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The Reform of Agricultural Subsidies
Lights upon Pandora’s Boxes

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Pandora’s Box

In classical mythology Pandora was the name given to the first woman. She was formed of clay by Vulcan, at the request of Jupiter, and was created for the purpose of punishing Prometheus. The gods vied in making her presents. Jupiter gave her a box filled with innumerable evils, which she was to give to the man who married her. She was then conducted to Prometheus, who would not accept of the present; but his brother, Epimetheus, fell victim to Pandora’s charms, and accepted the box from which on its being opened there issued all the ills and diseases which have since continued to afflict the human race. Hope alone remained at the bottom of the box, as the only consolation of the troubles of mankind.

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I. INTRODUCTION

The Uruguay Round Agreement on Agriculture (A on A) was a historic milestone in the evolution of the world trading system. For the first time the trading system’s most basic and also most sensitive group of commodities was brought under the ambit of the multilateral trading system in its own right and distinctly.

The Uruguay Round negotiations were fraught with difficulty and the final text of the Agreement on Agriculture was amended right up to the 11th hour by last minute wrangling culminating in the Blair House 2 agreement in December 1993.

For a new generation of trade negotiators looking in retrospect, it is not surprising that the Agreement on Agriculture did not immediately align itself with the traditional GATT disciplines for the trade in goods. WTO members accepted that they were commencing a process of reform as opposed to adopting an absolutely finite code for agricultural trade. This is borne out in the pre-ambular provisions of the Agreement on Agriculture in the following statements:

“Recalling that their long term objective as agreed at the Mid-Term Review of the Uruguay Round ‘is to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines’;

Recalling further that ‘the above mentioned long-term objective is to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets’ ”.

The substantive text of Agreement on Agriculture affirms this in Article 20 which is explicitly headed ‘Continuation of the Reform Process’ and states recognition, “that the long term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process.”
The WTO’s Committee on Agriculture\(^2\) completed the first phase of the mandated Article 20 negotiations on 27 March 2001 in deference to the, ‘ongoing process’.\(^3\) At the conclusion of this meeting a work program was adopted to commence the concretisation of further reforms. The items agreed upon to commence these negotiations include\(^4\) the Amber Box, Export Subsidies and Export Credits indicating that agricultural subsidies, both domestic and export, will be at the forefront of the continuation of agricultural reform.

**A. The Proposition**

Given that:

1) The subsidies provisions within the Agreement on Agriculture will be further reformed; and

2) The topic of subsidies is already comprehensively encapsulated within the Agreement on Subsidies and Countervailing measures;

Would it be a logical progression to bring the subsidies provisions of the Agreement on Agriculture under the provisions of the Agreement on Subsidies and Countervailing Measures?

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\(^1\) Set forth by HS code in Annex 1 to the Uruguay Round Agreement on Agriculture.

\(^2\) Established under Article 17 of the Agreement on Agriculture.

\(^3\) The author was in attendance of this session.

\(^4\) The comprehensive list is made up of the following:
Tariff quota administration, Tariffs, Amber Box, Export subsidies, Export credits, State trading enterprises, Export restrictions, Food security, Food safety and Rural development.
II. THE NEGOTIATING HISTORY

“It is impossible to understand the present posture of the Uruguay Round negotiations on agriculture without first addressing, at least in general terms, the historical background that led to the present state of affairs in world agriculture.”  (John M. Breen.)

A. Historical Perspective

It would be useful to ascertain to what extent there was any reference to, or interplay between, the activities leading up to the work of the Uruguay Round negotiating groups of the Subsidies and Agriculture agreements. One could gauge if any cross-pollination was present in the minds of the negotiators and whether they foresaw the future convergence of the two agreements at the time of their negotiation. What follows is a description of the milieu under which the subsidies provisions developed in the Agreement on Agriculture. This is not intended as a history of the agriculture negotiations themselves and the chapter aims to trace the thread of the development of the subsidies provisions. Some overlap is however inevitable.

The main protagonists in the Uruguay Round negotiations were the United States (US), the European Community (EC), the Cairns Group and in the latter part of the negotiations, a further group of countries reluctant to open their domestic markets to international competition. While the Cairns Group sought the application of the existing GATT rules applicable to agriculture, it was the US that took the bullish lead in opposing the EC’s bearish resistance to serious reform in agricultural trade.

The European mindset can be traced back to the initiation of the Marshall Plan post World War II. In order to stabilize Western Europe the US offered its assistance in reconstructing Europe if the Europeans approached the US with a unified assistance request. The coherent request came from the Europeans by way of the formation of the Committee of European Economic Co-operation (CEEC). The US then provided the required recovery program together with an Economic Co-operation

5 The 14 original Cairns Group countries were Argentina, Australia, Brazil, Canada, Chile, Columbia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Uruguay and Venezuela.
6 This group included Japan, Switzerland, Korea and Mexico.
7 Named after the US Secretary of State General George C. Marshall who launched the plan in 1947.
Administration (ECA) to administer the funds. The CEEC then converted into the Organisation for European Economic Co-operation (OEEC) to jointly disseminate the assistance with the American ECA. The OEEC formed an inter European monetary clearing system known as the European Payments System. Cameron finds that, ‘this ingenious device allowed for free multilateral trade within the OEEC.’\(^8\) Indeed intra European trade improved and diminished European reliance on imports. Under the OEEC/ECA arrangement the GATT had no real practical relevance to trans Atlantic trade relations. European countries were applying quotas under the balance of payments (bop) exception of GATT Article 12 and the US itself obtained a 1955 GATT waiver for quotas under Article 11 on a variety of agricultural products. The success of the OEEC\(^9\) led to the re-introduction of free currency conversion and normalised multilateral trade in 1958. In GATT terms this meant that the Article 12 balance of payments exemption could no longer be employed to justify agricultural protection (especially quotas) as OEEC countries had been doing. This early OEEC co-operative experience provided the impetus for the formation of the EC which in turn enhanced intra European agricultural trade via the Common Agricultural Policy (CAP).\(^10\) These conditions explain the difficulty that GATT parties found in handling agriculture. This is not to say that agriculture was not part of the GATT in the formal sense. Indeed, Hudec pointed out in his analysis of dispute settlement\(^11\) that in the 42 years up to 1989 43\% of matters contested to the GATT were agriculture related. Tangerman\(^12\) points out that many national policies, ‘were not in conformity with the fundamental spirit of the GATT, but in most cases the letter of the General Agreement did not provide the means which would have allowed to discipline them at an international level’. He ascribes this in part to the conditional exemption of export subsidies in GATT Article 16(3) and the exemption of agricultural products from the ‘General Elimination of Quantitative Restrictions’ in Article 11(2)(c).

In 1955 Article 16(3) of GATT was added with the intention to prohibit export subsidies on primary products. Agriculture had a cut-out in respect of paragraph 3 which provided to allow export subsidies on primary products not applied in a manner conferring, ‘more than an equitable share of world trade.’ Paragraph 4 excluded

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9 In 1961 the OEEC became the present OECD.
10 This policy is fully described in chapter III B of this paper.
12 An Assessment of the Uruguay Round Agreement on Agriculture (1994) at page 3.
processed products from the paragraph 3 exemption. Contracting parties (incorrectly) applied this provision to include processed agricultural products within the definition of a primary product. This practice is evidenced for example in the 1982 GATT panel US vs. EC on pasta where the panel ruled that pasta was not a primary product within the ambit of Article 16(3) merely because of its manufacture from a primary product (durum wheat).

In the Tokyo Round (1973-1979) the forerunner of the ASCM, the ‘Subsidies Code’ emerged. Membership in the Code was however voluntary. Although it provided an illustrative list of subsidies and better defined, ‘equitable share,’ it, ‘did little to reduce the prevalence of export subsidies in the agricultural sector.’ Yeutter, with regard to the EC’s agreement to a carry over of the equitable share provision into the Subsidies Code, observes that this was one of the worst bargains the US ever received in concession from the EC. In the wake of export subsidies it led to a huge shift in global market shares in favour of the EC, at the expense of traditional importers and the US, as markets stagnated in the early 1980’s. We do however observe, for current purposes, the inclusion of primary agricultural products in the ASCM’s forerunner. Agriculture cases were brought to the GATT in quantity under the Tokyo Subsidies Code. Also during the Tokyo Round discussions, the US raised the traffic light approach to subsidies and discussions were based thereupon, although the concepts did not find their way into the Code. This 1975 proposal by the US mooted that, ‘the code should categorise all types of subsidy practices and set out the conditions on which offsetting measures could be taken against such practices. Subsidies should be divided into the following three categories:

- **Prohibited** (practices designed to increase the competitiveness of national producers, thereby distorting international trade);
- **Conditional** (practices directed toward domestic economic, political or social objectives, but which may distort international trade);
- **Permitted** (practices with little or no impact on international trade against which offsetting measures could not be taken).

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13 Breen JM, Agriculture, in The GATT Uruguay Round A Negotiating History Volume 1 at page 136.
15 The corresponding US concession was to include an injury provision in its countervailing duty law.
In this proposition we can discern the emergence of the red light (banned), green light (acceptable) and amber light (objectionable) categorisation for subsidies. This is also the forerunner for the later refinement of the concept in agriculture where the lights colloquially became boxes.

In the intervening period between the Tokyo and Uruguay rounds, subsidies had become a discussion point in both the Subsidies and Agriculture Committees. The minutes of the Preparatory Committee (pre-negotiation preparation on subsidies and countervailing duties) of 4 February 1986 points out that, ‘Considerable discussions had taken place, especially since the end of the Tokyo Round, in the Committee on Subsidies and to some extent also in the Committee on Trade in Agriculture.’

The initial US approach to agriculture for the Uruguay Round was ambitious in seeking a full integration of agriculture into the GATT. This stance later became more flexible toward reform and in order to explain it simply, Clayton Yeutter defined it as the, ‘ratcheting process’. Dunkel ascribes the term as borrowed from sailing and it implies a step-by-step reform coupled with a no going back condition. The thrust of the drive was based on 1) tariffication of quotas and thereafter a progressive reduction of the tariffs; and 2) preserving existing market access and then increasing access by requiring minimum access commitments at reduced duties. The two thrusts should then eventually converge. Regarding export discipline, the operation of export subsidies in their various sophisticated forms was distorting competition to the point that smaller developing countries lost their traditional markets while others did not have the financial means to compete with major agricultural subsidisers. Dunkel refers to this export led trade diversion as, ‘one of the most worrying aspects of international trade.’

The key negotiating players were composed of three distinct groups. Firstly the EC, secondly, what Dunkel calls, ‘the strange alliance,’ being the US supported (thirdly) by the new Cairns Group instigated at the time by Australia and Argentina. In the mid 1980’s the EC’s CAP was firmly entrenched. After losing market share to EC

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18 The author is grateful to Professor Arthur Dunkel for relating his Uruguay Round experiences in person on 18 June 2001 in Geneva, Switzerland. References to ‘Dunkel’ in this chapter relate to this interview.
subsidies, American farmers, ‘infuriated as their global market share continued to decline,’ became the beneficiaries of a multi-billion dollar farm bill which allowed the US to introduce its Export Enhancement Program (EEP) as a direct counter to the CAP. It was this subsidy war that rallied the central complaint of the Cairns Group, who provided and continue to provide a counterweight to the US and EC positions. Yeutter describes the Cairns Group as, ‘catalytic, sensible and pragmatic’. Dunkel recalls that operationally, the main negotiators adopted a, ‘hands off,’ approach leaving the negotiating for agriculture basically to a relatively small group.

In 1988 we find that Switzerland re-introduced the old Tokyo Round US traffic light scheme in the Uruguay Subsidies Negotiating Group. The US then raised several issues in a take-up of the Swiss revitalisation of their ‘Tokyo Lights’ including, as McDonough points out, ‘agricultural subsidies (all domestic and export subsidies that affect trade in agricultural products should be prohibited).’ This indicates clearly that agricultural subsidies were raised and discussed in the ASCM negotiating group.

In October 1989 the US submitted a comprehensive negotiating proposal. According to Josling, ‘Export subsidies were to be banned. Domestic policies were to be categorised into those that were acceptable (minimally trade-distorting) and those that were objectionable and therefore had to be reduced.’ This is confirmed by Breen who describes the US as taking a, ‘red-yellow-green,’ approach to reduce trade distorting subsidies. McDonough further observes that in December 1991, ‘subsidies talks were among the most difficult taking place in the Round, and that progress in completing the negotiations was being held up by the stale mate in the agriculture negotiations.’ From this we can deduce that subsidies and agricultural subsidies were still related but separating on the eve of the Dunkel Draft. By way of example the Dunkel Text (DT) for subsidies in Article 6 deals with Serious Prejudice, as is the current position in the UR Legal Text. In both texts Article 6.3(d) deals with the

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19 Yeutter, Bringing Agriculture into the Multilateral Trading System (1998) at page 64.
increase in market share of a primary product.\textsuperscript{26} The DT has a footnote 1 which reads, ‘unless other multilaterally agreed specific rules apply to the trade in the product or commodity in question.’\textsuperscript{27} This shows that the primary (agricultural) product was within the ASCM domain, but that it was recognised, hence the footnote, that the agriculture group was working on specific agricultural disciplines. The footnote has survived into the UR Legal Text as note 17 to the ASCM. The current text additionally also has Article 6.9 taking the clear step to exclude agriculture from Article 6. There is no equivalent for this in the earlier DT. The mindset of the interaction between the rule-making group (which includes subsidies and countervailing duties) and the agriculture negotiating group was that the rules group focused mainly on broad concepts such as definitions, actionability, measurement and remedies and that the potential impasse topics related to primary products became the domain of the agriculture group.\textsuperscript{28} The essence of the tension stemmed from the debate regarding the inclusion (or not) of ‘primary products’ (agricultural) in the definition of prohibited (red light) subsidies for revising the Tokyo Subsidies Code.

The impetus for the Dunkel Draft arose due to their being no single document to coherently show what was on the table. The text was a compilation of the entire process up to that time and Dunkel, ‘filled the holes,’ where the negotiators had been unable to progress. Much of the agriculture text was drafted by the GATT secretariat. Clayton Yeutter\textsuperscript{29} credits the Dunkel Draft as a, ‘brilliant stroke’. He relates that, ‘Though his personal leadership and creativity the Director-General had assimilated all the efforts of the Uruguay Round in a final draft text. The missing element was now one of political will, and it was up to the GATT member nations to provide that ingredient. Mr. Dunkel had thrown down the gauntlet to more than 100 trade ministers, a test of their political fortitude and that of their chiefs of state.’ The success and value of the document lay in its, ‘package,’ nature in that it provided concrete methods for decreasing export & domestic subsidies and increasing access to markets. Dunkel’s view is that the invention of the agricultural boxes was, ‘done progressively’, as a growth process ongoing within the agriculture negotiation itself.

\textsuperscript{26} According to the Ad note to GATT Article 16 a primary product is any product of farm, forest, fishery or mineral having only been processed sufficiently to prepare it for market.
\textsuperscript{27} GATT Document: MTN.TNC/W/FA at section I.
\textsuperscript{28} McDonough provides some sense of this. See Subsidies and Countervailing Measures on page 885 in its footnote 451.
The Draft was supported by several gentlemen’s agreements which Dunkel initiated and he then later withdrew from the process thereby leaving a certain impetus of necessity for the parties to then formally close these gentlemen’s agreements. Modifications were mainly found in the US/EC Blair House Accord in November 1992 and Blair House II in December 1993. For our purposes the Blair Houses are significant in that the MacSharry compensation payments to compensate EC farmers for reduced cereal prices and the US deficiency payments were agreed to be tolerated. This compromise saw the birth of what is now known as the agricultural Blue Box. By December 1992 we see pressure from the EC for a clear divide to open between the industrial and agricultural subsidies with the EC submitting that provision be made for topics to have their own rules lex specialis to the Dunkel subsidies text. This is in effect a call for an agriculture carve out. It appears that this call became reality and henceforth the subsidies provisions relating to agriculture were dealt with by the agriculture group. Arthur Dunkel’s successor Peter Sutherland took over the Trade Negotiating Committee chair and implemented a process whereby all draft texts were made consistent with all other related draft texts. This function was performed by the Legal Drafting Group and the GATT secretariat under the guidance of a group of negotiators known as the, ‘Friends of the Chair’. This work would have involved for example the insertion of the wording, ‘Except as provided in the Agreement on Agriculture,’ to the opening of Article 3.1 dealing with prohibited subsidies in the ASCM. This is confirmed by the wording in the Dunkel Text for Article 3.1 of the ASCM which stated, ‘The following subsidies, within the meaning of Article 1 above, shall be prohibited:’. Note the absence of the wording making the A on A exception.

It is worth noting that the political compromise in the Blair House Accord was not easily obtained. Peter Van den Bossche relates the terse treatment dealt to Sir Leon Brittan (who was the EC Commission’s Commissioner for external trade and hence chief negotiator from 1993 onwards) by his own constituency. He recalls the EC Council meeting of 21 September 1993 as follows, ‘Speaking for the Commission at this Council meeting, Sir Leon Brittan strongly objected to the re-negotiation of the

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29 Bringing Agriculture into the Multilateral Trading System at page 71.
31 See McDonough, Subsidies & Countervailing Measures (1999) at page 228. The present Executive Director of the International Grains Council, Germain Denis, was among the ‘friends’.
Blair House Accord, and pleaded to the ministers not to tie his hands in future negotiations with the United States. In line with this request, he criticized a France-German draft compromise, which would, in his opinion, overly restrict his abilities in the forthcoming negotiations by requiring the Commission to seek ‘clarifications’ on the Blair House Accord. Sir Leon remarked that he needed no further negotiating directives to take into account the French concerns during further negotiations. Such a position provoked a furious reaction from the French foreign minister, Mr. Juppe, who reminded Sir Leon that he was a mere functionnaire who would kindly take his orders from the Council.’ Tough talking indeed!

B. Conclusion on The Negotiating History

Dunkel’s view for the future is that the reform of subsidies will not be possible outside of a balancing of the three pillars of agriculture (export subsidies, domestic support and market access) and that meaningful reform would be unlikely without the ability to invoke cross concessions within other Agreements. Stated differently, meaningful reform would not be possible within the A on A alone. Dunkel’s final word was that the concept of converging the subsidies provisions within the A on A with those of the ASCM was theoretically appealing, and in reality this convergence, ‘would be very difficult to predict!’

A historical overview has shown that the essence of the subsidies provisions of the A on A and those of the ASCM have a common heritage. These roots can be traced to GATT Articles 11(2) and 16(3) and later to the Tokyo Subsidies Code. The segregation between the two arose in the UR mainly due to the complexities of compromise required to contain the round breaking potential of agricultural issues. It is the author’s view that, from the perspective of history, the built in agenda of liberalisation within the A on A should (even if only eventually) re-discipline the UR compromises, leaving the way open to a re-convergence of agriculture with the subsidies disciplines within the ASCM.

Indeed McDonough was taken by a similar contemplation when looking forward from within the Uruguay Round. He ponders what we now know came to pass, ‘Also

33 The European Community and The Uruguay Round Agreements at page 65.
34 See McDonough (1993) at page 956.
for the future is the question whether a new Subsidies Code will be the foundation of a rules–based system with broad application or whether fragmentation will occur with different industry sectors carving out separate and distinct subsidy rules for their particular sector exclusive of the Subsidies Code.’
III. THE ECONOMIC FRAMEWORK

"Why so many nations have worked so hard over so many years to impede agricultural trade is almost beyond comprehension!"

(Clayton Yeutter, USTR under Ronald Reagan and Secretary of Agriculture under George Bush snr.)

It is extraordinary to contemplate the vast amounts of resources put into the negotiations on agricultural subsidies. Intuitively it follows from the sense in the opening quotation that in order to progress toward freer trade it would be necessary to reverse the historically created impediments, requiring substantial counter energy. It is thus useful to understand, in basic economic terms, why the issue of subsidisation should attract so much attention.

A. The Creation of Export Surpluses

The discipline of the A on A is predicated on what is commonly referred to as the 3 pillars, being export subsidies, domestic support and market access. The pillars are inter-related. The interplay of these 3 factors provides for the generation of exportable surpluses that would not otherwise arise. In a competitive market internally supported prices can generally be sustained above world market prices only if import competition is curtailed and when surpluses occur, export assistance is provided. Thus market access curtailment and export assistance underpin price support. It is this dynamic that gives rise to trade distortion in that, “importers no longer buy the least costly goods of the most efficient exporter, but instead purchase from whatever source can offer the lowest price net of the government subsidy.”

If export measures and market access components of the agreement were strong enough, the need for disciplines on price support could be lessened. As Roberts

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35 For example the WTO publication Trading into the Future (2000) at pg 17 states that:
The new rules and commitments apply to:
- Market access - Various trade restrictions confronting imports.
- Domestic support - Subsidies and other programs, including guaranteed farm gate prices and farmers’ incomes.
- Export subsidies and other methods used to make exports artificially competitive.

observes, “the greater competition from imports and the reduced export assistance would prevent countries from sustaining internal market prices around previous supported levels.” By way of elucidation we will proceed to examine the case of the EC as it accounts for 38% of world agricultural price distortions and 90% of export subsidy payments.

B. The European Community

The mainstay of agriculture within the Community is the Common Agricultural Policy (CAP). The CAP aims to provide community farmers with a floor price for their production by the Community purchasing produce when prices fall below the floor price. This is domestic support. As a flanking policy the price support is covered by high external tariffs that aim to prevent imports, which would otherwise occur due to the EC price being above the world market price. In other words, market access is restricted. These protected support prices encouraged production in excess of what the demand for these products was within the EC. This meant that immense stocks of food were built up within the EC. Breen recalls these stocks to be mountainous – 1.3 mmt of butter, 6 000 tons of beef and 15 mmt of cereals. These surpluses were then dissipated by bringing the products to the international market by way of export subsidies. The magnitude of the intervention is sufficient to depress the world price which in turn requires greater subsidies to clear the surpluses. Indeed Ockenden and Franklin point out that, “estimates suggest that the EU would become a net importer of most commodities as the industry would find it impossible to compete in the world markets at existing prices.” This view is supported by Krugman and Obstfeld who observe that, “Europe would actually be an importer under free trade.” Hudec observes that the EC made the transition to overproduction, ‘by the mid-to-late 1970s.’ This leads to the position that other nations who are unwilling or unable to meet export restitution payments, loose international market share.

ABARE, Current Issues (October 2000) at page 6.
ERS Agricultural Economics Report No.802 (May 2001). The comparative price distortion figure for the US is 16%.
Agriculture (1993) at page 149.
European Agriculture Making the CAP fit the future (1995) at page 66.
The governments of developed nations have generally adopted a policy of transferring income from urban dwellers to rural farmers. The reasons are: 1) to delay the decline of agriculture in favour of industry and consequent migration. 2) to compensate for the risk prone business of farming thus ensuring food supply even when crops are bad. 3) for secondary goals of environmental and lifestyle preservation. Politically this reasoning is imbedded. As Hathaway and Ingco point out, ‘Political forces make it difficult to change the situation. Even though the number of farm producers has fallen so sharply in OECD countries that now they make up a small fraction of the population, they are still a powerful political force in most industrial countries.’

The transfer efficiency of the subsidies to effect this reasoning is low. Farm beneficiaries receive only 30% of the transfers by consumers and taxpayers according to Breen\(^44\). The OECD finds similarly that, “up to 80% of agricultural transfers may not translate into higher incomes for farm households”\(^45\). The reason for this is mainly due to beaurocracy and leakages. The effect is that net welfare decreases and a benefit accrues to agriculture but only in the short term. The transfers are also highly concentrated. Within the CAP 6% of EC grain producers account for 60% of total production and receive 50% of cereal subsidies although being competitive at world prices.\(^46\) A strange system indeed. The question then arises, why make the transfer in this way? The answer is that consumers are thwarted by the complexity of the system that they would not support if the same prices were openly observable in the food store or by direct payment. Domestic consensus for reform would be difficult to achieve because the potential loosers are concentrated and vocal while the multitude of gainers are dispersed with small individual benefits.

The use of an export subsidy is unambiguously welfare decreasing for the exporter as is shown graphically in figure 1. Initially volume Q3-Q2 is exported. A subsidy is introduced which benefits foreign consumers and domestic producers, dropping the foreign price to P*s and raising the domestic price to Ps relative to the world price. Export volume then increases to Q4 – Q1. This hurts domestic consumers who face a higher price and the government looses the amount of the subsidy paid. The total loss (b,d,e,f & g) has two components. Firstly distortion losses, b due to under-

\(^{43}\) Agricultural Liberalisation and the Uruguay Round (1996) at page 31.
\(^{45}\) OECD (1996) at page 7.
consumption and d due to over production and secondly e,f,g which is the subsidy element given away to foreigners. This part of the loss arises because the exporting country uses the export subsidy to target the price in the importing country i.e. the price of the export to the importing country drops. This phenomenon gives rise to a terms of trade deterioration being $P_w - P^*_s$ multiplied by the export quantity $Q_4 - Q_1$.

It is necessary to bear in mind that this analysis of producer and consumer gains/losses assumes that gains to one group can offset losses to another at an equal social value to each group. It should be noted that in reality differing value might be ascribed to gains and losses of each group in recognising social values.

46 Agriculture (1993) at page 205.
Figure 1: EXPORT SUBSIDY

Key

D = Domestic Demand
S = Domestic Supply
Pw = World Price
Ps = Price in the exporting country after the subsidy
P*s = Price in the importing country after the subsidy
Q3 – Q2 = Export volume prior to the subsidy
Q4 – Q1 = Export volume after the subsidy
Ps – P*s = Magnitude of the subsidy
a+b+c = Producer gain
-a-b = Consumer loss
-b-c-d-e-f-g = Cost to government of subsidy
-b-d-e-f-g = Net welfare loss
-b = Efficiency loss under consumption
-d = Efficiency loss over production

(Source: Krugman & Obstfeld – adapted)
Stranger still is that those countries least willing to liberalise are those who have the most to gain thereby. General equilibrium simulations performed by the Australian Bureau of Agricultural & Natural Resource Economics (ABARE) indicate that global welfare gains from a further 50% liberalization of agricultural support would be in the order of US$ 53 billion in terms of GDP per annum by 2010, relative to the case where no change is made. They estimate that US$ 40 billion of this gain will accrue to developed countries precisely due to the existence of the high levels of, ‘distorting support’, in those countries. The results are provided in table 1.

<table>
<thead>
<tr>
<th>Country</th>
<th>Real GDP</th>
<th>Terms of Trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>479</td>
<td>-0.20</td>
</tr>
<tr>
<td>Argentina</td>
<td>312</td>
<td>2.69</td>
</tr>
<tr>
<td>Australia</td>
<td>189</td>
<td>1.74</td>
</tr>
<tr>
<td>Brazil</td>
<td>1,447</td>
<td>0.60</td>
</tr>
<tr>
<td>Canada</td>
<td>66</td>
<td>0.30</td>
</tr>
<tr>
<td>China</td>
<td>2,570</td>
<td>-0.27</td>
</tr>
<tr>
<td>European Union (15)</td>
<td>28,310</td>
<td>0.01</td>
</tr>
<tr>
<td>India</td>
<td>894</td>
<td>-0.17</td>
</tr>
<tr>
<td>Indonesia</td>
<td>64</td>
<td>0.06</td>
</tr>
<tr>
<td>Japan</td>
<td>8,980</td>
<td>-0.47</td>
</tr>
<tr>
<td>Malaysia</td>
<td>467</td>
<td>-0.15</td>
</tr>
<tr>
<td>New Zealand</td>
<td>264</td>
<td>3.41</td>
</tr>
<tr>
<td>Philippines</td>
<td>208</td>
<td>-0.40</td>
</tr>
<tr>
<td>Thailand</td>
<td>505</td>
<td>0.35</td>
</tr>
<tr>
<td>United States</td>
<td>1,830</td>
<td>0.40</td>
</tr>
<tr>
<td>Rest of Latin America</td>
<td>329</td>
<td>0.10</td>
</tr>
<tr>
<td>Rest of World</td>
<td>6,360</td>
<td>-0.32</td>
</tr>
<tr>
<td>Total</td>
<td>53,249</td>
<td>0.14</td>
</tr>
</tbody>
</table>

(Source: ABARE GTEM simulations)

Using the Global Trade Analysis Project (GTAP) model which is a standard multi-regional model currently in use by researchers in 30 countries.

This increases to US$123 billion if comprehensive liberalisation and dynamic effects are considered.

C. The Effects on Others

Based on the tabular analysis above, developing countries would benefit from liberalisation because they could better realise their agricultural comparative advantage. The developing group would produce and export to a greater extent thereby improving income. This would amount to a GDP benefit of approximately US$ 14 billion per annum by 2010.\(^{50}\) The analysis suggests that gains would be greatest in temperate products (grains), livestock and tropical produce (sugar cane). The gains would extend to downstream agri-processing industries which enjoy less support than their developed country counterparts.

In the table, all countries have improved GDP in the analysis, but some would face internal price increases due to the increase in the price of imports, the subsidies now having being flushed from the import price. This is reflected by a terms of trade deterioration. This raises fears that adjustment costs to liberalisation are too stringent. This may be a valid concern when the country has a narrow industrial base which thus provides few options for diversifying exports to redress the terms of trade. Furthermore they may have weak social safety structures to alleviate higher food costs. However, increased wage rates upon liberalization due to developing countries having a comparative advantage in labour,\(^ {51}\) could mitigate higher food prices.

One of the methods mooted to reduce the negative impact of subsidies on non-subsidising countries is to de-couple the payment of the subsidy from production. This means that the subsidy payment is not contingent on the volume of production. In theory a farmer’s production decision should be made with reference to equating marginal revenue with marginal cost or the return from each extra unit produced should exceed or equal the extra cost incurred in its production. In theory a subsidy given independently of these variables should be non- or minimally distortionary. Practically, however, it is impossible to disaggregate price support and marginal cost which influence production decisions and cause distortion. According to Tielu and Roberts,\(^ {52}\) ‘This is because of the additional effects on production of farm policy induced changes to farm income, wealth and risks – often ignored by commentators.

\(^{50}\) ABARE, Current Issues July 2000 at page 1.
\(^{51}\) ABARE, Current Issues July 2000 at page 3.
All of these effects are influenced by decoupled payments in ways that increase production. For example, one of the effects could be that subsidies increase income/wealth and can be structured to reduce the risk of income variability. In addition, ‘decoupled payments are often provided in a way that increases land values and are linked to the status of landholders as farmers. This would maintain land in farming that might otherwise be used for other purposes.’

Decoupling is thus not a valid excuse to continue a subsidy.

A common argument is that free trade is desirable only if all countries play by the same rules, the now very worn, ‘level playing field’. If firms in different countries are subject to different state treatment (regulations and assistance), then it is unfair (the argument goes) to expect the firms to compete in the international market place. For instance, suppose that the government of the EC subsidizes its wheat industry by giving grain companies large subsidies. In a net wheat importing country the wheat industry argues that it should be protected from this unfair foreign competition. Certainly, wheat producers would suffer, but consumers would benefit from the low price. Moreover, the gains of the consumers from buying at the low price would exceed the losses of the producers. The economic logic tells you to accept a subsidy. Foreign countries’ subsidies to its industry may be a bad policy for that country, but it is those foreign taxpayers that bear the burden. The importing country can benefit from the opportunity to buy wheat at a subsidised price. This approach to subsidies is explained by the trade scholar John H. Jackson as follows, “Entrepreneurs in a market economy, such as that of the US, often say that they can compete against ‘fair imports’ but they cannot compete against a foreign government’s treasury (and that) a buffering response such as countervailing duties on the imports that are subsidised, might be appropriate as a way to assist the importing country to maintain the relative purity of its economic system. This argument is so vague, it is even hard to articulate, much less prove.”

It is submitted that these arguments may be appealing for developed countries at near full employment with a diversified industrial and service base or for poor countries with virtually no agricultural sector at all. In the rich country viable switching opportunities and social safety nets exist and in the poor

52 ABARE, Current Issues August 1998.
53 Ibid.
54 The exact source of this tired term is unknown and its usage may be ascribed to the public domain.
country there is nothing to lose – a truly free lunch? The argument also requires that
the subsidies be sustainable or, put differently, be sure that the free gift is not from a
fair weather friend. The EC for example has at times reversed its wheat export
subsidies and taxed wheat exports.\textsuperscript{57} This ‘free gift’ concept is also not so appealing
when the agricultural sectors of countries that, but for the subsidies, would have
comparative advantage in agriculture are displaced from being exporters or attaining
self-sufficiency. This is compounded when the country is small and resource
endorsements strongly favour agricultural comparative advantage with no or few
attractive switching alternatives available. When unemployment is already high
displaced workers merely join the ranks of those uncatered for by viable switching
alternatives. At this stage there may be an unequal substitutability between the social
valuation of the producer losses and consumer gains in the type of analysis explained
in Figure 1. The fact that a market the size of the EC exports when it should be a net
importer clearly suggests that countries who would otherwise service those imports
are being denied their comparative advantage. In the ocean of trade these countries are
expected to navigate with a subsidy magnet attached to their compass of comparative
advantage. Under these conditions it is understandable that the attitude to reform
could be skeptical with a sense that a job in hand is worth two on the graph!

In presenting a summarised flavour for the above analysis the tables 2 & 3 (based on
modeling performed by the USDA’s Economic Research Service)\textsuperscript{58} reflect a focused
picture of the price and trade effects of liberalisation. It would appear that there is a
strongly enhanced effect brought about by the synergy of liberalising all 3 pillars and
that developing countries would have to liberalise themselves in order to benefit from
developed country liberalisation.

Italicics added.
Table 2: Effects on world agricultural prices of eliminating agricultural policy distortions, by country and policy.

<table>
<thead>
<tr>
<th>Elimination of:</th>
<th>World</th>
<th>U.S.</th>
<th>EU</th>
<th>Japan/Korea</th>
<th>LDC's</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage change from base price 1998</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All policies</td>
<td>11.6</td>
<td>1.8</td>
<td>4.4</td>
<td>1.5</td>
<td>2.3</td>
</tr>
<tr>
<td>Tariffs</td>
<td>6</td>
<td>0.7</td>
<td>1.5</td>
<td>1.4</td>
<td>2.3</td>
</tr>
<tr>
<td>Domestic support</td>
<td>3.6</td>
<td>0.9</td>
<td>2</td>
<td>0.2</td>
<td>N/A</td>
</tr>
<tr>
<td>Export subsidies</td>
<td>1.5</td>
<td>0.1</td>
<td>0.9</td>
<td>N/A</td>
<td>0</td>
</tr>
</tbody>
</table>

N/A = not applicable, no policy in use.
Numbers do not sum to row and column totals because only selected countries are included and there are interaction effects among policies.

(Source: Diao, Somwaru and Roe in ERS/USDA report AER 802.)

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TABLE 3 Developed and Developing Country Agricultural Policy Reforms: Effects on Developing Countries' Agricultural Trade

<table>
<thead>
<tr>
<th>Elimination of Developed Country Agricultural Policy Distortions</th>
<th>Elimination of developing country agricultural policy distortions</th>
<th>Global elimination of agricultural policy distortions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market access</td>
<td>Domestic support</td>
<td>Export Subsidies</td>
</tr>
</tbody>
</table>

(Percent change from base price 1998)

<table>
<thead>
<tr>
<th>IMPORTS</th>
<th>Value</th>
<th>Volume</th>
<th>Value</th>
<th>Volume</th>
<th>Value</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>0.6</td>
<td>-1.5</td>
<td>-1.1</td>
<td></td>
<td>24.6</td>
<td>20</td>
</tr>
<tr>
<td>Volume</td>
<td>0.2</td>
<td>-4.7</td>
<td>-2.7</td>
<td></td>
<td>17.1</td>
<td>7.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPORTS</th>
<th>Value</th>
<th>Volume</th>
<th>Value</th>
<th>Volume</th>
<th>Value</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>18.1</td>
<td>5.5</td>
<td>0.6</td>
<td>5.5</td>
<td>26.5</td>
<td></td>
</tr>
<tr>
<td>Volume</td>
<td>10.7</td>
<td>3.4</td>
<td>0.3</td>
<td>4.1</td>
<td>16.1</td>
<td></td>
</tr>
</tbody>
</table>

(Source: Diao, Somwaru and Roe in ERS report AER 802.)

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The report notes that overall, consumers in most countries are net beneficiaries from reform despite the rise in world focus prices because, “tariff elimination lowers the consumer price of imported foods, and the policy reforms produce overall economic efficiency gains in their economies. Some food importing countries face static welfare losses from full trade liberalisation because they do not have large initial policy distortions and they must pay higher world food prices.”59 What then is the bottom line for food importing and small exporting countries? The skeptics view as expressed by Ritchie and Dawkins is that, “Far too much time has been spent arguing over the predictions of computer models, none of which have come close to reality.”60 Probably the more accepted line would be that expressed by Goldin and van der Mensbrugghe. Based on the results of their modeling analysis called RUNS they draw the following conclusion, “For food importing countries and others, the effect of the Uruguay Round will depend ultimately on the actions of the individual countries themselves. The extent to which the potential benefits from trade reforms are passed on to domestic producers and consumers and the agility and flexibility of economies in responding to the opportunities offered by trade reforms will determine the level and distribution of the gains in any country and globally. The message of our analysis is that, although the Uruguay Round established a solid foundation for reform, liberalisation has been hesitant at best, particularly in agriculture, where reforms were not as wide spread as had initially been intended. Trade liberalisation should remain a top priority, particularly in OECD countries, where protectionist policies continue to undermine welfare and crowd out the exports and economic progress of developing and formally centrally planned economies.”61 The view is augmented by the later ERS modeling result62 which recommends that, “Global policy reform will lead to increased agricultural exports by many emerging and developing countries and improved terms of trade. Most of the potential benefits from policy reform will come from developing countries reform of their own policies.”

59 Ibid.
60 WTO Food and Agriculture Rules: Sustainable Agriculture and the Human Right to Food at page 15.
61 Assessing Agricultural Tariffication under the Uruguay Round at page 178.
D. Conclusion on the Economic Framework

The effects and exact distribution of the economic distortions are at times the subject of debate. What is however not in debate is the presence and undesirability of these distortions. The analysis indicates that there is sufficient economic concern to justify the pursuit of further liberalisation of the subsidies provisions within the A on A.

IV. THE LEGAL PROVISIONS

"In addition to the difficulties posed by the curious structure of the Agreement on Agriculture, the text of all its provisions, legally binding or otherwise, is exceedingly complex. Almost every general rule is subject to a number of refinements or exceptions, and most of these cannot be translated without recourse to additional information explaining their purpose and the meaning of special terms."

(Robert E. Hudec)

The following section sets out the source of the agricultural boxes of the A on A and the traffic lights of the ASCM with reference to The Legal Texts. It will also attempt some ‘translation’ needed in the quest for clarity as voiced in the opening quotation above.

A. The Agreement on Agriculture (Boxes)

1. Amber Box (Domestic Subsidies)

This type of subsidy to producers is considered as trade distorting and because of its distorting effect is subject to reduction in aggregate monetary value. Trade distortion is present when commodity prices or volumes of production differ from those that would be present in a competitive market. The most notable amber subsidies are artificial price support where the state buys commodities at a guaranteed floor price. The reduction of these measures was agreed to during the UR negotiations by way of what are called modalities. Modalities are the specific manner by which undertaken obligations are codified. These modalities were converted into schedules indicating commitments for each country. These form part of the Marakesh Protocol. The reduction methodology is performed mainly by way of the Aggregate Measure of Support (AMS) whereby product specific and general programs (such as price support) are combined, thus budgetary and non-budgetary items are covered. A flanking measure in respect of the AMS is the Equivalent Measurement of Support.

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63 The Results of the Uruguay Round of Multilateral Trade Negotiations The Legal Texts 1994.
64 Trading into the Future 2000 at page 18.
65 The Marakesh Protocol is the legal instrument which incorporates the member schedules into the GATT 1994.
(EMS) which quantifies the support where an AMS calculation cannot be done. Reductions of AMS/EMS are made with reference to a based period being the levels of support over the 3 year period 1986 to 1988.

Four exclusions are made from the Amber Box. Their defining feature is that they are removed from the Total AMS calculation and are thus not subject to reduction. The first exclusion from the Total AMS are de minimis values in respect of production value in Article 6(4). The second cut out in respect of the Amber Box is found in Article 6(2). This provision is a provision related to developing countries and might be termed a ‘Development Box’\textsuperscript{66}. The provision exempts 3 types of subsidies from reduction commitments. These are investment subsidies, input subsidies and payments to diversify from drug production.\textsuperscript{67} According to McMahon\textsuperscript{68} the Development Box is part of the Green Box provisions of Annex 2, ‘As part of governmental measures forming an integral part of agricultural and rural development programmes, Article 6.2 of the Agreement exempts three types of measure from the calculation of the AMS of developing countries, thus implementing the mid-term review agreement. The three measures are: generally available agricultural investment subsidies; agricultural input subsidies generally available to low income and resource poor producers; and, domestic support to encourage diversification from growing illicit narcotic crops. These three examples are similar, and can be added, to the list of ‘green box’ measures that are also exempt from the calculation of the AMS.’ Following from this line of reasoning Tangerman\textsuperscript{69} observes that ‘decisions as to which policies belong in the ‘green box’ as defined in Annex 2 will be relevant not only for measuring Total AMS and assessing whether commitments have been honoured. They are also relevant for the application of the Due Restraint provisions of Article 13 (‘peace clause’). If policies are found to be not in conformity with the ‘green box’ criteria, they are to some extent actionable under the relevant provisions of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures. Hence some attention is likely to be focused on decisions regarding ‘green box’ eligibility.’ The author supports this distinction pointed out by Tangerman. The analysis of the Development Box in the discussion of the Peace Clause (PC) later in

\textsuperscript{66} Current ‘Development Box’ proponents acknowledge the source of the (perhaps expanded) Development Box to lie within A on A Article 6(2). See Green and Priyadarshi (2001).

\textsuperscript{67} The other 2 exclusions involve Green Box and Blue Box provisions which will be discussed separately.

\textsuperscript{68} From Havana to Seattle: A History of Trade and Agriculture (2001) at page 49.
this paper\textsuperscript{70} does find that the Development Box is amber in character for purposes of PC actionability. Caution thus has to be exercised when providing too wide a colour categorization to the Amber Box exemptions. It may be more correct to envisage two classes of Amber Box being items subject to reduction and those not. This distinction from the Green Box is critical in assessing actionability.

A summary of the reductions that occur are as indicated in Table 4.

\begin{table}[h]
\centering
\caption{Numerical Targets for Cutting Agricultural Subsidies}
\begin{tabular}{|l|c|c|}
\hline
\textbf{Developed countries} & \textbf{Developing countries} \\
\hline
\hline
\hline
\textbf{Domestic support} & & \\
Total AMS cuts for sector & -20\% & -13\% \\
(base period: 1986 - 1988) & & \\
De minimis value & 5\% & 10\% \\
\hline
\textbf{Export Subsidies} & & \\
Value of subsidies & -36\% & -24\% \\
Subsidised quantities & -21\% & -14\% \\
(base period: 1986 -1990) & & \\
\hline
\end{tabular}
\textsuperscript{* LDCs do not have to make commitments to reduce subsidies (Article 15.2).
\textsuperscript{* Only the figures for cutting export subsidies appear in the agreement.
\textsuperscript{* Other figures were targets used to calculate scheduled commitments.
\textsuperscript{(Source: WTO - adapted)}

The main provisions of the A on A regarding the Amber Box are the following:

- Article 1(a): Defines the AMS.
- Article 1(d): Defines the EMS.
- Article 1 (f): Defines the implementation period.
- Article 1 (h): Defines the Total AMS.

\textsuperscript{69} An Assessment of the UR Agreement on Agriculture (1994) at page 51.
\textsuperscript{70} See Chapter IV.D.2 of this paper.
• Article 3 (1): Incorporation of Part 4 Schedules as part of the GATT 1994.
• Article 3 (2): Binds the Scheduled Commitments.
• Article 6 (1) & (3): Explains the reduction requirements under the scheduled commitments.
• Article 6 (4) (a)/(b): Defines the de-minimis exclusions.
• Article 7 (2)(a): Indicates the Amber Box as the default box for domestic subsidies.
• Article 7 (2)(b): Indicates that unlisted AMS curtails support to the de-minimus levels.
• Article 13(b): Due restraint.
• Annex 3: Sets forth the calculation methodology for the AMS.
• Annex 4: Sets forth the calculation methodology for the EMS.

2. Green Box (Domestic Subsidies)

Green Box measures are the opposite of Amber Box measures in that they represent non-trade distorting subsidies as a carved out exception of the Amber Box. Green here has the same connotation as the sense conveyed by the traffic light approach, in that, ‘green’, conveys a sense of acceptability. Green Box measures are not subject to reduction and may even be increased or added to. The criteria to be satisfied in order to qualify for the Green Box is the subject of Annex 2 to the A on A. The Annex provides a set of general criteria in paragraph 1 requiring the subsidy to be publicly funded, not constituting a transfer from consumers and not having the effect of producing producer price support. Thereafter follows a non-exhaustive list (paragraphs 2-13) which lists specific additional criteria in addition to the general paragraph 1 provision for the specifically identified measures. The illustrative list thus provides a sense of the shades of green that are considered acceptable. As Tangerman\(^{71}\) observes, “In principle one could have left the conditions for exemption from reduction commitments in (the) general form. However, it would have then been a matter of developing case law as to which measures qualify under these conditions. Negotiators have found it advisable to be more specific right at the beginning, and thus a long list of examples of policies was drawn up.”

\(^{71}\) An Assessment of the Uruguay Round Agreement on Agriculture (1994) at pg 38.
The provisions are not required to be disaggregated and may be provided in a commodity specific way. None the less a measure so provided would still have to meet the paragraph 1 criteria and, “have no, or at most minimal, trade – distorting effects.”

Items listed specifically in Annex 2 are the following:

- General Services.
  - Research.
  - Pest and Disease Control.
  - Training.
  - Extension and advisory services.
  - Inspection Services.
  - Marketing and Promotion.
  - Infrastructure.
- Public Food Security Stocks.
- Domestic Food Aid.
- Direct Payments.
  - Decoupled Payments.
  - Insurance and Safety Nets.
  - Natural Disaster Relief.
  - Producer retirement.
  - Resource retirement.
  - Investment aid for structural disadvantages.
  - Environmental Programs.
  - Regional Assistance.

The main provisions of the A on A regarding the Green Box are the following:

- Article 1 (a): Exclusion of the Green box from the AMS calculation.
- Article 1 (d): Exclusion of the Green Box from the EMS calculation.
- Article 6 (1): Exclusion of the Green Box from the reduction requirements.
- Article 7 (1): Indicates that compliance with the Annex 2 provisions is required in order to avoid reduction commitments and makes compliance an active duty.
- Article 13(a): Due restraint.
• Annex 2: Provides the basis for the exemption from reduction commitments i.e. the green box qualification criteria.

3. **Blue Box (Domestic Subsidies)**

The Blue Box represents a further carve out from the Amber Box. The Blue Box is set forth in Article 6(5). It applies to direct payments under production limiting schemes that are based on fixed areas and yields, or are made on 85% or less of the base level production or are made based on a fixed number of livestock. This box is exempt from the AMS determination. The Blue Box differs from the Green Box in that it is not decoupled in the sense of paragraph 6(b) of Annex 2 because the measures are linked to production. The reader will recall that the Blue Box represented a US/EC deal struck with the Blair House Accord. The result, as Josling observes, is that, “In this way, both the United States and the European Union escape the reduction commitment on major aspects of their domestic policy.”

This being said only 4 countries (EU, US, Norway and Iceland) notified Blue Box exemptions. In a sense the Blue Box could be seen as a transitional mechanism that had to be tolerated politically and that its value will terminate by the end of the Implementation Period.

The main provisions of the A on A regarding the Blue Box are the following:

- Article 6(5)(a): Defines the conditions for qualification as a Blue Box measure.
- Article 6(5)(b): Excludes Blue Box measures from the AMS calculation.
- Article 13(b): Due restraint which treats the Blue Box as Amber for actionability.

4. **Red Box (Export Subsidies)**

The A on A has prohibited the use of certain export subsidies on agricultural products within and outside of those specifically listed in part 4 of each Member’s schedule of commitments. The definition of an export subsidy in Article 1 indicates that 2

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72 See Chapter II of this paper.
73 Agricultural Trade policy: Completing the Reform (1998) at page 32.
74 Shirotori, Notes on the Implementation of the Agreement on Agriculture at page 136.
categories of export subsidy are provided for. The nature of these export subsidies thus has a red character in terms of the traffic light approach, at least partially in respect of both scheduled and unscheduled export subsidies. Some commentators have alluded to the, ‘red’, nature of these provisions although a colloquial term of Red Box has not developed. This paper will adopt the term. Those subsidies listed are then subject to reduction commitments in terms of both volume and value (refer to table 4). There are thus dual constraints to consider when ensuring that subsidisation is within permitted limits. However, once any one of the limits is reached the latitude remaining in the other is forfeited. For example if a country commits to maximum subsidies of $10 on 10 tons of wheat and uses the full $10 on the 1st ton of wheat exported, then the remaining 9 tons cannot attract any other subsidies. Conversely if $1 of subsidy was provided on the first 10 tons of wheat exported, then the remaining $9 cannot be attributed to any other tonnage. This procedure of listing and reductions has provided a clear indication as to what the allowable levels of directly listed export subsidies are. In this manner they intend to remove and replace the ‘equitable share’ problem in GATT Article 16(3). However, Josling observes that, “few would argue that these existing market shares are indeed equitable”. This being said Hudec finds that, “No one needs to wrestle with the normative meaning of ‘equitable share’. And no one has to establish any cause-and-effect relationship between the subsidy and actual trade flows. Compliance or violation are simply a matter of numbers.” The present author concurs that it was prudent to introduce the simplification as in the aforementioned statement. Article 9 provides a list indicating the minimum types of subsidies that must be included in schedules of reduction. The 6 listed Article 9 export subsidies are:

1. Direct payments contingent on export performance.
2. Export of government stocks at a price below domestic market levels.
3. Payments made on exports financed by government action.
4. Subsidies in respect of marketing costs and transport.
5. Internal transport at preferential rates for export goods.
6. Subsidy to a product contingent on that product being incorporated into another product, that other product being the export product.

75 For instance see Tangerman (1994) at page 65.
76 See Chapter VII.C.2 in this paper.
Table 5 indicates those countries that have undertaken scheduled export subsidy commitments.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>Number</th>
<th>COUNTRY</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>5</td>
<td>New Zealand</td>
<td>1</td>
</tr>
<tr>
<td>Brazil</td>
<td>16</td>
<td>Norway</td>
<td>11</td>
</tr>
<tr>
<td>Bulgaria</td>
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<td>Panama</td>
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<tr>
<td>Canada</td>
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<tr>
<td>Cyprus</td>
<td>9</td>
<td>Slovak Republic</td>
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<tr>
<td>Czech Republic</td>
<td>16</td>
<td>South Africa</td>
<td>62</td>
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<td>EU (15)</td>
<td>20</td>
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<td>Iceland</td>
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<td>Indonesia</td>
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<td>Uruguay</td>
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</tr>
<tr>
<td>Israel</td>
<td>6</td>
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<td>72</td>
</tr>
<tr>
<td>Mexico</td>
<td>5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: WTO

Read with Article 3(3) Article 9 prevents a member from providing any of the listed subsidies to a product not listed i.e. a product that was not subsidised in the base period. Subsidies of the type listed in Article 9 are therefore not allowed for new products. The list of export subsidies in Article 9 is extensive, however provision is made to provide export subsidies not listed. This can be deduced from Article 10(1) which refers to, ‘Export subsidies not listed in paragraph 1 of Article 9.’ It would however appear from Article 10(3) that even these unlisted subsidies are unacceptable when provided on export volumes above commitment levels. The wording used is, “no export subsidy, whether listed in Article 9 or not, has been granted in respect of the quantity of exports in question.”
Hudec is of the opinion that Josling, Tangerman and Warley present a, “very fine”, view of agriculture trade in their 1996 book, Agriculture in the GATT. Desta then notes the following from the book regarding the Josling et al view, “Some writers, for instance, conclude that << Contrary to the ‘old’ GATT … export subsidies are now prohibited in agriculture, except where indicated in Countries Schedules.>> This statement is largely but not entirely true. A word of caution should be added – it holds true only as regards the listed subsidies; the non-listed subsidies are not covered by the rule under Article 3(3). Subject to the anti-circumvention condition, Members are always free to use any subsidies that fall outside the list of Article 9(1) of the Agriculture Agreement.”

The present author would support Desta’s embellishment but submits that a further distinction of discipline in respect of non-listed subsidies is pertinent, that being the prohibition of their use above scheduled product undertakings (Article 10.3).

In the absence of Article 10(3) and by using a process of elimination, an unlisted subsidy provided in respect of a listed product would have been allowed within and over scheduled levels. A textual reading also seems to show that if you devised a subsidy different from those listed in Article 9, applied it to a product not listed on your schedule and ensured that it did not circumvent your other scheduled commitments; then such an export subsidy would be allowable. For example assume a country with no scheduled commitments for wheat. It would be acceptable for this country to provide an exporter credit (non Article 9 subsidy) in respect of all wheat exports. If the country did have scheduled commitments for wheat then it could not provide an exporter credit beyond its scheduled commitments. In this case the country which had bound itself is worse off than a country that did not bind itself. This textual reasoning is summarized in Table 6. These seemingly anomalous situations are however practically avoided by the result of the Appellate Body’s ruling in US-Foreign Sales Corporations which virtually bans all export subsidies by strictly interpreting circumvention. This case is discussed later in the paper.

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81 The notation << >> is quoting Josling et al from their pg 195.
82 Agricultural Export Subsidies Under the WTO “Agricultural Package”: A Legal Analysis (1997) at page 647.
83 The term is used here in a generic sense by way of example only.
The main provisions of the A on A regarding export subsidies are the following:

- **Article 1(e):** Defines an export subsidy.
- **Article 3(1):** Incorporation of part 4 schedules as part of the GATT 1994.
- **Article 3(3):** Limits Article 9 subsidies to scheduled volumes and values and prevents their application (at all) to unscheduled products.
- **Article 8:** Undertaking not to provide non-Agreement export subsidies.
- **Article 9(1):** Lists the subsidies that must be subject to reduction.
- **Article 9(2):** Provides flexibility to provide ‘overs’ in a given year as long as the total maximums scheduled are not exceeded.
- **Article 9(3):** Binds the extension in scope of export subsidies.
- **Article 9(4):** Exempts marketing and freight subsidies for Developing Countries.
- **Article 10(1):** Unlisted subsidies shall not be applied so as to circumvent listed subsidy obligations.
• Article 10(2): Commitment to develop disciplines for export credits.
• Article 10(3): Onus of proof of export subsidy provision is placed with the subsidiser.
• Article 10(4): Provides for conditions for the grant of food aid.
• Article 12: Relates to negative export subsidies i.e. export restrictions.
• Article 13(c): Due restraint.

B. Agreement on Subsidies and Countervailing Measures (Lights)

The ASCM provides a discipline on the use of subsidies and provides for the application of remedies against subsidies. The ASCM follows the traffic light approach\(^{84}\) of red light (prohibited subsidies), amber light (actionable subsidies) and green light (non-actionable). The ASCM covers industrial goods. It also covers agricultural goods in general terms but the A on A is lex specialis for agricultural goods and in these cases the A on A takes precedence over the ASCM.\(^{85}\) In order to understand the nature of the lights it is necessary to briefly take on board the definition of a subsidy in Article 1 and the meaning of specificity in Article 2.

A subsidy is defined as a financial contribution by direct transfer, forgone revenue or goods/service provision by a government or its trustee as well as income or price support. A benefit must be conferred upon the recipient by virtue of the contribution.\(^{86}\)

Once it is determined that a subsidy exists specificity is used to commence to categorise it into a traffic light category. Specificity is in relation to an enterprise or industry and exists if access is limited to certain of them individually or by designated geographical region. The contribution is non-specific if awarded on objective, predetermined criteria which apply automatically. It is possible to examine related circumstances to construe specificity even if the contribution appears non-specific on the face of it.

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\(^{84}\) See Chapter II of this paper.

\(^{85}\) Trading Into the Future (2000) at page 30 states that, “It applies to agricultural goods as well as industrial products, except when the subsidies conform with the Agriculture Agreement.”

\(^{86}\) Article 14 provides some guidance as to the definition of “benefit” for the purpose of countervailing duties.
1. **Red Light (Prohibited Subsidies)**

Part 2 (Articles 3&4) of the ASCM is relevant. Article 3 outlaws subsidies that are dependant on export performance or contingent upon local content requirements. These are automatically specific under Article 2(3). Article 3(2) provides that the ban is immediate i.e. there is no phasing out by reduction commitments like in the A on A. Annex 1 provides a non-exhaustive positive illustrative list of practices that are considered to be export subsidies.\(^{87}\) The annex describes 12 export subsides that are banned:

1. Export performance subsidy.
2. Currency retention schemes with an export bonus element.
3. Domestic transport costs on exports at better than domestic rates.
4. Provision of goods/services as export inputs at less than market rates.
5. Direct tax break.
7. Excess refund of indirect (value added) taxes.
8. Indirect tax break on inputs applied to produce export goods. The provision is further enumerated in Annex 2.
9. Excessive rebate of import duties on imported inputs. The provision is further enumerated in Annex 3.
10. Government supported export credit guarantee/insurance programs/exchange rate cover where premium rates lead to long-term losses for the scheme.
11. Government provision of export credits at less than the cost to the government. There is a grand-fathering provision in respect of OECD type export credit arrangements.
12. Any other payment from public funds in the sense of GATT Article 16.

Remedies available here are twofold. Firstly by way of Article 4 a shortened DSU procedure can be followed leading to the withdrawal of the subsidy or failing the withdrawal, authorised counter measures. The second recourse is to countervailing measures under Part V (Articles 10-23) of the ASCM, which would require an injury

\(^{87}\) Footnote 5 to Article 3(1)(a) refers to negatively listed items in annex 1, “Not constituting export subsidies”. Oddly no such measures are present in the Annex!
determination not needed in the first instance. However, Horlick and Clarke\textsuperscript{88} observe that, “Article 3 may be interpreted as only providing a list of programmes that are always deemed specific, without otherwise addressing whether such programmes are countervailable.”

2. \textit{Amber Light (Actionable Subsidies)}

Part 3 (Articles 5, 6 and 7) of the ASCM are relevant. These subsidies are neither prohibited nor condoned by the ASCM. The amber category may be challenged by way of its adverse effects on other members, but is acceptable if it has no adverse effect. This midway nature of the amber category gives rise to Jackson being of the view that, “It should not be surprising that most subsidies will fall under this yellow or amber category.”\textsuperscript{89} Article 5 indicates 3 types of adverse effects. Firstly injury to the domestic industry of another member. Secondly nullification or impairment of benefits under the GATT 1994. Thirdly serious prejudice which (according to Article 6.3) arises when the subsidy displaces the complainants exports to a 3\textsuperscript{rd} country or the subsidy causes price under cutting/suppression relative to a complainant’s product in a given market.

Remedies available here are twofold. Firstly by way of Article 7 a shortened DSU procedure can be followed leading to the removal of the adverse effect or withdrawal of the subsidy. The second recourse is to countervailing measures under part 5 (Articles 10-23) of the ASCM.

3. \textit{Green Light (Non-actionable Subsidies)}

The following discussion is provided as a matter of information as the Green Light subsidy is now defunct. ASCM Article 31 indicates that the green light subsidy would be reviewed after 5 years whereupon a decision by the ASCM Committee\textsuperscript{90} was needed to extend its application. The Committee could not agree to do this and the Green Light category fell away as of 1 January 2000.\textsuperscript{91}

\textsuperscript{88} The 1994 WTO Subsidies Agreement (1994) at page 45.
\textsuperscript{90} Established under ASCM Article 24.
\textsuperscript{91} This position was related by the then chair of the ASCM PGE at the World Trade Institute in January 2001.
Green light provisions are so named because they were thought to be of an innocuous nature, hence the word green conveys the sense of acceptability to proceed with the subsidy in the likeness of a green traffic light. Part 4 (Articles 8 and 9) of the ASCM describes the provision. Two categories are defined. Firstly in Article 8.1(a), those subsidies found to be non-specific under Article 2 and secondly in Article 8.1(b), 3 types of specific subsidy, which are deliberately exempted. The 3 types of specific subsidy are assistance for research activity, assistance to disadvantaged regions for development and assistance to adapt facilities to environmental regulations. There are detailed conditions applicable to these carve outs.92

Despite the fact that the green category is non-actionable, Article 9 indicates that in respect of the Article 8.2 carve out, action is none the less possible. In the event of the measure causing, “serious adverse effects”93, a member may at the discretion of the ASCM Committee94 obtain the remedy where the subsidising party must, “Modify this programme in such a way as to remove these effects,” or failing compliance, “take appropriate countermeasures.”95

The present defunct status of the Green Light has no impact on Article 8(1)(a) because a non-specific subsidy was exempt from action in terms of ASCM Article 1(2) in any event. The effect is felt in respect of Article 8(1)(b) where the listed provisions now become amber.

C. Agreement on Subsidies and Countervailing Measures Exclusion of Agriculture

The following analysis identifies the deliberate separations made in the ASCM between the subsidies provisions of the ASCM and the A on A. The ASCM specifically excludes the A on A in the following places:

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92 See ACM Article 8.2(a), (b) and (c). The complexity of the provisions is attested to by the fact that they require the help of 10 weighty footnotes to convey their terms.
93 ASCM Article 9.1.
94 Established under ASCM Article 24.
95 ASCM Article 9.4.
1. **ASCM Prohibited (Part 2)**

Article 3.1: “Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited.” Essentially the exception refers to export subsidies in part 5 of the A on A. The reference is not made to specific A on A sections. It is notable that the exception is not textually extended to the remedy for prohibited subsidies in Article 4.

2. **ASCM Actionable (Part 3)**

Article 5: The exemption is made for ASCM Adverse Effects. “This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.”

Article 6.9: This provision dealing with serious prejudice provides that, “This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.”

Article 7.1: This Article provides for the DSU remedy in respect of the ASCM part 3’s actionable subsidies. It states that, “Except as provided in Article 13 of the Agreement on Agriculture, whenever a member has reason to believe that any subsidy referred to in Article 1, granted or maintained by another Member, results in injury to its domestic industry, nullification or impairment or serious prejudice, such Member may request consultations with such other Member.”

Here each article (5, 6 & 7) of part 3 Actionable Subsidies are specifically excluded by reference to Article 13 of the A on A.

3. **ASCM Non-Actionable (Part 4)**

No A on A reference is made in respect of non-actionable subsidies.
4.  *ASCM Countervailing (Part 5)*

Article 10: The wording reads, “Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture.” The text here does not use the term, ‘except’, as in parts 2 and 3. It could appear that countervailing measures only differ in the manner of the investigation to be conducted. What the practical result turns out to be is that the investigation is identical for both agreements and is done according to the ASCM. What differs is the scope in applying the countervailing duty as discussed hereafter under the A on A Peace Clause.

In summary the provisions provide the sense that agriculture is a special case in relation to subsidies. The differences in the wording and scope of exclusion used in the ASCM feel somewhat clumsy. It is suggested that one article in the ASCM stating the relation to the A on A would be cleaner than the fragmented references at present. Such a clause might form part of Article 32 dealing with final provisions and could read as follows:

‘This Agreement applies to agricultural products as provided for in the Agreement on Agriculture except where the Agreement on Agriculture provides otherwise, in which case the Agreement on Agriculture shall take precedence over this Agreement.’ This would be valid if the present wording choice arose in the heat of the last minute drafting in the UR. However there may be a case to be made that the drafter deliberately used the present wording in anticipation of the expiry of the A on A Peace Clause. This is discussed later in the paper in chapter VII.C.1.

D.  *Agreement on Agriculture Exclusion of ASCM (The Peace Clause)*

The following analysis identifies the deliberate separations made in the A on A between the subsidies provisions of the A on A and the ASCM. The A on A specifically excludes the ASCM as follows:

The A on A makes cross-reference to the ASCM in respect of subsidies in one omnibus provision being Article 13 titled, ‘Due Restraint’. This due restraint
provision has colloquially been dubbed as the Peace Clause.\textsuperscript{96} The clause is essentially a shield from the actions available under the ASCM and the GATT 1994. From this we see that the A on A does not provide within its text for special actionability tools. Actionability for agriculture is sourced from the GATT 1994 and the ASCM. The ASCM provides for withdrawal or countervailing remedies (ASCM Parts 2, 3 & 5) while the GATT 1994 allows for serious prejudice or nullification complaints under Articles 16 & 23 respectively. The shield is however temporary and constitutes only a partial derogation from ASCM and GATT disciplines. The time bound nature of the Peace Clause (PC) is set to run with the implementation period according to the chapeau of Article 13. It should be noted that this implementation period is not the same as is used for reduction commitments but instead runs for 9 years (1995-2003) according to Article 1(f).\textsuperscript{97} It is notable that the implementation period for the PC extends beyond the overall implementation period for developed countries and is a separate concept which can be over looked on a first reading of the text.\textsuperscript{98}

The shield provisions apply as follows:

1. \textit{Green Box Article 13(a)}

The Annex 2 measures (domestic support not subject to reduction) are:

1. Non-actionable for the application of countervailing duties under ASCM part 5.\textsuperscript{99}
2. Exempt from action leading to withdrawal of adverse effects or subsidy withdrawal under the actionable subsidies provision of ASCM part 3, which specifically would mean ASCM Article 7 on remedies.
3. Exempt from action based on nullification or impairment complaints as provided under GATT Article 23. The shield is specifically for the so called ‘non violation’ complaint under GATT Article 23.1(b). It is notable that the

\textsuperscript{96} For example the term is extensively used on the website of the WTO.
\textsuperscript{97} Also see table 4.
\textsuperscript{98} For example the UNCTAD publication Positive Agenda and Future Trade Negotiations (2000) makes this error by stating on page 494 in note 226 that, ‘Article 13 of the A on A specifies that during the implementation period (ie until 1 January 2001)[…].’ The correct date is 31 December 2003.
\textsuperscript{99} Tangerman (1994) expresses the view that exempting the Green Box from countervailing action makes little practical difference because it may be difficult to show injury for most of these policies. However, as injury is determined by a domestic authority, countries may well find injury but then have difficulty defending the determination when facing a WTO challenge.
shield is not extended to GATT Article 23.1(a) violation section which covers, ‘the failure of another contracting party to carry out its obligations.’ The Green Box is thus susceptible to a direct violation complaint.

2. *Amber Box, Blue Box, Development Box and De minimis Subsidies Article 13(b)*

These domestic support measures are defined as those, ‘that conform fully to the provisions of Article 6.’ Article 6 covers the Amber Box which is subject to reduction commitments and gives an exemption from reduction to Green Box provisions (Annex 2), Development Box (Article 6.2), De minimis values (Article 6.4) and the Blue Box (Article 6.5). The Peace Clause provision makes particular reference to the Blue Box Development Box and de minimus items in Article 13(b) but does not specifically indicate the fate of Green Box provision, which essentially would be covered by the wording, ‘domestic support measures that conform fully to the provisions of Article 6’. We have already noted that the PC Article 13(a) provides in particular for the Green Box and by implication excludes it from Article 13(b). A possibility that can be raised is that the three non-reduction items can be green for the PC (Article 13(a)) if they satisfy the Annex 2(1) requirements (of being publicly funded without consumer transfer and not be supporting producer prices) and that they are amber for the PC (Article 13(b)) as stated in the text if they do not satisfy the Annex 2 requirements. This reasoning follows from the earlier discussion of the Development Box in chapter IV.A.1. It is submitted that the specific listing of these items for amber actionability under the PC means that the drafters did not envisage these items to be of a green nature despite exempting them from reduction commitments. In this way the ruling is less trade distorting than the amber standard but insufficiently mild to be considered minimally distorting hence green.

The shield provided for these provisions is:

1. ‘Due restraint’, needs to be applied before initiating a countervailing investigation. Exemption is provided from countervailing duties, ‘unless a determination of injury or threat thereof is made’, in which case there is not an exemption from countervailing duties. This provision is curious in that injury

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100 ‘Due restraint’ is not defined.
is a necessary and essential test when determining whether a countervailing duty can be imposed (GATT Article 16 and ASCM Articles 5 & 6). In effect the PC is not providing any protection that the ASCM does not already provide because in effect the ASCM also exempts the imposition of countervailing duties when no injury is present. As Hudec observes, ‘For trade-distortive measures that comply with the AMS obligation or are excused from it under special exceptions, there is no meaningful exemption from countervailing duties.’\(^{101}\) It is most likely that this wording is merely confirming the injury requirement of the ASCM and is not adding any functional requirement over and above that required by the ASCM. The only difference that thus remains is the, ‘due restraint’, requirement which would probably be of dubious value.\(^{102}\)

2. Exemption from actions based on adverse effects including serious prejudice (GATT Article 16 paragraph 1 and ASCM Articles 5 and 6) with the proviso that the measure should not grant support to a commodity over and above that granted in 1992. No specific reference is made to the remedy clause of Part 3 of the ASCM, being Article 7, which flows from the consideration of ASCM articles 5 and 6 which are specifically referred to. A better choice of wording may have been to refer to the relevant Part of the ASCM i.e. part 3 which would include ASCM articles 5, 6 and 7. This approach is followed for the Green Box in PC Article 13(a)(ii). The remedy thus shielded is as provided by the ASCM Article 7(8) and 7(9), being either removal of adverse effects, withdrawal of the subsidy or countermeasures. The PC thus allows a subsidiser to cause adverse effects as long as this is done with 1992 limits.

3. Exempt from action based on nullification or impairment complaints provided for under GATT Article 23. The shield is specifically for the so called non violation complaint under GATT Article 23.1(b). It is notable that the shield is not extended to GATT Article 23.1(a) violation section which covers, ‘the failure of another contracting party to carry out its obligations.’ The Amber Box et al is thus susceptible to a direct violation complaint. There is a condition to this shield, being that the measure should not grant support to a commodity over and above that granted in 1992.

\(^{101}\) Does the Agreement on Agriculture Work? Agricultural Disputes After the Uruguay Round (1998) at page 29.
3. **Export Subsidies Article 13(c)**

The provision applies to, ‘export subsidies that conform fully to the provisions of Part 5 of this Agreement, as reflected in each Member’s Schedule.’ This means that of the two variants of export subsidies in part 5 of the A on A only the listed Article 9 variety are shielded within scheduled commitments.

The shield is provided as follows:

1. The first shield is from countervailing duties. Essentially the provision is the same as the countervailing shield for the Amber Box (Article 13(b)(i)) discussed above, including the curiosity there noted. In the present instance the provision is subject to countervail but again conditional on an injury determination. The difference between the amber provision and the red provision is the following wording choice:
   - Amber: ‘exempt from countervailing duties’ and ‘unless a determination’.
   - Red: ‘subject to countervailing duties’ and ‘only upon determination’.

The meaning conveyed here seems to point to exports being more actionable than domestic support by way of using the stronger, ‘subject’, as opposed to the concessionary, ‘exempt’. Practically however it is difficult to find any difference between the operation of the two wording choices – in both cases the effect is that the ASCM’s countervailing provision applies.

In the export shield (Article 13(c)(i)) further elaboration is made on the injury determination by reference to, ‘volume, effect on prices or consequent impact.’ This is however a re-statement of the injury requirement present in ASCM Article 15.1 which reads, ‘A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidised imports and the effect of the subsidised imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.’

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102 For instance one could speculate whether due restraint was being exercised if an initiator decided to ‘sleep’ on the decision to commence countervailing action instead of doing it that same day.
The additional reference in the PC Article 13(c)(i) is thus still in essence invoking GATT Article 6 as interpreted by part 5 of the ASCM. It is thus contended that the export and domestic subsidy shields in the PC regarding countervailing duties are the same. Apart from the nuance in emphasis pointed out earlier, the wording used could have been the same in each case. The requirement that due restraint must be provided prior to initiating a countervailing duty investigation is also required for the export subsidies of Article 13(c).

2. Exempt from action arising from the use of prohibited and actionable subsidies under the ASCM. Specific reference is made to ASCM Article 3 (prohibited subsidies in the ASCM part 2) and Articles 5 and 6 (actionable subsidies under part 3 of the ASCM). The remedy clauses in respect of these references being ASCM Article 4 in respect of ASCM part 2 and ASCM article 7 in respect of part 3, are not referred to. However these remedy clauses contain the essence of the, ‘action based on’, the specified clauses and are thus relevant anyway. One wonders why the drafters did not follow the wording used for the like provision in the Green Box PC (Article 13(a)(2)) and simply refer to the relevant and fully encompassing Part of the ASCM i.e. ASCM part 2 and part 3 in the present case. The analysis suggests that the difference lies merely in that the same type of cross referencing is differently worded in Articles 13(a)(ii) and 13(c)(ii) and that no functional difference is intended by the choice of wording.

3. No exemption is provided from nullification or impairment action by way of GATT Article 23, neither for violation or non-violation complaints.

In summary then it is noticeable that the PC does not imply as much respite as the word ‘peace’ imbibes. Also, as one would expect from the colour coded approach, the protective nature of the PC diminishes through paragraphs (a), (b) and (c) as the Green, Amber, Red progression is made.
V. **SHEDDING ‘LIGHTS’ UPON THE ‘BOXES’**

“When I later walked out into the garden, in which the sun shone after a spring rain, everything glistened and sparkled in a fresh light.”

*(Dr Albert Hofmann – upon discovering LSD)*

The emergence of the colour coded lights (ASCM) and boxes (A on A) provides a visible sign that can be used as a benchmark of the closing of the gap between agricultural and industrial products. Given the foregoing exposition of the A on A boxes and the ASCM lights it is useful to identify certain interlinkages and divergences between the provisions. Table 7 provides a summary of these interlinkages and divergences.

Both agreements distinguish the various subsidies based upon a notion of how much economic upheaval they are likely to cause. In the A on A this is done by way of defining subsidies by their level of trade distortion. In the ASCM the notion of specificity is used to make the divide and specificity is a measure of trade distortion. Essentially, the reasoning goes, the more specific, the more distorting. The two legal texts thus draw from the same economic notion in general terms. This is indicated by the fact that broad horizontal Green, Amber and Red distinctions can be drawn in parallel for the two agreements. Table 7 shows that the ASCM is the cleaner agreement in that the A on A contains more clutter indicating its more convoluted nature due to exceptions.

A. **Red**

Both agreements take a disdainful (red) view of export subsidies. However the A on A legitimises listed export subsidies subject to reduction and non listed export subsidies applied in line with the Agreement, to some extent. This legitimisation appears to represent the stepped nature of agricultural reform. Tangerman notes that, “the realistic question in the UR was not whether export subsidies should be banned, but how one could reduce their use, and how this could be done such that rules are

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103 Refer to Table 6.
operationally effective.'\textsuperscript{104} From this follows the logic of converging the A on A export subsidy exceptions with the ASCM over time.\textsuperscript{105} Whether this is done with one step or with further steps is ancillary to the actual convergence.\textsuperscript{106} The end game scenario is succinctly encapsulated by Anderson et al when they state, ‘Nothing less than a ban on farm export subsidies is needed to bring agriculture into line with non-farm products under the GATT.’\textsuperscript{107}
**TABLE 7**

**Subsidy Rules in Industry and Agriculture**

<table>
<thead>
<tr>
<th>Type of Subsidy</th>
<th>ASCM Lights for Industrial Products</th>
<th>A on A Boxes for Agricultural Products</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GREEN</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>Non-specific domestic subsides and defined specific subsides under research, regional and environmental programs.</td>
<td>Minimally trade distorting domestic subsidies per Annex 2.</td>
</tr>
<tr>
<td><strong>AMBER</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>All other domestic subsidies i.e. not being green or red. (Incl. expired Green Box specifics).</td>
<td>Trade distorting domestic subsidies i.e. not green box safe.</td>
</tr>
<tr>
<td>Rule</td>
<td>Actionable. Subsidies on exports not dependant on export performance i.e. Domestic subsidy causing exports.</td>
<td>Export subsidies existing in the base period and some unlisted subsidies.</td>
</tr>
<tr>
<td></td>
<td>Partly actionable. To be reduced, except for <em>de minimis</em>, Blue Box, Development Box and unscheduled export subsidies.</td>
<td></td>
</tr>
<tr>
<td><strong>RED</strong></td>
<td></td>
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</tr>
<tr>
<td>Definition</td>
<td>Export subsidies.</td>
<td>Export subsidies not existing in the base period and in excess of scheduled commitments.</td>
</tr>
<tr>
<td>Rule</td>
<td>Prohibited.</td>
<td>Prohibited.</td>
</tr>
</tbody>
</table>

(Adapted and expanded by the Author from Tangerman 1994)

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108 This category includes the fishing, forestry and mineral sectors. See the Ad note to Section B of GATT Article 16 and Annex 1 to the A on A.
B. Amber

In both agreements the amber bay is the parking spot of last resort in that subsidies not specifically targeted as red and subsidies not definable for improved treatment under carve out provisions, gravitate to the amber category. Both are intended to cover trade distorting subsidies, the A on A by definition and the ASCM by specificity as a determinant of distortion. The A on A points out certain subsidies as being distorting by requiring them to be scheduled. The ASCM does a similar thing by directing that certain subsidies (in Article 2) are presumed to be specific. The agreements differ in that the listed distortions in agriculture are bound and subject to reduction whereas the ASCM has no such requirement. On the other hand the ASCM amber provision is fully actionable whereas the PC limits the amber actionability under the A on A. The idea of binding and reduction could be seen as being an added discipline in agriculture not available in industry, hence making agriculture stricter. Tangerman feels that this agriculture speciality is valuable. He says that, ‘in agriculture there are now quantitative rules for reduction (in the amber box) which do not have any parallel in the subsidies agreement. It would be counter productive to give up on these reduction requirements.’\textsuperscript{109} Indeed Anderson, Erwidodo and Ingco take up this concern in a novel manner which addresses the convergence of the amber provisions. They state their view as follows, ‘In one important sense the domestic subsidy provisions of the Agriculture Agreement go further than the subsidies Agreement, in that there is an attempt to measure the degree of assistance to agriculture (the Aggregate Measure of Support) and to negotiate commitments to reduce that AMS. On the one hand, joining the two agreements could lead to that quantitative approach being adopted for non-agricultural subsidies. On the other hand, experience with trying to reduce supports via that approach may be judged to be too difficult to be worth the negotiating effort. A rationale for the latter point of view is that in practice it is impossible to determine when subsidies are economically ‘legitimate’ in the sense of offsetting market failures or being the least-cost instrument to pursue certain non-economic objectives.’\textsuperscript{110}

The latter part of the observation is interesting as it hones in on the dilemma of determining the distortive extent of a subsidy. This is necessary when making up a list

\textsuperscript{109} Comment made in correspondence to the Author on 22 June 2001.
\textsuperscript{110} Integrating Agriculture Into the WTO: The Next Phase (2000) at page 16.
such as the AMS reduction commitment list in the A on A where the negotiators had to haggle over which subsidies are more distorting than others i.e. the Amber and Green Box distinctions. What results is a matter of compromise where the decreed level of distortion is perhaps not strictly in correlation with actual distortion levels. The next round in the game is then for players to try and shift their policies across the frontier between amber and green in order to obtain the reward of not being subject to reduction. As Anderson et al have suggested, ‘One of the possible benefits of getting countries to commit to reduce further their AMS is that it will encourage them to make more of their policies conform to the ‘green box’ criteria, the rewards for which are exemption from the AMS and avoidance of challenge.’

This is a good thing if the metamorphosis is really to a less distorting instrument but is not if the change merely succeeds in evading discipline on a truly distorting measure. Figure 2 provides a visual exposition of the policy choices made by WTO members in this regard. The consequence of the stated incentive would be a continued shift from the bottom right to the upper left of the figure. One could argue that the indicative substitute for distortion in the ASCM, specificity, removes the high negotiating cost of having to make the distinction decree as in the A on A and that it is easier to agree on the benchmark (specificity). In this case it would indeed be the case that one loses the ‘valuable’ reduction element of the A on A when converging on the ASCM amber provision but this loss is tempered by the offsetting value loss occurring in the Amber Box to Green Box migration which is incentivised to occur in the A on A. However, once the reduction commitments reach zero, there would be no remaining reason not to converge on the ASCM amber provision.

Another point of similarity is that in both agreements the amber provisions have certain carve outs to which less strict treatment applies for items that, except for the carve out, would remain amber. In the ASCM Article 2.1 provides for cases when subsidies will be non-specific, for example when access to the subsidy is not pertinently limited (ASCM Article 2.1(a)) or where the grant is subject to neutral, objective and automatic award criteria (ASCM Article 2.1(b)). In the A on A carve outs are present for de minimis values, the Blue Box and the Development Box.

The effect of the ASCM carve out is non actionability whereas the effect of the A on A carve out is exemption from reduction commitments while retaining the partial actionability of the Amber Box. A further form of natural decline of the A on A Amber Box is the number of WTO Members eligible to use it. According to Shirotori 28 countries specified positive base period values, with the bulk of developing country members indicating zero values. \(^{112}\) Josling and Tangerman claim that of the 28, no more than 12 are developing countries. \(^{113}\) The implication is that only a select 28 out of 142 members \(^{114}\) benefit from the A on A’s Amber Box. Josling and Tangerman continue that those members excluded from the Amber Box should be sufficiently catered for by the de minimis allowances and the Development Box (A on A Articles 6.4 and 6.2) and as such, ‘they should argue for large reductions and tight

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\(^{113}\) The Interests of Developing Countries in the Next Round of WTO Agricultural Negotiations (2000) at page 112.
rules, as this will primarily limit the distortions that developed countries can cause.'

The logic to be deduced is that a non amber club member using an amber tool (beyond de minimis) would be open to ASCM attack, hence why not push the club members into the same sphere of discipline.

C. Green

The official demise of the ASCM green light subsidy provision in Article 8 occurred on 31 December 1999. Although now being textually impotent, de facto an ASCM green category does exist in the ASCM. In the ASCM a subsidy is only actionable if it is specific. If a subsidy is found not to be specific, for instance under the neural, objective criteria method in ASCM Article 2.1(b), then it is not subject to action according to ASCM Article 1.2. If it is not actionable it is de facto acceptable or otherwise stated, green. In the A on A the Green Box is intended to cover items of, ‘no, or at most minimal, trade distorting effects,’ according to Annex 2 where the Green Box criteria are provided. Tangerman is of the view that these items would be specific (to an industry) under the ASCM Amber Light. This is indeed true in the sense that the Annex 2 subsidies are for the agricultural industry and hence would be specific in terms of ASCM Article 2.1. However, if the program is structured so as to satisfy the neutral, objective criteria requirements of ASCM Article 2.1(b) then the A on A Green Box item could in fact be non specific and hence also Green Light in the ASCM sense. More often though they would tend to be specific. What is notable is that the non actionability of the agriculture Green Box arises specifically due to the grace of the PC. Were it not for the PC this Green Box would indeed actually be amber to the extent of its specificity. This differs little from the defunct ASCM Article 8 where items, ‘which are specific’, are made non-actionable by ASCM Article 8.2 which states that the listed research, regional and environmental payments, ‘shall be non-actionable’. The ASCM special Green Light cases of Article 8.2 are also found in the A on A in Annex 2. The overlap is set out in table 8. The A on A Annex 2 listing is far more detailed than the ASCM with many more subsidies described. The descriptive nature of the A on A Green Box may in fact be hindering instead of

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115 The Interests of Developing Countries in the Next Round of WTO Agricultural Negotiations (2000) at page 112.
116 An Assessment of the UR Agreement on Agriculture (1994) at page 64.
assisting when the specificity alternative of the ASCM is considered. This is clarified by Shirotori in the following manner, ‘The major implementation problem with regard to the Green Box exemption is that each country may have its own interpretation of the criteria for Green Box measures. Developed country members of the Cairns group consider that the current criteria is too broadly defined that it allows countries to disguise domestic support measures which do not meet the basic principle of the Green Box criteria – i.e. having no or minimal trade distorting effect, and not providing price support to producers. The Agreement on Agriculture has no provision of a mechanism to assess conformity of those measures notified as Green Box measures.’

<table>
<thead>
<tr>
<th>Subsidy</th>
<th>ASCM Article</th>
<th>A on A Annex 2</th>
<th>Likeness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research</td>
<td>8.2 (a)</td>
<td>Paragraph 2(a)</td>
<td>ASCM more stringent</td>
</tr>
<tr>
<td>Regional Assistance</td>
<td>8.2 (b)</td>
<td>Paragraph 13</td>
<td>Similar</td>
</tr>
<tr>
<td>Environmental</td>
<td>8.2 (c)</td>
<td>Paragraph 12</td>
<td>Similar</td>
</tr>
</tbody>
</table>

(Source: Author's summary of The Legal Texts)

In summary, if the intention is truly that the A on A Green Box should be non trade distorting then in principle there should be acceptance of a test for distortion, being specificity under the ASCM as a plausible option. Indeed the absence of the PC would place the practices of the Green Box in the same position as the ASCM non-specific subsidies when the Green Light went out i.e. the green colour doesn’t fade if the provision is really non specific inferring non distorting.

Note that when examining another country under US countervailing practice, the US will consider any subsidy given to and used by all of the agriculture sector to be non-specific.


Failing this test the measure will be Amber Box (or one of its variants) and hence proceed to the second ASCM test after specificity, being adverse effects.
D. Blue

Essentially the A on A Blue Box is a special category of the Amber Box exempt from reduction commitments but subject to the same limited actionability as the A on A Amber Box. Tangerman and Josling consider that the Blue Box, ‘was a creature of its time, necessary to get agreement to go ahead with the broader Uruguay Round package. It is, however, still a somewhat awkward bilateral deal not appreciated in other parts of the world. Such an anomaly can surely be removed in the next round. The policies of the US and the EU themselves are changing for internal reasons. The US Fair Act goes further than ever before to make the payments to farmers decoupled from output and therefore compatible with the green-box. The EU may soon consider a similar move as a continuation of the reform stated in 1992, in order to make the CAP consistent with Eastern enlargement. The task for the Millenium Round will be made much easier if the EU and US have both modified their payments such that they meet the conditions laid down in the green box. The ‘blue-box’ can essentially be emptied and locked.\textsuperscript{120}

Anderson, Erwidodo and Ingco provide similar reasoning in their view that, ‘in particular the further de-coupling of farm income support measures from production as with America’s FAIR Act of 1996, may allow removal of the ‘blue box’ in the next round of talks.’\textsuperscript{121}

It is thus contended that the Blue Box re-merge with the A on A Amber Box where after it can be dealt with in the same manner as the Amber Box for convergence purposes. The suggestion should be facilitated by the fact that currently only 4 countries are entitled to make use of the Blue Box.

VI. THE CASE LAW

\textsuperscript{120} Issues in the Next Round of WTO Agricultural Negotiations (2001) at page 76.
\textsuperscript{121} Integrating Agriculture into the WTO: The Next Phase (2000) at page 10.
“With respect to subsidies on agricultural products the Agreement on Agriculture and the SCM Agreement reflect the latest statement of WTO Members as to their rights and obligations concerning agricultural subsidies.”

(Appellate Body in Brazil – Desiccated Coconut)

Article 19 of the A on A states that the, ‘Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.’ For present purposes it will be useful to examine the case law that has emerged with regards the clarification of A on A subsidies provisions, particularly as regards the relationship with the ASCM.122 In this regard two reports are of particular interest. These reports are Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products (Canada-Dairy)123 and United States – Tax Treatment For Foreign Sales Corporations (US-FSC).124

A. Canada Dairy

The dispute involved claims against Canada by the US and New Zealand. The Claimants alleged that Canada provided export subsidies for dairy products via internal arrangements on the pricing of milk and other dairy products in a manner contrary to export subsidy reduction commitments. The original panel concluded that Canada through Special Milk Classes had acted inconsistently with its obligations under Article 3.3 and Article 8 of the Agreement on Agriculture by providing export subsidies as listed in Article 9.1(a) and Article 9.1(c) of that Agreement in excess of the quantity commitment levels specified in Canada’s Schedule. The Appellate Body upheld the findings in the original panel report with respect to Articles 3.3, 8 and 9(c) of the Agreement on Agriculture. In respect of Article 9.1(a), the Appellate Body did not uphold the reasoning of the Panel, but it reserved its judgment on the question of whether there was a conferral of export subsidies within the meaning of Article 9.1(a). The Appellate Body recommended that Canada bring those measures found to be inconsistent with its obligations into conformity.125

122 The discussion is not intended to provide an analysis of all DSU cases regarding agriculture/subsidies and is thus confined to the issues at hand.
123 WTO Document series WT/DS103 and WT/DS113.
125 WTO Documents WT/DS103/RW and WT/DS113/RW at page 11.
The reasoning in the case is relevant. The panel examined A on A Article 9.1(a) dealing with direct subsidies including payments in kind and found that a ‘payment in kind’ was a ‘direct subsidy’. The AB found that this was not necessarily so and directed that the definition of a subsidy should be considered as inferred from Article 1.1 of the ASCM as further interpreted in the Canada-Aircraft case. The AB states at paragraph 90 that it is not the panel’s use of the definition of a subsidy under the ASCM for interpreting the meaning of A on A subsidies that it is reversing but rather the interpretive reasoning that the panel draws from the ASCM subsidy definition. As McMahon relates, ‘It was noted that the A on A does not contain a definition of subsidy, so, using Article 1.1 of the SCM Agreement, the Appellate Body stated that a subsidy involves a transfer of economic resources from the grantor to the recipient for less than full consideration.’ The definition of a subsidy under the A on A is thus drawn from the ASCM.

In paragraph 110 the AB states that ‘payments’ should be widely interpreted and include ‘revenue forgone’ as in A on A Article 1(c), stating that to find otherwise would favour form over substance. By making this wide interpretation the AB is indicating that it takes a strict view on circumvention. The AB is not prepared to entertain form over substance and in so doing confines circumvention of Article 9 scheduled subsidy reduction commitments. McMahon concludes that this approach by the AB was essential to preserve the integrity of export subsidy commitments.

A further examination of circumvention was conducted by the Panel under the A on A Article 10.1. The AB neither affirmed or reversed this reasoning as the AB did not have to consider Article 10.1 due to different prior reasoning in respect of the logic which had led the panel to Article 10.1. In paragraph 124 the AB declares this as, ‘completely moot’. This does not mean that the panel is necessarily wrong. It means that the reasoning is not relevantly required in the present case. It is however interesting to look at the panel’s reasoning as it may be relevant in a future instance. In paragraphs 7.18 and 7.19 the Panel confirms that the A on A takes preference over the ASCM in respect of agricultural products. In paragraphs 7.20 and 7.21 it confirms that export subsidies within ‘budgetary outlay and quantity commitment levels’, are

126 WTO Document: WT/DS70/AB/R.
permitted and that outlays beyond these limits are actionable under SCM Article 3, save for the PC. Linked to this is paragraph 7.29 where the panel confirms the distinction between A on A Article 9 and all other export subsidies. In respect of the ‘other’ export subsidies it states that A on A Article 10.1’s anti-circumvention provision applies at all times above scheduled reduction commitments. Unlike in paragraph 7.20 the Panel does not distinguish between the volume and value undertakings. This is confirmed in paragraph 7.133 which states that, ‘granting export subsidies ‘other’ than those listed in Article 9.1 in excess of the relevant reduction commitment level for the subsidised product concerned, is sufficient to conclude that Article 10.1 is violated.’ If one follows the reasoning that ‘other’ export subsidies are allowed only within reduction commitments (volume and value) then effectively these export subsidies are treated no differently from scheduled (A on A Article 9) export subsidies, meaning that the distinction between them is meaningless in practice. In effect they are also bound as if they had been scheduled. The Panel’s logic here is that merely because an ‘other’ export subsidy is provided over and above volume/value commitments, circumvention under A on A Article 10.1 exists i.e. is presumed. The Author finds the A on A drafting to be quite convoluted to get to this point. There is certainly a more direct and unambiguous textual wording to express this concept. The Panel’s view can be seen as a strong stance on anti-circumvention and could possibly be justified by reasoning that the Panel is taking a substance over form approach in order to be strict on export subsidies. It is, however, notable that in paragraph 7.122 of its report; the Panel does link this interpretation to, ‘the circumstances of this case’, being inter alia that both parties agree to the interpretation. The present author submits that this is the correct view, justified mainly on the premise that the reference to, ‘reduction commitment level’ in A on A Article 10.3 is interpreted to cover both quantity and value undertakings.

For the sake of completeness it is worth noting that this view could be challenged by taking an alternate view of A on A Article 10.3. Article 10.3 states that, “Any member that claims that any quantity in excess of a reduction commitment level is not subsidized must establish that no export subsidy, whether listed in Article 9 or not, has been granted in respect of the quantity of exports in question.” (Italics added.) The reference to ‘quantity’ is relevant in that when an A on A Annex 1 product is evaluated under a Member’s schedule of reduction commitments, 2 elements attach to the product. There is 1) a product quantity & 2) a product value beyond which export
subsidiisation is prohibited. By using the word ‘quantity’ as opposed to say the word ‘product’, only one element is singled out with the 2nd, the value element, being purposefully left out. The implication of this is that for an unlisted subsidy, use is limited to the quantity limit scheduled for the product, but on that product quantity any value of unlisted subsidy could be applied. This reading also means that the words ‘reduction commitment level’ from their context mean, ‘quantity reduction commitment level’. The reasoning would be diluted if ‘reduction commitment level’ was read separately from ‘any quantity in excess of’, that is without a continuum of meaning in the words. This alternate (separation) reading (as preferred in the previous paragraph) is that ‘reduction commitment level’ must be read alone and would thus encompass both quantity and value elements thereby neutralizing the challenger’s argument.

In the case of a listed subsidy this debate does not arise because A on A Article 3.3 specifically curtails both, “the budgetary outlay and quantity commitment levels specified.”

This point remained open as the AB report in paragraph 124 declared the Panel’s reasoning in respect of A on A Article 10.1 to be, ‘of no legal effect’.

Subsequently the original Panel was re-convened for compliance proceedings of the DSU under Article 21.5. The Panel makes certain observations regarding the applicability of the ASCM in paragraphs 6.91 to 6.102. The Panel states in paragraph 6.92 with respect to A on A export subsidies, that it considers, ‘that Article 9.1 of the Agreement on Agriculture and Articles 1.1 and 3.1 of the SCM Agreement can be said to be ‘closely related’ and ‘part of a logical continuum’. It notes that the ASCM Article 4.7 remedy requires withdrawal of the subsidy, being a removal or taking away thereof. The Panel then confirms that the A on A is carved out for special treatment in respect of export subsidies by reading A on A Article 21.1 and Article 8 with ASCM Article 3.1. In paragraph 6.99 the Panel reasons that because scheduled A on A export subsidies are permitted within commitments, when they are exceeded the

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129 The word ‘product’ is used in Annex 1 of the A on A when defining the coverage of the Agreement.
130 This reasoning would mean that in Table 6, the top right block would read, “Permitted within scheduled product quantity limits to any value (without circumvention).”
131 The AB did however have to address the matter in the FSC case which is discussed hereafter.
132 WTO Document: WT/DS/103/RW and WT/DS/113/RW.
ASCM Article 4.7 withdrawal remedy cannot be applied! The Panel continues that it would not be possible to, ‘particularly withdraw’, an export subsidy in respect of the part that exceeded scheduled commitments. The reasoning seems to be that the condoned and prohibited elements are linked. Hence they find that only a ruling to bring into conformity is feasible.

The following comment is offered with regard to the Panel’s approach. ASCM withdrawal is required for prohibited subsidies by Article 4.7. In agriculture, where a listed subsidy is provided in excess of schedule it is prohibited and is hence a prohibited subsidy in terms of the ASCM. However under the same subsidy scheme a non-prohibited subsidy can be provided because the within schedule subsidisation part of the payment is acceptable under the A on A. The same subsidy program thus provides two completely distinct subsidies. Withdrawal is required only of the excessive part and not of the whole subsidy program. The Panel’s use of the word ‘partial’ to describe withdrawal is misleading because a complete withdrawal of the prohibited subsidy is required by the ASCM while no action is needed for the acceptable subsidy. There are two distinct actions for two distinct subsidies under one general program. There is thus not a dilemma of having to try and partially remove a part of one unitary subsidy. Also, the Panel ignores the A on A PC which pertinently does not shield the prohibited portion of the subsidy from action under ASCM Article 3. In the PC the intent seems rather clear that the prohibited A on A export subsidy is actionable under ASCM Article 3, leading to an ASCM Article 4.7 withdrawal. The Panel in paragraph 6.10, ‘does not see how such a recommendation to partially withdraw would differ from a recommendation to bring the measure into conformity.’ It is suggested that conformity entails a cessation of subsidisation henceforth while withdrawal requires a retroactive solution in a refunding of the export subsidy. Precedent for this may be taken from the Article 21.5 phase of the Australia – Leather case133. In Australia – Leather the conclusion is that withdrawal is not limited to prospective action only but may encompass repayment of the prohibited subsidy.134

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134 It is notable that this case involved a one-off export subsidy payment and not a continual system as in Canada-Dairy. Also, the DSU Article 21.5 panel did not require the payment of interest, thus condoning a prohibited subsidy by way of an interest free loan contingent on export!
This decision thus allows for the recovery of an illegal export subsidy for the first time using a retro-active approach.\textsuperscript{135}

B. Foreign Sales Corporations (FSC)

The FSC ruling by the AB in February 2000 was made subsequent to the AB ruling in Canada – Dairy. US FSC’s are foreign corporate entities responsible for sales related activities concerning the sale of goods for export which are manufactured in the US. The FSC measure is a tax concession which exempts a portion of the FSC’s foreign source income earned on exports from tax in the US. To qualify for FSC status the corporations must be incorporated overseas, satisfy certain record keeping standards and make an election to be an FSC. The EC challenged the US measure both under the ASCM and the A on A. In agriculture the US scheduled quantity commitments for wheat export subsidies were challenged.

The initial panel found that A on A Articles 9.1(d) (which covers export subsidies for marketing agricultural products including handling, upgrading, processing costs, international transport and freight) and thus also Article 3.3 (provision of subsidies above commitments) were contravened by the tax measure. The AB found the link between marketing costs and tax to be too broad and reversed the Panel ruling. The AB states in paragraph 131 of its report, ‘if income tax liability arising from export sales can be viewed as among the ‘costs of marketing exports’, then so too can virtually any other cost incurred by a business engaged in exporting. This cannot be what was intended by Article 9.1(d). We, therefore, hold that income tax liability arising from export sales is not part of the ‘costs of marketing’ a product.’

The AB then proceeded to the circumvention question of A on A Article 10.1. The AB confirms in paragraph 136 of its report that the definition of a subsidy in the A on A is to be drawn upon from the ASCM. They then proceed in paragraph 138 to identify a further refinement of this A on A and ASCM linkage, ‘in disputes brought under the A on A, just as in cases under Article 1.1(a)(1)(ii) of the SCM Agreement, it is only where a government foregoes revenues that are ‘otherwise due’ that a

\textsuperscript{135} Not all scholars agree. Bourgeois (2001) feels that the case does not reflect the will of WTO Members. He states, ‘It is at any rate doubtful what WTO Members would find retrospective remedies
‘subsidy’ may arise.’ They add that in FSC the conferral of a benefit (being a necessary definition condition) is obviously present.

In paragraph 141 the AB assigns the same meaning to export contingency for the A on A as it has in the ASCM, ‘we think it appropriate to apply the interpretation of export contingency that we have adapted under the SCM Agreement to the interpretation of export contingency under the Agreement on Agriculture.’ The AB finds such contingency and that the export subsidy is not a listed A on A Article 9.1 variety.

A broad definition is given to ‘export subsidy commitments’ (paragraph 146-147) to encompass both scheduled and unscheduled products. This definition is distinguished from ‘reduction commitment levels’ which are taken to be narrowly applicable to scheduled products. Taken in terms of A on A Article 10.1 it means that an unlisted subsidy provided to an unlisted product is prohibited because it circumvents the requirement of A on A Article 3.3 that a listed subsidy should not be given to an unlisted product, or in essence the unlisted subsidy is achieving what the listed subsidy is not allowed to. Thus an unlisted subsidy may not be used to circumvent on either a listed or unlisted product for which an A on A Article 9.1 subsidy has been scheduled. Paragraph 146 is worthy of a full quotation as an example of nimble argument: ‘Under the second clause of Article 3.3, Members have committed not to provide any export subsidies, listed in Article 9.1, with respect to unscheduled agricultural products. This clause clearly also involves ‘export subsidy commitments’ within the meaning of Article 10.1. Our interpretation of this term is confirmed by the title of Article 9, which is ‘Export Subsidy Commitments’. Consistently with our reading of that term, Article 9.1 relates both to (1) the commitments made for scheduled agricultural products, under the first clause of Article 3.3, and to (2) the general prohibition, in the second clause of Article 3.3, against providing export subsidies listed in Article 9.1 to unscheduled agricultural products.’

The AB reasons in paragraph 148-149 that by making an export sale, entitlement to the FSC tax credit arises and that there is no limit to the amount to be benefited from, both on scheduled and unscheduled products.
In paragraphs 150 to 152 the AB provides its view on circumvention under Article 10. It uses as its barometer of effect the transfer of the same economic resources. By this is understood that any unscheduled (non Article 9) subsidy which is able to convey export subsidy value to any (listed or unlisted) product to the same extent that an Article 9 export subsidy could, is guilty of circumvention or even more readily, the threat thereof. The implication of this strict interpretation of circumvention effectively bans the use of any export subsidy (listed or unlisted) except as within volume and value allowances in part 4 of each Member’s schedule. With reference to our earlier discussion of A on A export subsidies, it means that the bottom right corner of Table 6 effectively becomes prohibited because of the fact that there is, one could almost reason, a presumption of circumvention. Further, the nature of the A on A 9.1 subsidies becomes of little relevance as long as one is able to make the ‘transfer of the same economic resources’ connection. As the transfer of resources is exactly what a subsidy is, this should not be difficult to do. Put differently, if one fails to prove that a given subsidy is a listed subsidy then it is automatically an unlisted subsidy and unlisted subsidies are likely (to the point of presumption) to circumvent a listed subsidy when resources are provided to the recipient.

McMahon declares that, ‘The decision of the Appellate Body in this dispute is welcomed not only because of its analysis of Article 10.1 A on A but also because it confirms the intimate link between Part V of the A on A and the SCM Agreement.’ Indeed for present purposes the case is a clear stride to the convergence of the A on A and ASCM in respect of export subsidy disciplines and a victory for opponents of export subsidies. The final word on US compliance with this decision is pending but as Stehmann observes, ‘removing an export tax incentive such as the FSC, which is very popular among big US corporations, will become a difficult exercise.’

VII. EXPIRY OF THE PEACE CLAUSE

137 FSCs under the WTO The Panel Ruling on Export Subsidies (2000) at page 154.
“The next step on the road to the integration of agriculture into the WTO may be more difficult (and possibly smaller) than the step that preceded it.”

(William A. Kerr)

This chapter links up with the earlier discussion of the A on A’s PC in chapter IV.D. We recall that the protection offered under the PC to agricultural products from actions under the GATT 1994 and the ASCM expires on 31 December 2003. The present A on A Article 20 built-in negotiations do not have a deadline by which they should be concluded. By nature this dilutes the political impetus to progress the negotiations with any sense of urgency. However the expiry of the PC does provide some deadline within the wider A on A negotiating context and thus will be a driver within the agriculture negotiations up to the end of 2003. For present purposes it will be considered whether the expiry of the PC brings any impetus to bear on a closer convergence of the A on A and the ASCM. The chapter commences to examine the boxes in the sequence found within the PC being green, amber and red.

A. Green Box Protection Expiry

The Green Box subsidies of A on A Annex 2 are required to be non or at most minimally trade distorting. By nature these items are ASCM specific but the UR logic was that they should not create adverse effects. So a Green Box subsidy should be a safe haven under the A on A (being non trade distorting) and be a safe haven under the ASCM by not creating adverse effects. It is thus notable that even under the PC, the Green Box can be challenged under the A on A itself if it can be shown that the measure is more than minimally distorting. Under the PC Article 13(a)(i) and (ii) the exemptions from action from countervailing duties and ASCM Part 3 action are thus not exemptions for measures not in full conformity with Annex 2. The change on PC expiry will be that the A on A Annex 2 compliant subsidies can be challenged. The challenger will find the Green Box measure to be specific and thus within the domain of the ASCM actionable amber category. The Green Box’s true test then follows. The test is that if the measure is really non trade distorting (A on A Annex 2) then no adverse effect should follow from ASCM Article 5 and no injury should be present.

138 Agreement on Agriculture chapeau to Article 13 Due Restraint.
for countervailing purposes in ASCM part 5. The interesting scenario will be where
the measure is Green Box compliant under the A on A Annex 2 by way of having a
minimal trade distorting effect (as opposed to no distorting effect) and the minimal
distortion is sufficient to give rise to an adverse effect under ASCM Article 5. Thus if
the measure is truly green a challenger will have a difficult time tackling a Green Box
subsidy after the PC expires. This being said, to the extent that countries may be
hiding amber measures within the Green Box i.e. making an illegal migration from
the bottom right to the top left of Figure 2, the PC expiry should hold some threat.

With regards the expiry of the non violation protection in Article 13(a)(3) a challenger
could now use this attack. However it would be difficult to make a case as regards an
infringement of UR expectations because clearly at the time of negotiation it was
expected that the Green Box would constitute an open ended safe haven for
agricultural policy. The safe haven expectation would again be subject to the
measure being at most minimally trade distorting and absent of adverse effects such
as injury.

B. Amber Box Protection Expiry

In chapter IV.D.2 it was noted that the Article 13(b)(i) shield against countervailing
duties appeared in form to provide protection but in substance the Amber Box is
presently subject to ASCM Part 5 countervailing action. The due restraint
conditionality will fall away on expiry of the PC removing the only real distinction
between the PC and standard countervailing action. The extent to which a flood of
countervailing actions ensue on 1 January 2004 will be an ex post indicator of the
extent to which Members are presently ‘duly restraining’ themselves.

In Article 13(b)(2) ASCM action under Articles 5 and 6 could presently be applied if
support exceeds 1992 levels on a commodity specific basis. On expiry of the PC the
1992 reference is no longer relevant as a benchmark. Its work is done and it is retired.
Post PC, Amber Box measures within 1992 levels loose their shield. It is notable that
presently there is some difficulty in determining whether the 1992 benchmark is being
observed. At the meeting of the WTO Committee on Agriculture held on 28 and 29

\[139\] Recall that the Green Box is not capped and may be added to by Members.
June 2001 Argentina pressed the EC to provide data for 1992 for specific cereals under the Blue Box. The EC stated that it did not have a break down for individual cereals and that in addition it was not required to notify these figures. The expiry of the PC should relieve this administrative challenge for the EC. After the PC, the overall non product specific AMS binding in Article 6(1) still remains but no reference is made to this level in the text of the PC. In ASCM Articles 5 and 6 we find the wording, ‘This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.’ If actionability in the A on A is approached from the ASCM direction would the above wording exclude the ASCM’s applicability? The answer must be no. The applicability of ASCM Articles 5 and 6(9) is withheld as provided by the PC. If the PC has expired then the non applicability’s link to the A on A dissolves and by reverse induction dissolves the carve out effect of the ASCM’s Article 5 and 6.9 links. This means that Amber Box measures within reduction commitments will have to face the risk of ASCM Part 3 action. From our previous analysis we know that the Amber Box is trade distorting, hence the requirement that subjects it to reduction. Its measures are thus likely to attract evidence of adverse effects under the ASCM. This exposure may be the strongest effect of the PC expiry. As regards Article 13(b)(iii), the same reasoning regarding the 1992 support levels of Article 13(b)(ii) is valid. A non violation complaint would be more easily entertained than was the case with the Green Box as the nature of the Amber Box (being distortionary) should have invoked some expectation of future difficulty at the time of negotiation.

C. Red Box Protection Expiry

1. Red Light aspects to the Peace Clause

Article 13(c) of the A on A PC provides that export subsidies within reduction commitments for export subsidies are shielded. It would appear by default that unlisted subsidies whether or not within commitment levels are not presently shielded by the PC. The position on expiry of the PC is the same as discussed above for the Amber Box regarding countervailing duties. Article 13(c)(ii) of the PC exempts the within schedule export subsidies from actionability under both Part 2 (prohibited

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subsidies) and Part 3 (actionable subsidies) of the ASCM. This paper noted earlier at the end of chapter IV.C.4 that the ASCM address the exclusion of the A on A differently in ASCM Part 2 and Part 3. It was observed that this was either an 11th hour drafting job or held a special implication on the expiry of the PC. To define the implication recall that for the Amber Box the dissolution of the PC meant that the specific ASCM references to the PC in ASCM Articles 5 and 6 were rendered mute by the process of reverse induction thereby leaving the A on A susceptible to ASCM action. ASCM containment was contingent on PC validity and expiry of the PC changed this containment into applicability. This was due to the very specific reference to the PC in ASCM Articles 5 and 6. This position applies equally to the Red Box references to ASCM Articles 5 and 6.

With regards the PC Article 13(c)(ii)’s reference to ASCM Article 3 the position may be different. In ASCM Article 3.1 the text reads, ‘Except as provided in the Agreement on Agriculture the following subsidies within the meaning of Article 1, shall be prohibited.’ There is no reference to A on A Article 13 specifically. This wording means that if the A on A provides otherwise the subsidy will not be a prohibited subsidy under the ASCM. Reading A on A Part V Article 8 it is stated that members undertake, ‘not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Members schedule.’ This could be interpreted as meaning that if a member does ‘provide otherwise’ and this is per schedule then the practice is acceptable. This would equate to a case of ‘except as provided by the A on A’ in the parlance of ASCM Article 3.1. The implication of this line of reasoning is that A on A within commitment export subsidies are not ASCM prohibited and thus not subject to the withdrawal remedy as set forth in ASCM Article 4.7. This is the effect of the wider scope of the cross reference to the A on A in ASCM Article 3.1 as opposed to the more specific references to A on A Article 13 in ASCM Articles 5, 6.9 and 7.1. Thus A on A scheduled subsidies will not be prohibited on the expiry of the PC but will be ASCM amber for actionability. Non A on A scheduled export subsidies remain ASCM Red Light, as they presently are, after the PC expires. This differs from the Amber Box where the within schedule amber subsidies and the above schedule ones become ASCM amber actionable across the board. This is indeed a curious position given the acceptance that export subsidies are the most frowned upon breed of subsidy as
indicated by its red label\textsuperscript{141} both in the ASCM and A on A contexts. Given the swinging hatchet approach to agricultural export subsidies taken by the AB in US-FSC, it is difficult to see the toned down actionability provision surviving beyond the first post PC AB decision.

2. \textit{GATT Article 16(3) Equitable Share}

A further dimension to consider is the PC application to GATT Article 16 in A on A Article 13(c)(ii). The Article was originally drafted to limit the use of export subsidies but it made a notable exception as regards export subsidies on primary products. Article 16.3 states that, ‘such subsidy shall not be applied in a manner which results in that contracting party having more than equitable share of world export trade in that product’ \textsuperscript{142}. The clause was not much used until the surge of European exports in the late 1970’s. Brazil and Australia brought cases against the EC on sugar exports in 1978 and the US on wheat flour in 1981. No challenger was able to prove a conclusive case of the subsidiser having attained an inequitable share of world trade. The problem is that the action needs to prove market effects in markets that (at least of sugar and wheat) were so distorted that there was no clear benchmark of the equity requirement. As Hudec points out, ‘no one had any chance of proving what anyone’s normal share would be.’ \textsuperscript{143} The benign nature of this clause led the way to remedies outside of GATT Article 16(3), ‘the United States decided that the only way to resist the EC subsidy program was to engage in subsidy wars, which the US did to the considerable discomfort of non-subsidising 3rd country exporters.’ \textsuperscript{144} Hudec’s conclusion is that, ‘The new rules on Export Subsidies actually supplant the old GATT rule in Article 16(3).’ \textsuperscript{145} He finds that this ‘supplanting’ is done by the operation of the PC in Article 13(c)! It would thus follow that an expiry of the PC reverses this ‘supplanting’. The view that GATT Article 16(3) is not the most flattering provision within the trading system is shared by other authors. Hathaway and Ingco are of the view that, ‘Over the years the equitable – share concept had proven useless in practice and thus there was no effective GATT discipline over the

\textsuperscript{141} With no disrespect to the Johnnie Walker trademark.
\textsuperscript{142} The historical context of this clause is discussed in Chapter II. Australia managed to prove in a 1958 case that France had gained a more that equitable share of the world wheat and wheat flour market, the only successful application of the clause ever.
\textsuperscript{143} Does the Agreement on Agriculture Work? Agricultural Disputes After the Uruguay Round (1998) at page 10.
\textsuperscript{144} Ibid.
use of export subsidies for agricultural products.' It thus appears from the weight of opinion that the re-emergence of GATT Article 16(3) as follows, ‘In practice, the term has proven essentially meaningless, as attempts at enforcement within the GATT framework have demonstrated. Moreover, the concept of ‘equitable share’ is fundamentally contrary to the idea of market access that is a hallmark of the GATT. To the extent that the term has any meaning, it suggests an approach whereby the world market is allocated among current participants.’

It thus appears from the weight of opinion that the re-emergence of GATT Article 16(3) from beneath the umbrella of the PC leaves the opponents of agricultural export subsidies holding a pea-shooter at the battle of Armageddon. The sense purveyed is that the pursuit of a remedy using the clause will probably leave the subsidiser smirking amiably while the opponent squanders resources in what is commented to be a highly questionable chance of success.

However, GATT panels were actually able to match the timing of the introduction of a new subsidy and an increase in market share but were unable to convince themselves of causation in linking the events. It is worth recalling that these findings were made within the context of the former GATT dispute settlement procedure where panel’s realised that their determinations could be blocked. It is mooted that under the present WTO DSU the Appellate Body may feel less constrained in effectively interpreting ‘equitable share’. In this lies the possibility that GATT Article 16(3) may yet have some resilience. Four factors can be cited to support this easing of interpretive constraint.

Firstly, the revised DSU under the WTO has essentially freed the AB of the blocking concern present under the GATT procedure. Secondly, the AB has been careful to point out that texts should not be interpreted as a nullity and must be assigned meaning. It was for instance indicated in the case US-Reformulated Gasoline that, ‘an interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to inutility.’ Thirdly, the AB has not shied away from interpreting economic concepts within the WTO’s legal framework. The novel concept of the ‘Accordion of Likeness’ and its link to the ‘elasticity of substitution’ in

145 Ibid at page 27.
146 Agricultural Liberalisation and the Uruguay Round at page 30.
the case of Japan-Alcoholic Beverages is a notable example of this.\textsuperscript{149} Fourthly, the AB is not keen to relegate the GATT when a WTO agreement is also present but rather prefers to interpret joint and simultaneous application. For instance, the AB clearly established in Canada-Periodicals that the GATT and the GATS may be concurrently applicable to the same set of facts, that they co-existed and that one does not override the other.\textsuperscript{150} This reasoning could equally apply as between the GATT and the A on A for the present discussion.

In view of the above reasoning it is mooted that GATT Article 16(3) has the potential to still be a contender upon expiry of the A on A Peace Clause.

\textbf{VIII. CONCLUSION}

\textsuperscript{148} WTO Document: WT/DS2/R at paragraph 23.
“Countries which have substantially greater economic power in the world should recognize that they owe the world trading system an additional obligation of responsibility not to use that power merely because they can get away with it.”

(John H. Jackson)

The agenda built into the Agreement on Agriculture embodies a clear mandate for further reform of agriculture in the direction of other WTO disciplines. This sense is aptly purveyed by Tangerman and Josling, ‘The next round of talks will be in large part a continuation of the same process of liberating world markets from the distorting influence of market interventions pursued for several decades in industrial countries. These policies themselves are broadly acknowledged to have failed, not just by academic economists extolling free markets but by politicians and farm leaders who realise that in the long run agriculture succeeds where it satisfies market demand rather than relying on government purchases or hidden consumer taxes. A competitive agricultural sector can be a significant asset, but an uncompetitive industry is a continual drain on government financial resources and a source of tension in trade relations.’ The history in chapter II indicated that agricultural and industrial subsidy disciplines have a common history within the GATT. This is probably most clear in the forerunner to the Agreement on Subsidies and Countervailing Measures, the Tokyo Subsidies Code which covered agricultural products together with the industrial counterparts.

The adverse economic effects of agricultural subsidies are hardly at question. There is a broad recognition that welfare gains are ripe for realisation upon further liberalisation with some distributional debate which will have to be addressed. The distortive economic nature of subsidies is linked in degree to the broad colour coding of red, amber and green with the actionability of each grouping, linked to the level of undesirability in respect of distortion of the underlying subsidies.

There is a close parallel between the red and amber categories in that in both the A on A and the ASCM it is clear that the adverse consequences of these subsidies can and should be actionable. The agricultural Green Box is the element that will require the closest attention. For the present the agricultural Green Box could fill the perhaps

\[150\text{ WTO Document: WT/DS31/AB/R.} \]
temporary gap left by the demise of the ASCM Green Light category upon a convergence. For the present even the hardiest reformists have to recognise that the will is not yet present to close the Green Box. For instance Anderson, Erwidodo and Ingco, concede short of Green Box elimination stating that, ‘efforts to tighten the ‘green box’ criteria could be made, so as to reduce the loopholes they provide for continuing output increasing subsidies.’\textsuperscript{151} For the present agricultural negotiations there should at least be an improved stringency on Green Box categorisation. Poorer countries would do well not to make a well intentioned re-opening of the Green Box for Development Box concerns lest the Developed nations hijack the process and further inflate the Green Box to the detriment of poor countries. Poor countries should focus instead on addressing their concerns separately as Special & Differential Treatment which they can reserve exclusively for their own benefit. The Green Box leaves one with a sense of Winston Churchill without the inspirational flavour in his words, ‘We shall not flag or fail. We shall go on to the end’.\textsuperscript{152} Looking beyond the immediate, the defunct ASCM Green Light provides hope. The Green Light category was legitimate in its time as an interim comforter, the interim nature confirmed by its expiry. The expiry arose in the absence of a clear will to renew it which is indicative of the lack of a true underlying need for the measure. A lack not necessarily of the need for green subsidies as such, but certainly the lack of need to shelter these subsidies from legitimate sanction. In the long term, of course governments will have legitimate policy concerns and they can and should attend to these without inflicting misery on their less affluent trading partners. The most suitable way to accommodate these policies is via an Amber Light Box which allows the use of a subsidy while keeping an honest motivation i.e. the measure faces action only when it inflicts misery on another.

Following from this it is not surprising that the current case law has provided a wealth of interactive interpretation of the ASCM upon the A on A. Convergence means more discipline and the Appellate Body has been strong on discipline especially as regards their scathing interpretation of circumvention. Interpretation seems to indicate a continuum of purpose between the Agreements and this continuum could logically support a convergence.

\textsuperscript{151} Integrating Agriculture into the WTO: The Next Phase (2000) at page 10.
\textsuperscript{152} The Quotable Churchill at page 36.
We would do well to recognise that the incentive is to circumvent subsidy commitments; therefore provide as little facilitation of this circumvention as is possible – fewer exceptions mean fewer loopholes. Anderson, Hoekman and Strutt are of the view that, ‘governments and interest groups will always be able to identify instruments that are not subject to multilateral disciplines to pursue their aims.’

Remember that if we do get the rules wrong the market merely exposes the futility of the effort, as Randy Green succinctly points out, ‘Market fundamentals trump government policies over the longer term and even the intermediate term. That is not an argument for minimalist government. It is an argument for a degree of humility in assessing (and selling) both the merits of past trade agreements and the potential of future ones.’

The expiry of the Peace Clause removes particular mandated differences between the A on A and the ASCM. In a sense the Peace Clause has merely been an interim wedge in respect of an already existing convergence of the Agreements. The Green Box and Amber Box will be particularly affected by the expiry of the Peace Clause.

In sum, the finding of this paper is that it would be a logical progression to bring the subsidies provisions of the Agreement on Agriculture under the provisions of the Agreement on Subsidies and Countervailing Measures. What now remains is to muster the political will to seize the hope that lies at the bottom of Pandora’s Box. Then, in the words of Nelson Mandela, ‘would history and the billions throughout the world proclaim that it was right that we dreamt and that we toiled to give life to a workable dream.'

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154 Recall GATT Article 16(3).  
155 The Uruguay Round Agreement on Agriculture at page 826.  
156 Address at the 53rd UN General Assembly (1998) at page134.
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## Alphabetical Index of Terms

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<td>Agreement on Agriculture.</td>
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<td>Appellate Body.</td>
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<td>Australian Bureau for Agricultural and Natural Resource Economics.</td>
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<td>Dispute Settlement Understanding.</td>
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<td>European Community.</td>
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<td>EU</td>
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<td>ERS</td>
<td>Economic Research Service of the USDA.</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade.</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services.</td>
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<tr>
<td>mmt</td>
<td>million metric tons.</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development.</td>
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<td>OEEC</td>
<td>Organisation for European Economic Co-operation.</td>
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<td>PC</td>
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<td>Permanent Group of Experts.</td>
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<td>The Uruguay Round of Multilateral Trade Negotiations.</td>
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