Negotiating Group on Market Access

TOWARDS NAMA MODALITIES

Revision

contains Annex B of the General Council decision of 1 August 2004 (commonly referred to as the "NAMA Framework"), as amended or supplemented by the relevant paragraphs of the Hong Kong Ministerial Declaration. The additions from the Ministerial Declaration have been indicated in bold;

 the <u>second column</u> shows possible modalities language. In some cases the issue has matured and the language is agreed. In other cases it was a simple transposition of the language in the July Framework. In yet other instances, it is language that I felt I could risk proposing on my own responsibility (identified in italics). Rest assured, those instances are a few: I took such initiative onlyon2 5(y)poml.1(tho3(caset)-5.4(r)-8.7(h)7es a7(IItand)-5.8at .8(d could be bridged at this time;

_______ is the Chair's commentarty bethind issues in I have not given an exhaustive narrative of the position of Members. Instead, I have briefly presented the issues and, in some instances, taken the liberty of providing some guidance for future discussions. In others instances, I felt I could not provide guidance because Members were unable to create that opportunity for me.

Where this document diverges from my April report is in the inclusion of an Annex. In this Annex, I have reproduced the various textual proposals submitted to the Negotiating Group on issues on which we do not yet have consensus and where the divergence is too great for me to bridge at this time. While this will certainly give Members a comprehensive picture of where we stand on all NAMA issues, it will not make their lives any easier. On some issues, as you will discover, the Annex represents a complex menu of options which Members will not have an easy time navigating.

There is another important dimension to the NAMA negotiations and to the interpretation of both the agreed modalities and the possible options for resolving outstanding issues presented in this document. This is what I have referred to as the "brackets" on the entire NAMA negotiations – that is, the agriculture negotiations. The simple fact is that progress in the NAMA negotiations have, at all times, been both constrained by and conditional upon progress in the agriculture negotiations. This is true both in respect of the overall negotiations and in respect of specific issues, including the level of ambition in the formula, the overall degree of flex

Over the past few weeks, I have been trying to obtain agreement on the "architecture" for resolving each of the issues. My intent was to prepare a final stage in the negotiations, which would be concentrated only on the numbers – the level of ambition. I cannot claim much success. We were able to confirm the architecture of the treatment of paragraph 6 countries and to agree on the substance of the issues related to least-developed countries. On other issues, I can claim only partial success. In respect of small, vulnerable economies and recently acceded Members, we have tentatively agreed only partial elements of the final solution. On the remaining issues, I can offer no more than possible approaches to finding an eventual solution.

I have faithfully adhered to the principle of the bottom-up approach, and this document is a reflection of the degree of convergence between Members on the issues.

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks
	<u>Preamble</u>	
 This Framework contains the initial elements for future work on modalities by the Negotiating Group on Market Access. Additional negotiations are required to reach agreement on the specifics of some of these elements. These relate to the formula, the issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities for developing-country participants, the issue of participation in the sectorial tariff component and the preferences. In order to finalize the modalities, the Negotiating Group is instructed to address these issues expeditiously in a manner consistent with the mandate of paragraph 16 of the Doha Ministerial Declaration and the overall balance therein. We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. We also reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities. We acknowledge the substantial work undertaken by the Negotiating Group on Market Access and the progress towards achieving an agreement on negotiating modalities. We take note of the constructive dialogue on the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirm our intention to use this document as a reference for the future work of the Negotiating Group. We instruct the Negotiating Group to continue 	We recall paragraph 16 of the Doha Ministerial Declaration in which we agreed "to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII <i>bis</i> of GATT 1994 and the provisions cited in paragraph 50 of the Doha Ministerial Declaration. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least- developed countries to participate effectively in the negotiations." Further to the Doha mandate, and building on the results reached in Annex B of the General Council Decision of 1 August 2004 (NAMA Framework) and paragraphs 13 to 24 of the Hong Kong Ministerial Declaration, we establish the modalities for the NAMA negotiations as set out below.	

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks
		schedules and also enhances transparency for traders. It may also avoid disputes in the area of classification and resolve the ambiguities from the Uruguay Round.
		In short, my first best solution is to have an agreed list with no deviations. My second-best solution is to have an agreed list with full transparency of any deviation
		Unbound Tariffs

- tariff reductions or elimination shall commence (b) Tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, we adopt a non-linear mark-up approach to establish base rates for commencing tariff reductions.
 - from the bound rates after full implementation of current concessions; however, for unbound tariff lines, we adopt a constant non-linear mark-up of [...] percentage points to the MFN applied rate in the base year to establish base rates for commencing tariff reductions.

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks
 credit shall be given for autonomous liberalization by developing Members provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round; 	(d)	Credit for bound autonomous liberalization by developing countries There is no consensus on this issue. Few developing Members have bound autonomous tariff reductions since the Uruguay Round. While some Members have noted the importance of this issue, they have also acknowledged that it is a difficult concept to operationalize. Perhaps as a result, until very recently, no proposal had been tabled and no discussion had been held on this subject. However, a proposal was tabled just before the preparation of this document. The proposal suggests that an unspecified number of additional points should be added to the coefficient in the formula for those lines which were bound autonomously. There has been no discussion of this proposal, which does not provide specifics on how to assess the value of the liberalization for the purpose of adjusting the coefficient.

- all non-ad valorem duties shall be converted to ad (e) all non-ad valorem duties shall be converted to valorem equivalents on the basis of the methodology outlined in document JOB(05)166/Rev.1 and bound in ad valorem terms;
 - ad valorem equivalents on the basis of the methodology outlined in JOB(05)/166/Rev.1 and bound in document

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks
		tariff lines unbound and, as a result, they are willing to consider a 95% percentage binding coverage for these Members. Others have shown greater flexibility. Some have suggested that, as the target tariff average was fixed on the basis of the "overall average of bound tariff for all developing countries after full implementation of current concessions", the same rationale could be used to determine their binding coverage (i.e. 81% if all developing countries except LDCs are included; 93% if the paragraph 6 countries are removed.).

Sectoral negotiations

7. We recognize that a sectorial tariff component, aiming at elimination or harmonization is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognize that participation by all participants will be important to that effect. We therefore instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants.

16. In furtherance of paragraph 7 of the NAMA Framework, we recognize that Members are pursuing sectoral initiatives. To this end, we instruct the Negotiating Group to review proposals with a view to identifying those which could garner sufficient participation to be realized. Participation should be on a non-mandatory basis.

1. We reaffirm that the sectoral tariff reduction component is another key element to achieving the objectives of Paragraph 16 of the Doha Ministerial Declaration. Participation in sectoral initiatives is on a non-mandatory basis. Such initiatives shall aim to reduce, harmonize or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, over and above that which would be achieved by the formula modality, in particular on products of export interest to developing countries.

2. We recognise the progress made in a variety of sectors, where discussions among participants in the sectorals have focused on: defining the critical mass which may include the share of world trade and level of participation of competitive producers; the scope of product coverage; the implementation schedule; and special and differential treatment for developing-country participants.

3. At the Hong Kong Ministerial Conference, Ministers instructed members to identify sectors which

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		from Ministers. It is clear that the proponents will be challenged to garner sufficient support for this proposal.
	<u>Flexibilities for developing Members subject to the</u> <u>formula</u>	<u>Flexibilities for developing Members subject to the</u> <u>formula</u>
8. We agree that developing-country participants shall have longer implementation periods		Implementation Period
for tariff reductions.		(See section on implementation period above.)
In addition, they shall be given the following flexibility:	Developing-country participants shall be given the following flexibility:	<u>Architecture</u>
		<i>There is consensus on the architecture of paragraph 8 flexibilities.</i>
(a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or	(a) applying less than formula cuts to up to [10] percent of the national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's non-agricultural imports; or	Numbers
(b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.	(b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of national tariff lines provided they do not exceed [5] percent of the total value of a Member's non- agricultural imports.	
We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.	We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.	

Modalities	Chairman's remarks
	Some Members have supported this proposal, although some indicated reservations about the number of additional points to be added to the coefficient. Others have expressed opposition to the proposal, arguing that it would establish a precedent for an "a-la-carte" application of the formula.
Small, Vulnerable Economies	Small, Vulnerable Economies
The criteria With the exception of developed countries, Members having a share of less than [0.1%] of world NAMA	<u>The criteria</u>
	Small, Vulnerable Economies <u>The criteria</u> With the exception of developed countries, Members

available data, as contained in document TN/MA/S/18 may use the following modality for tariff reduction:

It is understood that this does not create a subcategory of WTO Members.

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks	
	The treatment	The treatment	
		There is no consensus on the treatment of small, vulnerable economies.	
		There are two basic options on the table: a paragraph 6-type solution or a paragraph 8-type solution. The <u>first option</u> has two variations, one put forward by th5.	8(rn10u)-1.2(00289
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			JOB(06)/200/Rev.1 Page 13
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July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks	Pag Sof
	Least-Developed Countries (LDCs)		JOB(06)/; Page 14
	Flexibilities for LDCs		'200/Rev
9. We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.	· · · · · · · · · · · · · · · · · · ·		Rev.1

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks
	We reaffirm that developing country Members shall be permitted to phase in their commitments and enjoy appropriate flexibility in coverage.	
	Accordingly, by the time Members submit their comprehensive draft schedules of concessions, developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:	
	 inform the WTO of the products that are currently covered under duty free and quota free market access for LDCs; 	
	 notify the internal procedures by which they will implement the Decision; and 	
	 provide an indication of the possible time frame within which they intend to fully implement the Decision as agreed. 	
	<u>Recently Acceded Members (RAMs)</u>	<u>Recently Acceded Members (RAMs)</u>
11. We recognize that newly acceded Members shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions are still being implemented in many cases. We instruct the Negotiating Group to further elaborate on such provisions.	In recognition of their extensive market access commitments undertaken as part of their accession and that staged tariff reductions are still being implemented in many cases, the Recently Acceded Members shall have an additional implementation period of [] years, in respect of [].	<u>Who is a RAM?</u> An informal understanding was reached that for the purposes of complying with paragraph 58 of the Hong Kong Declaration concerning RAMs, the relevant negotiating bodies should consider the situation of all those Members who have acceded to the WTO since its establishment, with the exception of those who have
	In recognition of their extensive market access commitments undertaken as part of their accession and their current economic circumstances, Armenia, Kyrgyz Republic and Moldova shall not be required to undertake tariff reductions.	since become members of the European Union and those who are LDCs. In addition, any further countries which acceded before the conclusion of the negotiations under the DDA should also be considered. It is also understood that if Bulgaria becomes a member of the European Union before the

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Hong Kong Ministerial Declaration (in bold),	Modalities	Chairman's remarks	
as appropriate			

14. We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification. examination. categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and leastdeveloped country participants.

22. We note that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs. We also take note that Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. We recognize the need for specific negotiating

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Hong Kong Ministerial Declaration (in bold),	Modalities	Chairman's remarks
as appropriate		

and differential treatment for developing and least-

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold),	Modalities	Chairman's remarks	
as appropriate liberalization that will result from these negotiations. We instruct the Negotiating Group to			

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriat3.9)65(l)-121

July Framework, modified or supplemented by the Hong Kong Ministerial Declaration (in bold), as appropriate	Modalities	Chairman's remarks	-
	Paragraph 24	Paragraph 24	- age 22
24. We recognize that it is important to advance the development objectives of this Round through enhanced market access for developing countries in both Agriculture and NAMA. To that end, we instruct our negotiators to ensure that there is a comparably high level of ambition in market access for Agriculture and NAMA. This ambition is to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment.		A proposal (TN/MA/W/67) has been made in respect of operationalizing` this paragraph. While there was some support for this proposal, and most Members thought it a useful contribution to the negotiations, many of the Members who have taken the floor during discussions on this issue	

ANNEX

Specific textual proposals on issues in which broad divergences remain

I. **FORMULA**

Α. ARCHITECTURE

Option 1: A Simple Swiss formula with two coefficients, one for developing and the other for developed Members:

 $t_1 = \frac{(a \text{ or } b) \times t_0}{(a \text{ or } b) + t_0}$

where,

- t₁= Final bound tariff Baserate
- t₀=
- a= Coefficient for developed Members
- Coefficient for developing Members subject to the formula. b =

or

Option 2: ABI formula

$$t_1 = \frac{B \times t_a \times t_0}{B \times t_a + t_0}$$

where,

- t1 is the final rate, to be bound in ad valorem terms
- t_0 is the bound base rate
- $t_a\$ is the average of the current bound rates
- B is a coefficient, its value(s) to be determined by the participants

B. COEFFICIENTS

Option 1: Proposal by Pakistan (*TN/MA/W/60*)

These coefficients should be based on an objective criterion; taking the overall average of the bound tariff lines for developed and developing countries as their respective coefficients. These averages have been worked out to be 5.48% for developed countries, and 29.12% for developing countries². For the sake of simplicity these could be taken as 6 and 30. g

II. ELEMENTS REGARDING THE FORMULA

A. CREDIT FOR BOUND AUTONOMOUS LIBERALIZATION MEASURES BY DEVELOPING COUNTRIES

Proposal by the NAMA-11 (Room document of 16 June 2006)

(d) Noting that some developing countries have bound³ their tariffs on an MFN basis in the WTO since the conclusion of Uruguay Round, credit shall be given for such autonomous liberalization provided that the tariff lines were bound before commencement of the Doha Round. Credit will be effected by allowing the relevant developing country Member to use a coefficient [] points higher than the applicable coefficient to that Member in the agreed formula, for undertaking further reduction of these autonomously bound tariff lines.

III. SECTORALS

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- A. HARMONIZATION PROPOSAL ON THE TEXTILES AND CLOTHING SECTOR
 - **Proposal by Turkey** (*Presentation of 23 June 2006*)

Insert the following paragraph after the proposed sectoral language:

"5. Without prejudice to the modalities referred above and taking into acco(t)-6.4po ac1.7(d)-7.2(ab)5..7(d)-76.2(ng I41)]T

V. SMALL, VULNERABLE ECONOMIES

Α. Ρ

VI. RECENTLY ACCEDED MEMBERS

<u>Option 1</u>: Proposal by China (*Room document of 12 June 2006*) Croatia proposed some changes which have been incorporated below

- 1. The coefficient for the Swiss formula applicable to Recently Acceded Members shall be 1.5 times of that for developing-country participants.
- 2. In addition, the Recently Acceded Members shall be given the flexibility of applying less than formula cuts to up to 15 percent of tariff lines provided that the cuts are no less than half the formula cuts; or

the Recently Acceded Members may choose exemption from formula cuts for up to 10 percent of tariff lines.

- 3. The Recently Acceded Members shall have an implementation period [3-5] years longer than that for developing-country participants.
- 4. The Recently Acceded Members shall have a grace period for [3-5] years before the start of implementation of DDA commitments.

Option 2: Proposal by the NAMA-11 (JOB(06)/194)

NAMA 11 recognises the diversity in the tariff profiles of the RAMs as well as their specific situations. Accordingly, it would be appropriate that RAMs that declare themselves to be akin to developed countries

VII. NON-RECIPROCAL PREFERENCES

A. POSSIBLE SOLUTIONS

<u>Option 1</u>: Proposal by the African Group (*TN/MA/W/49*)

B. TREATMENT OF MEMBERS MOSTLY AFFECTED BY A TRADE SOLUTION

- Proposal by Sri Lanka (Room document of 16 June 2006)

As it has proposed by some Members⁵