

*The Future of 'The Boxes' under the WTO Agreement
on Agriculture - Suggestions from an African
Perspective*

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This note has been prepared following the request made during the teleconference with the African Group in Geneva on April 2, 2004. The note intends to inform the Group in the Framework discussions in the agriculture negotiations at the WTO. This paper is intended for general information purposes only, and should not be relied upon as legal advice nor is it intended to replace legal advice. It was drafted, under the coordination of Dominique Njinkeu by M. Hilton Zunkel (TRALAC, South Africa), and has benefited from useful insights from several ILEAP advisors. Views expressed in this publication should not be attributed to ILEAP, its Board of Directors, its funders, or the institutions with which lead advisors are associated. Comments can be sent to the ILEAP Secretariat (dominique.njinkeu@ileapinitiative.com).

"Let me mention some of the matters that will be discussed in the Doha Development Round. One of these concerns the international trade in agricultural products. Critical in this regard is access of our products into the food markets of the developed countries, some of which continue to subsidise their own agriculture in a context that verges on intellectual, economic and social obscenity and brutal selfishness."

Thabo Mbeki (President of South African) in reaction to the Doha Declaration 2001.

Introduction

When consideration is given to making specific suggestions as to the retention, amendment or removal of agricultural subsidies, colloquially described by the 'Boxes' in the Agreement on Agriculture (AoA), it is critical to recognise that these suggestions are to be made in the context of an overall objective of reform in order to establish a fair and market oriented trading system in agriculture. This tenant is reflected in the preamble of the AoA and is confirmed by the Doha Ministerial Declaration (paragraph 13). This is significant because in an arena where we have seen very little agreement, this tenant is agreed upon. It follows that any credible suggestions offered by Africa to reformulate the Boxes must relate to this tenant.

Here lies the difficulty for African countries and for a unitary African position. It is well understood that world market distortions caused by agricultural subsidies in developed countries denies African agriculture its rightful place in the agricultural trade arena. This being said, this denial of right is already partially compensated for that via preferential access to the markets of the EU for selected African countries. To this end the strange but very real position exists that the more distorted the market in the EU, the greater the benefit to those with preferential access. Not all enjoy this benefit which creates a divide in opinion within the developing country contingent generally and within the African contingent specifically. Preferences have created a disincentive for Africa to give hearty support to the reform tenant which will eventually have to be given effect. This implies that at times the right choice of 'Box' proposal will not necessarily be the easy choice and will not be without adjustment costs. This statement comes with a large caveat. It must be recognised that the distorted agricultural trading system to which African countries have been obliged to adapt, is a creation of the developed world. To the fullest possible extent African countries that are to be losers in the adjustment period, should not be made to bear the cost now resulting from historical folly in the developed world. In this vein adjustment aid, made directly or via special and differential treatment, is an imperative.

Furthermore it needs to be recognised that reform does not mean that subsidies will be eliminated. Wealthy nations will always have the resources to provide support via subsidies. It is thus imperative that this support is correctly packaged (i.e. 'Boxed') to ensure that these payments are kept honest. Honest is understood to mean that these payments should not displace Africa's comparative advantage in agriculture and agriculture's crucial role in African development.

For these reasons it is necessary for Africa to make particular suggestions as to the future subsidy pack as regards the agriculture boxes.

The 'Red'¹ Box – Export Subsidies

In economic terms it is undisputed that export subsidies are the most distorting form of subsidy. The Red Box represents prohibited subsidies except to the extent notified and scheduled. Only 25 countries have such notifications meaning that only 16% of the WTO membership of 148 countries is allowed to use some level of export subsidies. Of these 25 countries only 1 (South Africa) is an African country and although granted the use of 62 measures, none are used. From an African perspective it is inappropriate to have a distortive measure reserved for use by a minority of the WTO membership with no export subsidies being provided by African countries. For Africa, providing no export subsidies is the right thing to do. An export subsidy is a direct transfer from the consumer in the granting country to the consumer in the recipient country. Making a transfer of tax revenue from African citizens to food importers (say Japan) makes for fiscal nonsense and dangerous domestic politics.

It is mooted that Africa should support the closing of the Red Box in order to make all export subsidies prohibited. In this regard Africa should press for a strong and narrow reading of the Doha Declaration where paragraph 13 seeks 'reductions of, with a view to phasing out, all forms of export subsidies'. The stance should be that 'phasing out' is the standard and that the 'reduction' as a means to this end should be swift, preferably a shorter period than is agreed for the Doha implementation period. In support of this view it is notable that the dispute settlement system has been extremely harsh on agricultural export subsidies in the Canada Dairy and Foreign Sales Corporation (FSC) cases. It is suggested that South Africa make a symbolic gesture on behalf of the African position and officially distance itself from the notifications which it retains. This gesture may be used to secure a concession in one of the other boxes.

It must be recognised that some African countries are net importers of food and benefit from subsidised exports and thus 'enjoy' these subsidies. In assessing this impact it is important to recall that a *net importer* does mean a *sole importer*. Many net importers are also producers and may in fact become lesser importers, or exporters themselves, if world prices increase. In the instances where this is a serious food security concern then the most efficient means of addressing the problem is via directly targeted monetary or food aid, and not by the use of a blunt instrument like an export subsidy widely applied. The sometimes uncomfortable truth is that the minority who benefit from depressed prices are in an abstract sense like the beneficiaries under apartheid – the benefits to the few cannot justify the systemic costs to the whole.

Under the Red Box recall that the AoA provided for an explicit derogation (in article 9.4) which allows developing countries to use export subsidies for marketing and transport costs. This concession expired at the end of the implementation period (the year 2000). It is mooted that based on the foregoing discussion Africa does not ask for the reinstatement of this provision. Furthermore, because the concession has expired, requesting its reinstatement would be sure to attract demands for concessions elsewhere, probably in the form of more Amber Box use by the developed countries. In addition, the provision requires that the derogation would not lead to circumvention of export subsidy commitments. To the extent that these commitments exist, it is virtually impossible to satisfy the non circumvention provision in the wake of the FSC case.

Amber Box – Domestic Support

In examining the notifications under the AoA on domestic subsidies we find that 34 countries notified, and may thus use & reduce, domestic subsidies under the aggregate measure of support (AMS). This represents 23% of the membership which once more seems to indicate that the measure has an exclusive nature for just a small group. In the group of 34 there are only 2 African countries (Morocco and South Africa). These statistics should leave little doubt that the African position would not be very supportive of the continued use of this measure, and it is mooted that this would be the correct approach. Indeed in Cancún the African contingent proposed substantial reductions in the Amber Box supports and went further in seeking their phased elimination. It is recognised that the extended call to elimination is a shrewd tactic in placing pressure on the weight of the proposal. However it should be noted that realistically the mandate in the Doha Declaration stops at 'substantial reductions' making it unlikely that the elimination wording will survive. From the perspective of the subsection of

¹ The term is used here in the sense of the prohibited character of the so called 'Red Light' export subsidies under article 3 of the Agreement on Subsidies and Countervailing Measures. It is noted that the WTO does not use the term colloquially, and it is suggested that the term should be adopted.

the African contingent that has a particular interest in the retention of the magnitude of preferences, it should be noted that the Amber Box is the home of domestic price support which enables the EU to retain its internal price structure well above world market prices. This is particularly relevant in the sugar sector where the high intervention price² is featuring in the panel proceedings currently underway in the DSU on the EU's sugar regime. It is not recommended that the reform of the Amber Box be opposed on this account.

In the main Africa would do well to emphasise the word 'substantial' in the determination of a further AMS reduction. To this end there is synergy with the G20 proposal which suggested that, amongst other, this would mean a proposal to reduce support more on more heavily subsidized products, an initial down payment and larger reductions for products with a specified and significant share of global exports. These suggestions are a logical 'fit' to the African position requiring further substantial reductions in the allowable AMS.

The debate will of necessity be laborious as to exactly what the cut should be. One way of short circuiting this debate would be to suggest bringing the allowable AMS down to the existing de minimis limits (in article 6.4). As a further step the de minimis levels of developed countries could be reduced (suggest by half) on the premise that for these countries the current combined effect of 5% of both product specific and non product specific support is a material sum beyond what can ordinarily be considered as being truly de minimis i.e. too small to be of consequence. To the extent (believed to be limited) that African countries want to apply Amber Box measures themselves, the retention of the de minimis provision will cater for this. Recall that the de minimis level provided for use by developing countries is currently double that allowed for developed countries. It is suggested that Development Box concerns are kept separate and not addressed via an increase in the Amber de minimis allowance. This is a cleaner option and removes the risk that developed countries misuse a call for higher developing country de minimis to justify a raised or unreduced de minimis level of their own.

The other element requiring a suggestion to be made in the Amber Box is the element of average versus product specific levels of AMS. Current practice is to base the AMS on an average. In line with the African position that the Amber Box should be substantially reduced it follows that implementing a product specific AMS allocation would be a complementary proposal as it is also a proposal for greater discipline. In support of this proposal there is already some precedent for this in the AoA due restraint provision for the Amber Box (article 13b). In this article exemptions from actions are judged against *product specific* support levels. This is progressive in comparison to the aggregation applied to AMS reductions in the general instance.

Blue Box – Domestic Support Subsection

The Blue Box is a compromise relic of the Uruguay Round essentially concocted as part of the Blair House Accord to shore up the waning state of the negotiations at that time. Credible economists from both sides of the Atlantic have recognised the Blue Box as such, agreeing that it should be seen only as an interim arrangement falling away in subsequent reforms. This is sensible but unfortunately this sense did not find legal foundation in the AoA and Blue Box measures remain fully valid after the implementation period (see AoA article 6.5).

The Blue Box has only been used by 7 members. It was initially only notified by 4 countries (EU, US, Norway and Iceland) and has subsequently been used by a further 3 (Japan, Slovenia and Slovakia). Again, Africa needs to challenge the relevance of a measure that is only relevant to 5% of the WTO membership. This is a box where there should be no conflicting views within the African contingent as to the reform proposal. In this instance there is a stronger logic than with the Amber Box to support the African contention that the reductions in Blue Box support should move from reduction to elimination. Realistically with the EU and Japan wanting to retain the Blue Box, it is unlikely that it will be eliminated. As a compromise Africa should at least call for the inclusion of the Blue Box support currently used into the main AMS discipline of the Amber Box where its current unlimited use can be capped and then limited in the same fashion as the Amber Box.

Development Box – Domestic Support Subsection

The development cut out in respect of the Amber Box is found in the AoA article 6(2). This provision relates to developing countries and is coined as the basis for a 'Development Box'. The provision exempts 3 types of

² The current intervention price on raw sugar is €523/ton as compared to a world market price of about €200/ton. This Amber Box price gap is kept in place by a prohibitive tariff.

subsidies from reduction commitments. These are investment subsidies, input subsidies and payments to diversify from drug production.

This clause is by nature an important part of the agriculture package for African countries. The African suggestion would call for a continuation of the existing provision with an expansion and strengthening of the provisions into a wider Development Box. This widening could include the suggestion of making the Development Box measures available to all farmers in developing countries, given that resource poor and low income farmer categories are difficult to define. Further issues of commonality include support to encourage diversification from growing illicit narcotic crops. This was previously a South American concern, but is a social spill over cost of commodity price suppression that is taking hold in Africa also. The suggestion could extend to such crops that are legal but are harmful to human health, pertinently tobacco in the African context.

Africa has been extremely active in submitting proposals on the Development Box with inputs, literally, from Egypt to Swaziland. The overall logic here is that the Development Box can be seen as a visible operationalisation of Special and Differential Treatment. The separation of this box from the general Amber Box provisions (like de minimis) makes a clear statement that these items are not for the use of developed countries, a concept that risks blurring when development issues are addressed via tweaked Amber or Green Box provisions. African countries should suggest the inclusion of as many development elements as satisfy the contingent, recalling that the measures do not need to be used by all in all instances, but their reserved availability will provide ample comfort to African policy makers.

As a final Development Box item, it is suggested that the African contingent retains the latitude currently available to LDCs which excuses this group from undertaking any reduction commitments on more than a voluntary basis (see AoA article 15.2). It is most unlikely that this suggestion will be opposed in any way.

Green Box – Domestic Support Exemptions

The Green Box essentially represents so called 'safe' subsidies which are meant to be non trade distorting. The concern of African countries (shared by the G20) is that by the sheer magnitude of the Green measures, they do have a distorting effect. While it may be difficult to fault individual elements of the Green Box, Africans have felt that there are trade distorting elements within the Green Box. On the other end of the spectrum it has also been suggested that the Green Box could be opened for expansion of its development elements. The risk here is that an opening for development will attract concomitant calls for the addition of elements of non trade concerns, such as animal welfare. It is for this reason that it is suggested earlier that development aspects are as far as possible placed in the Development Box where their use for African countries (inter alia) is reserved. Africa should not seek the growth of the Green Box at the risk of accepting more distorting non development aspects to the benefit of developed countries as a quid pro quo.

In making suggestions as to the future structure of the Green Box, Africa could take a fresh approach or a moderate reformist approach.

The moderate approach would be support a cleanup of the more concerning elements of the Green Box with a tightening of disciplines on these elements. These elements would be the provisions on direct payments to producers, decoupled income support and income insurance (AoA Annex 2 in paragraphs 5, 6 & 7). Under this approach consideration could also be given to including a cap on the Green Box as part of an overall cap on all types of Boxes.

As a fresh approach, Africa could point to the events in the Agreement on Subsidies and Countervailing Measures (ASCM). In the ASCM the cousin of the agriculture Green Box, the Green Light category fell away by expiry as of 2000. The status of previously Green Light measures is that they are now Amber Light. What this means is that they are not automatically safe and not automatically prohibited. Members can use them as long as they do not upset others by causing adverse effects to the interests of others. If the measure does cause adverse effects then the affected member can take action to remedy this adverse effect. In essence this is the acid test of whether a subsidy is, as required for the Green Box, non or at most minimally trade distorting. If a subsidy is used in such a way that it is not adversely affecting others, proved by the fact that no action is brought against the user, this is an indication that it is not distorting trade. In this way the uncertainty as to whether a Green item is really a safe subsidy, and the concomitant debate on what to add or remove from the Green Box

becomes moot. It is suggested that this narrowing of the differences between the subsidies regimes for industrial and agricultural goods is the correct direction of reform, even if its strong nature puts it into the reform realm of the 'long-term objective' contemplated in the preamble of the AoA.

Concluding Remarks

The African position on the content of the Box regime of the WTO Agreement on Agriculture will essentially favour a reformist stance flavoured by strong adjustment and development elements. This is due in the main to Africa not being a provider of subsidies and disfavour of the current 'small club' of subsidizers in the current Agreement on Agriculture. This African position is realistic and echoes elements that are of concern to other WTO also. It must be recognised that an Africa position on the future of the coloured Boxes of the Agreement on Agriculture will raise inherent tensions within the African contingent. This tension arises from the friction between the logic of reform in a context of African agricultural advantage as opposed by the rewards of preferences founded in the continued distortion of developed country markets. This tension should not rift an African position as long as an understanding remains that it is the duty of the distorters to ease the cost of the transition on the principle of 'the distorter compensates'. Africans can readily agree on this principle as commonly understood.

This African perspective is summarised as follows:

Red Box – Move as steadily as possible to the elimination of export subsidies resulting in their status being that of a prohibited practice.

Amber Box – Emphasise the goal of substantial reduction, incorporating an initial down payment with the end result being a 'de minimis only' situation for Amber Box to remain.

Blue Box – Eliminate the Blue Box as a separate element or at least see its incorporation into the Amber Box.

Development Box – Retain the current foundation of the Development Box in article 6(2) and expand it to reflect an operationalisation of special and differential treatment. Clearly reserve the content of the Development Box for those members entitled to developing status, as opposed to restocking the Green Box at the risk of taking on board a host of 1st world non trade concerns. Retain the existing exemption from reduction commitments for LDCs.

Green Box – Aim to minimise the perceived trade distorting elements by tightening the use of contentious items, notably direct payments, decoupled payments and income support. As fresh approach, drop the concept of 'safe' green status and introduce the objective measure of the adverse effect test as is done in the Subsidies Agreement.

It is hoped that these proposals based on an African perspective will go some way to bringing to book agricultural subsidies that Africa has found to verge on intellectual, economic and social obscenity and brutal selfishness.