominal Total AMS limit in Schedule or de minimis)
Domestic Support:
Classification of domestic support policies

EXEMPT MEASURES
(Detailed Criteria for policy makers)
Offering scope for governments for policies whose potential distorting effect on trade and production is minimal or less:

NON-EXEMPT MEASURES
Residual category (no criteria)
subject to annual monetary limit (i.e. Total AMS commitment level in the Schedule or de minimis limit)

Encouraging a reform process towards “exempt” support measures
Total domestic support

exempt from reduction

No/minimal effects on trade or production

Production-limiting programmes

Development programmes

subject to reduction

Trade-distorting support

Green Box (policy criteria)

Blue Box (policy criteria)

Art. 6.2 (policy criteria)

Amber Box (*) de minimis amounts exempted
Domestic support

- **Criteria-based rules**
  - Exempt from monetary limit
  - Need to respect the criteria
  - Detailed criteria/requirements prescribed

- **Monetary limit based rules:**
  - When exemption criteria not respected
  - Detailed methodology to calculate support/subsidy
  - Annual monetary limit on support/subsidies
Green Box (Annex 2 of AoA)

**Fundamental objective**
- No, or at most minimal, trade-distorting effects or effects on production

**Basic criteria**
- Assistance: Provided through publicly funded government programme not involving transfers from consumers
- Not resulting in price support to producers

Once basic criteria are fulfilled, specific support policies among the Green Box policy options may be chosen by following the policy-specific criteria.
Green Box – Policy-specific criteria

**General services**, including:
- research
- pest and disease control
- training
- extension/advisory services
- inspection
- marketing and promotion
- infrastructural services

- Public stockholding for food security, and
- Domestic food aid

**Direct payments**, including:
- decoupled income support
- income insurance and income safety-net
- relief from natural disasters
- structural adjustment assistance
  - producer retirement
  - resource retirement
  - investment aids
- environmental programmes
- regional assistance programmes
General Services (para 2 of Annex 2)

- Budgetary expenditure by the government in offering services to the agriculture sector: **research, training, extension and advisory services, infrastructure services** etc.

- **No direct payment** to producers: **not directly affecting farm receipts**
  - Obviously, these services affect long-term productivity and thus production and consumption

- No targeting of individual producers: general or collective support
Food security-inspired governmental intervention
(Public stockholding (PSH) & domestic food aid)

- Budgetary expenditure in maintaining food stocks or providing food aid to needy people
- Policy objectives are often oriented towards supporting consumers
- Green Box policy criteria primarily target the interaction of the government's with *producers*, for example:
  - **Pre-determined** food security stock targets for PSH (intervention not driven by production fluctuation)
  - Purchase of food under *market conditions* (not administered prices) for both PSH as well as domestic food aid programmes
Various possibilities of Direct Payments  
(paragraphs 5-13 of Annex 2)

- Direct payments to farmers to support their income
- Payments shouldn’t affect producer expectations and their current production decisions:
  - “decoupled income support”: Payment amounts not to depend on current production parameters (production, prices or factors of productions)
  - Payments possibilities to address various disadvantages faced by farmers: loss of income from natural disasters, structural disadvantages (e.g. constrained access to investment), regional disadvantages etc
Blue Box (Article 6.5 of AoA)

- Direct payments under **production-limiting** programme
  - production quota, set-aside a part of land, levies etc.

- Often designed while moving away from price-dependent support systems towards direct payment

- Specific criteria for ‘decoupling’ (not as extensive as in Green Box): Payment to be based on past/historical area and production

- Recourse by very limited number of Members (EU, Iceland, Japan, Norway, USA(1995) and most recently China): not a politically easy choice
Article 6.2

Development programmes exempt from reduction: only for developing countries

- **investment subsidies** generally available to agriculture
- **input subsidies** generally available to low-income or resource poor producers
- **Diversification subsidies** to encourage diversification from growing illicit narcotic crops
Amber Box (AMS)

- All other domestic support measures (i.e. not falling within exempt categories) will be automatically deemed as falling in the Amber Box.

- No policy criteria for Amber Box (residual category).

- Agreement on Agriculture contains rules to quantify Amber Box support, referred to as AMS.

- Support amount against measures falling within the Amber Box is subject to annual limit.

- With regard to legal limit on AMS spending, two categories of Members:
  - Subject to a monetary limit (called Total AMS) in the Schedule.
  - Subject to de minimis (threshold based on a % of Value of production).
How to determine AMS commitment

- The information on the entire domestic support system in an acceding government has to be collected for the most recent three years.

- All domestic support measures need to be examined under the AoA domestic support framework and classified in the four Boxes (Green, Blue, Art 6.2 and Amber).

- Amber support is quantified to determine Base Total AMS:
  - AMS may be within *de minimis*
  - AMS may be in excess of *de minimis*; leading to the determination of Total AMS limit (to be specified in the Schedule);
  - *De minimis* is based on agricultural value of production; is generally 5% for developed and 10% developing countries. Negotiated outcome for acceding governments (e.g. China, Kazakhstan have 8.5% *de minimis*).

- Prescribed format to present the domestic support information;
  - the final document (AGST) determining the AMS commitment is legally significant; inscribed in the Schedule.
# Schedule CLXVI - Montenegro

## PART IV - AGRICULTURAL PRODUCTS: COMMITMENTS LIMITING SUBSIDIZATION

(Article 3 of the Agreement on Agriculture)

**SECTION I - Domestic Support: Total AMS Commitments**

<table>
<thead>
<tr>
<th>BASE TOTAL AMS 2005-2007</th>
<th>Annual and final bound commitment levels</th>
<th>Relevant Support Tables and document reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>333,278</td>
<td>333,278</td>
<td>WT/ACC/SPEC/CGR/1/Rev.2</td>
</tr>
</tbody>
</table>

Euros
## Members with Total AMS commitments

<table>
<thead>
<tr>
<th>Argentina</th>
<th>The former Yugoslav Republic of Macedonia</th>
<th>Moldova</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Iceland</td>
<td>Montenegro</td>
<td>Switzerland - Liechtenstein</td>
</tr>
<tr>
<td>Bolivarian Republic of Venezuela</td>
<td>Israel</td>
<td>Morocco</td>
<td>Chinese Taipei</td>
</tr>
<tr>
<td>Brazil</td>
<td>Japan</td>
<td>New Zealand</td>
<td>Tajikistan</td>
</tr>
<tr>
<td>Canada</td>
<td>Jordan</td>
<td>Norway</td>
<td>Thailand</td>
</tr>
<tr>
<td>Colombia</td>
<td>Korea</td>
<td>Papua New Guinea</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Mexico</td>
<td>Russian Federation</td>
<td>Ukraine</td>
</tr>
<tr>
<td>European Union</td>
<td></td>
<td>Saudi Arabia</td>
<td>United States</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Viet Nam</td>
</tr>
</tbody>
</table>
What if no Total AMS limit in Schedule?

“Where no Total AMS commitment exists in Part IV of a Member’s Schedule, the Member shall not provide support to agricultural producers in excess of the relevant *de minimis* level set out in paragraph 4 of Article 6.” (Article 7.2 (b) of the Agreement on Agriculture)
## Schedule CLXXII - Republic of Kazakhstan

### PART IV - AGRICULTURAL PRODUCTS: COMMITMENTS LIMITING SUBSIDIZATION

(Article 3 of the Agreement on Agriculture)

### SECTION I - Domestic Support: Total AMS Commitments

<table>
<thead>
<tr>
<th>BASE TOTAL AMS</th>
<th>Final bound commitment levels</th>
<th>Relevant Support Tables and document reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0</td>
<td>For the purpose of Article 6.4(a) of the Agreement on Agriculture, with respect to product-specific domestic support, the percentage of Kazakhstan’s total value of production of a basic agricultural product during the relevant year, and with respect to non-product specific domestic support, the percentage of the value of Kazakhstan's total agricultural production, which would otherwise be required to be included in a Member's calculation in its Current AMS, shall be 8.5 per cent.</td>
<td>Supporting Tables DS:1 to DS:9 in document WT/ACC/SPEC/KAZ/6/Rev.14</td>
</tr>
</tbody>
</table>

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WT/ACC/KAZ/93/Add.1
Role of AGST

- AGST/supporting tables form the basis of discussions and negotiations on the domestic support commitment that will be inscribed in the Schedule (Part IV of it).

- The very final AGST document prior to accession that determines the basis of domestic support commitment is also inscribed in the Schedule (‘incorporated by reference’ in the Schedule’).

- AGST document assumes an important legal role (Article 1 of AoA): it becomes the legal source of “constituent data and methodology” that needs to be consistently followed for domestic support calculations subsequently upon becoming the Member.
Supporting Tables for commitments on agricultural subsidization

These tables provide background information on data and methodology used by countries in deriving their commitments on domestic support and export subsidies. They include detailed information on the provision of domestic support and export subsidies during the agreed years (i.e., the base period). For example, details can be found in these tables on

- support exempt from reduction commitments (e.g., Green Box)
- aggregate measures of support (AMS, sometimes called the Amber Box) overall and for specific products, including the data on AMS support that did not exceed the prescribed minimum threshold in terms of value of production (i.e., the de minimis)
- provision of export subsidies subject to reduction commitments

The documents containing the tables of supporting material are generally referred to as the AGST Supporting Tables and are specifically noted in the “Schedules” (or lists) containing domestic support and export subsidy reduction commitments. For Uruguay Round participants, the supporting tables were prepared based — in practice — on a document negotiated in the Uruguay Round but never formally agreed: Modalities for the Establishment of Specific Binding Commitments under the Reform Programme. Supporting material submitted in the context of accessions is prepared using the guidance contained in WT/ACC/4.

The WTO compilations in the series G/AG/AGST/ were circulated in five volumes and contained the AGST Supporting Tables submitted by countries during the Uruguay Round as well as in the context of accessions. The agricultural supporting tables of acceded Members are now routinely circulated in the WT/ACC/ or WT/ACC/SPEC/ documents series and are referenced as such in Sections I (domestic support) and II (export subsidies) of Part IV of the Schedules. The information contained in the supporting tables is used, as appropriate, by Members in their notifications of current measures.

Click any Member to access the relevant supporting tables.

| Afghanistan | Albania | Angola | Antigua and Barbuda | Argentina | Armenia |
Export Subsidies

- Original Members during the Uruguay Round committed to **reduce** the then existing export subsidies (1986-90) and not to introduce any new export subsidy: **reduction commitments in Schedule**

- Seeking to eliminate all forms of export subsidies was one of the very important objectives in the ongoing agriculture negotiations:

- Historic decision in **Nairobi** to **eliminate all forms of export subsidies**

- Almost all acceded Members have committed to **bind export subsidies at zero**. Likely to continue especially after Nairobi
Role of Schedules*

- **GATT jurisprudence**: Schedule may only add to the obligations flowing from the rules & may not diminish those rule-based obligations. ("United States-Sugar Headnote" case)

- **Marrakesh Protocol** (paragraph 3) further confirms that: ".. Concessions and commitments in the Schedule are "without prejudice to the rights and obligations of Members under agreements in Annex 1A of the WTO Agreement".

- **Hierarchy with the Schedule and the AoA rules** (AoA Article 21):
  "The provisions of GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the WTO Agreement shall apply subject to the provisions of this Agreement."

*Integral part of GATT 1994*
THANK YOU