



**Committee on Agriculture
Special Session**

COMMITTEE ON AGRICULTURE IN SPECIAL SESSION

REPORT BY THE CHAIRMAN, H.E. MR STEPHEN NDŪN'GŪ KARAU,
TO THE TRADE NEGOTIATIONS COMMITTEE

28 November 2017

Revision

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1 EXECUTIVE SUMMARY

1.1. This document updates my report to the Trade Negotiations Committee circulated on 27 November 2017. It has been produced under my own responsibility. It does not purport to be a consensus document or exhaustively reflect the positions advocated by Members on the various issues under negotiation. It is intended, from my perspective as Chair, to inform the Membership of where we are in the Agriculture negotiations, so as to enable Ministers to make the necessary decisions and provide the necessary guidance at the Eleventh Session of the Ministerial Conference (MC11), which is scheduled to take place in Buenos Aires, Argentina on 10-13 December 2017.

1.2. In preparing this revised report, I took into account the written submissions and oral interventions made by Members at formal and informal meetings of the Special Session of the Committee on Agriculture (CoA-SS) and the Dedicated Sessions of the CoA-SS on Public Stockholding for Food Security Purposes (PSH) and the Special Safeguard Mechanism for Developing Countries (SSM) as well as in bilateral/plurilateral meetings with different Members in various configurations, including at the meetings that took place after the circulation of my initial report. To ensure transparency, I also periodically convened open-ended meetings of the entire Membership to report on my consultations. In that regard, since my appointment as Chair of the CoA-SS on 26 April 2017, I have held more than 100 meetings. I wish to underscore that I observed the principles of transparency, inclusiveness, balance and objectivity in the consultation process.

1.3. This report builds on the state of play document (JOB/AG/109) which was circulated to Members on 5 September 2017. It covers the eight topics being negotiated by Members, namely (i) PSH; (ii) Domestic Support; (iii) Cotton; (iv) Market Access, including the Special Agricultural Safeguard (SSG); (v) SSM; (vi) Export Prohibitions or Restrictions; (vii) Export Competition, and (viii) Sanitary and Phytosanitary Measures (SPS). This report only summarizes the salient elements or ideas expressed by Members on the various negotiating issues and does not purport to be a substitute for the written submissions or oral interventions of Members. Nevertheless, it is my considered view that it gives an accurate picture of the current status of the negotiations in the various areas.

1.4. This revised report contains my final recommendations for the consideration of Members. These recommendations are without prejudice to the positions of Members on the negotiating issues.

2 STATE OF PLAY

2.1 PUBLIC STOCKOLDING FOR FOOD SECURITY PURPOSES

General

2.1. Public Stockholding for Food Security Purposes remains a priority issue for MC11. All Members recognize that unlike other issues, there are clear Ministerial mandates, both from Bali and Nairobi Ministerial Conferences, and a firm deadline for a permanent solution to be found by the end of the year. Currently, there are four proposals on the table: one by Brazil, the European Union (EU), Colombia, Peru and Uruguay in JOB/AG/99 (17 July 2017), a second one by the G33 in JOB/AG/105 (19 July 2017), a third one by Russian Federation and Paraguay in JOB/AG/118 (30 October 2017) and a fourth one by Norway and Singapore in JOB/AG/125 (20 November 2017).

2.2. This section summarizes the ideas espoused in the four most recent proposals, as well as other ideas put forward during different meetings and consultations I convened in my capacity as Chairman of the Agriculture negotiations. Whereas the first two proposals suggest exempting the support provided under public stockholding programmes from the Aggregate Measurement of Support (AMS) calculation with differing conditions that have to be fulfilled by developing country Members, the other two proposals build on the Bali Ministerial Decision (BMD)¹, which seeks to

¹ Public Stockholding for Food Security Purposes, Ministerial Decision of 7 December 2013 (WT/MIN(13)/38-WT/L/913).

provide a legal shield against challenges under the Agreement on Agriculture (AoA). Of the two approaches, the Bali approach has gained broad support among the Membership, owing to the opposition of many Members to the idea of an unlimited exemption of market price support from AMS calculation and the fact that Members are familiar with it having adopted the BMD in December 2013.

2.3. In general, apart from the core provision, there is convergence of views on some key elements to be included in the permanent solution such as safeguards and transparency requirements. However, Members' views on the scope and content of these elements continue to differ. Different views have also been expressed on other issues such as country coverage, programme coverage and product coverage. The issue of linkage between PSH and Domestic Support has also been discussed extensively in meetings of the CoA-SS and also in my consultations. The view of most developing Members is that PSH is on a separate track and there is a specific Ministerial mandate for a permanent solution to be found by December 2017. As such, there is no basis for a linkage to be made between PSH and the negotiations on Domestic Support. The opposing view is that there is a strong link between PSH and Domestic Support and that considering them together, or at least in parallel, would actually facilitate a permanent solution to the PSH issue.

Core Provision

2.4. As mentioned above, two approaches have been under consideration. Under the first approach, one proposal suggests the exemption of support provided under PSH programmes for food security purposes from AMS calculation, while another also advocates the same treatment in addition to the exemption from a proposed new overall limit to trade-distorting Domestic Support. By contrast, the second approach advocates that the permanent solution should be built on the Bali interim solution, which provides that Members shall not challenge through the WTO Dispute Settlement Mechanism compliance of PSH programmes with the obligations under Articles 6.3 and 7.2(b) of the AoA when they satisfy a number of conditions and the developing country Member fulfils the terms of the Decision. Proponents believe that it would be easier to build convergence around the Bali approach given the familiarity of Members with it having adopted the BMD in December 2013 and the fact that it does not require an amendment to the AoA, to which many Members are strongly opposed. This approach has been gaining support among Members in light of the current state of negotiations in other areas. In my consultations, some Members highlighted the need for legal certainty of the permanent solution. In response, other Members stated unequivocally that they regarded a Ministerial Decision as legally binding.

Country and Programme Coverage

2.5. Regarding the country coverage, there are divergences in the proposals on the table. Three of the proposals suggest that apart from programmes of developing countries existing as of the date of the Bali Ministerial Declaration, the Decision should be extended to cover: (i) programmes of least developed countries (LDCs); and (ii) small programmes of any developing country Member in the sense of them not exceeding a certain percentage of the VoP or total quantity of a product produced by a developing country Member. The other proposal advocates a wider coverage that would include all programmes of developing Members and LDCs. It has also been suggested to limit the coverage to net importers of relevant products with a volume of production that does not exceed a certain level or that significant exporters should be excluded. The view has also been proffered that the eligibility of a Member should be forfeited should exports from stocks take place. Additionally, some Members have suggested that the permanent solution should apply only to non-commercial activities, including ensuring that stocks are constituted for a bona fide food assistance programme only; or only to support rural development and for the benefit of resource poor farmers.

2.6. In my consultations, broad support was expressed for the extension of the Decision to programmes of LDCs and small programmes of developing countries. However, some Members indicated that they could support the extension of the Decision to LDCs and other developing countries only when the transparency and safeguard provisions are enhanced.

Product Coverage

2.7. Regarding product coverage, two contrasting views have been expressed by Members. On the one hand, several Members have argued for maintaining the current phrase "traditional staple food crops" as used in the BMD. They noted that this issue was the subject of intensive consultations among Members before the Bali Ministerial Conference and as such there was no basis for re-visiting the agreed language. On the other hand, the G33 believes that there is a need for consistency in the terms used in the Decision and the AoA. They noted that the term used in footnotes 5 and 5&6 of Annex 2 and Article 12 of the AoA was "foodstuffs", and as such the same term should be used in the Decision.

2.8. In my consultations, there was broad support for maintaining the agreed language in the BMD.

Safeguards and Anti-Circumvention Provisions

2.9. Many Members are of the view that safeguards are needed to ensure that the procured stocks do not distort trade or adversely affect the food security of other Members. However, views differ on how these safeguards should be formulated. On the one hand, some Members see the safeguards in the BMD as a necessary minimum, with others expressing the view that they should be strengthened through, *inter alia*, having an explicit prohibition of direct and indirect exports in the text. On the other hand, some Members have requested "more functional" safeguards than those contained in the BMD, while others believe that the current language in the BMD is adequate and should not be changed.

2.10. It was also suggested that should a developing Member have a share in global exports above a certain percentage (for example 5%) for the stocked product or should exports of the product increase by a certain percentage [X]%, the product should no longer benefit from the permanent solution. Inclusion of a provision not allowing the applied tariffs for the products procured to exceed [X]% of the average applied tariffs in the period of 2013-2017 has also been suggested.

2.11. In my consultations, there was broad support for the view that the current language should be supplemented with language prohibiting direct and indirect exports from procured stocks.

Transparency Provisions

2.12. There are two opposing views on this issue. On the one hand, some Members, including those belonging to the G33 are of the view that the *ex-ante* conditions, such as those requiring a developing Member to be up-to-date with its Domestic Support notifications and to notify in advance a breach or a potential breach, are too onerous and difficult for a developing Member to comply with. As such, they have demanded that the transparency provisions in the BMD be made more practicable. It was pointed out that most Members – developed and developing – were several years behind with their Domestic Support notifications and that it was unrealistic for developing countries to be up-to-date with their notifications for five years immediately preceding their recourse to the BMD. On the other hand, some Members are of the view that the transparency provisions in the BMD are a necessary minimum and should be complemented. They disagree with the view that the *ex-ante* transparency requirements in the BMD are excessive. The point has also been made that there should be proportionality between the transparency requirements and the size of the PSH programme. The bigger the programme the more onerous the transparency provisions should be.

2.13. Some Members have also suggested including a mandatory notification of the targets, and data demonstrating that PSH programmes are not distorting trade or commercial markets. Two proposals, for example, advocate for additional data requirements such as notification of the VoP and the value of acquired stock prior to the implementation of the PSH programme as well as on an annual basis. Another proposal suggests a narrower set of transparency requirements that

include information on the programme and description of its functioning and statistical information on domestic activities², and on exports and imports.³

2.14. In addition, it has also been suggested to hold annual dedicated discussions based on available data and with the assistance of the Secretariat; to examine the programmes in the dedicated discussions on an annual basis; and to review or assess the situation by the Committee on Agriculture (CoA).

2.15. In recent discussions, however, some Members have indicated their willingness to re-visit the requirements if developing Members could identify which particular conditions they considered problematic. It was suggested, for example, that developing Members should be granted a grace period of not more than two years to submit their notifications and that the DS1 template and its supporting tables should be used to notify a breach or potential breach. One proposal built on this idea and suggested that notifications should be made not later than 18 months from the end of the reporting period.

2.2 DOMESTIC SUPPORT

General

2.16. Many Members have consistently indicated that they would like to see an outcome on Domestic Support at MC11. A number of submissions have been tabled since last year.⁴

Overall Limit on Trade-Distorting Domestic Support

2.17. An overall limit on trade-distorting Domestic Support has been suggested in several submissions and has been a focus of our discussions for a while. While there is broad support for the introduction of such a limit, some Members have expressed their opposition to such a limit. A key question among those supporting the introduction of an overall limit is whether such a limit should be fixed or floating.

2.18. In the proposal JOB/AG/99, proponents put forward the idea of a floating limit, expressed as a percentage of the VoP. However, several Members expressed a strong preference for a fixed limit.⁵ More recently, the idea of a hybrid limit has been advanced; it combines elements of both fixed and floating limits. It has been suggested that an overall limit should be based on existing entitlements (i.e. AMS and *de minimis*) – an idea that was picked up in one of the recent proposals, or that the current *de minimis* limit could be used as an overall limit (thereby constraining also Blue Box spending).

2.19. The other issue which has been discussed is what type of support such a limit should apply to. It is suggested in several proposals that it should apply to the sum of AMS and *de minimis*

² This includes, for example, annual purchases, annual releases, administered prices, released prices, total production, eligible population benefiting from the release of this crop, estimated quantities released to the beneficiaries.

³ This refers, *inter alia*, to total imports (quantity and value) and total exports (quantity and value).

⁴ Submission by Brazil, Argentina, Chile, Colombia, Paraguay, Peru and Uruguay in JOB/AG/72/Add.1 (11 November 2016); Submission by Rwanda on behalf of the ACP Group in JOB/AG/87 (15 November 2016); Communication by Benin on behalf of the LDC Group in JOB/AG/90 (13 January 2017); Proposal by Brazil, the EU, Colombia, Peru and Uruguay in JOB/AG/99 (17 July 2017); Submission by New Zealand, Australia, Canada and Paraguay in JOB/AG/100 (17 July 2017); Submission by China and India in JOB/AG/102 (18 July 2017); Communication by Switzerland on behalf of the G10 in JOB/AG/103 (18 July 2017); Communication by Japan in JOB/AG/104 (19 July 2017); Submission by Guyana on Behalf of the ACP Group in JOB/AG/112 (6 October 2017); Proposal by New Zealand, Australia, Canada, Chile and Paraguay in JOB/AG/114 (17 October 2017); Proposal by Argentina in JOB/AG/120 (2 November 2017); Proposal by Mexico in JOB/AG/124 (17 November 2017); Proposal by the Philippines in JOB/AG/127 (27 November 2017); Proposal by Russia in JOB/AG/129 (29 November 2017); and Proposal by Rwanda on Behalf of the African Group in JOB/GC/165-JOB/TNC/67-JOB/AG/132 (1 December 2017). However, statistical papers are not covered as they were submitted primarily in support of views and ideas put forward elsewhere.

⁵ Relevant proposals include a Submission by New Zealand, Australia, Canada and Paraguay in JOB/AG/100 (17 July 2017); Communication by Switzerland on behalf of the G10 in JOB/AG/103 (18 July 2017) and Communication by Japan in JOB/AG/104 (19 July 2017); Proposal by Argentina in JOB/AG/120 (2 November 2017); and Proposal by Mexico in JOB/AG/124 (17 November 2017).

support, at least initially. Many Members, however, prefer a wider coverage that would also include the Blue Box and/or Article 6.2 support. Some Members have expressed strong reservations against the potential inclusion of Blue Box, *de minimis* and/or Article 6.2 support. Special treatment in the form of a longer implementation period has also been suggested for Members with trade-distorting Domestic Support above a certain level.

Aggregate Measurement of Support (AMS)

2.20. A number of Members are of the view that priority should be given to further reducing AMS entitlements.⁶ Some even go further by calling for the complete elimination of AMS for all Members or limited only to developed Members. Taking into account the Doha mandate, some of these Members have reviewed their position by demanding that a first step towards the elimination of AMS could be taken at MC11. One proposal builds on this idea and suggests that a cut could be taken at MC11. For many Members, however, the elimination of current AMS entitlements is unrealistic and that there is a need for proportionality in the commitments to be assumed by Members.

De minimis

2.21. Some Members have argued that in view of the increasing VoP of several developing countries, particularly the larger ones, any reform to level the playing field should include *de minimis* support. However, many Members, particularly developing country Members have indicated that *de minimis* is a very sensitive issue for them and could not accept any proposals calling for their current level to be reduced. Members seeking reduction in trade-distorting Domestic Support have been considering the idea of an overall limit that would further discipline the use of trade-distorting Domestic Support in general, rather than seeking a reduction in *de minimis* entitlement *per se*. The views and ideas put forward in the course of the year also included exclusion of *de minimis* entitlement from any additional limitation; exclusion of LDCs, Net Food Importing Developing Countries (NFIDCs), and developing country Members in general from any additional commitment; and curtailing the *de minimis* entitlement notably for the world's largest producers and exporters.

Blue Box

2.22. A number of Members have expressed the view that disciplines governing the Blue Box should be re-evaluated considering its potential to distort trade. Among the disciplines suggested are a fixed overall limit; product-specific limits; and its inclusion in an overall trade-distorting Domestic Support coverage – immediately or at a later stage.

2.23. However, a number of Members consider the Blue box as a sensitive issue for them. They argue that the Blue Box is less trade distorting than the Amber Box and facilitates reforms which would level the playing field and introduce more competition in the agricultural sector.

Product-Specific Disciplines

2.24. Many Members consider product-specific limits or disciplines as a necessary element to limit trade-distorting Domestic Support. However, doubts have been cast by several Members about the feasibility of an outcome at MC11. The views and ideas put forward since a year include product-specific numerical limits; limits expressed as a percentage of the overall trade-distorting Domestic Support, as a percentage of the VoP of the products in question, or in per capita terms. Others have suggested product-specific AMS limits; overall limit on product-specific AMS, particularly for products of interest to the LDCs; product-specific Blue Box limits; product-specific limits to trade-distorting Domestic Support; and linking trade-distorting support and exports.

2.25. There is also a suggestion to focus on those products which benefit most from Article 6 of the AoA and which are of specific interest to developing country Members, including LDCs, NFIDCs

⁶ See, for example, the Submission by China and India in JOB/AG/102 (18 July 2017) and the Proposal by Rwanda on Behalf of the African Group in JOB/GC/165-JOB/TNC/67-JOB/AG/132 (1 December 2017).

and Small and Vulnerable Economies (SVEs). However, many Members have expressed their opposition to product-specific disciplines, whether in general or for developing country Members.

2.26. One recent proposal suggests putting the product-specific disciplines in the work programme, given the very divergent views of the Members on this issue.

Article 6.2

2.27. Some Members are of the view that the disciplines governing Article 6.2 should be re-visited considering the vast sums of money being spent by some developing Members. They argue that at least certain types of support under Article 6.2 (such as input subsidies) need to be disciplined and/or its use be constrained by an overall limit to trade-distorting Domestic Support. One proposal advocates the establishment of a work programme to explore additional reductions and disciplines for all elements of Article 6, including Article 6.2. However, almost all developing country Members consider support under Article 6.2 as a sensitive issue; several of them have indicated that they do not have flexibility to accommodate the demands of other Members.

Green Box

2.28. While there is the recognition that Green Box support is non- or minimally trade distorting, several Members would like it to be disciplined at some point owing to its increasing size and doubts about whether certain programmes meet the prescribed criteria.⁷ In addition, many developing country Members have expressed the view that Green Box disciplines should be better adapted to their needs. However, many Members remain opposed to any change in the current disciplines.

Transparency Provisions

2.29. The importance of transparency in the WTO is widely acknowledged by Members. Many Members would like to see an enhancement of the relevant disciplines and/or stricter enforcement. One recent proposal suggests exploring ways to enhance the effectiveness of existing notifications requirements in document G/AG/2, as well as of their implementation, and to review and update these requirements as necessary. Other ideas to enhance the transparency include additional data to be provided annually based on a questionnaire; annual dedicated discussions in the CoA; and punitive penalties for Members not fulfilling their transparency obligations, particularly large producers or large exporters of particular products.

2.30. Many developing country Members have, however, cautioned against onerous requirements, especially considering the difficulties that have been encountered by some of them in fulfilling the current requirements.

Special and Differential Treatment

2.31. The importance of special and differential treatment (SDT) for developing country Members is recognised by all Members. There appears to be a general understanding that no further commitment would be required from LDCs. However, while there is a recognition that SDT should be provided to all developing country Members, there are divergences as to the nature of flexibilities to be granted. The views and ideas put forward include higher overall limit (expressed as higher percentage or higher numerical limit) for developing country Members and longer implementation periods or same limit as developed Members but longer implementation period for them; exemption of developing country Members or SVEs and NFIDCs from binding reduction commitments; and technical assistance and capacity building to help the implementation of disciplines.

⁷ See, for example, the communication by Benin on behalf of the LDC Group in JOB/AG/90 (13 January 2017). See further Proposal by Rwanda on Behalf of the African Group in JOB/GC/165-JOB/TNC/67-JOB/AG/132 (1 December 2017).

2.3 COTTON

General

2.32. All Members recognize the mandate, agreed more than 13 years ago, that Cotton be addressed "*ambitiously, expeditiously and specifically within the agriculture negotiations*" and most Members have continued during all my consultations to express their support to a meaningful and specific outcome on Cotton.

2.33. This being said, a couple of delegations have consistently cast doubts about the possibility of achieving a substantive outcome at MC11, taking into account the overall negotiating environment.

Domestic Support

2.34. Cotton Domestic Support remains the central and most controversial issue in the negotiations on Cotton and the views remain far apart on what could constitute a possible outcome in this area.

2.35. As indicated in the Compilation Document JOB/AG/128, in addition to the C4 proposal contained in document TN/AG/GEN/46, several other submissions on Domestic Support also include specific suggestions on Cotton Domestic Support.

2.36. More generally, several Members continue to highlight the existence of a *de facto* link between the overall negotiation on Domestic Support and the negotiation on Cotton Domestic Support. The C4 considered that this link is contrary to the spirit of the agreed mandate to address cotton "*ambitiously, expeditiously and specifically*" and reaffirmed the need for a substantial outcome on cotton Domestic Support at MC11.

- **Trade-Distorting Support**

2.37. The positions remain divided between three main possible general approaches on how to address Cotton trade-distorting support:

a) The C4 proposal suggests a combination of disciplines addressing trade-distorting support (AMS, Blue Box and *de minimis*) including differentiated level of reductions for developed Members with final Bound Total AMS Commitments and reduction in AMS support for developing country Members with final Bound Total AMS Commitments based on the level of support notified during a reference period. The C4 proposal also includes a cap for all Members applicable on AMS and Blue Box support based on Members *de minimis* entitlements.

The C4 proposal generated various questions from Members, as well as some specific concerns related to the idea of a differentiation between developing country Members on the basis of whether or not they have AMS commitments. Several Members considered that the C4 proposal was too ambitious in the current overall negotiation context.

b) Several Members favour a limit on Cotton trade-distorting support expressed as a percentage of Cotton VoP as detailed, for example, in the proposals JOB/AG/99 and JOB/AG/120. In these proposals, trade-distorting support would be composed initially of *de minimis* and AMS only. By contrast, the C4 considered that a floating limit would not be sufficiently constraining.

c) Another group of Members insist on the need to first address the AMS granted to Cotton beyond the *de minimis* level and oppose any new disciplines on *de minimis* for developing country Members without an AMS commitment.

2.38. It seems generally accepted from the proposals and the discussions that LDCs should be exempted from any new commitments.

2.39. The C4 also called for a figures-based negotiation in order to compare the various levels of support and cuts in Cotton subsidies in the different boxes that would result from the different proposals currently on the table.

2.40. Recalling its strong scepticism about any possible substantive outcome on Cotton Domestic Support in the current negotiating environment, one delegation invited participants to turn their attention to a possible post-MC11 work programme in which Cotton could be included.

2.41. Several Members have expressed the view that the negotiations should ultimately aim at eliminating all types of Domestic Support that have distorting effects on the Cotton market, while others have suggested a review clause following a certain period of time after MC11 with a view to agreeing on the next steps to be taken in phasing out trade-distorting Domestic Support provided for Cotton.

- **Green Box**

2.42. While all Members recognize the Ministerial mandate to treat Cotton ambitiously, expeditiously and specifically, many Members considered that further disciplines on Green Box direct payments granted to Cotton producers as suggested by the C4 in its proposal could not be achieved at MC11. Some Members are of the view that it is not a realistic option for the time being, while some others have opposed the proposal on more fundamental grounds.

Other elements

2.43. As regards the other components of Cotton – Market Access, Export Competition, implementation and follow up as well as development assistance – Members have reaffirmed the continued relevance of the Nairobi Decision.

2.44. Most delegations agreed that this fact could be recognized in a Cotton outcome at MC11 as suggested by the C4 in paragraphs 10 to 13 of TN/AG/GEN/46, subject to possible minor edits aimed at updating references to various timelines contained in the Nairobi Decision.

2.45. It also appears to me, following the 8th Dedicated Discussion of the relevant trade-related developments for Cotton held on 17 November 2017 that the upcoming launch of a joint WTO/ITC Cotton Portal could be recognized in a Ministerial text on Cotton.

2.4 MARKET ACCESS

General

2.46. The discussions on Market Access have benefitted from technical work done by Members on topics such as tropical products, tariff overhang, tariff peaks, tariff escalation and the SSG. The need for enhanced transparency and updated Market Access information has been highlighted by some Members in order to make progress in the Market Access negotiations.

2.47. In May 2017, Paraguay and Peru in their submission⁸, sought to pursue agricultural Market Access negotiations in an incremental manner.⁹ The two Members also proposed to focus, as a first step, on the following specific issues so as to arrive at specific outcomes on them by the Twelfth Session of the Ministerial Conference (MC12): tariff simplification, tariff peaks, tariff escalation and bound in-quota tariffs. The proponents sought Members' engagement in Market Access negotiations post-MC11 towards establishing parameters for meaningful Market Access through tariff reduction and the revision of tariff rate quotas.

2.48. Specifically on the theme of tariff simplification, one more submission¹⁰ was presented by Tunisia to Members. A few Members supported tariff simplification as a potential outcome at MC11.

⁸ Submission by Paraguay and Peru in JOB/AG/93 (29 May 2017).

⁹ A similar idea of pursuing market access reforms in an incremental manner was also contained in the submission from the Cairns Group in document JOB/AG/91 (19 May 2017).

¹⁰ JOB/AG/119 (30 October 2017).

Some of these Members, however, suggested focussing only on highly complex forms of tariffs, rather than seeking an outright conversion of all non-*ad valorem* tariffs into *ad valorem* equivalents.

2.49. Generally, Members have not engaged in detailed technical discussions on the specific Market Access elements included in the various proposals. It became clear subsequently that with the limited time available before MC11, it would not be possible to address complex and technical issues such as tariff simplification, and achieve appropriate outcomes. The proponents have since redirected their negotiating efforts towards achieving an agreement on a detailed post-MC11 work programme for Market Access negotiations.

2.50. Some other Members have also supported the idea of negotiations on a post-MC11 work programme to guide the Market Access negotiations. However, a number of Members have cautioned against a selective picking and choosing among the various Market Access issues in any work programme that may be agreed.

2.51. A number of developing country Members (including LDCs and SVEs) have underlined the importance of incorporating SDT in any negotiating framework that is agreed in the area of Market Access. Some developing country Members have expressed the view that a lower priority should be accorded to Market Access negotiations considering their defensive concerns about preference erosion. The point about parallel progress in non-agricultural Market Access and services Market Access negotiations has also come up in the discussions.

2.52. Article XII Members have underscored the need for their special situation to be taken into account in the negotiations in view of the extensive Market Access commitments assumed by them at the time of accession.

Work Programme

2.53. Argentina, Brazil, Chile, Paraguay, Thailand and Uruguay have recently presented a submission¹¹ containing a work programme for the continuation of Market Access reform in agriculture. The proposed work programme has been discussed both in open-ended CoA-SS meetings and in a limited group format and generally received broad support.

2.54. Several developing Members have echoed their concerns on the lack of SDT in the proposed text. A specific request has also been made by a group of developing country Members to suitably acknowledge the issue of preference erosion. Some importing Members have expressed concerns about a few aspects of the proposed work programme, including on paragraph 2, which they consider prejudice the outcome of the negotiations. The proposal to conduct negotiations in dedicated sessions and have yearly transparency and monitoring exercises on Market Access has also been questioned by some Members.

2.55. The proponents have since circulated a revised submission¹² taking into account some of the comments Members made on the original submission.

2.56. In the most recent discussions, some Members reiterated their view that the revised proposal still included elements that might potentially prejudice an outcome and as such could not be the basis for future work. Furthermore, some Members stressed that without parallel progress in the market access negotiations in non-agricultural market access and trade in services, they could not envisage negotiations in agricultural market access. The need to have a simply-worded work programme modelled on the basis of Paragraph 31 of the Nairobi Declaration was emphasised by some Members.

¹¹ JOB/AG/122 and Corr.1 (9 November 2017).

¹² JOB/AG/122/Rev.1 (20 November 2017).

Special Agricultural Safeguard (SSG)

2.57. Several Members have proposed a decision at MC11 on the elimination of SSG rights (Article 5 of the AoA) of WTO Members.¹³ This position has been endorsed by some other Members.

2.58. Simultaneously, some other Members have expressed their opposition to the elimination of the SSG. Some of them consider the SSG as forming part of the delicate balance that was reached during the Uruguay Round. A number of Members also doubt that SSG elimination would be feasible in isolation of broader Market Access reforms.

2.59. Some of these proposals¹⁴ have also included a possibility for Members to negotiate access to or an improvement of the SSG until its elimination by all. A few Members have expressed support for such a negotiating window; simultaneously a number of other Members have expressed opposition to any idea of extension of the SSG to Members which are not currently eligible, or a relaxation of the existing SSG conditions in Article 5 of the AoA. One proponent has identified SSG "improvement" to be a possible approach to address its concerns related to price volatility and market distortions and has considered a successful outcome addressing these concerns to be indispensable for the success of MC11.

2.5 SPECIAL SAFEGUARD MECHANISM (SSM)

General

2.60. The discussions on SSM continue to reveal the contrasting readings of the negotiating mandate among Members. Relying on various mandates, including the Nairobi Ministerial Declaration, the G33, supported by some other developing country Members, have sought an outcome on SSM at MC11 without accepting any linkage with other negotiating issues. However, several Members are strongly opposed to an outcome on SSM in isolation and, especially, in the absence of a Market Access outcome.

2.61. The G33 contends that an SSM for developing country Members is needed to enable them to effectively address the negative impacts of international price volatility on resource-poor small-scale farmers.¹⁵ Other developing country Members have also supported an agreement on SSM to also counter price volatility and remedy the existing distortions in international agricultural trade.

2.62. A number of other Members do not consider the SSM to be the appropriate remedy to address price volatility. One Member also stressed that Members that were not responsible for causing distortions in international trade should be exempted from the application of the SSM.

2.63. A number of developing country Members with SSG rights also support an outcome on SSM, as they consider the existing SSG provisions to be complex and not attuned to addressing the needs of developing country Members facing import surges and/or price depressions.

Outstanding Issues

2.64. The G33 has elaborated on the following outstanding issues in connection with the SSM with a view to reaching agreement on the technical aspects and leaving the bigger political decisions to be made later by Ministers: product coverage, capping of remedies, and treatment of trade under

¹³ Submission by Paraguay, Argentina, Australia, Chile, Colombia, New Zealand, Pakistan, Peru, Uruguay and Viet Nam in JOB/AG/85, Corr.1, Corr.2 (15 November 2016); Submissions by the Russian Federation in JOB/AG/95 (29 May 2017), and JOB/AG/116 (19 October 2017) and Submission from the Philippines in JOB/AG/121 (8 November 2017).

¹⁴ JOB/AG/116 (19 October 2017), JOB/AG/121 (8 November 2017), and JOB/AG/123 (10 November 2017).

¹⁵ Submission by the G33 in TN/AG/GEN/45 (29 May 2017).

Free Trade Agreements (FTA).¹⁶ To facilitate those technical discussions, the G33 submitted a set of specific questions on certain outstanding issues.¹⁷

2.65. The level of engagement on these issues has been limited. Some Members did emphasize a few aspects related to these issues, especially concerning the capping of remedies and treatment of FTA trade. These were, however, a re-statement of their well-known positions. Some Members have indicated their willingness to discuss technical aspects related to product coverage.

Recent Discussions

2.66. The G33 has suggested focussing on a partial concrete outcome on SSM at MC11 in the form of either a volume-based or a price-based SSM.¹⁸ Not all G33 Members have expressed their support for this proposal. Some stated that they were in the process of examining the proposal and reserved their right to present their views later. The incremental approach included in the proposal has not led to any discernible change in the negotiating position of other Members. The recent discussions have rather remained one-sided with only the proponents participating in the discussions.

2.67. A few Members believe that the only feasible outcome on SSM at MC11 would be a decision on the continuation of the SSM negotiations post-MC11. One Member has underlined the difficulties it would have in accepting an outcome at MC11 in the form of a continuing work programme on SSM. It would rather prefer a concrete outcome, *albeit*, a partial one on SSM at MC11, and suggested an outline¹⁹ of such a partial outcome based on the price-based SSM. However, the submission by that Member, being made at a late stage in the Geneva preparatory process for MC11, generated only preliminary discussions and feedback from Members.

2.6 EXPORT PROHIBITIONS AND RESTRICTIONS

General

2.68. The discussions on this subject have been facilitated by a proposal from Singapore in JOB/AG/101 (17 July 2017) and its revised version circulated as JOB/AG/101/Rev.1 on 9 November 2017 as well as a submission from Israel, Japan, Korea, Switzerland and Chinese Taipei circulated as JOB/AG/115 on 18 October 2017. Following discussions on Singapore's proposal, it circulated a second revised proposal, JOB/AG/101/Rev.2, on 1 December 2017. This revised proposal could not be discussed by the Membership before the issuance of my revised report.

2.69. My consultations have confirmed that many Members consider that there could be an outcome in the area of Export Prohibitions and Restrictions at MC11, and that Singapore's proposal could be a basis for a decision by Ministers at MC11.

2.70. However, some Members still have concerns about some elements in the proposal. One Member in particular has stated its opposition to an outcome at MC11, as it believes it is the first step to limit the policy space available to developing countries to make use of this important policy tool to further their economic development. Some Members have expressed the view that an outcome could not be envisaged in the absence of a broader agricultural package.

Advance Notification

2.71. The revised proposal JOB/AG/101/Rev.1 by Singapore suggests that the advance notice for an export prohibition or restriction, to be made in accordance with subparagraph 1(b) of Article 12 of the AoA, should be submitted at least 30 days prior to the coming into force of the measure. However, this time frame may be dispensed with when there is a critical shortage of foodstuffs caused by an event constituting *force majeure*.

¹⁶ Submission by the G33 in JOB/AG/96 (29 May 2017).

¹⁷ Submission by the G33 in JOB/AG/106 (19 July 2017).

¹⁸ JOB/AG/111 and Corr.1, 2 and 3 (15 September 2017).

¹⁹ Submission by the Philippines in JOB/AG/130 (29 November 2017).

2.72. Many Members expressed their support for the language proposed by Singapore. However, some Members, particularly net-food importing developing countries, favoured an advance notice period longer than 30 days, so as to enable them to make alternative arrangements. It was noted that the term "*force majeure*" was an ambivalent term and that it should be avoided in the text. The issue of shipments "*en route*" was also raised.

2.73. Some Members cautioned, however, against the risk of making the notification requirements too burdensome for developing country Members. The view was expressed that the proposed time frame of 30 days would limit the policy space of developing countries. It was also noted that it was not always possible to anticipate sudden demand/supply mismatches and that advance notification might lead to market manipulation.

2.74. In this context, the possibility of not making the time limit mandatory was discussed and drafting suggestions to reflect this option were made. While expressing a preference for the language proposed by Singapore in its proposal JOB/AG/101/Rev.1, some Members indicated that they might consider such an approach, if this could help bridge the gaps in Members' positions on this issue. Building upon my consultations on this issue, the latest proposal by Singapore, JOB/AG/101/Rev.2, now includes such an option as a possible alternative to its initial proposal.

Content of notification, consultation, reporting and monitoring

2.75. The revised proposal JOB/AG/101/Rev.1 by Singapore also includes provisions related to the content of notice as well as on consultation, reporting, and monitoring in paragraphs 3 to 7.

2.76. These provisions did not generate lengthy debates amongst the Membership. However, it was noted that the suggested provisions might be too onerous, including the one requiring that reasons be provided for the institution of restrictive measures. It was also noted that the proposed text was redundant considering the existing language in the AoA. In its latest proposal, JOB/AG/101/Rev.2, Singapore has taken on board the concerns expressed and has deleted these paragraphs.

Exemptions for Foodstuffs Purchased for Non-Commercial Humanitarian Purposes

2.77. Singapore's proposals specify that foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme shall be exempted from the application of Export Prohibitions and Restrictions.

2.78. While many Members supported this proposal, the view was expressed that this provision would limit Members' flexibility in applying such measures and that WFP purchases were made on commercial terms. One Member suggested discussing after MC11 how the WTO could assist the WFP humanitarian efforts, but in a context de-linked from the proposal on transparency of export restrictions.

Special and Differential Treatment

2.79. The SDT provisions contained in Singapore's revised proposal JOB/AG/101/Rev.1 replicate the SDT provisions contained in paragraph 2 of Article 12 of the AoA and also exempt LDCs.

2.80. In my consultations, there was broad support for Singapore's approach, but a few Members questioned the relationship between the proposed language and the text of Article 12.2 of the AoA. The need to permit NFIDCs to benefit from these SDT provisions was also mentioned, as reflected in the proposal JOB/AG/101/Rev.2.

Other issues

2.81. Israel, Japan, Korea, Switzerland and Chinese Taipei suggested addressing complementary elements in relation to Export Prohibitions and Restrictions in their submission JOB/AG/115, namely: Duration of measures, status of net-food importers, and clarification of foodstuffs.

2.82. While some Members expressed an interest in these issues, there was broad agreement that an outcome on these issues cannot be envisaged at MC11 and that they should be addressed post-MC11.

Post-MC11 work programme

2.83. Several Members welcomed the inclusion of a reference to the continuation of the work on Export Prohibitions and Restrictions after MC11 in paragraph 10 of Singapore's revised proposal, as they thought further discussions on the topic were warranted. This view was opposed by some Members, who said there was no basis for continuing discussions on this topic post-MC11. It was noted that this issue could only be discussed as part of the overall agricultural negotiations and not in isolation.

2.7 EXPORT COMPETITION

2.84. Canada, Chile and Switzerland circulated on 10 November 2017 a proposal containing possible language on a post-MC11 work programme on Export Competition in document RD/AG/61. I detected broad support for this proposal.

2.85. A couple of concerns were expressed, including on how the proposal related to the review process foreseen to be undertaken by the CoA in the December 2015 Ministerial Decision. Some Members indicated that they were still assessing the proposal by Canada, Chile and Switzerland.

2.8 SANITARY AND PHYTOSANITARY MEASURES

2.86. Following the submission of a discussion paper by Brazil and Argentina on 30 May 2017 in RD/AG/57, Brazil circulated on 10 November 2017 a proposal containing possible language on a post-MC11 work programme on SPS in document RD/AG/62.

2.87. Several Members, while acknowledging their interest in the SPS proposal, considered that these issues could be addressed by the SPS Committee, which already had a mandate and did not need a Ministerial Decision to continue its work. Some Members indicated that they were still assessing the proposal by Brazil.

3 RECOMMENDATIONS

3.1 PUBLIC STOCKHOLDING FOR FOOD SECURITY PURPOSES

3.1. Taking into account the proposals on the table and what I have heard in different meetings and the strong opposition by many Members to the unlimited exemption of market price support provided under the public stockholding programmes, my assessment is that in the absence of parallel progress on Domestic Support, a Permanent Solution based on the Bali Decision is most likely to attract convergence among the Membership.

3.2. With respect to transparency, many Members feel that the provisions in the BMD should be made more operable, otherwise it would be difficult for developing countries to make use of the Decision. Some Members disagreed with this view and said that the transparency provisions in the BMD should be maintained at the minimum and preferably strengthened. In their view, this was necessary to ensure that public stockholding programmes were not causing trade distortions or undermining the food security of other Members. In recent discussions and following the tabling of the Norway/Singapore proposal, some Members have indicated their willingness to re-examine the transparency requirements considered too onerous by developing Members.

3.3. In that regard, some Members welcomed the transparency provisions in the Norway/Singapore proposal, which envisages, *inter alia*, developing Members being given not later than 18 months to submit their domestic support notifications after the end of reporting period. Regarding safeguards, it is the view of some Members that the provisions in the BMD should be maintained and that it was unnecessary to add any new provisions to clarify the existing agreed language in the Decision. Many Members disagree with this view and several of them have argued, *inter alia*, for an explicit provision prohibiting direct or indirect exports from procured stocks. The

point has also been made that the safeguard provisions should be strengthened if a decision was taken to extend the country and programme coverage in the BMD.

3.4. I believe that substantive progress has been made in the PSH negotiations and that a decision is within reach if all Members engage constructively and move away from their entrenched positions, particularly on the key negotiating issues of transparency and safeguards. I am of the considered view that the Norway/Singapore proposal provides Members with a good platform to address the outstanding issues and reach an agreement in fulfilment of the Ministerial mandate to find a solution by the end of this year.

3.2 DOMESTIC SUPPORT

3.5. There have been many submissions and proposals on Domestic Support. However, Members' negotiating positions on the key issues still remain far apart despite the attempts by several Members to bridge the gaps through recent proposals. While several Members are in favour of a commitment to set an overall limit on trade-distorting Domestic Support, others disagree that such a limit is needed. They rather argue that it would be important to address AMS limits, particularly product specific AMS entitlements which are mostly responsible for distortions in trade. Among the proponents of an overall limit, there is disagreement as to the coverage: AMS and *de minimis* support; AMS, *de minimis* and Blue Box support; and all Article 6 support, including Article 6.2. Unless there is a significant change in Members' positions on the key negotiating issues and a recalibration of the level of ambition in the next few days, I would recommend that Members work towards a limited outcome in the form of a decision on some core principles that would also include a work programme to guide the negotiations post-MC11.

3.3 COTTON

3.6. Based on my consultations, I believe that the Nairobi Decision pertaining to Cotton in the areas of Market Access, Export Competition, Implementation and Development assistance can be reaffirmed and the work undertaken since then acknowledged. It is my considered view that an agreement could potentially be reached on textual elements based on the C4 proposal in this regard.

3.7. More specifically, it could be envisaged to use the Market Access text suggested by the C4 in paragraph 10 of its proposal in TN/AG/GEN/46, complemented by an explicit renewal of the biannual review of the list of products annexed to the Nairobi Ministerial Decision on Cotton and an acknowledgment of the launch of the Cotton Portal. On Export Competition, Development and Implementation and follow up, the text suggested by the C4 in paragraphs 11, 12 and 13 of its proposal could be used, with updates as appropriate, regarding the Director General's regular reports to the Ministerial Conferences.

3.8. As regards Cotton Domestic Support, the divergences remain too wide for me to make a recommendation on the way forward. Consequently, I would suggest merely juxtaposing for reference the different options suggested in the cotton-specific proposals circulated by Members, including the C4. I invite Members to reflect on what can be envisaged in this area at MC11.

3.4 MARKET ACCESS

3.9. Based on my consultations thus far, it appears to me that the joint revised submission from Argentina, Brazil, Chile, Paraguay, Thailand and Uruguay in JOB/AG/122/Rev.1, which incorporates some of the comments received following the initial proposal, could form a basis of a possible work programme to guide negotiations on this issue post-MC11. I therefore invite Members to work together and make all efforts to achieve convergence based on this proposal, taking into account the specific concerns and issues raised by Members.

3.10. Notwithstanding the repeated calls for the elimination of SSG by the proponents at MC11, the positions of Members have not evolved. A large group of Members with SSG rights has stated clearly that the elimination of SSG might be contemplated only within the framework of the market access reform process. There is also not a common view among the proponents on the sort of improvements that could be made to the SSG and what could be achieved at MC11. I will therefore

invite Members to reflect on what could possibly be achieved at MC11 and the issues that could be addressed post-MC11.

3.5 SPECIAL SAFEGUARD MECHANISM (SSM)

3.11. I would encourage Members to reflect on the collective mandate that the Ministers gave us at Nairobi to negotiate an SSM for developing country Members in dedicated sessions of the CoA-SS. Despite a number of submissions from the G33 on this topic, the positions of Members remain far apart and recent discussions have not managed to bridge the gaps in negotiating positions.

3.12. I am aware of the efforts being made by one Member, among the proponents, to make progress on this issue, including through the consideration of a partial outcome initially targeting the price-based mechanism only. However, the progress made thus far in those discussions has not been sufficient to provide me with a basis to make specific recommendations for a way forward at MC11.

3.6 EXPORT PROHIBITIONS AND RESTRICTIONS

3.13. There is an acknowledgement among most Members that an outcome on Export Prohibitions and Restrictions is possible at MC 11. One Member has stated that it cannot envisage an outcome, as it would erode its policy space to use this policy instrument for its economic development. Some Members have also indicated that they cannot envisage a stand-alone outcome on export prohibitions and restrictions and that it needed to be part of a broader Agriculture package. Notwithstanding these concerns, it is my considered view that Singapore's latest proposal offers Members a platform to further engage with a view to reaching an agreement on this issue at MC11. I suggest that Members continue exploring language which could accommodate the remaining concerns.

3.7 EXPORT COMPETITION

3.14. There was broad support for the proposal by Canada, Chile and Switzerland in document RD/AG/61, which contains elements that could be included in a work programme post-MC11 and I consider this proposal constitutes a potential basis for a post-MC11 work programme in this area.

3.8 SANITARY AND PHYTOSANITARY MEASURES (SPS)

3.15. In this area, several Members doubted whether an outcome on SPS was relevant in the context of the Agriculture negotiations but the text suggested by Brazil in document RD/AG/62 nevertheless remains on the table.

4 CONCLUSION

4.1. This report is an honest effort on my part to accurately capture the state of play of the Agriculture negotiation at this point in time.

4.2. My responsibility as Chair also requires me to clearly identify at this stage what I see as potential deliverables at MC11 based on the proposals as well as the meetings, consultations and informal contacts I have had thus far with Members. By doing so, I hope I can effectively help the Membership to prioritize and focus on issues in respect of which outcomes are within reach and provide the necessary directions to guide negotiations in respect of issues where significant outcomes could not be achieved at MC11.

4.3. As you will have seen from my recommendations, I consider that there is basis for agreements to be reached at MC11 on PSH and Export Prohibitions and Restrictions. A Decision could also be envisaged on Cotton at MC11. Regarding Domestic Support, I have recommended that unless there is a significant shift in Members' positions in the next few days, they should pursue a limited outcome in the form of a decision on some core principles that would also include a work programme to guide the negotiations post-MC11 owing to persistent differences in their negotiating positions. With regard to SSM, I am not in a position to propose any specific recommendations for a way forward considering the wide divergences in Members' positions.

Regarding other negotiating issues, my assessment is that the best possible outcome will be a post-MC11 work programme. I suggest considering the work programme for all these outstanding negotiating issues together in order to ensure consistency and coherence in approach.

4.4. While I had initially envisaged circulating draft texts, where appropriate, in these recommendations for Members' consideration, I decided not to do so as Members had indicated to me that they would like to further engage on the negotiating issues both in Geneva and Buenos Aires. Consequently, I therefore decided to limit the scope of this document to the current status of the negotiations in the various areas and also provide my final recommendations to Members on how they could usefully approach the outstanding issues. It is my expectation that they will stimulate further discussions among Members paving the way for agreements to be reached by Ministers on some of the negotiating issues and decisions reached on work programmes for the remaining issues contributing to a successful Ministerial outcome on Agriculture at MC11.

4.5. Last but not least, Members have undertaken significant work in the negotiations through the attendance of numerous meetings and the submission of proposals including in the very last days, which are reflected in the Compilation Document JOB/AG/128. It is my sincere hope this important body of work will not be lost and will constitute a solid basis for Members' work post-MC11.

4.6. Let me conclude by confirming that I remain fully committed to facilitating convergence in every way possible in the remaining days before MC11 and at the Ministerial Conference itself.
