

# **WORLD TRADE ORGANIZATION**

**TN/AG/W/3**  
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**Committee on Agriculture**  
**Special Session**

## **DRAFT POSSIBLE MODALITIES ON AGRICULTURE**

This document is the same as that distributed as JOB(06)/199 with the corrections included from JOB(06)/199/Corr.1 as well as corrections to a number of typographical errors which were included in these documents.

Dear Mr Lamy,

I am sending to you in your capacity as TNC Chair, the attached document in line with the discussions at the informal TNC of 30 May and your fax of 16 June to TNC participants.

It sets out draft Modalities for preparing the Schedules for the Agriculture negotiations. I should stress that this document is not in a formal sense agreed by Members, even as a draft. But it is intended to reflect in a balanced and accurate way the state of intensive discussions and reflection to this point within the Special Session, consistent with the ground rules of our enterprise as laid down, for instance, in TNC/1: "Chairpersons should reflect consensus, or where this is not possible, different positions on issues." Of course, it is only the Members themselves that can establish Modalities, and it is a matter for Members also as to what documentation they wish to adopt in working to that end. That being the case, I forward this particular document in my capacity as Chair of the Informal session on Agriculture to you as Chair of the TNC.

There should be no surprises therein. Indeed, it has long been the premise of our work that this should not be the case. It has been clear that the draft that would emerge this week would be unlikely to contain things Members have not seen or heard before, or things that Members would not be able to work out for themselves. Members for their part have made it clear that they do not expect invented "solutions" out of thin air, and even if they were to appear, they would serve no practical purpose given that they emerge in a vacuum and are severed from any real emergent consensus or convergence by Members themselves. They have made it just as clear that they see draft "Modalities" as meaning precisely that: there is no basis to pick and choose among them. This is a "menu fixe" for decision. It is no smorgasbord. Reflecting that approach, I foreshadowed in the Reference Paper issued last week that: "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."

That is precisely the kind of document that is now attached.

It is not an elegant document. But it reflects the reality of where we are. When all is said and done, where there are divergences, there are divergences. There is no point deluding oneself on that. Indeed, it would be a profound error to do so. Apart from anything else, there will never be any prospect of bridging differences if one does not have a sober and realistic view of them to begin with. Brushing things under the carpet or wishing things were otherwise than they are is no way to resolve differences. Dealing with them honestly and fairly can be the only way that has any chance of moving us forward. I have not, therefore, attempted to invent solutions where none has so far emerged. To do so would not only go against our agreed procedures but also against a Chair's more fundamental duty to deal honestly and fairly with the Membership.

A Chair's responsibilities also involve the responsibility, consistent with that duty of honesty and fairness, to call things as they are seen in an effort to move the process forward. In my Reference Papers and, indeed, through more informal processes, I provided some commentary of my own which was aimed at suggesting where I thought particular efforts could and should be made. I stand by those various comments, but I do not think it is appropriate now to elaborate further any such personal views. They are on the record, and they served a purpose at the time – which was to try to promote convergence. But we are beyond that point now. Having made my own comments, positions of Members are what they are. The task here and now is above all to reflect that as fairly and honestly as possible. At this crucial point in the negotiations it is more than ever important to confront the issues squarely as they are without distraction or intrusion.

I can conclude only by confirming to you and participants that I remain committed to facilitating convergence in every way possible in the time remaining to us. You may count on my continued full support in your efforts as Chair of the TNC to move us forward over the crucial next few days in particular.

Yours sincerely

Ambassador Crawford Falconer  
Chairman  
Committee on Agriculture, Special Session

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

- Year in relation to the implementation period and to the specific commitments of a Member refers to the calendar, financial or marketing year specified in the draft Schedules to be submitted pursuant to the modalities.
- The base period for supporting data is [1995] to [2000] unless otherwise stated [and [1999] to [2001] for product-specific AMS caps].
- The implementation period is [2008] to [ ] unless otherwise stated and [2008] to [ ] for developing country Members unless otherwise stated.
- Total value of agricultural production is defined as the gross value of all agricultural production of basic products at farm gate prices. The value of production of a basic agricultural product is the gross value of production of that basic product at farm gate prices.
- Product coverage is as in Annex 1 of the Agreement on Agriculture with any appropriate changes arising from HS2002 applying *mutatis mutandis*.

*Note: Members' draft Schedules should be based on HS2002 nomenclature to the extent possible and disaggregated at the HS 6-digit level as a minimum. In the alternative, Members should clearly indicate the version of the Harmonized System being used (e.g. HS96).*

- Tropical products and products of particular importance to the diversification of production from the growing of illicit narcotic crops (hereinafter referred to as tropical and diversification products) are defined as those products listed in Annex F to this document.
- Cotton is defined as HS headings 52.01 to 52.03: raw cotton, waste and cotton carded or combed.
- A recently acceded Member is a Member of the WTO that acceded [under Article 12 of the Marrakesh Agreement Establishing the World Trade Organization].
- "Non-product-specific support" means domestic support [provided in favour of agricultural producers in general] [available generally to agricultural producers and not support that is effectively only in favour of a few or specific commodities].
- "Overall Trade-Distorting Domestic Support" means the sum of (i) the Final Bound Total AMS plus (ii) permitted *de minimis* level expressed in monetary terms plus (iii) the Blue Box level, and which is:
  - (i) with respect to support provided during the base period (i.e. the "Base Overall Trade-Distorting Domestic Support") and the maximum support permitted to be provided during any year of the implementation period or thereafter (i.e. the "Annual" and "Final Bound Overall Trade-Distorting Domestic Support Commitment Levels") as specified in Section [ ], Part [ ] of a Member's Schedule; and

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<sup>1</sup> In general the definitions would remain as set out in Article 1 of the Agreement on Agriculture but some changes are needed in order to reflect the new commitments which Members will make, the new implementation period(s) and other factors.

- (ii) with respect to the level of support actually provided during any year of the implementation period and thereafter (i.e. the "Current Overall Trade-Distorting Domestic Support", calculated in accordance with the provisions of this Agreement and with the constituent data and methodology used in the tables of supporting material incorporated by reference in Part [ ] of the Member's Schedule.

## II. MARKET ACCESS

### A. TIERED FORMULA FOR TARIFF REDUCTIONS

#### 1. Basis for reductions

1. Subject to the provisions set out in sections B to H below, customs duties shall be reduced in equal annual instalments from bound duty levels<sup>2</sup> using the tiered formula in paragraphs 2.3 and 2.4 below.

2. In order to place bound non-*ad valorem* tariffs in the appropriate band of the tiered formula, Members shall follow the methodology to calculate *ad valorem* equivalents (AVEs), along with associated provisions, set out in Annex A.

#### 2. Tiered Formula

3. Members shall reduce bound duties in accordance with the following tiered formula:

- (a) Where the bound duty or *ad valorem* equivalent is greater than 0 and less than or equal to [20-30] the reduction shall be [20-65] per cent;
- (b) Where the bound duty or *ad valorem* equivalent is greater than [20-30] per cent and less than or equal to [40-60] per cent, the reduction shall be [30-75] per cent;
- (c) Where the bound duty or *ad valorem* equivalent is greater than [40-60] per cent and less than or equal to [60-90] per cent, the reduction shall be [35-85] per cent; and
- (d) Where the bound duty or *ad valorem* equivalent is greater than [60-90] per cent, the reduction shall be [42-90] per cent [except for those Members with more than [ ] per cent of tariff lines in the top tier who shall make a reduction of [ ] per cent].

[The average reduction in bound duties by developed country Members shall in any case be [at least [ ] per cent [with additional tariff reductions beyond those otherwise required for any particular band, if necessary, to achieve this objective]].]

4. Developing country Members shall reduce bound duties in accordance with the following tiered formula:

- (a) Where the bound duty or *ad valorem* equivalent is greater than 0 and less than or equal to [20-50] per cent, the reduction shall be [15-slightly less than 65] per cent;
- (b) Where the bound duty or *ad valorem* equivalent is greater than [20-50] per cent and less than or equal to [40-100] per cent, the reduction shall be [20-slightly less than 75] per cent;
- (c) Where the bound duty or *ad valorem* equivalent is greater than [40-100] per cent and less than or equal to [60-150] per cent, the reduction shall be [25-slightly less than 85] per cent; and
- (d) Where the bound duty or *ad valorem* equivalent is greater than [60-150] per cent, the reduction shall be [30-slightly less than 90] per cent.

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<sup>2</sup> That is, all out-of-quota duties. In-quota tariffs shall be subject to commitments under paragraph 18.

[The maximum average reduction in bound duties any developing country Member shall be required to undertake is [ ] per cent. Should the above formula imply an average reduction of more than [ ] per cent for a developing country Member, that developing country Member shall have the flexibility to apply lesser reductions, at its discretion, so that the average reduction is no more than [ ] per cent.]

5. [Developing country Members with ceiling bindings and homogeneous low bindings:
- (a) shall be subject to the overall average reduction only;
  - (b) shall have the right to distribute their tariff lines across the lower tiers of the formula on the basis of their own assessment of sensitivities; and
  - (c) irrespective of the thresholds for the tiers to be agreed, shall not be required to undertake the level of cuts required in the highest tiers.]

B. [TARIFF CAP

6. If, after the application of the tiered formula, a bound duty should be greater than [75-100] per cent, it shall be reduced to that level. [Non-*ad valorem* bound duties shall be reduced by the amount required to bring the *ad valorem* equivalent to this maximum level]. For developing country Members, the maximum bound duty shall be [150] per cent.]

C. SENSITIVE PRODUCTS

**1. Designation**

7. Each [developed country] Member shall have the right to designate up to [1-15] per cent of [dutiab] tariff lines as "Sensitive Products". [Developing country Members shall have the right to designate up to [50 per cent more than the absolute number of tariff lines designated by the developed country having the highest number of such tariff lines] [ [ ] per cent of [dutiab] tariff lines] as "Sensitive Products".]

8. Designation of such status shall be indicated by the symbol "SePs" in Column [ ] of Table 1, Section 1 of the Member's draft Schedule. Each such product shall be subject to a combination of a reduction in bound duties and an expansion of tariff quota for the product concerned or a proportionate increase if the product is one of a number in a single bound tariff quota [unless a current bound quota for the Sensitive Product concerned does not exist, in which case a Member [may] [shall] apply the provisions under paragraph 3.10(b)(iii) below].

**2. Treatment - Tariff Cut**

9. Bound duties on products designated as Sensitive shall be reduced by no less than [20-70] per cent of the reduction that would otherwise have been required by the tiered formula. Developing country Members shall have the right to reduce bound duties on products designated as Sensitive by no less than [ ] per cent of the reduction that would otherwise have been required by the tiered formula. [Sensitive Products will not be subject to the tariff cap under paragraph B.6.]

**3. Tariff Quota Expansion**

10. The basis for expansion of tariff quotas shall be [domestic consumption expressed in terms of physical units] [current bound tariff quota volumes] [current imports [in the years [ ] to [ ]]] of the product concerned].

- (a) Subject to the provisions set out in (b) below, expansion of the tariff quota for a Sensitive Product shall be on a most-favoured-nation basis.

[Bound tariff quotas shall be increased based on a minimum of [6] per cent of domestic consumption or, for developing country Members, less than [4] per cent of domestic consumption. For developing country Members, domestic consumption shall not include self-consumption of subsistence production. Developing country Members with bound quotas established as a result of Article XXVIII negotiations or accession commitments shall be able to use as a base for tariff quota expansion the lesser of the bound tariff quota so established or less than [4] per cent of domestic consumption. The formula for expansion shall be as follows: [ ] ]

[Bound tariff quotas shall be increased by the following formula

$$\Delta Q = 100 * (0.45 - 0.5 * (1 - (r_f - r_s) / r_f))$$

Where

$\Delta Q$  is the expansion in the tariff quota expressed as a percentage of current bound tariff quota;

$r_f$  is the reduction in bound duty under the tiered formula;

$r_s$  is the reduction in bound duty for the sensitive product; and

the maximum deviation from the tiered formula as measured by  $(r_f - r_s) / r_f$  shall be [80] per cent and the minimum deviation [20] per cent.

]

[Bound tariff quotas shall be increased by the following formula

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

Where

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

$\Delta Q_b$  is the base expansion of the tariff quota expressed as a percentage of domestic consumption;

$T_{1s}$  is the bound duty to be applied to the sensitive product;

$T_{1n}$  is the bound duty as calculated under the tiered formula;

S is the Slope.

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[Bound tariff quotas shall be increased by the following formula

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

Where

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

$r_f$  is the reduction in bound duty under the tiered formula;

$r_s$  is the reduction in bound duty for the sensitive product; and

$t_0$  is the current bound duty or its *ad valorem* equivalent.

]

(b) In cases where:

(i) [the existing bound tariff quota represents:

- more than [30] per cent of domestic consumption the expansion in the tariff quota under (a) above shall be adjusted by a factor of [0.2];
- more than [10] per cent but less than or equal to [30] per cent of domestic consumption the tariff quota under (a) above shall be adjusted by a factor of [0.33];
- more than [5] per cent but less than or equal to [10] per cent of domestic consumption the tariff quota under (a) above shall be adjusted by a factor of [1];
- more than [2.5] per cent but less than or equal to [5] per cent of domestic consumption the tariff quota under (a) above shall be adjusted by a factor of [2];
- less than or equal to [2.5] per cent of domestic consumption the tariff quota under (a) above shall be adjusted by a factor of [3];
- an exceptionally high percentage of domestic consumption the additional tariff quota commitment will be adjusted further in Schedules negotiations in an equitable manner.]

(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 to] [shall not] create a new tariff quota, [provided that the tariff cut for the Sensitive Product shall 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.] [Developing country Members shall have the right to apply a lower reduction in bound duties than would otherwise have been required under the tiered formula over the implementation period, or a reduction in bound duties of up to [55] per cent of that required by the tiered formula over a shorter

implementation period, or the reduction required by the tiered formula over a longer implementation period or [ ] . ]

D. OTHER ISSUES

**1. Tariff escalation**

11. [Should, after application of the tiered formula for tariff reductions, the bound duty on a processed agricultural product be greater than the bound duty on the primary product, the bound duty for the processed agriculture product shall be reduced by applying a factor of [1.3] compared to the reduction which would otherwise have been required under the tiered formula or by reducing to the rate applicable to the unprocessed product, whichever is the lesser.

12. The list of primary products and their processed forms is yet to be determined, and will be elaborated taking into account the provisional and illustrative elements in the proposals cited in Annex B.]

13. [Members shall implement an additional tariff cut of [ ] per cent on a list of tariff lines of special interest to developing country Members for which:

- (a) tariff escalation is clearly identified and its calculation takes into account all the raw materials processed into the end product;
- (b) tariff escalation is substantial; and
- (c) trade flows in the raw material are significant.]

14. [When the bound duty on a processed agricultural product is greater than that of the relevant primary product, and:

- (a) if the tariff lines for both products are in the same tier (except for the highest tier), the bound duty for the processed tariff lines shall be reduced by the cut rate that would otherwise be applied for the tier immediately above, as long as the tariff rate on the processed product will not fall below the tariff rate for the primary products.
- (b) if they both belong to the highest tier, the bound duty for the processed tariff lines shall be subject to an additional reduction of [ ] per cent compared to the reduction which would have been otherwise required under the tiered formula, as long as the tariff rate on the processed product will not fall below the tariff rate for the primary products.]

**2. Commodities**

15. [In the event that adverse effects of tariff escalation were not to be eliminated via the tiered formula for reductions in bound duties and such specific measures on tariff escalation as are provided for, Members shall engage with commodity dependent producing country Members to ensure satisfactory solutions.]

16. [Provision shall be made for suitable procedures for negotiations on the elimination of non-tariff measures affecting trade in commodities.]

### **3. Tariff simplification**

17. [All bound duties on agricultural products shall be expressed as simple *ad valorem* [or specific] duties.] [While reductions in bound duties shall be made on the basis of existing bound duties in whatever form they are currently expressed, highly complex forms of bound duties, such as complex matrix tariffs [or compound tariffs] shall be simplified.] [Members undertaking such simplification shall supply supporting data with their draft Schedules that demonstrates that the simplified bound duty is representative of the original complex duty.]

### **4. Tariff quotas**

(a) Bound in-quota duties

18. [Bound in-quota duties rates shall be [eliminated] [reduced by [ ] percent].]

(b) Tariff quota administration

19. The administration of bound tariff quotas shall be subject to the disciplines [to be developed taking into account the provisional and illustrative proposals cited in Annex C].

### **5. Special Agricultural Safeguard**

20. [Article 5 of the Agreement on Agriculture shall expire [for developed country Members] [at the [beginning] [end] of the implementation period] [at the end of the reform process].] [Members shall have the right to apply the Special Safeguard Provisions of Article 5 of the Agreement on Agriculture. Members shall reduce the number of tariff lines eligible for the SSG under the Uruguay Round Agreement on Agriculture by [ ] per cent.]

E. SPECIAL AND DIFFERENTIAL TREATMENT

#### **1. Special Products**

(a) Selection

21. Each developing country Member shall have the right to self-designate [at least 20 per cent of] [up to 5] tariff lines in the Member's Schedule as "Special Products" [until the end of the implementation period]. Such tariff lines shall be designated by the symbol "SP" in column [ ] of Table 1 of Section 1 of its draft Schedule.

22. [Designation shall be guided by the indicators listed in Annex D which are based on the criteria of food security, livelihood security and/or rural development needs of individual developing country Members.] [To be a candidate for designation as a "Special Product" [a product must be produced domestically or be a close substitute of products produced domestically] [, [ ] per cent of domestic consumption of the product must be met through domestic production; or the product must represent more than [ ] per cent of agriculture GDP; or the product must contribute at least [ ] per cent of the total nutritional value (dietary and calorific requirement) of the population].]

23. [A tariff line shall not be designated as a "Special Product" if: [developing country Members export more than [ ] per cent of world exports of that product; or more than [ ] of imports by the Member concerned are imported from other developing country Members;] [the developing country Member concerned is a net exporter; or if the developing country Member concerned exports the product on a most-favoured-nation basis;] [the product is eligible for the Special Safeguard Mechanism].]

24. [Any product accordingly designated and notified as SP, whether in its natural unprocessed form or in its processed forms, shall be presumed to meet at least one of the indicators given in Annex D, either at the national or regional level, in the developing country Member concerned. A product in any of its processed forms shall be deemed to be eligible for designation as SP if the product in its natural unprocessed form is designated as SP. The right to self-designate any product as SP shall not be questioned at any stage of the negotiating processes, including the processes for verification of the Schedules of Members.] [To show compliance with the criteria, each developing country designating a product as "SP" shall, [upon request] demonstrate, using appropriate indicators how the product concerned meets the criteria of food security, livelihood security and rural development.]

(b) Treatment

25. [No product designated as a Special Product shall be subject to [a cap on the bound duty under paragraph B.6] [or to] [any new tariff quota commitment].]

26. [Notwithstanding paragraphs 1 and 2 of Article 4 of the Agreement on Agriculture, in respect of the total tariff lines covering agricultural products, at the duty level, designated as SP by a developing country Member based on the guidance provided by the indicators listed in Annex D, the following treatment on bound import tariff rates shall apply:

- (a) At least [50] per cent of the aforementioned tariff lines will not be subject to any tariff reduction commitment; Provided that, if any developing country Member is characterised by special circumstances<sup>3</sup>, an additional [15] per cent of the aforementioned tariff lines will not be subject to any tariff reduction commitment;
- (b) [25] per cent other than those categorised in subparagraph (a) above, of the aforementioned tariff lines will be subject to a reduction of [5] per cent; and
- (c) Each residual tariff line, other than those categorised in subparagraphs (a) and (b) above, of the aforementioned tariff lines will be subject to a reduction of not more than [10] per cent..]

27. [Products designated as "Special Products" shall 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.]

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

## **2. Special Safeguard Mechanism**

(a) Selection

29. Each developing [and least-developed] country Member [shall have access to a Special Safeguard Mechanism for all agricultural products] [shall have the right to designate up to [ ] [per cent

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<sup>3</sup> Special circumstances refer to situations where a developing country Member:

- (a) had bound at least [25%] of its total tariff lines at a maximum import duty of [80%] at the start of the implementation period;
- (b) had undertaken ceiling binding commitments under the Uruguay Round;
- (c) has predominantly low income or resource poor producers; or
- (d) has any other structural difficulties in its agriculture sector.

of] tariff lines [at the HS 6-digit level] 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 [which result in a reduction in the bound duty to less than then current applied duty] ]. [Products designated as "Special Products" may not be designated as "SSM".]

(b) Trigger and Remedy

30. 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. Fulllest liberalization of trade in tropical and diversification products**

31. [Tropical and diversification products are those listed in Annex F.] [A list of tropical products shall be established on the basis of the indicative list of the Uruguay Round and shall not include products produced in significant quantities in non-tropical countries. For Members identified as operating the diversification of production from the growing of illicit narcotic crops, a list of products of particular importance for diversification shall be established.]

32. [Developed country Members shall reduce bound duties on tropical and diversification products

- (a) by the reduction applicable under paragraph A.2.3(d) above;
- (b) where such products are subject to tariff escalation, an additional reduction in bound duties of 10 percentage points; and
- (c) any bound in-quota duty shall be eliminated.]

33. [Members shall reduce bound duties on tropical products according to the following modalities:

- (a) [ ] per cent of tropical product tariff lines shall be reduced to [0];
- (b) [ ] per cent of tropical product tariff lines shall be reduced by the reduction foreseen for the tier immediately above the one for the product in question in the tiered formula;
- (c) bound duties on other tropical products shall be reduced by the reduction applicable under the tiered formula.

34. For diversification products, importing Members shall designate [ ] per cent of the tariff lines on the above list and provide preferential access to the Members concerned for as long as an effective diversification programme is in place.]

35. [No tropical or diversification product listed in Annex F may be designated as a Sensitive Product by a developed country Member.] [Tropical and diversification products may be declared as Sensitive Products or as Special Products and be treated as such.]

### **4. Preference erosion**

36. In recognition of the importance of long-standing preferences, preference erosion [associated with the products and markets listed in Annex G] shall be addressed by:

- (a) [[the preference granting Member] applying a lesser reduction of [ ] percent of the appropriate reduction under the tiered formula;] [and] [or]
- (b) [[the preference granting Member] wherever relevant, eliminating any bound in-quota duty] [and] [or]
- (c) [[the preference granting Member] implementing the tariff reduction over an additional period of [ ] years [with the first year of the implementation deferred by [ ] years];] [and] [or]
- (d) [[the preference granting Member,] to the extent technically feasible, maintaining the preference margin;] [and] [or]
- (e) [[the preference granting Member] providing improved market access opportunities for non-preference-receiving products which are also of vital export interest to preference receiving Members, to the extent possible;] [and] [or]
- (f) [[the preference granting Member] taking fully into account the issue of preference erosion in designating Sensitive Products].

37. [[Preference granting Member] [Members] shall provide targeted technical assistance, including additional financial and capacity building assistance, to help address supply-side constraints and to promote the diversification of existing production in the territories of preference receiving Members.]

#### F. RECENTLY ACCEDED MEMBERS

38. [The implementation period for [developing] recently acceded Members shall be [2011] to [three years after the end of the implementation period for other [developing country] Members .] [To the extent that the implementation period of commitments undertaken in acceding to the WTO overlaps with the implementation period of commitments undertaken in association with these modalities, the start of implementation of commitments undertaken in association with these modalities shall begin [immediately] [[ ] years] after the end of implementation of accession commitments.]

39. [Recently acceded Members may reduce bound duties by [ ] per cent of the reduction that would otherwise have been required by tiered formula [and bound duties below [10] per cent in a [developing] recently acceded Member shall be exempt from reduction].]

40. [Developing] [R][r]ecently acceded Members shall have the following additional flexibility on the selection and treatment of Special Products: [ ]. And on sensitive products the following additional flexibility [ ].]

41. [Small low-income, recently acceded Members with economies in transition shall not be required to undertake reductions in bound duties and shall have access to all instruments available to other Members at the same level of development under Market Access.]

#### G. LEAST-DEVELOPED COUNTRIES

42. Least-developed country Members shall have full access to all special and differential treatment provision and shall not be required to undertake reduction commitments.

43. [Developed-country Members shall, and developing-country Members declaring themselves in a position to do so should<sup>4</sup>:

- (a) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.
- (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 country Members 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.]

[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.]

#### H. COTTON

44. 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 country Members from the commencement of the implementation period.

45. [Developing country Members that are not in a position to give duty- and quota-free access for cotton exports from least-developed country Members undertake to facilitate imports of cotton from the least-developed country Members from the commencement of the implementation period.]

46. [Developed country Members [shall] [should] grant duty- and quota-free access for cotton exports from [least-developed] [developing] country Members from the commencement of the implementation period.]

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<sup>4</sup> The text of this paragraph is the "Decision on Measures in Favour of Least-Developed Countries" in Annex F of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

I. [SMALL, VULNERABLE ECONOMIES

47. Members with economies that, in the period [1999] to [2004], had an average share of [(a) world merchandise trade of no more than [0.16] per cent,] [(b) world trade in non-agricultural products of no more than [0.10] per cent] [and] [(c) world trade in agricultural products of no more than [0.40] per cent] shall have the right to reduce bound duties by [ ] less than those that would otherwise have been required under paragraph 4 above.

48. Any Member meeting the criteria in paragraph 47 shall have the right to self-designate at least [ ] per cent of tariff lines as Special Products based on criteria of food security, livelihood security and rural development needs. Such Members shall not be required to undertake reductions in bound duties, increase bound tariff quotas [or be subject to a tariff cap] on these products.]

49. [Developed country] Members shall provide enhanced improvements in market access for products of export interest to Members with small, vulnerable economies.]

J. MONITORING AND SURVEILLANCE



### III. DOMESTIC SUPPORT

#### A. FINAL BOUND TOTAL AMS: A TIERED FORMULA

##### 1. Tiered reduction formula

###### (a) Reductions in Final Bound Total AMS

50. The Final Bound Total AMS shall be reduced in accordance with the following tiered formula:

- (a) Where the Final Bound Total AMS is greater than US\$40 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be [70-83] per cent;
- (b) Where the Final Bound Total AMS is greater than US\$15 billion and less than or equal to US\$40 billion, or the equivalents in the monetary terms in which the binding is expressed, the reduction shall be [60-70] per cent;
- (c) Where the Final Bound Total AMS is less than or equal to US\$15 billion, or the equivalent in the monetary terms in which the binding is expressed, the rate of reduction shall be [37-60] per cent.

51. Developed country Members with high relative levels of Final Bound Total AMS [of at least [40] per cent of the total value of agricultural production] shall undertake an additional reduction [equal to at least half of the difference between the reduction rate specified in their tier and the reduction rate specified in the higher tier].

###### (b) Implementation period and staging

52. The reductions in Final Bound Total AMS shall be implemented according to the following schedule [ ].

###### (c) Special and differential treatment

53. The reduction in Final Bound Total AMS applicable to developing country Members with Final Bound Total AMS commitments shall be [two thirds] of the reduction applicable under subparagraph (a)50(c) above. The reductions in Final Bound Total AMS shall be implemented according to the following schedule [ ]. [Net food-importing developing country Members shall be exempt from reductions in Final Bound Total AMS.]

54. Developing country Members shall have continued access to the provisions of Article 6.2 of the Agreement on Agriculture.

###### (d) Other

55. [As provided for under Article 18.4 of the Agreement on Agriculture, those cases where [exchange rate fluctuations] [and inflation rates] have caused extraordinary situations shall be dealt with separately and on a pragmatic case-by-case basis.]

B. PRODUCT-SPECIFIC AMS CAPS

**1. Product-specific AMS caps**

56. Product-specific AMS limits shall be set out in the Schedule of the Member concerned.

57. Article 6.3 of the Agreement on Agriculture shall be amended to reflect the modalities with respect to product-specific AMS caps by the addition of the following:

Ad Article 6.3:

A Member shall not exceed the product-specific AMS limits specified in its Schedule.

58. The product-specific AMS limits specified in each Member's Schedule shall be the average applied levels of such support provided during the base period [1995 to 2000] [1999 to 2001].

59. [In cases where a product-specific AMS during the base period was below the *de minimis* level the Current AMS for such products shall not exceed [the *de minimis* level] [[ ] per cent of the value of production of that product] and the limit for such products shall be denoted accordingly in the Schedule.] [In cases where product-specific AMS exceeded *de minimis* after the base period the product-specific limit shall not exceed [ ].]

60. Product-specific AMS caps shall be implemented [according to the following schedule [ ]].

**2. Special and differential treatment**

61. [In the case of developing country Members, the Current AMS for individual products shall not exceed the respective levels established by one of the following methods:

- (a) the average applied levels during the base period [1995 to 2000] or [1995 to 2004], as may be selected by the Member concerned; or
- (b) [twice] the Member's product-specific *de minimis* level; or
- (c) [20] per cent of the Annual Bound Total AMS in any year.]

C. DE MINIMIS

**1. Reductions**

62. The *de minimis* levels pursuant to Article 6.4(a) of the Agreement on Agriculture shall be reduced by [50] [80] [ ] per cent [or by such an amount as would be required to adjust to the rate of cut of Overall Trade-Distorting Domestic Support if that is greater]. The new *de minimis* levels shall [become effective from the beginning of the implementation period] [be phased in through equal annual instalments over the implementation period].

**2. Special and differential treatment**

63. Developing country Members:

- (a) that allocate almost all *de minimis* support for subsistence and resource-poor farmers;
- (b) with no AMS commitments[.] [; and]

(c) [net food-importing developing country Members.]

shall be exempt from reductions in *de minimis*.

64. For other developing country Members, the *de minimis* levels pursuant to Article 6.4(b) of the Agreement on Agriculture shall be reduced by [ ] per cent [or by such an amount as would be required to adjust to the rate of cut of Overall Trade-Distorting Domestic Support if that is greater]. For these Members, the new *de minimis* levels shall [be phased in over a period[ ]].

D. BLUE BOX

### 1. Basic criteria

65. Subject to the additional criteria set out below Article 6.5 shall be amended as follows:

Article 6.5

The value of the following direct payments shall be excluded from a Member's calculation of its Current Total AMS:

(a) Direct payments under production-limiting programmes if:

- (i) such payments are based on fixed and unchanging areas and yields; or
- (ii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production; or
- (iii) livestock payments are made on a fixed and unchanging number of head.

Or

(b) Direct payments that do not require production if:

- (i) such payments are based on fixed and unchanging bases and yields; or
- (ii) livestock payments made on a fixed and unchanging number of head; and
- (iii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production.

### 2. Additional criteria

(a) Blue Box cap

66. In addition to the criteria set out in paragraph 1.65 a Member shall not provide support under Article 6.5 in excess of the amount as determined below. This will be expressed consistently in the value-specific commitments set out in that Member's Schedule.

67. The maximum permitted value of support under Article 6.5 shall not exceed [2.5] per cent of the average total value of agricultural production during the base period. This limit will [apply from the commencement of the implementation period] [be reduced to [ ] per cent in accordance with the following schedule [ ]] [be phased in, starting, in the first year of implementation, from 5 per cent of the average total value of agricultural production in the base period, according to the following schedule [ ]].

68. In cases where a Member has placed an exceptionally large percentage of its trade-distorting support [greater than [40] per cent during the base period] in the Blue Box, [the percentage reduction in that support under Article 6.5 will equal the percentage reduction that the Member concerned will make in the Final Bound Total AMS] [the limit under Article 6.5 shall be [ ] percent of the average total value of agricultural production].

(b) Other criteria

69. [The value of support provided to an individual product under Article 6.5(a) shall not exceed the average value of support provided to it during the period [ ]. [Members using such payments shall demonstrate through notification that the production of the individual product in receipt of such payments has not increased in relation to the period when the application of such payments was decided.]]

70. [The value of support provided to an individual product under Article 6.5(b) shall:

(a) not exceed [ ] per cent of the value of the overall Blue Box cap; [and

(b) not exceed [ ] per cent of the value of production of the product concerned in the period [ ].]]

71. [Direct payments under Article 6.5(b) that are based on compensating for a differential between prices actually received as compared to a price benchmark [shall use a historical or specified reference period] [and] [shall not compensate for more than [ ] per cent of the differential in prices.] ]

72. [An increase in Blue Box support for any individual product beyond the limitations determined under this Article shall be permissible where that amount does not exceed [[ ] per cent of] a corresponding reduction in Current AMS support for the product(s) concerned.] [Where there was no Current AMS support in the base period [ ] to [ ] for a particular product, an increase in Blue Box support is permissible for that product where the support concerned does not exceed [ ] percent of value of production and the overall Blue Box cap is still respected.]

73. [Where more than [ ] per cent of the total value of agricultural production is derived from [ ] basic agricultural products, the Member concerned shall have the flexibility to [ ].]

### **3. Special and differential treatment**

74. For developing country Members, the maximum permitted level for the value of support under Article 6.5 shall not exceed [5] cent of the average total value of agricultural production in the [base] period [from [ ] to [ ]].

### **4. Transparency Requirements**

75. [Members using direct payments under Article 6.5, shall for the products receiving such payments, notify:

(a) All parameters referring to any existing or additional criteria, at the time when the programmes were established;

(b) As from the first implementation year of the Doha Development Agenda, all those parameters, such as base period, production levels, area planted, number of head, and other parameters [to be completed] shall be notified at product-specific level.

76. No Blue Box payments shall be used until all notifications obligations above are complied with timely and accurately.]

77. Transparency of the Blue Box measures shall be increased through improved notification requirements.

E. OVERALL REDUCTION OF TRADE-DISTORTING DOMESTIC SUPPORT: A TIERED FORMULA

**1. Base level**

78. The Base Overall Trade-Distorting Domestic Support shall be the sum of (i) the Final Bound Total AMS plus (ii) permitted *de minimis* level expressed in monetary terms plus (iii) the Blue Box level expressed in monetary terms where;

- (a) the "Final Bound Total AMS" is the "Final Bound Commitment Level" as defined in Article 1(h) of the Agreement on Agriculture;
- (b) for the purpose of this base level for reductions in Overall Trade-Distorting Domestic Support, the permitted *de minimis* level is the annual average of the sum of a Member's:
  - (i) product-specific *de minimis* levels [for those products where the average value of product-specific AMS support in the base period did not exceed the *de minimis* level] [for those products that did not receive AMS support in any year of the base period]; and
  - (ii) non-product-specific *de minimis* levels in the base period [, for those years for which non-product-specific AMS support was provided, the non-product-specific *de minimis* level shall be deemed to be zero];

as specified in Article 6.4 of the current Agreement on Agriculture [or the Protocol of Accession of the Member concerned], expressed in monetary terms, during the base period; and

- (c) for the purpose of this base level of reductions in Overall Trade-Distorting Domestic Support, the Blue Box level is the higher of existing average Blue Box payments during the base period and 5 per cent of the average total value of agricultural production during the base period.

**2. Tiered reduction formula**

79. The base level of Overall Trade-Distorting Domestic Support shall be reduced in accordance with the following tiered formula:

- (a) Where the base level of Overall Trade-Distorting Domestic Support is greater than US\$60 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be [70-80] per cent;
- (b) Where the base level of Overall Trade-Distorting Domestic Support is greater than US\$10 billion and less than or equal to US\$60 billion, or the equivalents in the monetary terms in which the binding is expressed, the reduction shall be [53-75] per cent;

- (c) Where the base level of Overall Trade-Distorting Domestic Support is less than or equal to US\$10 billion, or the equivalent in the monetary terms in which the binding is expressed, the rate of reduction shall be [31-70] per cent.

### **3. Implementation period and staging**

80. As the first instalment of the overall reduction, in the first year and throughout the implementation period, the sum of all trade-distorting support shall not exceed 80 per cent of the base level of Overall Trade-Distorting Domestic Support. As for the second and subsequent years of implementation, the remaining reductions shall be implemented according to the following schedule [ ].

### **4. Special and differential treatment**

81. Developing country [, and recently acceded] Members with no AMS Commitments shall not be required to make commitments on reductions in Overall Trade-Distorting Domestic Support. [In addition, net food-importing developing country Members shall also be exempt from commitments to reduce Overall Trade-Distorting Domestic Support.]

82. For [other] developing country Members [with AMS commitments], the applicable reduction for Overall Trade-Distorting Domestic Support shall be [two thirds] [[ ] per cent] of the relevant rate specified in paragraph 2.79(c) above.

83. As the first instalment of the overall cut, in the first year and throughout the implementation period, the sum of all trade-distorting support shall not exceed 80 per cent of the base level of Overall Trade-Distorting Domestic Support. As for the second and subsequent years of implementation, the remaining reductions shall be implemented according to the following schedule [ ].

### **5. Other**

84. Commitments relating to reductions in Overall Trade-Distorting Domestic Support shall apply as a minimum overall commitment. If necessary, a Member shall be required to make additional commitments on reductions or limits in Section A (Final Bound Total AMS), Section C (*De minimis*) and/or Section D (Blue Box) in order to achieve the appropriate reduction in Overall Trade-Distorting Domestic Support.

#### **F. GREEN BOX**

85. Annex 2 of the Agreement on Agriculture shall be amended as set out in Annex H of this document.

#### **G. COTTON**

##### **1. Reductions in Support for Cotton Production**

86. Trade-distorting domestic support for cotton shall be reduced by [ ] per cent more than the reduction in Final Bound Total AMS [or Overall Trade-Distorting Domestic Support whichever is the greater] and set out in Part [ ] of each Member's Schedule.

87. [AMS support for cotton shall be [eliminated] [reduced according to the following formula

$$R_c = R_g + \frac{(100 - R_g) * 100}{3 * R_g}$$

R<sub>c</sub> = Specific reduction applicable to cotton as a percentage

R<sub>g</sub> = General reduction in AMS as a percentage

88. This will be applied to the base value of support calculated as the arithmetic average of the amounts notified by Members for cotton in supporting tables DS:4 from 1995 to 2000.]

89. [The ceiling on Blue Box subsidies for cotton shall be [5 per cent of total Blue Box ceiling] [one-third of [the ceiling on the Blue Box for agriculture as a whole] [the production value for cotton] [the amount that would be otherwise determined respectively through application of paragraph D.2(b)69 above and the "double trigger" approach specified in paragraph D.2(b)70(a) and (b) above.]]

## **2. Implementation**

90. The reductions for trade-distorting domestic support on cotton shall be implemented over a period [which is one third of the implementation period] [according to the following schedule [ ]].

## **3. Special and Differential Treatment**

91. [Developing country Members shall have the following rates of reduction for trade-distorting domestic support for cotton [ ] [ , provided that the rate of reduction is no less than two thirds of that specified in paragraph 1.86 above.]]

92. [The relevant Blue Box cap for developing country Members [which are net producers and exporters of cotton] shall be [ ]. The relevant Blue Box cap for cotton for developing country Members shall be [ ].]

93. [Developing country Members shall implement their reduction commitments for cotton over a period of up to [ ] years.]

## **H. RECENTLY ACCEDED MEMBERS**

94. [The implementation period for [developing] recently acceded Members shall be [2011] to [three years after the end of the implementation period for other [developing country] Members.]] [To the extent that the implementation period of commitments undertaken in acceding to the WTO overlaps with the implementation period of commitments undertaken in association with these modalities, the start of implementation of commitments undertaken in association with these modalities shall begin [immediately] [[ ] years] after the end of implementation of accession commitments.]

95. [Small, low-income, recently acceded Members with economies in transition shall not be required to undertake reductions in Final Bound Total AMS [and] [or] *de minimis* level.]

96. [In the case of such Members, investment subsidies and input subsidies generally available to agriculture, interest subsidies to reduce the costs of financing as well as grants to cover debt repayment shall be exempted from domestic support AMS commitments.]

I. MONITORING AND SURVEILLANCE

97. Procedures and notification requirements and formats shall be improved to ensure transparency and enhance monitoring of domestic support measures. Details to be developed in the context of horizontal modalities for monitoring and surveillance.



#### IV. EXPORT COMPETITION

##### A. GENERAL PROVISIONS ON EXPORT COMPETITION

98. Nothing in the modalities on export competition can be construed to give any Member the right to provide, directly or indirectly, support to exports of agricultural products in excess of the commitments set out in Members' Schedules or in conflict with the terms of Article 8 of this Agreement. Furthermore, nothing can be construed to imply any change to the obligations and rights under Article 10.1 or to diminish in any way existing obligations under other provisions of the Agreement on Agriculture or other WTO Agreements.

99. The following provisions will give effect to the detailed modalities ensuring parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect pursuant to the July 2004 Agreed Framework and the Hong Kong Ministerial Declaration.

##### B. EXPORT SUBSIDY COMMITMENTS

100. Developed country Members shall eliminate their export subsidies by the end of 2013. This will be on the basis of annual budgetary outlay commitments being reduced by [ ] percent [and quantity commitments being reduced by [ ] percent] in each year commencing 2008 to 2013, such that a substantial part of the elimination of export subsidy commitments is achieved by 2010, the mid-point of implementation for developed country Members.

101. Developing country Members shall eliminate their export subsidies by the end of [ ]. This will be on the basis of annual budgetary outlay commitments being reduced by [ ] percent [and quantity commitments being reduced by [ ] percent] in each year commencing 2008 to [ ] such that a substantial part of the elimination of export subsidy commitments is achieved by [ ], the mid-point of implementation for developing country Members.

102. In accordance with the Hong Kong Ministerial Declaration, developing country Members will continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end-date for elimination of all forms of export subsidies.

##### C. EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES

103. Export credit, export credit guarantees or insurance programmes shall comply with the detailed disciplines set out in Annex I.

104. [Export financing support, which does not conform with the provisions of paragraph 3.4 of Annex I, or which is provided in circumstances as may otherwise be allowable under Article 9 of this Agreement, constitute export subsidies for the purposes of this Agreement and are therefore [subject to specific export financing elimination commitments contained in Members' Schedules] [to be prohibited by [ ] for developed country Members and [ ] for developing country Members] [to be eliminated within the binding levels of Members' export subsidies elimination Schedules].]

105. [The disciplines set out in Annex I, shall apply from the first day of the implementation period of the Doha Round for developed country Members [and from [ ] for developing country Members] [.] [and the maximum repayment term of 180 days shall be phased in according to the following schedule [.] ]]

106. [The disciplines set out in Annex I, shall apply from the first day of the implementation period of the Doha Round for developed country Members [and from [ ] for developing country Members] [.] ]]

[and the maximum repayment term of 180 days shall be phased in according to the following schedule [ ].]

D. AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES

107. Agricultural exporting state trading enterprises shall comply with the detailed disciplines set out in Annex J.

108. Members shall,

- (a) eliminate by [ ] [the end of 2013] for developed country Members, and by [ ] [the end of [ ]] for developing country Members, [in accordance with the following timetable [to be developed]] [in parallel with the elimination of export subsidies]:
  - (i) those export subsidies, defined by Article 1(e) of the Agreement on Agriculture, which are currently provided to or by an agricultural exporting state trading enterprise, consistent with Members export subsidy commitments and the provisions of Article 9.4 of the Agreement on Agriculture;
  - (ii) government financing of exporting state trading enterprises, [including, *inter alia*], preferential access to capital or other special privileges with respect to government financing or re-financing facilities, borrowing, lending or government guarantees for commercial borrowing or lending, at below market rates; and
  - (iii) government underwriting of losses, either directly or indirectly, [including, *inter alia*] losses or reimbursement of the costs or write-downs or write-offs of debts owed [to, or] by export state trading enterprises on their export sales.
- (b) [[prohibit] [phase-out] by [ ] [the end of 2013] [in parallel with the elimination of export subsidies] the use of monopoly powers for such enterprises, after which Members shall not restrict the right of any interested entity to export, or to purchase for export, agricultural products.]

109. The provisions of paragraph 108(b) for developing country Members shall be subject to the provisions contained in paragraph 3.4(a) and (b) of Annex J.

E. INTERNATIONAL FOOD AID

110. International food aid shall comply with the detailed disciplines set out in Annex K.

111. [In-kind food aid [provided in situations other than those defined in paragraphs 2.4 and 2.6 of Annex K] shall be [prohibited] [phased out] by [ ] [the end of 2013] for developed country Members and by [ ] [the end of [ ] for developing country Members] [in accordance with the following timetable [ ] ] [in parallel with the elimination of export subsidies].]

112. [The monetisation of in-kind food aid shall be [prohibited] [phased out] by [the end of 2013] for developed country Members and by [ ] [the end of [ ] ] for developing country Members [in accordance with the following timetable [ ] ] [in parallel with the elimination of export subsidies] [.] [except where it is necessary to fund activities that are directly related to the delivery of food aid to the recipient or for the procurement of agricultural inputs.]

F. COTTON

113. All forms of export subsidies for cotton shall be eliminated by developed countries in 2006 [and developed countries concerned shall provide information on measures they have taken to implement this [and their schedules of commitments shall be modified with effect from 31 December 2006].]

114. [All forms of export subsidies for cotton shall be eliminated by developing country Members in 2007 [and developing country Members concerned shall provide information on measures they have taken to implement this] [and their schedules of commitments shall be modified with effect from 31 December 2007].]

115. [The extent to which disciplines and commitments for the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect for export credits, agricultural exporting state trading enterprises and international food aid, apply to cotton and their scheduling shall be specified in the lists of commitments.]

**V. EXPORT PROHIBITIONS AND RESTRICTIONS**

A. ARTICLE 12.1

116. [Article 12.1 of the Agreement on Agriculture shall be amended to include the measures set out in Annex L.]

**VI. COMMODITY ARRANGEMENTS**

A. UNDERSTANDING ON THE PROVISIONS OF ARTICLES XX(H) AND XXXVIII OF GATT 1994

117. [An Understanding on the provisions of Articles XX(h) and XXXVIII of GATT 1994 is set out in Annex M.]

**VII. [OTHER ISSUES]**

A. [SECTORAL INITIATIVES]

B. [GEOGRAPHICAL INDICATIONS]

C. [DIFFERENTIAL EXPORT TAXES]

118. The differential element of export taxes shall be eliminated by the end date for implementation.]

**DRAFT GUIDELINES FOR THE CONVERSION OF FINAL BOUND NON-AD VALOREM DUTIES  
INTO AD VALOREM EQUIVALENTS<sup>5</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 Annex 1 of the Agreement on Agriculture) in their WTO Schedules will apply these Guidelines for converting their non-*ad valorem* tariffs into AVEs.<sup>6</sup>

3. There are no preconditions to the tabling of data sets as a working basis. However, it should be noted in this context that all tariff reductions will be made from Members' bound rates, as agreed in paragraph 29 of the Framework Agreement. The issue of tariff simplification remains under negotiation in accordance with paragraph 37 of the Framework Agreement.

4. A solution to the issue of the potential "overlap" in tariff cuts, which may be created at the margins of the tariff bands, will need to be found.

5. While there is broad acceptance that Members are searching for the closest approximation possible of the correct AVE (exact precision being unattainable), it should be noted that in the consultations strong linkages have been made between providing Members "flexibility" and "verification" procedures.

6. At the request of Members, the Secretariat will continue to provide advice on technical matters, including technical assistance which may be necessary in the case of some developing country Members for applying the methodology set out below.

**II. CONVERSION METHODOLOGY**

7. The principal method for converting the final bound non-*ad valorem* duties into their *ad valorem* equivalents will be the unit value method based on IDB import data. This method will be applied in accordance with the modalities outlined in Section A below.

8. An alternative conversion method will be applied to the extent that the unit value method based on IDB import data is not appropriate or not practicable as determined in Section B below.

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<sup>5</sup> This text was first distributed as document number 2601 on 10 May 2005. The text and Members' submissions of *ad valorem* equivalents of bound non *ad valorem* tariffs can be found on the Members' website.

<sup>6</sup> Secretariat notes TN/AG/S/11, S/11/Add.1 and S/11/Add.2 describe the incidence of final bound non-*ad valorem* duties in Members' WTO Schedules.

A. UNIT VALUE METHOD BASED ON IDB IMPORT DATA

**1. Formula**

9. The final bound non-*ad valorem* MFN duties specified in Members' Schedules will be converted into their AVEs in accordance with the following formula:

$$AVE = (SP * 100)/(UV * XR)$$

AVE: AD VALOREM EQUIVALENT (per cent)

SP: MONETARY VALUE OF DUTY PER UNIT OF IMPORTS

UV: IMPORT UNIT VALUE

where  $UV = V/(Q * C_Q)$

V = value of imports

Q = quantity of imports

$C_Q$  = conversion factor for quantity units, where appropriate

XR: CURRENCY EXCHANGE RATE, where appropriate

**2. Parameters for the calculations**

10. The calculations will be based on total import flows with respect to the non-*ad valorem* tariff item concerned. The result of the calculations must be closely representative of the true level of tariff protection afforded by the non-*ad valorem* tariff.

11. The calculations of AVEs will be made in terms of a weighted average for the period 1999-2001. Any exchange rates and conversion factors that may be required for the calculations will relate to, and be applied on, the raw data (i.e. value and/or quantity of imports) for the individual years of this period prior to summing up the values or volumes for the three-year period for the purposes of calculating the weighted averages. In other words, weighted averages for IDB import unit values and world Comtrade import unit values will be calculated, for each tariff line concerned, in the following manner: the import values registered during the three-year period 1999-2001 will be first summed up and then divided by the sum of the import quantities registered during the same period.

12. In the case of seasonal tariffs, a separate AVE will be calculated for each of the seasons.

**3. Data requirements and sources**

13. The final bound non-*ad valorem* MFN duties will be sourced from the Consolidated Tariff Schedules Database (CTS).

14. The import values and import quantities will be sourced from the WTO Integrated Database (IDB) at the most disaggregated tariff line level. The data necessary to calculate world import unit values at the HS-six-digit level derived from the UN Commodity Trade Statistics Database (Comtrade) can be downloaded from the password-protected Members' Web Site. In the following paragraphs, these world import unit values will be referred to as "Comtrade unit values".

B. ALTERNATIVE AVE CALCULATION

1. **Specific situations covered**

*Missing data*

15. An alternative method for the calculation of AVEs to that outlined in Section A above will apply in the following situations:

- the IDB import data for the tariff line concerned are missing, or
- the IDB import value for the tariff line concerned is, on weighted average of the 1999-2001 period, lower than US\$ 2,500 or the equivalent in another currency, or
- there are reporting or other errors in the IDB import data.

*40/20 Filter*

16. An alternative method to that outlined in Section A above will also apply in any case where the IDB-based AVE cannot be considered to reflect the true level of tariff protection afforded by the non-*ad valorem* tariff. The "40/20 filter" is designed to systematically identify distorted IDB-based AVEs using existing, publicly available data that all Members have access to. This filter will be applied to all AVEs calculated on the basis of IDB import data in accordance with Section A above as well as in the cases specified in paragraphs 22-24 below.

*Step 1: Identification of distorted IDB import unit values*

17. The difference between the IDB import unit value and an estimated world import unit value is the basis of the first step of the 40/20 filter. To run this filter Members shall:

- Calculate the difference in per cent between (i) the weighted average 1999-2001 IDB import unit values at the tariff line level<sup>7</sup> and (ii) the weighted average 1999-2001 Comtrade unit values.<sup>8</sup>
- If the IDB import unit value exceeds the Comtrade unit value by more than 40%, the tariff item is subject to Step 2.
- Otherwise, the IDB AVE is directly used to allocate this item in the appropriate tier of the tariff reduction formula to be established, and the item is not subject to Step 2.

*Step 2: Relevance test*

18. An IDB import unit value that exceeds the Comtrade unit value by more than 40% does not alone indicate whether a product should be subject to an alternative method of AVE calculation. Calculation of AVEs is not an exact science. In the end, the tariff will be placed within the tiers of the tariff reduction formula. Members are only attempting to identify those products, which are most likely to move to a lower tariff reduction tier as a result of distorted import unit values. Therefore, there should be no concern about an IDB import unit value that is 100% greater than the Comtrade

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<sup>7</sup> It should be noted that the majority of non-*ad valorem* tariffs is bound at the HS-eight-digit level. In the event that a Member has bound its non-*ad valorem* tariffs at a more disaggregated (or more aggregated) level, the IDB import unit values will be calculated at that more disaggregated (or more aggregated) level.

<sup>8</sup> For the calculation of weighted averages, see paragraph 11 above.

unit value, if the resulting AVE is 3% using IDB data, rather than 6% using Comtrade data. Though 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 difference between the AVE calculated using IDB and the AVE calculated using Comtrade. To run this test Members will:

- Complete the calculation of AVEs using IDB import unit values.
- Calculate AVEs using Comtrade unit values for those tariff lines identified in Step 1 as requiring the Step 2 relevance test.
- Subtract the IDB AVE from the Comtrade AVE.
- If the resulting difference is greater than 20 percentage points then the tariff line is subject to an alternative AVE calculation method as specified in paragraph 25 below. Otherwise, the IDB AVE is used to allocate this item in the appropriate tier of the tariff reduction formula to be established.

*Other*

20. Sugar will be treated in accordance with the provisions of paragraph 26 below.

**2. Alternative methods**

21. In any of the cases identified as a result of the provisions under in paragraphs 15 to 20 above, the provisions of paragraphs 9 to 14 will be applied, subject to the following modifications.

*Missing data*

22. In the case of missing data as specified in paragraph 15 above, Members may apply one of the following alternative methods in place of the average 1999-2001 IDB import unit value, subject to identification of the source of the data:

- (i) extend the base period 1999-2001 by up to two years at either end;
- (ii) use the IDB import unit value of a closely related tariff line;
- (iii) use the IDB import unit value of the tariff line at issue of a near country; or
- (iv) use the Comtrade unit value.

23. Members should in principle use a consistent method across all tariff lines. Should the choice vary in order to obtain the most representative price, Members shall specify for each such tariff line which method was used.

24. Except where option (iv) has been chosen, the provisions of paragraphs 16-19 above (40/20 filter) apply.

***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) For HS Chapters 17-24, a 60/40 (Comtrade/IDB) weighting will apply.

***Other***

26. For all tariff lines for raw and refined sugar, [world prices] [or other prices] will apply [ ].

**C. ADDITIONAL DATA REQUIREMENTS**

27. The following provisions apply for the methods under both section A and section B above.

28. Where technical conversion factors are necessary, these will be sourced from the FAO unless they are already specified in the Schedule of the Member concerned.

29. All import unit values/prices will be expressed on a c.i.f. basis. Where necessary, f.o.b./c.i.f. conversion factors will be applied according to a methodology to be established.

30. Where the conversion of the currency used to record import values is necessary, the exchange rate to be used will be the annual average market exchange rate published in the *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).<sup>9</sup> Where the exchange rates are unavailable from the *IFS Yearbook*, the rate of exchange to be used will be that duly published by the competent authorities of the importing Member concerned and will reflect, as effectively as possible, the current value of the currency in commercial transactions in terms of the currency of the country of importation.

**III. MULTILATERAL VERIFICATION PROCEDURE**

31. In order to ensure transparency, the preliminary AVE calculations resulting from the conversion methodology set out in Section II above will be subject to the multilateral verification procedure set out below.

**1. Submissions of AVE calculations**

32. Members will submit to the Secretariat their preliminary AVE calculations, including full details of the constituent data, data sources and methods applied, using the annexed electronic spreadsheet format.<sup>10</sup> Those tariff lines that have been identified by the procedures under paragraphs 15 to 20 above will be identified as such in order to allow particular scrutiny. The Secretariat will post all submissions on the password-protected Members' WTO Web Site for the purposes of the multilateral review.

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<sup>9</sup> In the country tables of the monthly editions of the *International Financial Statistics* the annual average market exchange rate can be found in line "rf" of the exchange rates section.

<sup>10</sup> To be distributed separately.



**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.

**Tariff Escalation**  
**Provisional Draft List of Primary and Processed Products<sup>1</sup>**

| <b><u>Bovine meat</u></b>   |   |
|---|---|
| <b>Primary product</b>  | <b>Processed product</b>  |
| 0102.90 Live bovine animals other than pure bred breeding animals | 0201.10 – Meat of bovine animals, fresh or chilled; Carcasses and half-carcasses<br><br>Meat of bovine animals, fresh or chilled.<br>0201.20 – Other cuts with bone in<br>0201.30 – Boneless<br><br>0202.10 – Meat of bovine animals, frozen; Carcasses and half-carcasses<br><br>Meat of bovine animals, frozen.<br>0202.20 – Other cuts with bone in<br>0202.30 – Boneless<br><br>0206.10 – Edible offal of bovine animals, fresh or chilled<br><br>Edible offal of bovine animals, frozen.<br>0206.21 – Tongues<br>0206.22 – Livers<br>0206.29 – Other<br><br>0210.20 – Meat of bovine animals salted, in brine or dried or smoked; Other, including edible flours and meals of meat and meat offal<br><br>1602.50 – Prepared or preserved meat, meat offal or blood of bovine animals |

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<sup>1</sup> The list is that proposed by Canada in JOB(06)/166 and is included here provisionally only. The ultimate list would need to be agreed specifically in accordance with the particular proposal adopted in the main text.

| <b><u>Swine meat</u></b>   |  |
|--|--|
| <b>Primary product</b>   | <b>Processed product</b>   |
| <p>Live Swine, other than pure-bred breeding animals<br/>0103.91 Weighing less than 50 kg<br/>0103.92 Weighing 50 kg or more</p> | <p>0203.11 – Meat of swine, fresh or chilled; Carcasses and half-carcasses</p> <p>Meat of swine, fresh or chilled.<br/>0203.12 – Hams, shoulders and cuts thereof, with bone in<br/>0203.19 – Other</p> <p>0203.21 – Meat of swine, frozen; Carcasses and half carcasses</p> <p>Meat of swine, fresh or chilled.<br/>0203.12 – Hams, shoulders and cuts thereof, with bone in<br/>0203.19 – Other</p> <p>Meat of swine, frozen.<br/>0203.22 – Hams, shoulders and cuts thereof, with bone in<br/>0203.29 – Other</p> <p>0206.30 – Edible offal of swine, fresh or chilled<br/>Edible offal of swine, frozen.<br/>0206.41 – Livers<br/>0206.49 – Other</p> <p>Meat of swine salted, in brine, dried or smoked; Edible flours and meals of meat and meat offal<br/>0210.11 – Hams, shoulders and cuts thereof, with bone in<br/>0210.12 – Bellies (streaky) and cuts thereof<br/>0210.19 – Other</p> <p>Prepared or preserved meat, meat offal or blood of swine.<br/>1602.41 – Hams and cuts thereof<br/>1602.42 – Shoulders and cuts thereof<br/>1602.49 – Other, including mixtures</p> |
| <b><u>Sheep meat</u></b>   |  |
| <b>Primary product</b>   | <b>Processed product</b>   |
| <p>0104.10 Live sheep</p>  | <p>0204.10 –Carcasses and half-carcasses of lamb, fresh or chilled</p> <p>0204.21 – Other meat of sheep, fresh or chilled; Carcasses and half-carcasses</p> <p>0204.30 – Carcasses and half-carcasses of lamb, frozen</p> <p>Other meat of sheep, fresh or chilled.<br/>0204.22 – Other cuts with bone in<br/>0204.23 – Boneless</p> <p>Other meat of sheep, frozen.<br/>0204.42 – Other cuts with bone in<br/>0204.43 – Boneless</p>  |
| <b><u>Vegetables</u></b>   |  |
| <b>Primary product</b>   | <b>Processed product</b>   |
| <p>0701.90 – Potatoes, fresh or chilled; Other than seed</p>   | <p>0710.10 – Potatoes (uncooked or cooked by steaming or boiling in water), frozen</p> <p>2004.10 – Potatoes prepared or preserved otherwise than by vinegar or acetic acid, frozen</p>  |

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|--|--|
| 0702.00 – Tomatoes, fresh or chilled             | Tomatoes prepared or preserved otherwise than by vinegar or acetic acid.<br>2002.10 – Tomatoes, whole or in pieces<br>2002.90 – Other<br><br>2009.50 – Tomato juice, unfermented and not containing added sugar or other sweetening matter<br><br>2103.20 – Tomato ketchup and other tomato sauces                       |
| <b><u>Fruits</u></b>                             |  |
| <b>Primary product</b>                           | <b>Processed product</b>   |
| 0805.10 – Oranges, fresh or dried                | Orange juice, unfermented and not containing added spirit, whether or not containing added sugar or sweetening matter.<br>2009.11 – Orange juice, frozen<br>2009.12 – Orange juice, not frozen, of a Brix value not exceeding 20<br>2009.19 – Other  |
| 0805.40 – Grapefruit, fresh or dried             | Grapefruit juice, unfermented and not containing added spirit, whether or not containing added sugar or sweetening matter.<br>2009.21 – Of a Brix value not exceeding 20<br>2009.29 – Other  |
| 0806.10 – Grapes, fresh                          | 0806.20 – Grapes, dried  |
| 0808.10 – Apples, fresh                          | 0813.30 – Apples, dried<br><br>Apple juice, unfermented and not containing added spirit, whether or not containing added sugar or sweetening matter.<br>2009.71 – Of a Brix value not exceeding 20<br>2009.79 – Other  |
| <b><u>Coffee</u></b>                             |  |
| <b>Primary Product</b>                           | <b>Processed Product</b>   |
| 0901.11 – Coffee, not roasted: Not decaffeinated | 0901.21 – Coffee, roasted: Not decaffeinated<br>2101.11 – Extracts, essences and concentrates  |
| 0901.12 – Coffee, not roasted: Decaffeinated     | 0901.22 – Coffee, roasted: Decaffeinated<br>2101.11- Extracts, essences and concentrates   |
| <b><u>Cereals</u></b>                            |  |
| <b>Primary Product</b>                           | <b>Processed Product</b>   |
| 1001.10 – Durum Wheat<br>1001.90 – Wheat: Other  | 11.01 – Wheat or meslin flour<br>11.03.11 – Groats and meal, of wheat<br>11.03.20 – Pellets <sup>2</sup><br>1108.11 – Wheat starch<br>11.09 – Wheat gluten, whether or not dried   |
| 10.03 – Barley                                   | 11.03.19 Groats and meal, of other cereals <sup>1</sup><br>11.03.20 Pellets <sup>1</sup><br><br>1104.19 – Rolled or flaked grains, of other cereals <sup>1</sup><br>1104.29 – Other worked grains, of other cereals <sup>1</sup><br><br>Malt, whether or not roasted<br>1107.10 – Not roasted<br>1107.20 – Malt, Roasted |

<sup>2</sup> The test for determining tariff escalation will require examination of national schedules with detail beyond the 6 digit level.

|  |   |
|--|---|
| <p>10.04 – Oats</p>  | <p>11.03.19 Groats and meal, of other cereals<sup>1</sup><br/>11.03.20 Pellets<sup>1</sup></p> <p>Cereal Grains Otherwise Worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading<br/>10.06; germ of cereals, whole, rolled, flaked or ground<br/>1104.12 – Rolled or flaked grains: Of oats<br/>1104.22 – Other worked grains: Of oats</p>  |
| <p><b><u>Oilseeds</u></b></p>  |   |
| <p><b>Primary Product</b></p>  | <p><b>Processed Product</b></p>   |
| <p>12.01 – Soya Beans, whether or not broken</p>   | <p>Flours and meals of oil seeds or oleaginous fruits, other than those of mustard:<br/>1208.10 – Of soya bean</p> <p>Soya bean oil and its fractions, whether or not refined, but not chemically modified.<br/>1507.10 – Crude oil, whether or not degummed<br/>1507.90 – Other</p>  |
| <p>1202.10 – Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken: In shell</p>              | <p>Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken:<br/>1202.20 – Shelled, whether or not broken</p> <p>Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard,<br/>12.08.90 – Other than of soybeans<sup>1</sup></p> <p>Ground-nut oil and its fractions, whether or not refined, but not chemically modified.<br/>1508.10 – Crude oil<br/>1508.90 – Other</p> <p>Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.<br/>2008.11 – Ground nuts</p> |
| <p>Rape or colza seeds, whether or not broken<br/>1205.10 – Low erucic acid rape or colza seed<br/>1205.90 – Other</p> | <p>Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard,<br/>12.08.90 – Other than of soybeans<sup>1</sup></p> <p>Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.<br/>- Low erucic acid rape or colza oil and its fractions:<br/>1514.11 – Crude oil<br/>1514.19 – Other<br/>- Other:<br/>1514.91 – Crude oil<br/>1514.99 – Other</p>  |
| <p>12.06 – Sunflower seeds, whether or not broken</p>  | <p>Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard,<br/>12.08.90 – Other than of soybeans<sup>1</sup></p> <p>Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.<br/>Sunflower-seed or safflower oil and fractions thereof:<br/>1512.11 – Crude oil<br/>1512.19 – Other</p>   |

|  |   |
|--|---|
| 1207.60 – Safflower seeds  | Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard,<br>12.08.90 – Other than of soybeans <sup>1</sup><br><br>Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.<br>Sunflower-seed or safflower oil and fractions thereof:<br>1512.11 – Crude oil<br>1512.19 – Other   |
| Other oil seeds and oleaginous fruits, whether or not broken<br><br>1207.10 – Palm nuts and kernels  | Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard,<br>12.08.90 – Other than of soybeans <sup>1</sup><br><br>Palm oil and its refractions, whether or not refined, but not chemically modified<br><br>1511.10 – Crude oil<br>1511.90 – Other  |
| Other oil seeds and oleaginous fruits, whether or not broken<br><br>1207.20 – Cotton seeds   | Flours and Meals of Oilseeds or oleaginous fruits, other than those of mustard,<br>12.08.90 – Other than of soybeans <sup>1</sup><br><br>Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.<br>Cotton-seed oil and its fractions:<br>1512.21 – Crude oil, whether or not gossypol has been removed<br>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<br><br>1701.12 – Raw beet sugar, not containing added flavouring or colouring matter | 1701.91 – Cane or beet sugar containing added flavouring or colouring matter<br><br>1701.99 – Cane or beet sugar, other than containing added flavouring or colouring matter<br><br>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<br>1803.20 – Cocoa paste, wholly or partly defatted<br><br>1805.00 – Cocoa powder, not containing added sugar or other sweetening matter<br><br>1804.00 – Cocoa butter, fat and oil<br><br>Chocolate and other food preparations containing cocoa.<br>1806.10 – Cocoa powder, containing added sugar or other sweetening matter<br>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<br>1806.32 – Other, in blocks, slabs or bars, not filled<br>1806.90 – Other |
|  |   |

][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.

**Annex C**

**Provisional 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. [In order to promote this,] 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] [precludes] in any way the importation of any product or tariff line within the tariff quota.
  - (b) Members shall provide timely initial allocations of import licences 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 [additional] [unfavourable commercial] terms [or requirements] which act to restrict [the importation of] products [eligible for importation under a tariff quota, such as] [within the tariff quota commitment, including] product specification requirements, domestic purchasing requirements, non-viable quota allotments, [restrictions on quota allocation to] [denial of access to quota allocations for] 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][tariff quota quantities under] [post-Uruguay Round] bilateral and regional trade agreements against their scheduled WTO tariff quota commitments.] [Members [shall] [may] credit preferential imports, including existing preferential tariff quotas, against scheduled WTO tariff quota commitments.]
  - (f) Members shall publish [all relevant information] sufficiently in advance [of the opening date for the tariff quota all relevant information] in relation to their administration of tariff quota commitments, including information regarding administrative requirements and procedures [,] [Through the year, information shall be made readily available on] the contact details of importers to whom tariff quota allocations have been attributed and current tariff quota fill rates. [For Members that do not publish publicly available import statistics on tariff quota imports, detailed import statistics for tariff quotas, by tariff line, shall be reported to the Committee on Agriculture on an annual basis.]

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<sup>1</sup> This draft is a composite for provisional and discussion purposes derived from JOB(06)/168 and JOB(06)/171.

- (g) [No charges, deposits or other financial requirements shall be imposed, directly or indirectly, on or in connection with the administration of tariff quota commitments or with importation of tariff quota products other than as permitted under the GATT 1994.]
- (h) [Members shall not impose unfavourable commercial terms or requirements which act to restrict products eligible for importation under a TRQ such as:
  - (i) domestic purchasing requirements;
  - (ii) non-viable quota allotments; and
  - (iii) export or re-export requirements which restrict imports.]
- (i) [Members shall establish a mechanism of redistribution of unused licences in order to ensure that the system is operating according to its intentions. Reallocated quota shares must be valid until the end of the quota period in question.]

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 shall 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] per cent (excluding any additional amount added to the tariff quota under 3(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 licences on demand.]
  - (a) [If fill rates are, in each year over a [two year] period, less than [80] per cent, the out-of-quota duty shall be reduced to the in-quota rate until such time that imports equal or exceed the volume specified in the Member's Schedule. Until imports equal or exceed the volume specified in the Member's Schedule, the tariff quota shall be operated on an applied tariff basis at the in-quota rate.
  - (b) If the fill rate drops below [80] per cent in any subsequent [year], the out of quota duty shall again be reduced to the in quota rate until imports equal or exceed the volume specified in the Member's Schedule.]
- (a) [If the tariff quota fill rate for any two consecutive years falls below [75] per cent<sup>3</sup> each year, the tariff quota must be administered on a first-come, first-served basis the following year.]]

4. Special and differential treatment

- (a) [Developed country Members shall accord special and differential treatment to products from developing country Members in connection with the allocation of

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

<sup>3</sup> As notified to the Committee on Agriculture by the relevant Member.



expanded access under existing or new tariff quotas resulting from the negotiations under the Doha Development Agenda. For the purposes of Article XIII of GATT 1994, where a tariff quota has been allocated in full or in part among developing country suppliers the individual country allocations shall be as specified in the Schedule of the Member concerned; and any re-allocation of shortfalls shall be made among the developing country suppliers concerned. Developed country Members shall, on request, provide to the maximum extent possible advisory and marketing assistance in order to facilitate imports from developing countries under tariff quotas.]

**Illustrative list of indicators for designation of Special Products**

- (i) The product has been identified as a staple food or as part of the basic food basket of the developing country Member concerned 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 in the developing country Member concerned; 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 twenty (20) hectares or of average farm size of the developing country Member concerned or less in size; or
  - (b) A significant proportion of the farms or operational land holdings producing the product are of twenty (20) hectares or the average farm size of the developing country Member concerned or less in size.
- (vii) A significant proportion of the producers engaged in the production of the product are low income, resource poor or are subsistence farmer or disadvantaged producers.
- (viii)
  - (a) A relatively high absolute number of people are dependent on the product; or
  - (b) A significant proportion of the total agricultural population or rural labour force is employed in the production of the product.
- (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) A significant proportion of the agricultural population or rural labour is employed in the production of the livestock product(s).
- (xviii) The product in respect of which product-specific AMS has been notified by any other Member and which has been exported by that notifying Member during any year of the implementation period of the Uruguay Round.

Draft

Special Safeguard Mechanism for Developing Country Members

1. Notwithstanding the provisions of paragraph 1(b) of Article II of GATT 1994 or of Article 4 of this Agreement, any developing country Member may take recourse to the imposition of an additional duty in accordance with the provisions of paragraphs 4 and 5 below in connection with the importation of any agricultural product [which is designated in its Schedule with the symbol "SSM"] if:

- (a) the quantity of imports of that product entering the customs territory of that developing country Member [during any year] exceeds a trigger level equal to [130 per cent of] the average yearly quantity of imports [on a most-favoured-nation basis] for the [36 month] period preceding the year of importation for which data are available [or 130 per cent of the average yearly import quantity on a most-favoured-nation basis for the base period of [ ] to [ ], whichever is the greater] (hereinafter referred to as the "average import volume") [.] [and domestic prices are declining.] [and unit import value of trade on a most-favoured-nation basis are declining relative to the base period.]

[Where there are no, or minimal, levels of imports in the base period or the most recent three-year period for which data are available, [ ] per cent of domestic consumption of the product shall be used as a proxy for "average import volume". Where historical trade patterns have been disrupted due to historical circumstances, an alternative representative base period shall be used];

or, but not concurrently:

- (b) the c.i.f. import price, expressed in terms of the developing country Member's domestic currency, at which a shipment<sup>1</sup> of imports of that product enters the customs territory of that developing country Member during any year (hereinafter referred to as the "import price"), falls below a trigger price equal to [70 per cent of] the average [monthly price<sup>2</sup>] [annual price] for that product [on a most-favoured-nation basis] [for the most recent three-year period preceding the year of importation for which data are available] [for the previous 36 month period] [or 70 per cent of the average price of imports of that product on a most-favoured-nation basis for the base period of [ ] to [ ], whichever is the greater] (hereinafter referred to as the "average [import] [monthly] price") [.] [and imports are increasing.]

[Provided that, where the developing country Member's domestic currency has at the time of importation depreciated by at least 10 per cent over the preceding 12 months against the international currency or currencies against which it is normally valued the import price shall be computed using the average exchange rate of the domestic

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<sup>1</sup> A shipment shall not be considered for purposes of this subparagraph or paragraph 5 unless the volume of the product included in that shipment is within the range of normal commercial shipments of that product entering into the customs territory of that developing country Member.

<sup>2</sup> The trigger price used to invoke the provisions of this subparagraph shall, in general, be based on the average monthly c.i.f. unit value of the product concerned, or otherwise shall be based on a price that appropriately reflects the quality of the product and its stage of processing. The trigger price shall, following its initial use, be publicly disclosed and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

currency against such international currency or currencies for the three-year period referred to above.]

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 completion of custom clearance procedures in the exporting country before the additional duty is imposed either under subparagraph 1(a) and paragraph 4 or under subparagraph 1(b) and paragraph 5 shall be exempted from any such additional duty, provided that:

- (a) the volume of such shipments may be counted in the volume of imports of the product in question during the following year for the purposes of triggering the provisions of subparagraph 1(a) in that year; or
- (b) the price of any such shipment may be used during the following year in determining the average [import] [monthly] price trigger for the purposes of triggering the provisions of subparagraphs 1(b) in that year.

4. (a) Any additional duty imposed under subparagraph 1(a) shall be maintained [for no more than 12 months after it has been imposed] [only until the end of the year in which it has been imposed]. [If, import quantities are such that an additional duty under subparagraph 1(a) is applicable in two consecutive years the additional duty in the second year shall be two thirds that applicable in the first year. If, import quantities are such that an additional duty under subparagraph 1(a) is applicable in three consecutive years the additional duty in the third year shall be one third that applicable in the first year. No additional duty under subparagraph 1(a) may be imposed until [ ] years have passed after the third consecutive year of application of additional duties.

[(b) An additional duty imposed under subparagraph 1(a) may only be levied at levels that do not exceed [20 per cent of the current bound duty.] [those specified in the following schedule:

- (i) where the level of imports during a year does not exceed 105 per cent of the average import volume, no additional duty may be imposed;
- (ii) where the level of imports during a year exceeds 105 per cent but does not exceed 110 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 50 per cent of the bound tariff or 40 percentage points, whichever is higher;
- (iii) where the level of imports during a year exceeds 110 per cent but does not exceed 130 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 75 per cent of the bound tariffs or 50 percentage points, whichever is higher; and
- (iv) where the level of imports during a year exceeds 130 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 100 per cent of the bound tariff or 60 percentage points, whichever is higher.]]

- [(b) An additional duty under subparagraph 1(a) may be invoked if imports over the previous six months are [ ] per cent greater than imports over the same six months period in the preceding twelve months.

Any additional duty under subparagraph 1(a) and 1(b) above shall not exceed [ ] per cent of the difference between the Final Bound Rate of duty of the Uruguay Round and the current Bound Rate in the developing country Member's Schedule. Least-developed country Members may apply an additional duty of [ ].]

- 5. [(a) Any additional duty imposed under subparagraph 1(b) may be assessed either on a shipment-by-shipment basis or on an *ad valorem* basis for a duration of no more than 12 months as defined in subparagraph 5(b) below.

- (b) In the event that the additional duty is assessed on that product:

- (i) on a shipment-by-shipment basis, the additional duty shall not exceed the difference between the import price of each shipment and the trigger price;
- (ii) on an *ad valorem* basis, the additional duty shall not exceed the difference between the import price of the shipment and the trigger price referred to in subparagraph 1(b) above, expressed as a percentage of that import price;

provided that if at least two subsequent shipments are at import prices that are 5 per cent or more lower than the trigger price referred to in subparagraph 1(b), the developing country Member may shift to the imposition of additional duty on a shipment-by-shipment basis as set out in subparagraph 5(b)(i) above.]

- [(a) An additional duty under subparagraph 1(a) may be invoked if the average domestic prices over the previous [ ] months are [ ] per cent lower than the average domestic prices over the same six month period in the preceding twelve months.

- (b) Any additional duty under subparagraph 1(a) and 1(b) above shall not exceed [ ] per cent of the difference between the Final Bound Rate of duty of the Uruguay Round and the current Bound Rate in the developing country Member's Schedule. Least-developed country Members may apply an additional duty of [ ].]

- [(a) Any additional duty under subparagraph 1(b) shall apply on a shipment-by-shipment basis according to the following schedule:

- (i) no additional duty may be applied if the import price is less than 20 per cent below the trigger price defined in subparagraph 1(b);
- (ii) an additional duty of up to 15 per cent of the difference between the import price and the trigger price may be applied if the import price is more than 20 per cent but less than, or equal to, 30 per cent below the trigger price;
- (iii) an additional duty of up to 20 per cent of the difference between the import price and the trigger price may be applied if the import price is more than 30 per cent but less than, or equal to, 40 per cent below the trigger price;

- (iv) an additional duty of up to 25 per cent of the difference between the import price and the trigger price may be applied if the import price is more than 40 per cent but less than, or equal to, 50 per cent below the trigger price;
- (v) an additional duty of up to 30 per cent of the difference between the import price and the trigger price may be applied if the import price is more than 50 per cent below the trigger price.

6. [The trigger levels under paragraphs 1(a) may be decreased by [20] per cent and under paragraph 1(b) may be reduced by [20] per cent and the additional duty under subparagraphs 1(a) and 1(b) may be increased by [20] per cent for products the export of which was subsidized by a developed country Member.]

7. [Any additional duty under subparagraphs 1(a) or 1(b) shall not exceed [ ] per cent of the difference between the bound duty applicable in [2007] and the current bound duty.]

8. For perishable and seasonal products, the conditions set out above shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 may be used in reference to the corresponding period in the three-year period referred to in subparagraph 1(a) and different trigger prices for different periods may be used under subparagraph 1(b).

9. The operation of the special safeguard shall be carried out in a transparent manner. Any developing country Member taking action under subparagraph 1(a) above shall give notice in writing, indicating the tariff lines affected by the measure and including relevant data to the extent available, to the Committee on Agriculture as far in advance as may be practicable and in any event within 30 days of the implementation of such action. A developing country Member taking action under paragraph 4 shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action. Any developing country Member taking action under subparagraph 1(b) above shall give notice in writing, indicating the tariff lines affected by the measure and including relevant data to the extent available, to the Committee on Agriculture within 30 days of the implementation of the first such action or, for perishable and seasonal products, the first action in any period. Developing country Members undertake, as far as practicable, not to take recourse to the provisions of subparagraph 1(b) where the volume of imports of the products concerned are declining. In either case a developing country Member taking such action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

10. Where measures are taken in conformity with paragraphs 1 through 7 above, Members undertake not to have recourse, in respect of such measures, to the provisions of paragraphs 1(a) and 3 of Article XIX of GATT 1994 or paragraph 2 of Article 8 of the Agreement on Safeguards.

[11. 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.]

[12. This Article shall expire [ ].]

**Draft [Indicative List of ]**

**Tropical 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>   |
|-------------|--|
| <b>0602</b> | <b>Other live plants (including their roots), cuttings and slips; mushroom spawn.</b>  |
| <b>0603</b> | <b>Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.</b>  |
| 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 provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption.   |
| 0713        | Dried leguminous vegetables, shelled, whether or not skinned or split.   |
| <b>0714</b> | <b>Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith.</b>                    |
| <b>0801</b> | <b>Coconuts, Brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled.</b>  |
| 0802        | Other nuts, fresh or dried, whether or not shelled or peeled.  |
| <b>0803</b> | <b>Bananas, including plantains, fresh or dried.</b>   |
| <b>0804</b> | <b>Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried.</b>   |
| 0805        | Citrus fruit, fresh or dried.  |
| <b>0807</b> | <b>Melons (including watermelons) and papaws (papayas), fresh.</b>   |
| 0810        | Other fruit, fresh.  |
| 0811        | Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter.  |
| 0812        | Fruit and nuts, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption.  |
| 0813        | Fruit, dried, other than that of headings Nos. 08.01 to 08.06; mixtures of nuts or dried fruits of this Chapter.   |
| 0814        | Peel of citrus fruit or melons (including watermelons), fresh, frozen, dried or provisionally preserved in brine, in sulphur water or in other preservative solutions.   |
| <b>0901</b> | <b>Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion.</b>  |
| <b>0902</b> | <b>Tea, whether or not flavoured.</b>  |
| <b>0904</b> | <b>Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta.</b>   |
| <b>0905</b> | <b>Vanilla.</b>  |
| <b>0906</b> | <b>Cinnamon and cinnamon-tree flowers.</b>   |
| <b>0907</b> | <b>Cloves (whole fruit, cloves and stems).</b>   |
| <b>0908</b> | <b>Nutmeg, mace and cardamoms.</b>   |
| <b>0909</b> | <b>Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries.</b>   |
| <b>0910</b> | <b>Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices.</b>   |
| <b>1106</b> | <b>Flour, meal and powder of the dried leguminous vegetables of heading No. 07.13, of sago or of roots or tubers of heading No. 07.14 or of the products of Chapter 8.</b>   |

<sup>1</sup> This list is derived from that included in JOB(06)/129 by Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama and Peru. The items in bold are also found in the Indicative List of Tropical Products used in the Uruguay Round.



| HS4  | HS4 DESCRIPTION   |
|------|---|
| 1108 | <b>Starches; inulin.</b>  |
| 1202 | <b>Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken.</b>  |
| 1203 | <b>Copra.</b>   |
| 1207 | <b>Other oil seeds and oleaginous fruits, whether or not broken.</b>  |
| 1208 | <b>Flours and meals of oil seeds or oleaginous fruits, other than those of mustard.</b>   |
| 1211 | <b>Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered.</b>  |
| 1212 | Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety <i>Cichorium intybus sativum</i> ) of a kind used primarily for human consumption, not elsewhere specified or included.  |
| 1301 | <b>Lac; natural gums, resins, gum-resins and oleoresins (for example, balsams).</b>   |
| 1302 | <b>Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products.</b>   |
| 1401 | <b>Vegetable materials of a kind used primarily for plaiting (for example, bamboos, rattans, reeds, rushes, osier, raffia, cleaned, bleached or dyed cereal straw, and lime bark).</b>  |
| 1402 | <b>Vegetable materials of a kind used primarily as stuffing or as padding (for example, kapok, vegetable hair and eel-grass), whether or not put up as a layer with or without supporting material.</b>   |
| 1403 | <b>Vegetable materials of a kind used primarily in brooms or in brushes (for example, broomcorn, piassava, couch-grass and istle), whether or not in hanks or bundles.</b>  |
| 1404 | <b>Vegetable products not elsewhere specified or included.</b>  |
| 1502 | Fats of bovine animals, sheep or goats, other than those of heading No. 15.03.  |
| 1504 | Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified.  |
| 1505 | Wool grease and fatty substances derived therefrom (including lanolin).   |
| 1507 | Soya-bean oil and its fractions, whether or not refined, but not chemically modified.   |
| 1508 | <b>Ground-nut oil and its fractions, whether or not refined, but not chemically modified.</b>   |
| 1511 | <b>Palm oil and its fractions, whether or not refined, but not chemically modified.</b>   |
| 1512 | Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.  |
| 1513 | <b>Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.</b>  |
| 1515 | <b>Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.</b>   |
| 1516 | <b>Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.</b>  |
| 1517 | Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading No. 15.16.   |
| 1518 | <b>Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading No. 15.16; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, not elsewhere specified or included.</b> |
| 1520 | <b>Glycerol, crude; glycerol waters and glycerol lyes.</b>  |
| 1521 | <b>Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured.</b>  |
| 1522 | Degras; residues resulting from the treatment of fatty substances or animal or vegetable waxes.   |
| 1701 | Cane or beet sugar and chemically pure sucrose, in solid form.  |
| 1703 | Molasses resulting from the extraction or refining of sugar.  |
| 1801 | <b>Cocoa beans, whole or broken, raw or roasted.</b>  |
| 1802 | <b>Cocoa shells, husks, skins and other cocoa waste.</b>  |

| HS4  | HS4 DESCRIPTION  |
|------|--|
| 1803 | <b>Cocoa paste, whether or not defatted.</b>   |
| 1804 | <b>Cocoa butter, fat and oil.</b>  |
| 1805 | <b>Cocoa powder, not containing added sugar or other sweetening matter.</b>  |
| 1806 | Chocolate and other food preparations containing cocoa.  |
| 1903 | <b>Tapioca and substitutes therefore prepared from starch, in the form of flakes, grains, pearls, siftings or in similar forms.</b>  |
| 2001 | Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid.   |
| 2004 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No. 20.06.   |
| 2005 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No. 20.06.   |
| 2006 | <b>Vegetables, fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glacés or crystallised).</b>  |
| 2007 | <b>Jams, fruit jellies, marmalades, fruit or nut purée and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter.</b>   |
| 2008 | <b>Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.</b>   |
| 2009 | Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.   |
| 2101 | <b>Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof.</b>  |
| 2103 | Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard.   |
| 2208 | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol.; spirits, liqueurs and other spirituous beverages.   |
| 2305 | <b>Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of ground-nut oil.</b>  |
| 2306 | <b>Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading No. 23.04 or 23.05.</b>  |
| 2401 | <b>Unmanufactured tobacco; tobacco refuse.</b>   |
| 2402 | <b>Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.</b>  |
| 2403 | Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences.  |
| 3203 | Colouring matter of vegetable or animal origin (including dyeing extracts but excluding animal black), whether or not chemically defined; preparations as specified in Note 3 to this Chapter based on colouring matter of vegetable or animal origin.   |
| 3301 | <b>Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils.</b> |
| 5001 | Silk-worm cocoons suitable for reeling   |
| 5202 | Cotton, not carded or combed   |

**Annex G**

**[Draft List of Products Relating to Long-standing Preferences and Preference Erosion<sup>1</sup>]**

| <b>Importing Member</b> | <b>HS4</b> | <b>HS4 DESCRIPTION</b>  |
|-------------------------|------------|---|
|                         |            | <b>Meat of Bovine Animals</b>   |
| EC                      | 0201       | Meat of bovine animals, fresh or chilled  |
| EC                      | 0202       | Meat of bovine animals, frozen  |
|                         |            | <b>Bananas</b>  |
| EC                      | 0803       | Bananas, including plantains, fresh or dried.   |
|                         |            | <b>Sugar</b>  |
| EC and United States    | 1701       | Cane or beet sugar and chemically pure sucrose, in solid form.  |
| EC and United States    | 1703       | Molasses resulting from the extraction or refining of sugar   |
|                         |            | <b>Other Fruits and Vegetables</b>  |
| EC                      | Ex 0804    | Pineapples  |
| EC                      | Ex 0806    | Fresh grapes  |
| EC                      | Ex 2005    | Unshelled beans "Vigna spp., Phaseolus spp.", prepared or preserved otherwise than by vinegar or acetic acid (excl. frozen)     |
| EC                      | Ex 2005    | Vegetables and mixtures of vegetables, prepared or preserved otherwise than by vinegar, non-frozen (excl. preserved by sugar... |
| EC                      | Ex 2008    | Pineapples, prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit...                |
| EC                      | Ex 2008    | Citrus fruit, prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit nes             |
| United States           | Ex 2009    | Frozen orange juice, unfermented, whether or not containing added sugar or other sweetening matter (excl. containing spirit)    |
| EC                      | Ex 2009    | Grapefruit juice, unfermented, Brix value > 20 at 20°C, whether or not containing added sugar or other sweetening matter...     |
|                         |            | <b>Beverages and Spirits</b>  |
| EC                      | Ex 2207    | Undenatured ethyl alcohol, of actual alcoholic strength greater or equal to 80%   |
| EC                      | Ex 2208    | Rum and raffia  |

<sup>1</sup> This list is derived from the WTO Staff Working Paper, "Non-Reciprocal Preference Erosion Arising From MFN Liberalization in Agriculture: What Are The Risks?" and included in the Chairman's reference paper on long-standing preferences and preference erosion (document number 3842).

**[Provisional Indicative List of Products Relating to Long-Standing Preferences<sup>2</sup>]**

| <b>HS4</b> | <b>HS4 Description</b>  |
|------------|---|
| 0201       | Meat of bovine animals, fresh or chilled  |
| 0202       | Meat of bovine animals, frozen  |
| 0207       | Meat and edible offal, of the poultry of heading No 0105, fresh, chilled or frozen  |
| 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   |
| 0703       | Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled   |
| 0708       | Leguminous vegetables, shelled or unshelled, fresh or chilled   |
| 0709       | Other vegetables, fresh or chilled  |
| 0710       | Vegetables (uncooked or cooked by steaming or boiling in water), frozen   |
| 0714       | Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith                                     |
| 0802       | Other nuts, fresh or dried, whether or not shelled or peeled  |
| 0803       | Bananas, including plantains, fresh or dried  |
| 0804       | Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried  |
| 0806       | Grapes, fresh or dried  |
| 0807       | Melons (including watermelons) and papaws (papayas), fresh  |
| 0808       | Apples, pears and quinces, fresh  |
| 0810       | Other fruit, fresh  |
| 0813       | Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of this chapter  |
| 0905       | Vanilla   |
| 1001       | Wheat and meslin  |
| 1002       | Rye   |
| 1006       | Rice  |
| 1102       | Cereal flours other than of wheat or meslin   |
| 1103       | Cereal groats, meal and pellets   |
| 1508       | Ground-nut oil and its fractions, whether or not refined, but not chemically modified   |
| 1511       | Palm oil and its fractions, whether or not refined, but not chemically modified   |
| 1513       | Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified  |
| 1701       | Cane or beet sugar and chemically pure sucrose, in solid form   |
| 1703       | Molasses resulting from the extraction or refining of sugar   |
| 1804       | Cocoa butter, fat and oil   |
| 1904       | Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or ot |
| 2002       | Tomatoes prepared or preserved otherwise than by vinegar or acetic acid   |
| 2005       | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006   |
| 2008       | Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included  |

<sup>2</sup> This list was submitted by the ACP Group in JOB(06)/204 of 21 June 2006.

| <b>HS4</b> | <b>HS4 Description</b>  |
|------------|---|
| 2009       | Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter   |
| 2101       | Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof |
| 2103       | Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard  |
| 2204       | Wine of fresh grapes, including fortified wines; grape must other than that of heading No 2009  |
| 2207       | Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength   |
| 2208       | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages  |
| 2309       | Preparations of a kind used in animal feeding   |
| 2401       | Unmanufactured tobacco; tobacco refuse  |
| 2402       | Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes   |

AGREEMENT ON AGRICULTURE: ANNEX 2

Running list of proposed changes to paragraphs 2 through 13

*Government Service Programmes*

*General services (paragraph 2)*

- (i) Add the following subparagraph (h), including a footnote, to the existing paragraph 2:
- (h) agrarian, land and institutional reform[, and any other programmes related to food and livelihood security and rural development, in developing country Members,] including services related to such [reform and other] programmes.<sup>1</sup>***
- Text of footnote 1: *Such reform and other programmes include, inter alia, settlement programmes, issuance of property titles, employment assurance, [provision of infrastructure,] nutritional security, poverty alleviation, soil conservation and resource management, and drought management and flood control.*
- (ii) Add the following subparagraph (h) to the existing paragraph 2:
- (h) services relating to agrarian, land and institutional reform, food and livelihood security and rural development, including issuance of property titles, employment assurance, nutritional security, poverty alleviation, soil conservation and resource management, and drought management and flood control.***
- (iii) Add the following subparagraph (h) to the existing paragraph 2:
- (h) Policies and services related to farmer settlement, land reform and the redress of historical land ownership structures in developing country Members. These services may include the provision of infrastructure, land rehabilitation, soil conservation and food security programmes to promote rural development and poverty alleviation***

*Public stockholding for food security purposes<sup>5</sup> (paragraph 3)*

- (i) Modify the existing footnote 5 as follows:

For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, ~~provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.~~

- (ii) Add text at the end of the existing footnote 5:

***... However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS.***

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\* The following symbols have been used:

- 1) Italicised text in bold indicates proposed additions/revisions and strike-out indicates proposed deletions of the relevant provisions of the Agreement on Agriculture.
- 2) Square-bracketed text indicates alternative proposals.

*Domestic food aid<sup>6</sup> (paragraph 4)*

- (i) Modify the existing footnote 5&6 as follows:

<sup>5&6</sup> For the purposes of paragraphs 3 and 4 of this Annex, ***the acquisition of foodstuffs at subsidized prices when procured generally from low-income or resource-poor producers in developing country Members with the objective of fighting hunger and rural poverty, as well as*** the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.

*Direct payments to producers (paragraph 5)*

- (i) Add text at the end of the first sentence and modify the second sentence of the existing paragraph 5 as follows:

(a) Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1 above, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13 below. ***Direct payments shall not be linked to production levels, including input levels therein. When Members make such payments, they shall notify the base period and all other relevant criteria, as well the laws, regulations, and administrative decisions of such programmes made under this provision. Further notifications under paragraph 5(a) shall include regular and periodic information on how the programmes under this provision achieve the stated objectives.***

(b) Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to criteria ~~(b) through (e)~~ in paragraph 6, in addition to the general criteria set out in paragraph 1.

- (ii) Modify the existing paragraph 5 as follows.

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1 above, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13 below. ~~Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.~~

- (iii) Add text at the end of the existing paragraph 5:

***... On-going payments shall be based on activities in a defined, fixed and unchanging historical base period.***

- (iv) Add subparagraph (c) and modify the existing paragraph 5 as follows:

(a) Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1 above, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13 ~~below~~.

(b) Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.

- (c) Transparency and Reporting (to be developed)

*Decoupled income support (paragraph 6)*

- (i) Modify the existing subparagraphs (a) and (e) and add a subparagraph (f) as follows:
- (a) Eligibility for such payments shall be determined by clearly-defined criteria ~~such as of~~ **low levels of** income, ~~status as a producer or landowner, factor use or production~~ **landholding and production** level in a **notified, defined and fixed and unchanging** base period. **Developing country Members who have not previously made use of this type of payment, and thus have not notified, shall not be precluded from establishing an appropriate base period<sup>7</sup>, which shall be fixed and unchanging and shall be notified.**
- (e) **Land, labour, or any other factor of production shall not be required to be in "agricultural use" and** no production shall be required in order to receive payments.
- (f) **Such payments shall not be made in conjunction with AMS support and support under Article 6.5, if the sum of such support, as appropriate<sup>8</sup>, exceeds X per cent of the annual value of production of a given product.**

Text of footnote 7: **Developing country Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph.**

Note 8: This is without prejudice to the final outcome of the negotiations of the amendment of Article 6.5.

- (ii) Modify the existing subparagraph (a) as follows:
- (a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed **and unchanging historical** base period.

*Government financial participation in income insurance and income safety-net programmes (paragraph 7)*

- (i) Modify subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry, **or in the case of a developing country Member, in accordance with specific criteria which shall be defined in national legislation<sup>9</sup>**. Any producer meeting this condition shall be eligible to receive the payments.
- Text of footnote 9: **Includes administrative orders and regulations made by the designated competent authorities.**
- (b) The amount of such payments shall compensate **only up to** ~~for less than~~ 70 per cent of the producer's income ~~loss~~ in the year the producer becomes eligible to receive this assistance. **In the case of a developing country Member, compensation shall only be up to a certain proportion of the producer's income which shall be defined in national legislation<sup>10</sup>.**



Text of footnote 10: ***Includes administrative orders and regulations made by the designated competent authorities.***

- (ii) Add two footnotes to the existing subparagraphs (a) and (b):
- (a) Eligibility for such payments shall be determined by an income loss<sup>1</sup>, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.

Text of the footnote 1: ***Developing country Members may determine the income loss on an aggregate basis of the agriculture sector as a whole (i.e. not on an individual basis) at either a national or regional level.***

- (b) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss<sup>2</sup> in the year the producer becomes eligible to receive this assistance.

Text of footnote 2: ***If developing country Members have based the eligibility criteria in 7(a) above on an aggregate basis of the agriculture sector as a whole, the total amount of payments shall compensate for less than 70 per cent of the aggregate income loss of the agriculture sector as a whole.***

- (iii) Modify the existing subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall be determined by an income loss ***of the farm enterprise as a whole***, taking into account only income derived from agriculture, which exceeds 30 per cent of ***the reference income, which is*** average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding ~~three~~ ***five***-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments ***from the government***.
- (b) The amount of such payments ***by governments*** shall ~~compensate for less than 70 per cent of the producer's income loss~~ in the year the producer becomes eligible to receive this assistance ***raise the producer's income to no more than 70 per cent of the producer's reference income.***
- (iv) Modify the existing subparagraphs (a), (b) and (c) as follows:
- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of ***the reference income, which is*** average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding ~~three~~ ***five***-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments ***from the government***.
- (b) The amount of such payments ***by governments*** shall ***in the year the producer is eligible to receive this assistance, raise the producer's income to no more than 70 per cent of the producer's reference income.*** ~~compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance.~~
- (c) The amount of any such payments shall relate solely to income ***derived from agriculture of the farm enterprises' as a whole***; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.

- (v) Modify the existing subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of **the reference income, which is** average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding ~~three~~ **minimum five-** year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments **directly or indirectly from the government.**
  - (b) The amount of such payments, **directly or indirectly from the government, shall,** ~~shall compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance~~ **contribute only up to 70 per cent of the producer's reference income.**

*Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters (paragraph 8)*

- (i) Modify subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural disaster or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry, **or in the case of a developing country Member, in accordance with specific criteria which shall be defined in national legislation<sup>11</sup>.**
- Text of footnote 11: **Includes administrative orders and regulations made by the designated competent authorities.**
- (b) Payments made following a disaster shall be applied only in respect of losses of income, **crop**, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster **or other disaster** in question.
- (ii) Add a footnote to the existing subparagraph (a):
- (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural disaster or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss<sup>3</sup> which exceeds 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.

Text of footnote 3: **Developing country Members may determine the production loss of the affected sector(s) or region(s) on an aggregate basis.**

- (iii) Modify subparagraph (a) as follows:
- (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural disaster or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest

entry. *In the case of developing country Members, payments for relief from natural disasters may be provided to producers when the estimated production loss is less than 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period.*

- (iv) Add to the existing subparagraph (a) and modify the existing subparagraph (b) as follows:
- (a) Eligibility for such payments shall arise:
- (i) *In the case of direct payments related to disasters* only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding ~~three~~ *five*-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
- (ii) *In the case of government financial participation in crop or production insurance schemes, eligibility for such payments shall be determined by a production loss which exceeds 30 per cent of the average of production in a period demonstrated to be actuarially appropriate.*
- (iii) *In the case of the destruction of animals or crops to control or prevent pests, diseases, disease-carrying organisms or disease-causing organisms named in national legislation or international standards, the production loss may be less than the 30 per cent of the average of production referred to above.*
- (b) Payments made following a disaster shall be applied only in respect of losses of income, **crops**, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.
- (v) Add to the existing subparagraph (a) and modify the existing subparagraphs (b) and (d) as follows:
- (a) *Eligibility for such payments shall arise:*
- (i) *In the case of direct payments related to disasters* ~~Eligibility for such payments shall arise~~ only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding ~~three~~ *five*-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
- (ii) *In the case of government financial participation in crop insurance schemes, eligibility for such payments shall be determined by a production loss which exceeds 30 per cent of the average of production in an actuarially appropriate period.*
- (iii) *In the case of the destruction of animals or crops to control or prevent diseases named in legislation or international standards, the production loss may be less than the 30 per cent of the average of production referred to above.*
- (b) Payments made following a disaster ~~under Paragraph 8~~ shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors **or destruction of animals or crops** due to the ~~natural~~ disaster in question.
- (d) Payments made ~~during a disaster~~ **under Paragraph 8** shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

(vi) Add to the existing subparagraph (a) and modify the existing subparagraphs (b) and (d) as follows:

- (a) Eligibility for such payments shall arise:
- (i) ***In the case of direct payments, eligibility*** shall arise, only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding ***minimum five-year*** ~~three-year~~ period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
  - (ii) ***In the case of government financial participation in production insurance schemes, eligibility shall be determined by a production loss which exceeds 30 per cent of the average of production in a period that is actuarially appropriate.***
  - (iii) ***Where payments under this paragraph are made in respect of the destruction of animals or crops to control or prevent a disease identified by an appropriate authority, may arise when the production loss is less than the 30 per cent of the average of production referred to in paragraph 8(a)(i) or 8(a)(ii), as applicable.***
- (b) Payments made ***under this paragraph*** ~~following a disaster~~ shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster ***or destruction of animals or crops*** in question.
- (d) Payments made ***under this paragraph*** ~~during a disaster~~ shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

*Structural adjustment assistance provided through investment aids (paragraph 11)*

- (i) Modify the existing subparagraph (b) as follows:
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after ***a fixed and unchanging*** base period, other than as provided for under criterion (e) below. ***Developing country Members who have not previously [made use of this type of payment, and thus have not notified] [notified the usage of this type of payment], shall not be precluded from establishing an appropriate base period [<sup>12</sup>, which shall be fixed and unchanging and shall be notified].***
- Text of footnote 12: ***Developing country Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph.***
- (ii) Add at the end of subparagraph (a) and modify the existing subparagraph (b) as follows:
- (a) ... ***Such structural disadvantages must be clearly defined.***
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production, ***[the use of factors of production,] or inputs into the production*** (including livestock units) undertaken by the producer in any year after ***a fixed and unchanging historical*** ~~the~~ base period, other than as provided for under criterion (e) below. ***The base period shall be notified.***

*Payments under environmental programmes (paragraph 12)*

- (i) Add the following subparagraph (c) to the existing paragraph 12:
  - (c) ***The conditions spelt out in paragraphs 12 (a) and (b) above shall not apply to payments made by developing country Members.***
- (ii) Modify the existing subparagraph (b) as follows:
  - (b) The amount of payment shall be limited to the extra costs ~~or loss of income~~ ***involved in complying with the government programme and not be related to or based on the volume of production.***

*Payments under regional assistance programmes (paragraph 13)*

- (i) Add text at the end of subparagraph (a) and modify the existing subparagraph (b) as follows:
  - (a) ***... Developing country Members shall be exempted from the condition that disadvantaged regions must constitute a clearly designated contiguous geographical area with a definable economic and administrative identity.***
  - (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the ***fixed and unchanging historical*** base period, ***which shall be notified***, other than to reduce that production. ***Developing country Members who have not previously made use of this type of payment, and thus have not notified, shall not be precluded from establishing an appropriate base period<sup>13</sup>, which shall be fixed and unchanging and shall be notified.***

Text of footnote 13: ***Developing country Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph.***

- (ii) Add text at the end of subparagraph (a) and modify the existing subparagraphs (b) and (f) as follows:
  - (a) ***... Developing country Members will be exempt from the condition that the disadvantaged region be a clearly designated contiguous geographical area with a definable economic and administrative identity.***
  - (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the ***fixed and unchanging historical*** base period, ***which shall be notified***, other than to reduce that production. ***Developing country Members should not be precluded from utilizing this kind of payment in the future in the event that no base period was notified. An appropriate base period which shall be fixed and unchanging and shall be established and notified.***
  - (f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production (***including livestock production***) in the prescribed area.
- (iii) Add text at the end of the existing subparagraph (a) as follows:
  - (a) ***... Developing country Members shall be exempted from the condition that disadvantaged regions must constitute a clearly designated contiguous geographical area with a definable economic and administrative identity.***

- (iv) Modify the existing subparagraph (b) as follows:
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the *fixed and unchanging historical* base period, *which shall be notified*, other than to reduce that production.

ANNEX I

**POSSIBLE NEW ARTICLE 10.2 OF THE AGREEMENT ON AGRICULTURE**

**EXPORT CREDITS, EXPORT CREDIT GUARANTEES OR INSURANCE PROGRAMMES**

**1. General Provisions**

1. Subject to the provisions of this Article, Members shall not, directly or indirectly, provide support or enable support to be provided for, or in connection with, the financing of exports of agricultural products, including the credit and other risks associated therewith [, otherwise than on market related terms and conditions]. Each Member accordingly undertakes not to provide export financing support otherwise than in conformity with this Article [and with the commitments as specified in Members schedules].

**2. Forms and Providers of Export Financing Support Subject to Discipline**

2. For the purpose of this Article, the term "export financing support" includes any of the following forms of support for, or in connection with, the financing of exports of agricultural products:

- (a) direct financing support, comprising direct credits/financing, refinancing, and interest rate support;
- (b) risk cover, comprising export credit insurance or reinsurance and export credit guarantees;
- (c) government-to-government credit agreements covering the imports of agricultural products exclusively from the creditor country under which some or all of the risk is undertaken by the government of the exporting country; and
- (d) any other form of governmental export credit support, direct or indirect, including deferred invoicing and foreign exchange risk hedging.

3. The provisions of this Article shall apply to export financing support provided by or on behalf of the following entities, hereinafter referred to as "export financing entities", whether such entities are established at the national or at the sub-national level:

- (a) government departments, agencies, or statutory bodies;
- (b) any financial institution or entity engaged in export financing in which there is governmental participation by way of equity, provision of loans or underwriting of losses; [and]
- (c) [agricultural export state trading enterprises; and]
- (d) any bank or other private financial, credit insurance or guarantee institution which acts on behalf of or at the direction of governments or their agencies.

**3. Terms and Conditions**

4. Export financing support shall be provided in conformity with terms and conditions set out below. Such conforming export financing support [shall be deemed to comply with paragraph 1 above.] [shall not be deemed not to be an export subsidy for the purposes of this Agreement or of any

of the WTO Agreements nor shall such support be deemed a non-commercial transaction for the purposes of Article 10.1 of the Agreement on Agriculture.] [Furthermore, support in the form of export credit insurance, reinsurance or guarantees shall not be provided in respect of export financing contracts whose terms and conditions are not otherwise in conformity with the provisions of this paragraph.]

- (a) **Maximum repayment term:** The maximum repayment term of a supported export credit, the period beginning at the starting point of credit<sup>3</sup> and ending on the contractual date of the final payment, shall be no more than 180 days<sup>[4]</sup> [without exception.][except for:
- (i) breeding stock; for which the maximum repayment period shall be [36] months;
  - (ii) agricultural vegetable reproduction material, for which the maximum repayment period shall be [12] months;
  - (iii) all agricultural products exported to least-developed and net food-importing developing countries (as set out in paragraph 7.12), for which the maximum repayment period shall be [36] months; and
  - (iv) all agricultural products to developing country Members under exceptional circumstances (as set out in paragraph 7.13), in which case the maximum repayment period shall be [36] months.]
- (b) **Payment of interest:** Interest shall be payable. "Interest" excludes premiums and other charges for insuring or guaranteeing supplier or financial credits, banking fees or commissions relating to the export credit, and withholding taxes imposed by the importing country.
- (c) **Minimum interest rate:** The applicable Libor (London Interbank Offered Rate) for the currency in which the credit is denominated (not inclusive of and separate from risk-premium reflective of, as the case may be, the buyer/commercial, country/political and sovereign credit risks covered) plus [a fixed margin of [ ] basis points] [an appropriate margin sufficient] to cover the cost of extending such financing (e.g. administrative or transaction costs) shall be applicable in respect of [direct financing support] [export financing support] and in respect of invoiced amounts benefiting from deferred payment under an export contract.
- (d) **Premiums in respect of coverage of risks of non-repayment under direct financing support, export credit guarantees or export credit insurance/reinsurance:** Premiums<sup>[5]</sup> shall be charged, shall [be market-based] [or] [be risk-based], [not undercut private market pricing], [and shall be adequate to cover operating costs<sup>[6]</sup> and losses<sup>[7]</sup> over a period of [ ] ] [and shall ensure that the

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<sup>3</sup> The "starting point of a credit" shall be [no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period] [the date of the contract of sale for the purposes of export] [the date of export].

<sup>4</sup> [In case of non-payment within the agreed re-payment period the exporter shall be entitled to claim indemnification from the export credit agency only within a fixed period of time which shall not exceed [ ] months.]

<sup>5</sup> Premiums shall be defined as [ ]

<sup>6</sup> Operating costs shall be defined as [ ]

<sup>7</sup> Operating losses shall be defined as [ ]



programme or part of the programme which is subject to the provisions of these disciplines is self-financing as defined in paragraph 3.4(g)]. Premiums shall be expressed in percentages of the outstanding principal value of the credit and shall be payable in full [at the date of issuance of cover] [or] [no later than the end of the month following the month in which the exports are made]. Premium rebates shall not be accorded.

- (e) **Risk sharing:** Cover provided in the form of [export credit insurance, reinsurance or export credit guarantees] [export financing support] shall not exceed [ ] per cent of the value of a transaction.
- (f) **Foreign exchange risk:** Export credits, export credit insurance, export credit guarantees, and related financial support shall be provided in freely traded currencies. Foreign exchange exposure deriving from credit that is repayable in the currency of the importer shall be fully hedged, such that the market risk and credit risk of the transaction to the supplier/lender/guarantor is not increased. The cost of the hedge shall be incorporated into and be in addition to the premium rate determined in accordance with this paragraph.
- (g) **Self-Financing:** Export financing support programmes or parts thereof which are subject to the provisions of this Article shall be self-financing. Self-financing shall be considered as the ability of such programmes, or parts thereof, to operate in a manner by which the premiums charged cover all operating costs and losses over a period of [1-15] years. [For this purpose, the providers of export financing support shall keep separate accounting of the programmes covered by this Article according to appropriate accounting standards [set out in Annex ... to be developed].]
- (h) **[Loss preventative measures:** [In the event of an impending or actual default, the export credit financing entity may employ loss preventative measures to minimize losses. Immediate debt recovery efforts are preferred. Where immediate debt recoveries are not practicable, other loss preventative measures may include a multilateral *pari passu*, rescheduling of debt or a bilateral restructuring of debt. Other than as may be agreed in multilateral *pari passu*, rescheduled debt, debts with respect to which less than [ ] per cent of principal has been recovered in [ ] years shall be considered as unrecoverable to the extent of such unrecovered amount. Such unrecovered amounts and any debt forgiveness provided to the obligor shall be considered a loss to the export credit financing entity.] [Other than may be agreed multilaterally, *pari passu* rescheduling debt arrangements, debts shall not be rescheduled or otherwise restructured in a manner that results in circumvention of the terms and conditions of this paragraph.]]
- (i) **[Financing calculations:** For the purpose of determining whether a loan guarantee by a government in connection with an agricultural export confers a benefit, any comparison of the amount that the firm receiving the government guaranteed loan and the amount that the firm would pay on a comparable commercial loan absent the government guarantee or insured loans must be made on a direct one-to-one comparison basis. The terms and conditions must be for the same or equal for each of: tenor; form of repayment obligation; credit rating of obligor; risk rating of country; and the time period within which the loan is offered. In addition, the difference between the two amounts shall be adjusted for any difference in fees.]

#### **4. Non-conforming Financing Support**

5. Export financing support, which does not conform with the provisions of paragraph 3.4 of this Article or which is provided in circumstances as may otherwise be allowable under Article 9 of this Agreement, hereinafter referred to as "non-conforming export financing", constitute export subsidies for the purposes of this Agreement and are therefore, [subject to specific export financing elimination commitments contained in Members' Schedules] [to be prohibited by [ ]] [to be eliminated within the binding levels of Members' export subsidies elimination Schedules].

#### **5. Implementation**

6. [The following additional and specific disciplines shall be phased in from the first day of the implementation period of the Doha Round: [ ].]

7. [Over the implementation period the scope of permitted export financing instruments shall be reduced to only pure risk cover comprising export credit insurance or reinsurance and export credit guarantees according to the following timetable [ ].]

#### **6. Other Issues**

8. Members who operate export financing programmes in accordance with the provisions of this Article [, excluding least-developed country Members,] shall comply with the following transparency requirements:

- (a) [on the day of the entry into force of these provisions, Members concerned shall submit a notification concerning that Member's export financing programmes, export financing bodies and other related matters in the years [ ] to [ ] in accordance with the format specified in Annex [to be developed] hereto;
  - (b) After the entry into force of this Agreement the notification under paragraph 6.8(a) shall be updated at the beginning of each subsequent year;
  - (c) At not less than [ ] monthly intervals Members shall submit a notification to the Committee on Agriculture in which details are provided of export financing commitments entered into in accordance with the format specified in Annex [to be developed] hereto. For each export financing programme, the notification shall include accounting information referred to under the self-financing provisions indicating whether the programme was self-financing during the previous year;
  - (d) A Member whose export financing programmes are not in conformity with the disciplines and the self-financing principle shall provide the Committee on Agriculture information on any corrective action taken or envisaged to bring the programme back into conformity.]
- 
- (a) [no later than three months after the entry into force of this Article each Member shall notify the Committee on Agriculture of any export financing support entity that exceeds the maximum repayment term of 180 days and is not covered by the exceptions in paragraph 3.4(a). Failure to notify shall result in prohibition of use of such programmes;

- (b) Each Member operating a non-conforming export financing support entity shall annually notify the Committee on Agriculture, at the beginning of each subsequent year, all relevant data;
- (c) Each Member shall annually notify the Committee on Agriculture, at the beginning of each subsequent year, of the following information for each entity providing export financing support. If funds are provided in a foreign currency other than the Member's national currency, then the repayment and interest shall be converted to the Member's national currency using prevailing market exchange rates at the time funds are received. The notifications shall include the following data:
  - (i) the value of all direct financing support comprising direct credits, refinancing and interest rate support granted, including any government-to-government transactions the value of all risk cover extended in the form of export credit insurances, reinsurance and export credit guarantees, including any government-to-government transactions; and the value of all other support, including, but not limited to, deferred invoicing and foreign exchange risk hedging;
  - (ii) the total amount of funds from all sources including national accounts used to pay claims and the total amount of reimbursements of funds to such sources including national accounts in respect of such claims;
  - (iii) the total amount of revenue earned from premiums charged and interest earned; and
  - (iv) the total amount of operating costs, losses, and the amount of debt forgiven and written off.
- (d) If a Member's annual notification for any export financing support entity, for three consecutive years, reflects that the total amount of revenue earned from premiums charged and interest earned on premium revenue is less than the total of operating costs and losses, then the Member shall provide a narrative statement to explain the progress towards self-sustaining activity in the next year's report including specific actions to increase premiums, reduce risk exposure, reduce operating costs and/or recover losses.]

## **7. Special and Differential Treatment**

9. [Developing countries providers of export credits shall be eligible to benefit from the following elements:

- (a) [Non-conforming export financing support, as defined in paragraph 4.5, shall be [subject to specific export financing elimination commitments contained in developing country Members' Schedules] [be prohibited by [ ] for developing countries] [be eliminated within the binding levels of developing country Members' export subsidies elimination Schedules];]
- (b) [The specific disciplines set out in paragraph 5.6][The following additional and specific disciplines] shall be phased in from [ ]: ;]

- (c) [The provisions of paragraph 5.7, shall be implemented according to the following timetable [ ];]
- (d) [The maximum repayment period under paragraph 3.4(a) shall be no more than [ ] days;]
- (e) [The minimum interest rate as provided for under paragraph 3.4(c) may be adjusted to take into account withholding taxes on international borrowings and additional borrowings for capital required to conform to Basel II norms. Such elements shall not be considered export subsidies for the purpose of this Article;]
- (f) [The premiums charged in accordance with paragraph 3.4(d) may be market-based and premium rebates may be provided for under the following circumstances [ ];]
- (g) [With respect to the risk sharing provisions contain in paragraph 3.4(e), 100 per cent of the value of the transaction may be covered in the form of [export credit insurance, reinsurance or export credit guarantees] [export financing support];]
- (h) [As an exception to the provisions of paragraph 3.4(f), developing country Members may hedge in non-freely traded currencies;]
- (i) [The self-financing period contained in paragraph 3.4(g) for developing countries shall be [at least] [ ] years;]
- (j) [For the purpose of paragraph 3.4(h), when warranted by genuine financial difficulties the rescheduling of debt should be on the same terms and conditions as those for commercial tenders in order to prevent or curtail planned defaults.]]

10. [Developing country Members shall benefit from a grace period of three years after the entry into force of this Agreement before being required to comply with the provisions under paragraph 6.8.]

11. [Export financing entities in developing country Members which have the objective of preserving domestic price stability or ensuring food security shall be exempt from the provisions of paragraph 6.8 of this Article.]

12. Least-developed countries and net food-importing developing countries as listed in G/AG/5/Rev.8 shall be accorded differential and more favourable treatment comprising: [ ].

13. In exceptional circumstances which can not be adequately covered otherwise by international food aid, commercial export credits or preferential international financing facilities, Members may provide,

[in respect of exports to developing and least-developed country Members, where it has been confirmed by [ ] that commercial export credits are not available, and where the absence of export credits would preclude trade, ad hoc temporary government financing arrangements to underwrite agricultural export credits that shall comply with the terms and conditions in paragraph 4, notwithstanding that they [may charge risk-based premiums, rather than market-based premiums], [and need not be self-financing]. Members shall provide ex ante notifications [to be developed] for such government financing.]

[more favourable terms for export financing support in respect of exports to developing country Members experiencing emergency situations may be provided in

accordance with this paragraph. Notwithstanding the terms and conditions of paragraph 3.4, export financing support provided pursuant to this paragraph shall be deemed conforming export financing support. An emergency is defined as a sudden, significant and unusual deterioration in a developing country Member's economy and in its ability to finance current imports of basic foodstuffs, and which may have far reaching consequences such as social deprivation or unrest. In the event of such an emergency the importing developing country Member concerned may request exporting Members to provide more favourable export financing terms than are otherwise permissible under this Article. The importing developing country Member concerned shall notify the Committee on Agriculture in writing of the circumstances which are considered to justify more favourable terms than are permitted under the relevant provisions of this Article, together with details of the products concerned, so as to provide an opportunity for other interested exporting Members to consider responding to the request. Where commitments are made to provide more favourable credit terms and conditions in response to such a request, details of the committed terms and conditions shall be notified by the exporting Member or Members concerned to the Committee on Agriculture. The maximum repayment term permitted under this exception shall not exceed [36] months.]

14. [Members shall ensure that, in the event that exceptional circumstances provided for under the preceding paragraph arise, actions will be taken strictly consistent with the terms and conditions of that paragraph so as not to undermine or circumvent their export subsidy commitments and obligations under this Agreement.]

**POSSIBLE NEW ARTICLE 10 *BIS* OF THE AGREEMENT ON AGRICULTURE**

**AGRICULTURAL EXPORTING STATE TRADING ENTERPRISES**

1. Members shall ensure that agricultural exporting state trading enterprises are operated in conformity with the provisions specified below and, subject to these provisions, in accordance with Article XVII, the Understanding on the Interpretation of Article XVII and other relevant provisions of GATT 1994, the Agreement on Agriculture and other WTO agreements.

**1. Entities**

2. For the purpose of this Article, an agricultural exporting state trading enterprise shall be considered to be :

Any governmental or non-governmental enterprise, including a marketing board, which has been granted [or which enjoys *de facto* as a result of its governmental or quasi-governmental status] exclusive or special rights [or] privileges [or advantages with respect to exports of agricultural products], including statutory or constitutional powers, in the exercise of which the enterprise influences through their export sales the level or direction of agricultural exports.

**2. Disciplines**

3. In order to ensure the elimination of trade-distorting practices with respect to agricultural exporting state trading enterprises as described above, Members shall:

(a) eliminate by [ ] [the end of 2013] for developed country Members, and by [ ] [the end of [ ] ] for developing country Members [in accordance with the following timetable [to be developed] ] [, in parallel with the elimination of export subsidies]:

(i) those export subsidies, defined by Article 1(e) of the Agreement on Agriculture, which are currently provided to or by an agricultural exporting state trading enterprise, consistent with Members export subsidy commitments and the provisions of Article 9.4 of the Agreement on Agriculture;

(ii) government financing of exporting state trading enterprises, [including, *inter alia*], preferential access to capital or other special privileges with respect to government financing or re-financing facilities, borrowing, lending or government guarantees for commercial borrowing or lending, at below market rates; and

(iii) government underwriting of losses, either directly or indirectly, [including] losses or reimbursement of the costs or write-downs or write-offs of debts owed [to, or] by export state trading enterprises on their export sales.

(b) [Ensure that the use of monopoly powers by such enterprises is not exercised in a manner which, either *de jure* or *de facto*, [effectively] circumvents, or threatens to circumvent, the provisions set out in paragraphs 1 and 2.3(a) above [, it being understood also that where the use of such powers would, to all practical intents and purposes, amount to a difference in form rather than substance from introduction or maintenance of an export subsidy per se, such use is prohibited.] [[Prohibit] [Phase-

out] by [ ] [the end of 2013] the use of monopoly powers for such enterprises, after which Members shall not restrict the right of any interested entity to export, or to purchase for export, agricultural products.]

### **3. Special and Differential Treatment**

4. [Notwithstanding paragraph 2.3 (b) above <sup>8</sup>:

- (a) agricultural state trading enterprises in developing country and least-developed country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will be permitted to maintain or use monopoly powers for agricultural exporting [until [ ]] to the extent that they would not be otherwise inconsistent with other provisions of this Agreement and other WTO Agreements; [and]
- (b) [where a developing or least-developed country Member has an agricultural exporting state trading enterprise with export monopoly powers, that enterprise may continue also to maintain or use those powers [until [ ]] even if the purpose for which that enterprise has such privileges could not be deemed to be characterised by the objective: "to preserve domestic consumer price stability and to ensure food security". Such an entitlement, however, would be permissible only for such an enterprise whose share of world exports of the agricultural product or products concerned is less than [ ] per cent, such that the entity's share of world exports of the product or products concerned does not exceed that level in [ ] consecutive years, and to the extent that the exercise of those monopoly powers is not otherwise inconsistent with other provisions of this Agreement and other WTO Agreements.]]

### **4. Monitoring and Surveillance**

5. Any Member that maintains an agricultural exporting state trading enterprise shall notify [to the Committee on Agriculture] [on an annual basis] relevant information regarding the enterprise's operations. This will, consistent with standard WTO practice and normal commercial confidentiality considerations, require timely and transparent provision of information on any and all exclusive or special rights [or] privileges [or advantages] granted to such enterprises within the meaning of paragraph 1 above sufficient to ensure effective transparency. This will include [acquisition costs and export sales on a transaction-by-transaction basis. Members shall notify any benefits, not otherwise notified under other WTO disciplines, that accrue to a state trading export enterprise from any special financial privileges. At the request of any Member, a Member maintaining a state trading export enterprise shall provide any specific information requested concerning all operations relating to the enterprise's export sales of agricultural products.] [the product exported, the volume of the product exported, the export price and the export destination.]

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<sup>8</sup> This would only apply in the event that the second option in that sub-paragraph was agreed. Otherwise this foreshadowed provision would be redundant.

**POSSIBLE NEW ARTICLE 10.4 OF THE AGREEMENT ON AGRICULTURE**

**INTERNATIONAL FOOD AID**

1. Members reaffirm their commitment to maintain an adequate level of international food aid (hereinafter referred to as food aid<sup>9</sup>), to take account of the interests of food aid recipients and to ensure that the disciplines contained hereafter do not unintentionally impede the delivery of food aid provided to deal with emergency situations.

**1. General Provisions**

2. Members shall ensure that all food aid transactions are provided in conformity with the following provisions:

- (a) they are needs-driven;
- (b) they are provided in fully [or, in the event of an exceptional situation, less than fully] grant form;
- (c) they are not tied directly or indirectly to commercial exports of agricultural products or of other goods and services;
- (d) they are not linked to the market development objectives of donor Members; and
- (e) agricultural products provided as food aid shall not be commercially re-exported. Non-commercial re-exportation is permissible, but only where, for logistical reasons and in order to expedite the provision of emergency food aid for another [affected] [country] in an emergency [humanitarian] situation, this occurs as an integral part of a food aid transaction initiated by a relevant United Nations agency, [relevant regional or international intergovernmental agency or organization,] [or non-governmental humanitarian organization or private charitable body].

3. The provision of food aid shall take fully into account local market conditions of the same or substitute products. [Members shall refrain from providing in-kind food aid in situations where this would create, or would risk to create an adverse effect on local or regional production of the same or substitute products.] Members are encouraged to procure food aid from local or regional sources to the extent possible [, provided that the availability and prices of basic foodstuffs in these markets are not unduly compromised].

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<sup>9</sup> Unless otherwise specified, the term food aid is used to refer to both in-kind and cash-based food aid donations.



## 2. Safe Box for Emergency Food Aid

4. To ensure that there is no unintended impediment to the provision of food aid during an emergency [humanitarian] situation<sup>10</sup>, food aid provided under such circumstances shall be exempt from the provisions of paragraph[s] [ ], provided that there has been:

- (a) a declaration of an emergency by the [affected] [recipient] country [, or, the Secretary-General of the United Nations]; and
- (b) an assessment of need undertaken by [a country][,] a relevant United Nations agency, including the World Food Programme and the United Nations Consolidated Appeals Process; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies [, a relevant regional or international intergovernmental agency or organization, a non-governmental humanitarian organization or private charitable body working in collaboration with the recipient government]; and
- (c) an emergency appeal from [a country][,] a relevant United Nations agency, including the World Food Programme and the United Nations Consolidated Appeals Process; the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies [, a relevant regional or international intergovernmental agency or organization, a non-governmental humanitarian organization or private charitable body working in collaboration with the recipient government].

5. [A notification will be required on an ex-post basis by donors [and the relevant international agency or organization] in order to ensure transparency.]

6. [Recognising that there can be exceptional circumstances such that to wait for an emergency appeal as described in paragraph 2.4 above would result in an unacceptable delay in the provision of food aid, food aid may be provided in response to an urgent request from the country concerned. In such cases, the donor Member shall notify the Committee on Agriculture no later than [ ] after the provision of such aid. [Food aid provided under this paragraph shall be limited to the period of the immediate aftermath of the emergency, and thereafter shall be subject to the provisions of

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<sup>10</sup> [For the purpose of this Article, an emergency [humanitarian] situation is defined as an urgent situation in which there is clear evidence that an event or series of events has occurred which causes human suffering or imminently threatens human lives or livelihoods and which the government concerned has not the means to remedy: and it is a demonstrably abnormal event or series of events which products dislocation in the life of a community on an exceptional scale. The event or series of events may comprise one or a combination of the following:

- (i) sudden calamities such as earthquakes, floods, locust infestations and similar unforeseen disasters;
- (ii) human-made emergencies resulting in an influx of refugees, or the internal displacement of populations, or in the suffering of otherwise affected populations;
- (iii) food scarcity conditions owing to slow-onset events such as drought, crop failures, pests and diseases that result in an erosion of the capacity of communities and vulnerable populations to meet their food needs;
- (iv) severe food access or availability conditions resulting from sudden economic shocks, market failure or economic collapse that result in an erosion of the capacity of communities and vulnerable populations to meet their food needs; and
- (v) a complex emergency for which the government of the affected country or the Secretary-General of the United Nations has requested the support of the World Food Programme.]

paragraph 2.4.] In such circumstances, an ex-post declaration of appeal by an organization or agency listed in paragraph 2.4 above shall be deemed to be in conformity with that paragraph.]

7. The provision of food aid in conformity with paragraph 2.4 [,2.5 and 2.6] may be provided for [as long as necessary] [as long as the emergency lasts] [a period of [ ] months, after which the continuation of such food aid under the Safe Box shall be] subject to an assessment of continued genuine need as a result of the initial onset of the emergency. The assessment of continued need shall be conducted by [the triggering organization or agency] [or] [in co-operation with] [the recipient country].

8. ["Cash-based" food aid that is conformity with the other provisions of this Agreement will be included in the safe box and be presumed to be in conformity with Article 10.1 of the Agreement on Agriculture.]

### **3. Disciplines for Food Aid in Non-emergency Situations**

9. [In addition to the provisions of paragraphs 1.2 and 1.3, in-kind food aid provided in situations other than defined in paragraphs 2.4 [, 2.5 and 2.6], shall be:

- (a) [based on an assessment of need [by an identified multilateral third party organization, including humanitarian non-governmental organizations working in partnership with specialized United Nations agencies] [in accordance with the following [ ]];
- (b) targeted to an identified vulnerable population group; and
- (c) provided to address specific developmental objectives or nutritional requirements.]

[phased out by the end of 2013 for developed country Members and by [ ] [the end of [ ]] for developing country Members [in accordance with the following timetable [ ]] [in parallel with the elimination of export subsidies].]

10. [The monetisation of in-kind food aid shall be [prohibited] [phased-out] by [ ] [the end of 2013] for developed country Members and by [ ] [the end of [ ]] for developing country Members [in accordance with the following timetable [ ]] [in parallel with the elimination of export subsidies].] [The monetisation of in-kind food aid shall be prohibited except where is it necessary to fund activities that are directly related to the delivery of the food aid to the recipient[, ] [or for the procurement of agricultural inputs]. Such monetisation shall be carried out under the auspices of a relevant United Nations agency and the recipient government.] ] [Food aid may be monetised to implement food security activities, targeted to chronic and acute food insecure populations. For this purpose, Member donors shall prepare for those recipients in which monetisation will occur a commercial import requirement (CIR). The CIR shall include a market analysis to show that the monetisation of the commodity in the recipient country will not result in a disincentive to or interference with the commercial import trends or create a disincentive to domestic production. The CIR shall include:

- (a) rationale for monetisation;
- (b) proposed mechanics of the monetisation – commodity selection and methods of sales;
- (c) utilisation of monetised proceeds; and
- (d) plan for safeguarding the monetised proceeds.]

11. [Non-emergency in-kind food aid provided in conformity with the provisions of paragraphs 1.2, 1.3 and 3.9 shall not be considered to cause commercial displacement and therefore not circumvent Members' export subsidy commitments.]
12. Food aid donor Members shall be required to notify to the Committee on Agriculture, on an annual basis, the following data [ ].

**EXPORT PROHIBITIONS AND RESTRICTIONS**

**[POSSIBLE AMENDMENT TO ARTICLE 12.1 OF THE AGREEMENT ON AGRICULTURE<sup>11</sup>]**

1. [In order to strengthen the existing disciplines on export prohibitions and restrictions of Article XI of GATT 1994, Article 12 of the Agreement on Agriculture shall be modified to include the following elements:

- (a) [Existing prohibitions or restrictions in Members territories shall be notified to the Committee on Agriculture within 90 days of the coming into force of these provisions.
- (b) As provided in paragraph 7 of Article 18 of the Agreement on Agriculture, any Member may bring to the attention of the Committee on Agriculture such measures which it considers ought to have been notified by another Member.
- (c) As of day one of the implementation period, a term of one year shall be established for the elimination of those export prohibitions or restrictions in foodstuffs and feeds.
- (d) The above is proposed notwithstanding that, any Member instituting export prohibitions or restrictions and the affected importing Member may agree to set a term exceeding one year, as long as the term agreed on is not in excess of 18 months. Notice shall be given to the Committee on Agriculture of the agreement reached in this respect.
- (e) A Member instituting those measures shall give notice of the causes that justify its keeping it.
- (f) A biannual surveillance mechanism shall be established in the Committee on Agriculture for the observance of obligations described in subparagraphs (c) and (d).]

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<sup>11</sup> Proposal submitted by the G-20 in JOB(06)/147 of 18 May 2006 is included here for illustrative purposes only at this point.

**ANNEX M**

**[COMMODITY ARRANGEMENTS**

**UNDERSTANDING ON THE PROVISIONS OF ARTICLES XX(H) AND XXXVIII OF GATT 1994<sup>12</sup>]**

1. [The term "arrangements" in Article XXXVIII of GATT 1994 is understood to cover both:
  - (a) Commodity agreements of which all interested producing and consuming countries are parties; and
  - (b) Agreements of which only commodity-dependent producing countries are parties.

Such producers' agreements may be negotiated by the producing countries themselves or adopted after negotiations undertaken under the auspices of UNCTAD or International Commodity Organizations. They may be negotiated on an international or regional basis and may provide for participation of associations of producers.]

2. [The exception provided by Article XX(h) which permits member countries or intergovernmental commodity agreements, to apply export restrictions and other measures that may not be consistent with the rules of GATT, provided that they are necessary for the attainment of their objectives, shall also apply to the agreements in which commodity-dependent producing countries only participate.]

3. [It shall [further] be reaffirmed that the existing rules permitting countries to impose taxes on exports for the attainment of development and other objectives, including those relating to the stabilization of prices of primary commodities, shall also apply to export taxes levied in pursuance of such agreements.]

4. [Technical and financial assistance shall be provided to commodity dependant exporting countries to assist them in the diversification and periodic review of developments in the world commodity markets and their impact on their economies.]

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<sup>12</sup> This text is based on a proposal received from the African Group (TN/AG/GEN/18 of 7 June 2006).