2989 30 April 2007

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON AGRICULTURE, SPECIAL SESSION

In these and other areas I can well imaging there is scarcely a Member that will agree with what I have suggested. That in itself, I would be tempted to say, is possibly the best recommendation I could hope for.

So this is not a passive observation or a series of "dumb questions". We are well past the time for that. We need next to move to a revised text to

I. DOMESTIC SUPPORT

A. OVERALL CUT

1. On the basis of the Hong Kong Ministerial Declaration I am working on the following thresholds as applicable.

Bands	Thresholds (US$ billion)
1	0-10 & all developing countries
2	10-60
3	> 60

2. The following range of reductions, noted in the first Draft Text, remain where we need to settle this.

Bands	Thresholds (US$ billion)	Cuts
1	0-10 & all developing countries	31%-70%
2	10-60	53%-75%
3	> 60	70%-80%

3. Let me state up-front how I intend to proceed here and in the sections that follow. I do not honestly feel I would be doing anyone a favour by hiding behind the technicalities of saying everybody's position might prevail. That would be safe and bureaucratic. We are wellic. behinu[(every)-6.7(b)4l5 r

8. I know there are some that argue for the very low te

14. Hong Kong has made it clear that Developing

C. FINAL B

of commodities that existed in the (relatively high spending) 1999-2001 period, but to apply those shares to the overall 1995-2000 expenditure period. That would tend to give you commodity specific outcomes toward the middle of the two ranges.

24. A third option would be to essentially go with the 1995-2000 period but be prepared to modify it with some kind of constrained ad hoc adjustment to give a modest degree of flexibility. This could be along the lines of, for instance, permitting an overrun of e.g. 10% for no more than two commodities over the lifetime of the implementation period, and that, if resorted to for a particular one of those commodities, it could not be resorted to more than once in a three year cycle.

25. That still leaves some other (albeit, comparatively, of secondary importance) matters to resolve. The point has been made, more generally, that the product specific "capping" is meant to be precisely that i.e. it is not meant to be the primary driving engine for AMS *reductions* (although these are clearly meant to happen also at the commodity specific level, not least because the framework makes express reference to at least some of this occurring). Reduction is principally via the AMS reduction modality. Caps are caps. On that basis the logic of the base period is essentially a matter of fairness: not to have some kind of attempt to gerrymander the outcome –whether that is up or down. It is essentially to get a fair and reasonable (nothing can ever be perfect) basis upon which to set the caps.

26. On this basis the point has been made that unyieldingly applying any base period could conceivably create some anomalies. At the extreme, a Member could have a notional "entitlement" to AMS but happen not to have spent *anything* in the period ultimately selected. Therefore it would be effectively completely deprived of its AMS "entitlement" even though it formally retains that entitlement. Now, some might say "too bad", but in fact the way that is meant to be dealt with is by direct and formal AMS cuts, not by means of indirect effect. Of course, that is an extreme case which will not I think happen in those terms, but it does seem to me that there are some more limited situations where anomalies could arise.

27. We cannot provide for every conceivable variation without undermining the whole point of disciplines but I can see two situations that could be germane, and I have the feeling that the world would not end if we provided for them. The first situation is where a Member spends below product specific de minimis in the base period. Under "normal" circumstances that might have fluctuated up over that threshold. I am inclined to suggest as a rough and ready rule that they could still have an ongoing AMS entitlement but no higher than the "old" de minimis (i.e. 5% of v.o.p.)

28. The second situation is where there has been product specific support above de minimis *after* the base period, whatever it is ultimately determined to be (and we are seriously looking at a period that will end no later than 2001 at most). One option is, again, to take the "well too bad" approach: a base period is a base period. On the other hand, the base period is not meant to be more than a methodology-if its application creates a degree of artificiality or anomaly in the outcome it does not serve its proper function. For that reason my rough and ready suggestion is that if such a situation does arise, the average of the most recent two *notified* post base period years could be the basis for any such products.

29. For developing countries, there should be, to be consistent with the terms of the framework, special and differential treatment. Applied to a "capping" exercise it would seem to me to translate into proportionate flexibility. I don't see any of this, frankly, as make or break. If, for instance, we were to end up with a six year 1995-2000 period for developed countries, developing countries should certainly have the option of going with that, should they choose to do so. But I feel there should certainly also be entitlement to a couple of options. Having also the option of choosing a somewhat more extended period (e.g. 1995-2004) seems to me to be a starter. I wouldn't press the analogy too far but this gives you something like one-third "more" by way of timing-based flexibility. The other alternative is that a developing Member could opt for a ceiling that represents some percentage of its product specific de minimis entitlement-say one and a half or two times that amount.

D. BLUE BOX

30. I am working on the hypothesis that we will ultimately agree to shrink the currently permissible overall ceiling for developed countries from 5% to 2.5%. It remains to be determined whether this is to apply from day one or it is something that will be arrived at only at the end of the implementation period. I see no reason to have complicated options for this. We take a clear-cut decision one way or the other.

One Member exception from the overall ceiling

31. There has been a long-standing understanding that, for one Member which had placed a disproportionately large percentage of its trade-distorting domestic support in the blue box (it should be stressed that this relates to the *"old"* blue box only), this could have the unintended (and perverse) practical effect of deterring that Member from moving from Amber to Blue.

32. I see two options for that Member –which could be defined (if need be) as having an amount greater than 40% of its trade distorting support du

38. But, as noted above, what this is all about is still how much money can or should be spent on particular commodities. It is about trying to stop the overall amount being shifted into one or two products. In fact, there are all sorts of permutations and combinations that one can invent under this rubric of "anti-concentration". But, if product specific amounts are a non-starter then all so-called "anti-concentration" variants that are in actual fact only devices to extract a product specific cap by another name are also non-starters, as no-one is going to be taken in. So there is little point trying to over-complicate this. Is there a genuine willingness to take a ceiling limit one way or another or not?

E. COMBINED AMBER AND BLUE COMMODITY SPECIFIC CAPS

39. This, presumably, is why there has been a latter day interest in bypassing all of this. Hence the suggestion that we go down the route of so-called "merged" blue and amber commodity specific caps.

40. If this was to be done, it would have to have certain safeguards built – in. Most important, it could not be a device to simply circumvent what would otherwise be the required AMS commodity – specific caps. How could that be done?

41. Although it would be a "combined" cap, it would still have to be made up of the AMS and blue elements. So you would still (at least analytically) have to arrive at the component elements to make up the combined cap. So the purely analytical elements will still have to reflect the judgements for your AMS and Blue elements outlined above. I won't repeat all that here.

42. In addition, nobody has ever suggested that this would ever over-ride the AMS commodity-specific commitment (whatever it would be determined to be in its own right). Thus, that would always function as a ratchet within any "overall" commitment. In other words, a Member could spend up to its full AMS entitlement, but it would never be entitled to exceed that entitlement by utilising its implicit blue entitlement for AMS purposes.

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47. I note that it doesn’t just say "more" than the general formula. It says "more *ambitiously*". So, whatever "more" will ultimately be, it is not to be, on this reading, a minor or modest or marginal additional undertaking. It must itself have the quality of being ambitious in its own right and that "ambition" is to be measured from the point of the "general" and not from the starting –point of zero. In other words it will be ambitious by measuring its outcome in relation to the general formula not just per se.

48. Of course, what is crucial here is what could be described as the "general formula". At issue, essentially, is AMS and Blue box. The other general figure is, of course, for Overall TDS. None of these are determined, so it is not as if we have a fixed point, right now. But what is clear is that one cannot make sense of what either the Framework or Hong Kong means unless there are commodity specific reductions for Cotton irrespective of what is ultimately determined in respect of other commodities.

49. For AMS, we are generally supposed to be doing "capping" rather than commodity specific reductions per se (although the framework itself envisages there will be "some" reductions). So, strictly speaking, the only way we can reasonably interpret the Hong Kong wording is in relation to the only thing that is indeed "general" in respect of AMS for reduction, i.e. the general formula itself. As you will see from the above, I have the sense that, wherever we ultimately come out, 60% is at least in play as a "general" for a tier two country and 70% for a tier one country.

50. For Blue, we still do not know if we will do commodity specific at all in any sense of the term. Unless and until we do, we can orient ourselves only by means of the general blue box reduction that seems to be in play, which appears to be around 50%. If there was, however, an anti-concentration discipline of some sort, that could give us another general standard to potentiall.7(m)7f770.6066

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55. I would sense the above essentially for value. We are wide apart on value versus volume commitments. As regards volume, this is still to be resolved, with flatly opposed views. I think this negotiation has some way to go, and is not unrelated to other elements in this pillar. The only observation I would make at this stage is that

62. Where there has been more doubt or questioning has been over the following: the country where the emergency exists; relevant regional humanitarian organisations, non-governmental humanitarian organizations or private charitable bodies.

63. It might be more straightforward to develop WTO rules on the Safe Box if all emergencies followed the sequence of and event causing an emergency, declaration of an emergency, needs assessment and an appeal by a recognised institution. But the real world is not so tidy. The reality is that there will be occasions when it is neither feasible nor humanly conceivable that action would be withheld, pending ideal processes to work their way through. I have heard no persuasive arguments to deny this, and irrefutable actual instances have been cited. It would be absurd if we were to believe we were doing a sensible job if we were to end up prescribing rules, the practical effect of which would be to interfere with genuine humanitarian responses to emergency.

64. So, we cannot deny that there have been, and can be, situations where there is a need to respond to an emergency before there is a UN agency declaration/needs assessment etc. Normally, that would be triggered by an appeal from the relevant Government. But situations can arise where the relevant Government does not do so, but there is an undeniable emergency humanitarian situation within its jurisdiction. And the international awareness could well be generated by a non-governmental organisation. Therefore, provision needs to be made in the Safe Box for these situations. They will, presumably, not be the norm,

(such as the United Nations or the Red Cross); that it is targeted to an identified vulnerable population; and that it is provided to address specific developmental objectives or nutritional requirements. Other organizations with direct responsibility in this area, such as the Consultative Sub-Committee on Surplus Disposal of the FAO, may have or could develop additional rules in the coming period. We should allow for whatever occurs there by way of progress to be applicable here. Second, there could be an acknowledgement of the desirability of moving to cash-based. That could be coupled with a commitment to work on ways to get to that goal with a review of these disciplines in say four years. In addition there could be a commitment now-short of full elimination-to have moved at least a certain percentage to cash-based by that four year review point.

69. On re-exports of food aid I think we are effectively there. What is to be prevented is the commercial sale in country A of food which was intended as food aid in country B. However, we do not mean to interfere with food aid being moved from country B to country C when it is part of a UN programme.

70. I do not have the sense that we will, in the time available to us, get agreement to flat elimination of monetization. The disciplines route seems to be the only option, along the lines of the following: only under exceptional circumstances; to fund activities that are directly related to the delivery of the food aid to, or facilitating procurement of agriculture inputs, where necessary, by the final recipients. Furthermore, it could be provided that monetization is under the auspices of, or at the very least subject to review and comment by, the core UN humanitarian agency and the recipient governmental authority, with a view to ensuring that there is minimal risk of commercial displacement and disincentive to local production. We could have a review of monetization, too, in four years time with a directive to update the disciplines in light of the views provided by those agencies.

71. To ensure that food aid complies with the rules it is essential that we develop appropriate provisions on monitoring and surveillance, particularly for non-emergency food aid and for emergency food aid provided before an appeal is made. Such notification requirements would have to cover both ex-ante and ex-post and a means to ensure compliance with these requirements would also be needed.

C. EXPORTING STATE TRADING ENTERPRISES

72. I would envisage continuing to use a short chapeau followed by substantive provisions on: the definition of a STE; disciplines on export subsidies, government financing, underwriting of losses and monopoly powers; special and differential treatment; and monitoring and surveillance. Concerning the chapeau, this was one of the rare sections of the Proposed Draft Modalities which did not include square brackets and so I see no need to change it

73. Concerning the definition of an exporting state trading enterprise, there is really a straightforward choice: we use the current definition as provided in the Understanding on the Interpretation of Article XVII and amend it slightly so that it refers to STEs involved in the sale for export of agricultural products; or we venture into broadening this definition to include enterprises which have been granted advantages with respect to exports of agriculture products and enterprises which enjoy *de facto* exclusive or special rights, privileges or advantages or concepts of this kind. Frankly, I am wary about the wisdom of going for substantive changes to a definition which has already been well-established, all the more so as I get no clear sense that anybody really knows where any more substantive modified drafting actually leads, and they certainly have a great deal of difficulty in being able to explain what is "in" and what is "out" with such wider definitions as have been variously proposed, let alone whether this is an operationally reliable way of distinguishing ste's from "private" enterprises rather than confusing that distinction inadvertently. Thus, unless I hear compelling arguments to the contrary, I would opt for prudence.

74. There has not been any objection to the wording proposed in the Possible Draft Modalities for the elimination of export subsidies so my working assumption is that we will go with that.

75. For government financing and underwriting of losses there are still disagreements as to whether the list of measures covered by government financing and underwriting of losses should be exhaustive or indicative. If it is government financing or government underwriting of losses that are at issue, that is what is the principal obligation. The forms that come afterwards, and are specified, are presumably to leave no doubt that they are what is meant, so there can be no a priori argument about

In my view it is down to a choice between that and deciding to have immediate elimination of credits of over 180 days for any product for which there were no reduction commitments in a Member's Schedule plus the phasing out of export credits for other products in parallel with the phasing out of direct export subsidies. Clearly, such a programme for elimination could not be construed so as to imply the creation of any right to provide export subsidies in excess of the quantity and budgetary outlay commitments set out in Members' Schedules.

Export Credits, Export Credit Guarantees or Insurance Programmes with repayment periods of 180 days or less

Forms and Providers of Export Financing Support Subject to Discipline

81. Two basic approaches to addressing export credits emerged during last year's negotiations. One approach would focus on having a short self-financing period and a narrow range of permitted export financing instruments as a simple means of ensuring market consistency. Under this approach the only financial instrument would be pure risk cover.

82. The other is a broader and more rules orientated approach which would appear to have more support among Members. This would permit a wider, though still limited, range of financial instruments than only pure risk cover.

83. The proposal to limit the permitted financial instruments to risk cover would actually prevent a Member from providing export credits – although

days for all agricultural products. Of course, a maximum period of 180 days is meaningless unless we know when to start counting. Although various proposals were made, I think the bulk of opinion was that it should be the date of arrival, or the weighted mean date of arrival for credits covering more than one shipment.

Other disciplines

87. In addition to self-financing and the maximum repayment term, disciplines are also needed on payment of interest, minimum interest rates, risk premiums, risk sharing and foreign exchange risk. Although there were some differences concerning these sections of the possible draft modalities they did not appear to be insurmountable. I do not inte

negotiation, it is a reasonable presumption that neither of those positions will in the end actually prevail. So I would have thought that it is a reasonable prediction from any dispassionate observer that

thirds cut within the bands but that the thresholds should be different too, the practical consequence of which can as a practical mater actually take us quite a way away from two-thirds overall.

100. One practical way is to try the following. First, there will indeed be an overall outcome figure that is a minimum target: two-thirds of the average cut for developed countries. The preferred manner to get to that target is that a developing Member applies the same thresholds and two thirds of the cuts within the bands. But, if application of that approach would lead to an overall cut in excess of two-thirds of the developed country average, the developing Member would still have to apply two-thirds of the cuts within each band but may modify all the thresholds by such a fixed percentage (it needs to be fixed in order avoid any incentive to manipulate this unpredictably) as would lead to the overall two-thirds cut. In no case would the thresholds be more than is envisaged in the G20 proposal.

101. This needs of course to be supplemented by comment on various other proposals on e.g. sve's, ram's as well as a developing country equivalent of the disproportionality concept which will come with my next instalment.

B. SENSITIVE PRODUCTS

Selection

102. My report to the TNC noted that proposals extended from as little as 1% to as much as 15% of tariff lines. That remain formally the case, but I frankly believe that the general centre of gravity is now actually much more convergent than that. I would estimate it to be higher than 1% certainly but not above 5%. That said, there remains a question about whether that is manageable for all developed Members, notably those which might be otherwise subject to a disproportionate impact through cuts in the top band. I believe it is not, so I have a more concrete proposal below to deal with that possibility.

Treatment

103. To begin with, as regards the issue of deviation from the tariff cut for sensitives, I have the sense that the centre of gravity is at somewhere between 1/3 and 2/3 of the cut. Obviously, one-third of a 60% cut in the top band is a 20% cut. I doubt if a net cut that is less than that in the top band is likely to fly. Conversely, two-thirds of an 85% cut is 56.6%. I doubt that a net cut that is higher than that in the top band is likely to fly.

104. I am inclined to think that if this is close to the range we end up with there will be an emerging consensus also for the principle that

positions remain on the table. Where we end up on that

113. Now there is also the issue that

to those Members that had more than (for instance) 25-30% of their tariffs in the top band (see section above).[6]

122. In such a case, the Member(s) concerned would have a somewhat greater entitlement to sensitive product numbers. But, if the logic is to give some greater flexibility, as it were, to deal with their more particular situation, there would need to be some counter-balancing on the "other side". So, there would be an entitlement to have somewhat greater number of sensitive products but the "quid pro quo" for this would have to be that there was a commitment to give a somewhat larger TQ commitment than the default situation.

123. This gives us our situation five position; viz. where a Member has more than (say) 25-30% of its tariffs in the top band it can have (say) 1/3 more sensitive products than otherwise. However, to balance this it would be required to provide (say) one–third more than the default commitment by way of TQ expansion to balance this greater flexibility.

C. TARIFF CAPPING

124. I have nothing to add on the question of tariff capping.

D. SPECIAL PRODUCTS

125. We are, in my view, a long way apart on existing positions and there is no point in pretending otherwise. In my view this owJe is no-5.4(m)77.5(sei-6.61s)282.28 ld11.5 questioaddse-5.s.5(baltr)]TJ-19aprarwJeerri

be "three or four" will prevail. The de facto zone of engagement over numbers –if indeed there is a decision to ever go for a number-(not an unambiguous *a priori* requirement on my reading of the 2004 framework I would add) is obviously considerably narrower to anyone that is not partisan in this exercise. But I say *de facto* for a reason: I have no evidence (although I do not know what is going on in purely bilateral discussions) that anyone is actually talking about this.

128. You will have seen above that I have convinced myself at least as to where the rough centre of gravity is for developed country (default) sensitive products i.e. somewhere between 1 and 5%. Strictly speaking there is NO connection in numerical terms between sensitives and specials, but my sense is that, politically, the specials number will simply have to be larger than

apart from whether or not they would be WTO consistent in any case. Fourth, the product of what is done in such a way would have to be on the table in matter of weeks on the assumption that we are going to get all this done in the timeframe we all say we are working to. So this must be pretty well advanced by now. If not, it is time to recognize that it will not be in place in time to do the job.

132. Hong Kong clarifies that self-designation is to be *guided* by indicators, and that those indicators are to be *based on* the criteria. If something (in this case"indicators") is a guide, it must be capable of telling you where to go: it has to be able to describe a path. To be a guide worthy of the name it must be intelligible and accessible to the reader. It has to be transparent. Which means, operationally, it has to be objectively and intrinsically intelligible: it is the *indicator itself* that is providing the guidance, so it would fail to do that if there was a need for some kind of supplementary interpretation to be additionally required from elsewhere. Something describing itself as a guidebook would get consigned to the dustbin if, upon opening it, you were told: the writer knows how to get around Geneva but he hasn't got a map to give you -suggest you go and ask a cab driver if you can find one. In this case we are also to have a particular *kind* of guide: it is to be *based* on criteria. If something is "based" on something it has to be grounded in it: it has a relationship of dependency. It doesn't just have a "vague relationship" or "connection" or a "loose association". It has to be capable of exhibiting a discernable rationale. Or taking this together and putting it more prosaically: these "indicators", to be worthy of the name would have to transparently, objectively and intelligibly exhibit their rationale.

133. That leads me to the working conclusion that for something to be an indicator it should, at the very least, have to be open at least to empirical observation or reasonably capable of verification. It is hard for me to avoid the conclusion that, generally, we should have a preference for transparency and predictability. Be that as it may, it would seem to be unavoidably germane in this particular situation. Based on the above, I would suggest that there should at least be a strong presumption that there is a rationale for indicators involving data that can be tested for in a straightforward manner by utilising internationally recognised sources (provided of course the substantive conceptual connection is warranted). Of course, it may well be that "internationally recognised" sources are not available. But the Member concerned does have access to its national data even if this is not "internationally recognised". But this, in principle, should still be something that could be shared and therefore inherently publicly available. Anything that was not capable of such verification or transparency would not be a viable indicator.

134. Then there is treatment. I have to go back to the framework to try to discern what would be – if one was trying to be objective- a reasonable way to go about this. I go back to the text. First, the

146. As I say, I have to try. All you have to say is no. In which case we go back to what we have been doing up to now. But I just want to be sure that that is in fact what you want to do.