

**Negotiations on Agriculture**

**Revised Consolidated Reference Paper on Possible Modalities on Market Access**

***Introduction***

1. As you know, you have directed that I prepare a draft modalities text on or around 19 June. I have myself made clear that, in subscribing to the bottom-up, transparent process we are adopting, any such draft is unlikely to contain things you have not seen or heard before, or things that Members would not be able to work out for themselves. After all you have made it clear that it is not my role to invent solutions out of thin air, and even if I was sufficiently deluded or misguided enough to make the attempt, you would hardly accept them given that they emerge in a vacuum and are severed from any real emergent consensus or convergence on your part as Members. Indeed, TNC laid it out in words of one syllable: "Chairpersons should reflect consensus, or where this is not possible, different positions on issues." Thus, unless or until there is such emergent consensus, one has to respect the substantive positions of Members. Come that date, therefore, I will be issuing a document that does so.

2.

the subject of reference papers. Such comments will, of course, drop out when it becomes a draft text per se.

5. It must also be borne in mind that the conclusion of modalities, in whatever form, does not represent the end of negotiations. Indeed, much more work will be needed in the next phases as Members will have to prepare draft Sched[([ntp(44 -1.1sch mo.6(es )base-0.0018 e TD0765 0 TD0.0139 Tc0.1465 Tw[d ll raphidare tn te,e(n)727d( )-5.8()78.2(f).3(ts)44 -h ft te, nego

10. Finally, it needs to be noted that, like the General Council Decision of 1 August 2004 (paragraph 2) and the modalities of the Uruguay Round (fourth paragraph of MTN.GNG/MA/W/24 of 20 December 1993), modalities cannot be used for dispute settlement. Therefore, draft modalities certainly cannot be used for dispute settlement.

11. As this is the first pillar to be addressed in this manner, I have tried to look at how the definitions might look either for modalities or for an amended Agreement on Agriculture. For this reason, I have included these, but mostly to the extent that they concern market access. No doubt, they will be changed and be added to as we proceed. They would have to undergo legal revision at a later stage.

12. In addressing some issues that cross different pillars, such as cotton or commodities, I have focused only on market access. Domestic support and export competition will be taken up subsequently. But, as you will see below, some of my own remarks reflect a view on where things are at that reflects judgements about what is going on (or not) in other pillars.

## **Draft Possible Modalities on Agriculture**

### **I. DEFINITIONS<sup>1</sup>**

- Year in relation to the implementation period



much) - at least offer you my view as a keen observer of this process. And I cannot escape the conclusion that the zone described above is where you will all end up *if there is to be an agreement in the time frame we are all working to.*

Now, having said that, as the broad sense of where we will end up – if at all – I

But I know also that what is not far under the surface of this difference over the two-thirds proposition – or what is really getting in the way of a practical way forward – is a view that some at least hold that the divergence between cuts in bound and applied is too wide on this basis. If so, I feel that, given the late hour, we now have no choice but to deal openly and frankly with each other over this and lay it to rest. If we all resolve that it is a matter of all accepting that a bound tariff is a bound tariff and those are the only apples that we are comparing, life will be a lot simpler. But that is up to you as Members. I don't think you are there yet. I would venture only four observations.

First, this negotiation cannot be expected to “make up” for any regrets that Members might have had about where past negotiations got them: whatever one makes of past deals with hindsight, they were past deals. It is true that for a good number of developing country Members it means now there is a gap between their bound and applied rates. That is not

the very logic of the tiered formula itself is to have that general effect as you go up the nominal tariff chain. So, of course, the view may be taken by cap proponents that that is entirely appropriate. All I would note is that in this, as in so many other things, it is not a matter of abstraction or formality. There is a matter of *degree* also so that we not end up with outcomes that are manifestly disproportionate on this –or on any other matter of course. Let's not lose sight of that as we deal with this "evaluation".

C. SENSITIVE PRODUCTS

1. **Designation**

6. [Each [developed] country Member wi( )]903 0t6.5(p)-5pS



variable trade effects depending on what, in fact, the trade coverage is actually going to be. Even with, say, three percent of lines it is conceivable that the percentage of trade covered could be quite a high figure for one Member but quite a low figure for another. Are we completely relaxed about that? So, to my mind at least, I cannot help wondering whether all this focus on the number/percentage is all that sensible or whether it runs the risk of mistaking form for substance. But, it is not something over which there has been anything that I could describe as a serious negotiation. In the same vein, of course, we have to settle whether we are talking dutiable lines or all lines. It all makes, as one could say, quite a bit of difference one way or the other.

## 2. Treatment - Tariff Cut

7. Bound duties on products designated as Sensitive will be reduced by [at least [70] per cent] [by 20, 50 or 80 per cent] [by between one third and two thirds] of the reduction that would otherwise have been required by the tiered formula.

You have already seen from my previous reference paper that I do feel that we ought to have been at least moving into what I described as a "topping and tailing" mode. Regrettably (but not exactly to my surprise) there did not appear to be too many takers. I still think that we will end up doing that in due course. Although, "due course" in present circumstances is shaping up as being a matter of days and hours rather than weeks, given the timeframe we have left. I frankly find it difficult to avoid the sense that the general zone in which we will end up negotiating is between 30% and 70% of the cut. As I said orally during the last meeting, I find it quite plausible to believe that if we make no progress on this in an incremental way, Ministers – or whomever is in the room when we finally run out of time and simply have to make a decision – will have an overwhelming temptation to just go for a clean number – in which case, I for one, would not be at all surprised if we ended up with a straight 50% of the cut and it will be left at that. But that can be no more than me happening to have that feeling in my bones. If that prospect does indeed create particular anxiety amongst Members I can only urge that it would therefore seem to me to be a prudent negotiating technique to actually start negotiating more concretely on the margins. If not, the chances of a last minute single Solomonic slice just strikes me as more plausible.

least [20] per cent of the current bound tariff quota and (iii) [80] per cent of the reduction under the tiered formula the expansion shall be at least [5] per cent of the current bound tariff quota]

[calculated according to the formula

$$Q = [ Q_b ] + (T_{1n} - T_{1s}) * [S]$$

Where

Q is the expansion in the tariff quota expressed as a percentage of domestic consumption;

Q<sub>b</sub> is the base expansion of the tariff quota expressed as a percentage of domestic consumption;

T<sub>1n</sub> is the bound duty as calculated under the tiered formula;

T<sub>1s</sub> is the bound duty to be applied to the sensitive product;

S is the Slope.

]

[calculated according to the formula

$$Q = [0.8] * (r_f - r_s) * 100 / (1 + t_0)$$

Where

Q is the expansion in the tariff quota expressed as a percentage of current imports;

M is current imports;

r<sub>f</sub> is the reduction in bound duty under the tiered formula;

r<sub>s</sub> is the reduction in bound duty for the sensitive product; and

t<sub>0</sub> is the current bound duty or its *ad valorem* equivalent.

]

(b) In cases where:

- (i) [the existing bound tariff quota represents more than [ ] per cent of domestic consumption the expansion in the tariff quota under (a) above shall be adjusted by [ ]];
- (ii) [current imports] [the existing bound tariff quota] represent[s] less than [ ] per cent of domestic consumption, the expansion in the tariff quota under (a) above shall be adjusted by [ .].];
- (iii) there is no existing final bound tariff quota commitment for a Sensitive Product the Member concerned [may choose] [shall] not create a new tariff quota, [provided that the tariff cut for the Sensitive Product will be achieved in a shorter implementation period. Alternatively, a Member may opt for a longer implementation period for the full tariff cut required by the tiered formula.]

There is no getting away from the fact that we are considerably apart on this and I cannot, frankly, find any discernable sign of further convergence at this point – beyond the elements I identified in my previous reference paper. It is clearly absolutely

or even really talking the same language. Nor can I see easily how one final convulsion at the end of June can be expected to crunch this. This really needs very intensive work over the next few days.

One point on which Members may wish to reflect, however, is that the proposals I have tried to summarise above can be boiled down to a co-efficient multiplied by a variable. The choices for the co-efficient are domestic consumption, existing tariff quotas and current imports – but they do not decide the level of ambition the variable decides the level of ambition. Of course, the variable will have to change dramatically to achieve the same result from different co-efficients and there are other factors in the choice of co-efficient as well, such as the relative sizes of imports, consumption and existing tariff quotas which influence different positions but until we get some common basis for negotiation we need some progress here.

THE ISSUES

The truth is that, whatever view one might take of the above, there haven't exactly been many other proposals. And we do have a Framework decision which needs to be respected so we need to find a formulation to discharge it. Absent anything better, this

(b) Tariff quota administration

15. The administration of bound tariff quotas shall be subject to the disciplines [set out in Annex C] [to be developed based on Annex C].

Again, we have a requirement on this so there will have to be an Annex C and, hopefully, something in it! Some very recent ideas have been tabled - such as the Australian and Canadian documents. But, frankly, the discussion on this has been so cursory that it is difficult to find any concrete language at this point which has any degree of backing and I do not feel even the Australian or Canadian text have that status. What I have done is to

## (b) Treatment

21. [[No product designated as a Special Product shall be subject to [a cap on the bound duty] [or to] [any new tariff quota commitment].

22. At least [50] per cent of tariff lines designated as "Special Products" shall be exempt from any reduction in bound duties, [25] per cent of tariff lines designated as "Special Products" shall be subject to a reduction in bound duties of [5] per cent and the remainder shall be subject to a reduction in bound duties of not more than [10] per cent].]

23. [Products designated as "Special Products" will be subject to a reduction in bound duties of [ ] per cent of the reduction that would otherwise have been applicable under the tiered formula for reductions in bound duties or, in the case where a cap in the bound duty would otherwise have been applied, the cap shall be [ ] per cent higher than would otherwise have been the case.

24. "Special Products" [currently subject to bound tariff quotas] shall be subject to tariff quota expansion of [ ] per cent.]

**2. Special Safeguard Mechanism**

## (a) Selection

25. Each developing country Member [may designate up to [ ] per cent of tariff lines as "SSM" in column [ ] in Part I, Section I of its Schedule] [may designate as "SSM" in its Schedule those products which have undertaken tariff reductions greater than [ ] per cent] [will have access to a Special Safeguard Mechanism for all agricultural products]. [Products designated as "Special Products" may not be designated as "SSM".]

## (b) Trigger and Remedy

26. The quantity and price triggers under which the Special Safeguard Mechanism may be invoked and the additional duties that may be charged are set out in Annex E.

**3. Fullest Liberalization of trade in tropical and diversification products**

- (a) [applying a lesser reduction of [ ] percent of the appropriate reduction under the tiered formula;] [and] [or]]
- (b) [any bound in-quota duty shall be eliminated] [and] [or]]
- (c)

- (b) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.
- (c) Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.
- (d) Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.

#### H. COTTON

37. Developed country Members [and developing country Members [in a position to do so]] shall give duty and quota free access for cotton exports from least-developed countries from the commencement of the implementation period.

#### I. [SMALL, VULNERABLE ECONOMIES

38. Members with economies defined as small, vulnerable in [ ] may reduce bound duties by [ ]

**DRAFT GUIDELINES FOR THE CONVERSION OF FINAL BOUND NON-AD VALOREM DUTIES  
INTO AD VALOREM EQUIVALENTS<sup>1</sup>**

**I. OBJECTIVE**

1. There is general understanding amongst Members that construction of a tiered formula for tariff reductions requires a common measurement device for converting the various types of non-*ad valorem* final bound tariffs to *ad valorem* equivalents ("AVEs"). These Guidelines are intended to establish such a common methodology for the calculation, and subsequent submission, of AVEs for the purposes of allocating tariffs to the various tiers to be established. The Guidelines are based on the principles of practicality, comparability, simplicity, transparency and verifiability.

2. All Members with final bound non-*ad valorem* tariffs for agricultural products (as defined in The5.9(l)





B. ALTERNATIVE AVE CALCULATION

1. **Specific situations covered**

*Missing data*

15.

there is a 100% difference here, the absolute difference between the AVEs is low enough so as not to warrant additional attention.

19. The relevance test is designed to only identify tariff lines in which there is a large absolute

*Alternative treatment pursuant to the 40/20 filter*

25. The conversion of non-*ad valorem* duties, captured in the 40/20 filter, into their AVEs will be calculated using the following weightings based on unit values of Comtrade and IDB data:

- (a) For HS Chapters 1 to 16, and the products in Annex 1 of the Agreement on Agriculture in the HS Chapters beyond Chapter 24, a 82.5/17.5 (Comtrade/IDB) weighting will apply.
- (b)

**2. Verification**

33. The verification process is to ensure that the AVE calculations have been performed in accordance with these Guidelines [details to be developed.]

34. Final lists of AVEs are to be submitted to the Secretariat within [ ] days following the completion of the verification process. Upon receipt, the Secretariat will promptly post these submissions on the password-protected Members' Web Site.





0702.00 – Tomatoes, fresh or chilled	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid. 2002.10 – Tomatoes, whole or in pieces 2002.90 – Other  2009.50 – Tomato juice, unfermented and not containing added sugar or other sweetening matter  2103.20 – Tomato ketchup and other tomato sauces
<b><u>Fruits</u></b>	
<b>Primary product</b>	<b>Processed product</b>





1207.60 – Safflower seeds	Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard, 12.08.90 – Other than of soybeans <sup>1</sup>  Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified. Sunflower-seed or safflower oil and fractions thereof: 1512.11 – Crude oil 1512.19 – Other
Other oil seeds and oleaginous fruits, whether or not broken 1207.10 – Palm nuts and kernels	Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard, 12.08.90 – Other than of soybeans <sup>1</sup>  Palm oil and its refractions, whether or not refined, but not chemically modified  1511.10 – Crude oil 1511.90 – Other
Other oil seeds and oleaginous fruits, whether or not broken 1207.20 – Cotton seeds	Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard, 12.08.90 – Other than of soybeans <sup>1</sup>  Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified. Cotton-seed oil and its fractions: 1512.21 – Crude oil, whether or not gossypol has been removed 1512.29 – Other
<b><u>Sugar</u></b>	
<b>Primary product</b>	<b>Processed product<sup>3</sup></b>
1701.11 – Raw cane sugar, not containing added flavouring or colouring matter  1701.12 – Raw beet sugar, not containing added flavouring or colouring matter	1701.91 – Cane or beet sugar containing added flavouring or colouring matter  1701.99 – Cane or beet sugar, other than containing added flavouring or colouring matter  1704 – Sugar confectionery (including white chocolate) not containing cocoa
<b><u>Cocoa</u></b>	
<b>Primary product</b>	<b>Processed product</b>
1801.00 – Cocoa beans, whole or broken, raw or roasted	1803.10 – Cocoa paste, not defatted 1803.20 – Cocoa paste, wholly or partly defatted  1805.00 – Cocoa powder, not containing added sugar or other sweetening matter  1804.00 – Cocoa butter, fat and oil  Chocolate and other food preparations containing cocoa. 1806.10 – Cocoa powder, containing added sugar or other sweetening matter 1806.20 – Other preparations in blocks, slabs or bars more than 2 kg or liquid, paste, powder, granular or other bulk form in containers or immediate packings of a content exceeding 2 kg 1806.32 – Other, in blocks, slabs or bars, not filled 1806.90 – Other

<sup>3</sup> This does not preclude the possible addition of additional products within Chapter 17 and 18 that can be linked back to the primary product.

**Draft**  
**Tariff Quota Administration**<sup>1</sup>

1. [Tariff quota commitments shall be administered in a manner which is transparent and predictable, and ensures that the market access opportunities represented by such commitments are made fully and effectively available.
2. Members shall administer tariff quotas in conformity with WTO provisions, including through the following requirements:
  - (a) A tariff quota commitment shall not be administered in a manner which hinders in any way the importation of any product or tariff line within the tariff quota.
  - (b) Members shall provide timely initial allocations of import licenses and mechanisms for re-allocation or tradability of tariff quota allotments to ensure that the annual tariff quota quantity is imported within the quota year.
  - (c) Members shall not impose seasonal or other time limits on imports under tariff quotas, including those created through delays arising from licensing and associated procedures, which result in under-fill of the quota.
  - (d) Members shall not impose unfavourable commercial terms which act to restrict the importation of products within the tariff quota commitment, including product specification requirements, domestic purchasing requirements, non-viable quota allotments, restrictions on quota allocation to retail distributors and other end-users, restrictions on sales to final consumers, or export or re-export requirements.
  - (e) Members shall not credit allocations or preferential imports under bilateral and regional trade agreements against their scheduled WTO tariff quota commitments.
  - (f) Members shall publish all relevant information sufficiently in advance in relation to their administration of tariff quota commitments, including information regarding administrative requirements and procedures, the contact details of importers to whom tariff quota allocations have been attributed and current tariff quota fill rates.
3. [Underfill Mechanism:
  - (a) If the tariff quota fill rate in any year falls below [85%]<sup>2</sup> the under-filled portion of the tariff quota will be added to the tariff quota quantity for the following year.
  - (b) If fill rates are, in each year over a [two year] period, less than [85%] (excluding any additional amount added to the tariff quota under (a)), the out-of-quota duty shall be reduced to the in-quota rate [until such time that annual imports equal or exceed the volume specified in the Member's schedule]. Thereafter, the Member shall adopt one of the following options for administering the tariff quota: applied tariffs or licenses on demand.
  - (c) Provisions on special and differential treatment will be developed.]]

---

<sup>1</sup> This document was distributed as JOB(06)/168 by Australia and is included here for illustrative purposes only. The Canadian proposal was distributed as JOB(06)/171 and referred to underfill of tariff quotas.

<sup>2</sup> A quota fill rate will be deemed to be below 85 per cent unless notified otherwise by the relevant Member to the CoA.

**Draft**  
**Illustrative list of indicators for designation of special products**

- (i) The product is identified as a staple food or as part of the basic food basket of the developing country Member through laws and regulations, including administrative guidelines.
- (ii)
  - (a) A significant proportion of the domestic consumption of the product in its natural unprocessed or processed form is met through domestic production in the developing country member concerned; or
  - (b) Total domestic production of each food class (in terms of carbohydrates, fats and proteins or any other food class) accounts for a significant proportion of the total normative requirement of that food class in accordance with the dietary preferences; or
  - (c) The product contributes to a significant proportion of the total calorific intake per capita per day.
- (iii)
  - (a) A significant proportion of the total food expenditure, or of the total income, at the household level in the developing country Member concerned is spent on the product; or
  - (b) A significant proportion of the total agricultural income at the household level in the developing country Member concerned is derived from the production of the product.
- (iv) Domestic consumption of the product in the developing country Member is significant in relation to total world exports of that product.
- (v) A significant proportion of total world exports of the product is accounted for by the largest exporting country.
- (vi)
  - (a) A significant proportion of the total domestic production of the product is produced on farms or operational land holdings of 20 hectares or of average farm size of the e hniD( )Tjarahnirti

- (ix) A significant proportion of the gross arable land is under cultivation of the product.
- (x) A significant proportion of the domestic production of the product, including a product produced from livestock is produced in drought-prone or hilly or mountainous regions.
- (xi) A significant proportion of the domestic production of the product is produced by vulnerable populations such as tribal communities, ethnic groups, women, aged people, or disadvantaged producers.
- (xii) The productivity per worker or per hectare of the product in the developing country Member is relatively low as compared to either the average productivity in the world or the highest productivity level achieved in any country.
- (xiii) A relatively low proportion of the product is processed in the developing country Member as compared to the world average.
- (xiv) The product contributes to improving the living standards of the rural population directly and through its linkages to non-farm rural economic activities, including handicrafts and cottage industries or any other form of rural value addition.
- (xv) A significant proportion of the total value of agricultural production or agricultural GDP or agricultural income is contributed to by the product.
- (xvi) A significant proportion of the customs tariff revenue is derived from the product in a developing country Member.
- (xvii)
  - (a) A significant proportion of the agricultural income or agricultural production is derived from the production of the livestock product(s), or
  - (b)

**Draft**

2. Imports under any [bound] tariff quota shall be counted for the purpose of determining the volume of imports required for invoking the provisions of subparagraph 1(a) and paragraph 4, but imports within such [bound] tariff quota shall not be affected by any additional duty imposed under either subparagraph 1(a) and paragraph 4 or subparagraph 1(b) and paragraph 5 below.

3. Any shipments of the product in question which have been contracted and were en route after





[9. No developing country Member shall take recourse to measures under Article 5 in respect of any product on which it has imposed additional duties pursuant to the provisions of this Article.]

[10. This Article will expire [ ].]

DraftTropical Agricultural Products and Products of Particular Importance to the Diversification of Production from the Growing of Illicit Narcotic Crops<sup>1</sup>

<b>HS4</b>	<b>HS4 DESCRIPTION</b>
0602	Other live plants (including their roots), cuttings and slips; mushroom spawn.
0603	Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.
0604	Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.
0701	Potatoes, fresh or chilled.
0702	Tomatoes, fresh or chilled.
0709	Other vegetables, fresh or chilled.
0711	Vegetables provisional

<b>HS4</b>	<b>HS4 DESCRIPTION</b>
1203	Copra.
1207	Other oil seeds and oleaginous fruits, whether or not broken.
1208	Flours and meals of oil seeds or oleaginous fruits, other than those of mustard.
1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in

<b>HS4</b>	<b>HS4 DESCRIPTION</b>
	or in similar forms.
2001	Vegetables, fruit, nuts and other edible parts of

