

1 Negotiated by:

- the mandate for the NAMA negotiations as articulated in the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), Annex B of the Decision Adopted by the General Council on 1 August 2004 (the "NAMA Framework", WT/L/579) and the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC);
- the consensus among Members, where such consensus has been clearly expressed in the Negotiating Group process;
- the views of Members, presented in formal proposals and statements, in informal written submissions, and in oral interventions through hundreds of hours of Negotiating Group meetings, plurilateral and bilateral consultations on issues on which an explicit consensus has not been reached ; and
- my own judgement - not as a substitute for the judgement of Members but to prompt a real negotiation among them.

2. To better situate my draft modalities and the final phase of negotiations, I would offer the following general observations, which I hope will guide Members.

3. First, if I have been invited to propose the modalities it is because Members have been unable to bridge their positions themselves. The first corollary of this statement should be obvious to all Members: you will have to change your positions to reach an agreement. As a further logical consequence, however, it is almost certain you will be disappointed with my proposed modalities since, by definition, they cannot fully reflect any Member's position but rather a compromise between their positions. I have tried to build on the ideas of Members and to balance, as best I could, competing interests. At the same time, I have tried to fulfill the mandate you have given me - to move the negotiations forward by proposing specific outcomes, not rehearsing everyone's position, and challenging all to compromise.

4. Second, my proposed modalities rest on a principle that is almost unanimously held in the Negotiating Group - the principle that all must contribute. There are important differences among Members about how this principle should apply in specific circumstances and there is an important caveat: that Members should be asked to contribute at their individual level of capacity to do so. However, Members agree that the proposed modalities must invite a real contribution from all and I have not shied from proposing real contributions.

5. Third, the mandate directs us to give special attention to the needs of developing countries. This is intended to be given effect in the prescribed architecture of the modalities, including: different coefficients in the formula for developed and developo

6. As part of this broader development mandate, “less than full reciprocity in reduction commitments” is required. However, it is difficult for the Chairman to assess with confidence whether less than full reciprocity has been achieved, since the positions of the Members are very polarized and there has never been an agreed definition of reciprocity.

7. In prior rounds of negotiation, efforts to agree a definition have been unsuccessful, because Members have insisted on using their own yardstick to measure reciprocity, typically on the basis of the estimated trade flows for their specific exports in markets of principal interest. In the present Round, many developing Members have argued that reciprocity can only be interpreted as a requirement for developing countries that apply the formula to reduce their bound tariffs less than developed countries,

12. Sixth, I would recommend to Ministers that, in assessing these proposed modalities, they adopt the first of Stephen Covey's *Seven Habits of Highly Effective People* - to start with the end in mind. After the modalities I have proposed have been applied, developed countries will have bound tariffs below 3% on average, and tariffs peaks below 10% even on their most sensitive products. The two largest developed Members will have more than 90 percent of their duties below 5 percent and less than 2 percent of duties between 7 and 8.5 percent - their new tariffs peaks. In the developing countries applying the formula, bound tariffs will be below 12 percent on average, and only a handful will have averages above 15 percent. In these same countries, 80 to 90 percent of bound duties will be lower than 15 percent, dramatically reducing the "overhang" in their tariff schedules. Relatively weaker developing economies will have higher average tariffs and greater flexibility in how they structure their tariff schedules, but will nevertheless contribute to the market access outcome, significantly reducing their tariff binding overhang and achieving very high levels of tariff binding coverage.

13. Finally, I would observe that, in much of the rhetoric of Members, the negotiations have been portrayed as simply a confrontation between the interests of developed and developing countries. This rhetoric does not reflect the reality. In respect of every modality in the NAMA negotiations, developing countries' interests and positions are diverse and they are as often opposed as are the positions of developed and developing economies. Developed Member interests are also different, so much so that it would seem quite odd indeed if a Member were to take any position on behalf of "the developed countries". In my consultations with Members, as many developing countries have argued the need for greater access to developing country markets as have developed countries. Whether these negotiations succeed or fail, it is important that they be understood for what they are - not a struggle between rich and poor but a search for balance between the many competing interests of Members. This task is not made easier by the fact that the tariff schedules of Members are varied and do not always correlate well to their economic circumstances or level of development ... except when stated as collective averages and, as one Member famously put it: "I don't export averages."

14. Having made these general points, I would like to turn to my specific proposals and offer some comments.

The Formula

15. There is an almost unanimous view that a simple Swiss formula with two coefficients should be adopted. Recent proposals to supplement or replace the Swiss formula with a linear cut or average cut in order to facilitate convergence on the formula were greeted with considerable concern by most Members - developed and developing - who view the Swiss formula as the principal achievement of the NAMA mandate. Where additional flexibility is judged necessary by Ministers to address specific concerns, the clear majority of Members would prefer them to use the flexibilities already provided in the mandate - that is, to balance the level of ambition in the formula with the exemptions and/or trade volume constraints in paragraph 7 (Flexibilities for Developing Members Subject to the Formula).

16. As regards the coefficients in the formula, the extreme positions propose a difference of 5 and 25 points between developed and developing countries. Based on my consultations with Members, neither of these positions will find consensus. Between the two extreme positions, there is a large group of Members that seek or can accept an outcome in the ranges I have proposed. In respect of both coefficients, the proposed range is not in the mathematical middle between the extreme positions: it is the middle ground as Members have defined it in my consultations.

Elements Regarding the Formula

Product Coverage:

17. I have proposed a list of NAMA products in the HS2002 nomenclature to which all NAMA modalities will apply. My proposal is for an agreed list, which records, without prejudice to the rights of other Members, a number of longstanding deviations from the list by specific Members. The majority of Members have indicated their preference for an agreed list with no deviations. However, as a result of the sensitivity of the classification of products for two Members, it has been impossible to reach consensus. As a result, I have proposed a second-best approach: an outcome that achieves an agreed list and does not alter the rights of Members.

Mark-up for Unbound Tariffs:

18. Considering the harmonizing effect of the Swiss formula, the majority of Members have expressed flexibility on the issue of the mark-up for unbound tariffs. The remaining sensitivities are the effect on low unbound tariffs, on the one hand, and the impact on line-by-line outcomes, on the other. To balance these concerns, I believe a mark-up of 20 points would be appropriate and, on the basis of my consultations, I believe this could achieve consensus among Members.

reduction, on all tariffs. I have, therefore, proposed this additional flexibility, while being careful not to overcompensate these Members.

24. I would note that other Members have also proposed expanded flexibilities in specific circumstances. In particular, South Africa has proposed that consideration should be given to the impact of the application of the formula on the Southern African Customs Union, which took deeper tariff reductions than other developing Members in the Uruguay Round. As well, they argue that the impact of the formula tariff reduction on South Africa would have a negative effect on other members of the customs union, which comprises Members at significantly different levels of development. Some support was expressed by other Members, but the proposal was not yet fully articulated and the response from other Members was preliminary. I am, therefore,

Sectoral Negotiations

30. I do not expect sectoral negotiations to be completed by the time the modalities are established,

38. On the issue of improving rules of origin for duty-free, quota-free market access, neither the proponents nor the Members more broadly have a precise idea how they wish to proceed. Certainly, there is no consensus I can report or propose at this stage on the basis of the discussion in the Negotiating Group. I would note that harmonizing preferential rules of origin may not be the optimal solution and that there are best practises among Members that could be readily adopted to enhance the effectiveness of these programs. However, I expect that bilateral engagement on this issue will be required to fulfill the commitment to provide more transparent and simple rules of origin that contribute to facilitating market access for LDCs.

Recently acceded Members

39. The mandate for the negotiations directs Members to take into consideration the extensive market access commitments of recently acceded Members and the fact that, in some cases, these tariff reductions are still being implemented. We also have guidance from the General Council with respect to which Members should be considered recently acceded for the purposes of these modalities, that is all Members which have acceded since the establishment of the WTO in 1995. However, the exact nature of the consideration to be given to these Members is not defined.

40. In view of the diversity among recently acceded Members - the depth of their market access commitments, the length of time since their accession and implementation of their accession commitments, the strength of their economies and the extent to which they have benefited from NAMA trade - there is wide support for a differentiated response to their circumstances.

41. As I indicated in my July 2006 Report to the Trade Negotiations Committee, there is a consensus that Moldova, the Kyrgyz Republic and Armenia should not be required to undertake tariff reductions in this Round, particularly in light of their economic circumstances. It is also my judgement, based on my consultations, that the Former Yugoslav Republic of Macedonia, Saudi Arabia and Viet Nam should be excused from further market access commitments, in view of their very recent accession and the depth of their market access commitments.

42. There is wide agreement that recently acceded Members with less than 0.1 percent of world NAMA trade should have access to the flexibilities for SVEs and I have proposed that the lowest band of the SVE tariff reduction modality be amended in order to allow them access to these flexibilities. It is my view, however, that SVE modalities provide sufficient flexibility for these Members and I have, therefore, not proposed an extended implementation period for these Members.

43. As regards recently acceded developing countries that will apply the formula, it is widely agreed that they should have access to the flexibilities that would normally apply, plus an extended implementation period. I have, therefore, proposed that these Members should have a 2-year grace period after completion of accession commitments, on a line-by-line basis. That is, individual tariff lines should be allowed a 2-year "rest" between the end of accession reductions and the commencement of DDA cuts. Obviously, this grace period would apply only to tariff lines on which accession commitments were not fully implemented 2 years before the entry into force of the DDA. In addition, I have proposed a 2-year extension of the implementation period for DDA reductions on all tariff lines. These are more generous implementation provisions than have been proposed by many Members. However, all Members have supported the use of the implementation period to address this issue and, in my view, this represents the minimum that could be considered to respect the mandate.

Non-Tariff Barriers (NTBs)

44. Real progress has been made in giving shape to the vertical and horizontal proposals on NTBs. However, these negotiations are not yet sufficiently advanced to propose either the adoption or rejection of modalities for specific proposals. I have, therefore, focussed these modalities on the forward process, including moving to text-based negotiations.

45. It is clear from my consultations that these proposals enjoy varying degrees of support among the Members and that, as they must achieve consensus to form part of the single undertaking, serious consideration should be given to restructuring or withdrawing some of these proposals.

46. As regards bilateral NTB proposals, the negotiations are Member-driven and, until Members advise of a mutually agreed outcome, I cannot take these issues into modalities.

Capacity-Building Measures

47. There is consensus on this language and a commitment to assist LDCs and other Members at an early stage of development to take advantage of the market access that these negotiations will provide.

Non-Reciprocal Preferences

48. While preferences have been much debated in the Negotiating Group, the guidance I have received from Members remains very limited. In spite of this, I have pursued the mandate provided by Ministers to the best of my ability. This mandate was to determine the scope of the preference erosion problem and to develop possible solutions to the problem.

49.

Non-Agricultural Environmental Goods

54. Until Members can agree the approach to addressing environmental goods in the Committee on Trade and Environment in Special Session (CTESS) there is little chance they will agree the treatment of such goods in the NAMA modalities. As regards treatment, however, it is my view that, in singling out these goods in the NAMA mandate, Ministers intended a

of 20 percentage points to the MFN applied rate in the base year to establish base rates for commencing tariff reductions.

- (c) The base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November).
- (d) All non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of the methodology outlined in document TN/MA/20 and bound in *ad valorem* terms.
- (e) The reference period for import data shall be 1999-2001.

(d) The overall binding target average shall be

- (i) at or above 50 percent shall bind all their non-agricultural tariff lines at an average level that does not exceed an overall average of 22 percent;
- (ii) at or above 30 percent but below 50 percent shall bind all their non-agricultural tariff lines at an average level that does not exceed an overall average of 18 percent; and
- (iii) below 30 percent shall bind all their non-agricultural tariff lines at an average level that does not exceed an overall average 14 percent.

Fiji shall be deemed to fall under (i).

In addition, 95 percent of all non-agricultural tariff lines shall be subject to a minimum cut of 10 percent.

- (b) All tariff lines shall be bound on 1 January of the year following the entry into force of the DDA results at initial bound rates.
- (c) The initial bound rates shall be established as follows: for bound tariff lines the existing bindings shall be used, and for unbound tariff lines the Member subject to this modality will determine the level of the initial binding of those tariff lines.
- (d) The overall binding target average shall be made effective at the end of the implementation period as follows: the tariff reductions shall be implemented in 9 equal rate reductions. The first reduction shall be implemented on 1 January of the year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years.

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Annex 1
Product Coverage of Non-Agricultural Products at the tariff line level
in the Harmonized System 2002 Nomenclature

The modalities for non-agricultural products shall cover the following products:⁵

(a) Fish and fish products defined as:

<u>Code/ Heading</u>	<u>Product Description</u> ⁶
Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates

<u>Code/ Heading</u>	<u>Product Description</u> ⁶
35.01	Casein, caseinates and other casein derivatives; casein glues
35.02	Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter), albuminates and other albumin derivatives
35.03	Gelatin (including gelatine in rectangular (including square) sheets, whether or not surface-worked or coloured) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 35.01
35.04	Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed
35.05	Dextrins and other modified starches (for example, pregelatinised or esterified starches); glues based on starches, or on dextrins or other modified starches
3809.10	- With a basis of amylaceous substances
38.23	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols
3824.60	- Sorbitol other than that of subheading 2905.44
41.01	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split
41.02	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on or split, other than those excluded by Note 1 (c) to this Chapter.
41.03	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter
43.01	Raw furskins (including heads, tails, paws and other pieces or cuttings suitable for furriers' use), other than raw hides and skins of heading 41.01, 41.02 or 41.03
50.01	Silk-worm cocoons suitable for reeling
50.02	Raw silk (non-thrown)
50.03	Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)
51.01	Wool, not carded or combed
51.02	Fine or coarse animal hair, not carded or combed
51.03	Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock
52.01	Cotton, not carded or combed
52.02	Cotton waste (including yarn waste and garnetted stock)
52.03	Cotton, carded or combed
53.01	Flax, raw or processed but not spun; flax tow and waste (including yarn waste and garnetted stock)
53.02	True hemp (<i>Cannabis sativa L.</i>) and skins of hemp

Annex 2
European Communities

Tariff line	Indicative product description
0302.32.90	Yellowfin tunas (<i>Thunnus albacares</i>), fresh or chilled, other than for the industrial manufacture of products of heading 16.04
0302.69.99	Other fish, fresh or chilled, excluding livers and roes
0303.79.98	Other frozen fish
0304.10.38	Other fish fillets and other fish meat, fresh or chilled
0304.20.19	Frozen fillets, of other freshwater fish
0304.20.94	Other frozen fillets
0306.13.50	Shrimps of the genus <i>Penaeus</i>
0306.13.80	Other shrimps and prawns
0307.49.18	Other cuttle fish (<i>Sepia officinalis</i> , <i>Rossia macrosoma</i> , <i>Sepiola spp.</i>), frozen
0307.59.10	Other octopus (<i>Octopus spp.</i>), frozen
1604.14.11	Tunas and skipjack, in vegetable oil
1604.14.16	Tunas and skipjack, fillets known as 'loins'
1604.14.18	Other preserved or prepared tunas and skipjack
5701.10.90	Other carpets and other textile floor covering, knotted, whether or not made up, of wool or fine animal hair
6105.10.00	Men's or boys' shirts, knitted or crocheted, of cotton
6109.10.00	T-shirts, singlets and other vests, knitted or crocheted, of cotton
6110.12.90	Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted, of Kashmir (cashmere) goats, for women's or girls'
6110.20.99	Other jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted, of cotton, for women's or girls'
6110.30.99	Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted, of man-made fibres, for women's or girls'
6203.42.35	Other trousers, bib and brace overalls, breeches and shorts, of cotton, for men's or boys'
6205.20.00	Men's or boys' shirts, of cotton
6214.20.00	Shawls, scarves, mufflers, mantillas, veils and the like, of wool or fine animal hair
7601.10.00	Unwrought aluminium, not alloyed

Note: The 23 tariff lines correspond to the tariff structure notified by the European Communities to the Integrated Database (IDB) for the year 2005, which is in the HS2002 nomenclature. The product descriptions are indicative only.

Annex 3
United States

Tariff line	Indicative product description
61046220	Women's or girls' trousers, breeches and shorts, knitted or crocheted, of cotton
61051000	Men's or boys' shirts, knitted or crocheted, of cotton
61071100	Men's or boys' underpants and briefs, knitted or crocheted, of cotton
61082100	Women's or girls' briefs and panties, knitted or crocheted, of cotton
61091000	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of cotton
61099010	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of man-made fibers
61102020	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
61103030	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
62019220	Men's or boys' anoraks, windbreakers & similar articles nesoi, not knitted or crocheted, of cotton, not cont. 15% or more by wt of down, etc
62034240	Men's or boys' trousers and shorts, not bibs, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc
62046240	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of cotton, nesoi
62046335	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, nesoi
62052020	Men's or boys' shirts, not knitted or crocheted, of cotton, nesoi
62064030	Women's or girls' blouses and shirts, not knitted or crocheted, of manmade fibers, nesoi
62113200	Men's or boys' track suits or other garments nesoi, not knitted or crocheted, of cotton
62113300	Men's or boys' track suits or other garments nesoi, not knitted or crocheted, of man-made fibers

Note: The 16 tariff lines correspond to the tariff structure notified by the United States to the Integrated Database (IDB) for the year 2005, which is in the HS2002 nomenclature. The product descriptions are indicative only.
