

**Chairman's Reference Paper**

## SPECIAL PRODUCTS

***Background***

Paragraph 7 of the Hong Kong Ministerial Declaration states that:

".... We also note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism. Developing country Members will have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. [...] Special Products and the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture."

Paragraph 41 of the Agreed Framework (Annex A of WT/L/579) states that:

"Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries."

## Structure for Discussion

### *Introduction*

1. The Hong Kong Ministerial Declaration clarifies that Special Products will be: (a) self-designated by each developing country Member for itself; (b) that an "appropriate number" of products can be designated as Special; and (c) selection of these products will be guided by indicators and based on the criteria of food security, livelihood security and rural development. But translating this guidance into practical and predictable modalities has not been easy.
2. All delegations accept that the designation of a tariff line as a Special Product needs to be linked to the three criteria.
3. However, the reality is that reliable and universal indicators to match a product to these criteria are not easy to find and the negotiations have shown that there are three distinct approaches to this issue.
  - One approach that has been advocated is selection guided by an "illustrative, non-exhaustive, non-prescriptive, and non-cumulative list of indicators" that take account of the diverse nature of national and regional agricultural systems in developing country Members. This position is based on the understanding that the Hong Kong Ministerial Declaration requires indicators that act as a guide for each developing country's self-selection process. Under this approach, the actual number of products that could be selected would not be limited to any percentage of tariff lines. This open-ended "guidelines" approach is opposed by a number of Members, including some developing country Members.
  - The second school of thought argues that an analysis of, and agreement on, a finite and common set of indicators are pre-requisites. These would then be combined to "filter" or "screen" products that are candidates to the Special Products designation. Such indicators could be both positive and negative. That is, some would indicate products that could not be designated as Special (for example, if the developing country is a net exporter of the product concerned) and some that would indicate products that would be eligible for designation as Special (for example, indicators showing a product made up a specific portion of national or regional calorific intake). Such an approach could include a limit to the number of Special Products that could be selected. This has not proved to be any more capable of commanding consensus among members than the former approach.
  - Finally, a third option which has emerged, as a result of the difficulties and uncertainties associated with the first two approaches, would be to limit self-designation to a specific number or proportion of tariff lines, possibly combined with indicators for the criteria.
4. Of course, there is scope for different combinations of these three approaches and, no doubt, completely novel ones as well.
5. Following recent informal discussions, there has been a clear sense that we need now to focus on the latter option to see if it has the capacity to get much-needed forward movement. For that reason I do not dwell here on the former two approaches. This note focuses on what needs to be done if we are to progress on the issue of numbers because, while the July Framework refers to "an appropriate number of products", wide gaps exist regarding what an appropriate number is and how we will define that number.

*Comment*

6. I feel that we urgently need to make efforts to align concrete proposals with what we say, at a general level, our shared intentions are. At this time, in my view, we have a serious mismatch between our proposals and our stated intentions. We need to address this issue and we have very little time to do so. The reasons for pursuing these discussions are compelling. For instance, in these negotiations, there has been intensive discussion on what the overall tariff cuts and bands should be, together with what the appropriate commitments should be for developing countries in respect of these matters. While no agreement exists on these elements, the debate has been intensive and members talk about these numbers sometimes using terms like "core modalities". Yet the issue of Special Products has the potential to effectively trump anything that might be considered to be at the negotiating "heart" of the modalities when Members discuss cuts and bands.

7. For example, the view has been expressed that we should consider twenty percent of tariff lines as a possible number for entitlement to Special Products status. Indeed, strictly speaking, the G-33 proposal speaks of "at least" twenty percent - which envisages, literally interpreted, an even higher number. Since we need to start with a specific percentage to assess what we will need to deal with as a practical matter, let's start with that twenty percent figure as a working hypothesis.

8. To help me orient this discussion, I asked the Secretariat to do a rough and ready assessment of what this might mean for a couple of developing Members. I have no reason to believe that they would present an atypical profile. In one case, if a Member had access to 20% of lines as Special Products it would be able to cover as much as 98.4% of the value of import trade. In another case, the amount would be 94.0% of the value of import trade. This does not suggest that the developing countries concerned would actually choose their Special Products based on their value of trade but it does highlight how much trade could be covered by 20% of tariff lines.

9. Two comments spring immediately to mind. First, if this is indeed a typical profile, it would effectively render (in technical terms – we come to political reality below) the whole discussion on special and differential treatment, as it relates to flexibilities for developing countries in relation to market access tariff cuts and thresholds, completely redundant. It would trump anything envisaged under that part of the Framework. Furthermore least-developed country Members have a clear entitlement under the Framework to make no tariff cuts. This level of Special Products would appear to grant essentially the same potential entitlement to developing countries which are not least-developed country Members. I doubt this was the intention of the July Framework. Second, in any case I find it difficult to imagine that anybody could plausibly argue that having 98% of their trade in this particular category could be described as "special". There might be a debatable line defining what percentage of trade would represent "special" as opposed to "normal", but I'm comfortable with the judgement that 94% or 98% is a long way from a debatable line.

10. There is good news, however. I have not heard in discussions to this point that any developing Member seriously intends to resort to such a high level of use for Special Products. All Members have said that this category is, for them, a genuinely "special" category, and, as such, could not and would not be the norm for import treatment. This is what I referred to above as a mismatch. It is the apparent reality of a given position, but it is unintended. A percentage of the magnitude described above is considerably out of alignment with the seemingly agreed approach of all Members.

11. On that basis, the only sensible way to proceed is to try to find a way to redress these unintended consequences. The issue is how this is to be done. One could take the view that this could operate as a ceiling entitlement and it would not be resorted to fully. But we are operating in a world of negotiating realities and the response is just as likely to be: but if that ceiling is well beyond what is needed why would one have entitlement to have recourse to such an amount? And we are, at the end of the day, trying to find a way to build confidence and assurance that mechanisms are aligned with shared expectations.

12. What, therefore, are the realistic options? I suggest we need to find some now. It appears to me there are at least three – not necessarily mutually exclusive.

13. First, if we are going to consider percentages – and consultations to this point indicate to me that Members favour this approach – one clear option is to look at a lower overall percentage. It is, at least to my mind, an obvious line of approach we should test vigorously. But, it would have to be said that, in order to lower the potential size of trade coverage to something closer to an ordinary meaning of "special", the percentage at issue would have to come down significantly from 20%. I perceive this to be a candidate for serious and urgent engagement.

14. Second, there is a question as to whether "treatment" can be incorporated in an approach that might diminish concerns regarding a relatively high absolute percentage of tariff lines number. Clearly, if Special Product status is identical with, or close to identical with, no liberalisation for the tariff lines concerned we have the mismatch identified above at its most extreme. Analytically, presumably these effects are lessened to the extent that treatment is relatively more permissive of trade. It is clear to me that, until this point at least, there has been little readiness on the part of "proponents" of Special Products to interpret the "more flexible treatment" standard in the July Framework in anything other than a firmly import – limiting manner. If that remains the case, it would seem to me that all the emphasis would have to fall on the previous option. This is just a factual observation, not an attempted prescription.

15. I would add, though, that I have heard no dissent, even from those proposing a somewhat more liberal approach to treatment, regarding the view that the treatment should be unambiguously more flexible than would be the case for sensitive products. If, therefore, there was willingness to explore this avenue, we could proceed on that firm and accepted basis if this would help raise confidence levels. It is true that we have no agreement to this point on treatment for sensitive products but, in technical terms alone, it is always possible to shadow the options that are on the table – provided there is a will to do so.

16. Third, we always have, technically, the option of Members generally indicating in advance what their actual intentions are, irrespective of what the actual formal numerical entitlement might be. This idea has been actively on the table since before Hong Kong. But there has been to this point no interest in engaging in an exercise of this sort – at least not in a multilateral forum. Nevertheless, I have detected a variant of this which may be worth exploring. Particular Members could be prepared, or be willing to declare their own preparedness, not to resort to Special Products, or to resort to Special Products to a lesser extent than what might be generally agreed. Any option is worth exploring. I would simply observe that this option does present formidable organisational/logistic problems, particularly given limited time.

17. In the absence of any readiness to negotiate seriously along one or other, or some combination of, the above lines, it is difficult to avoid concluding that efforts to work towards a number will simply not succeed. I say that because the potential far-reaching scope of a decision in this area – at this level – would make it nearly impossible to agree to such a number. Of course, the wording of the July Framework and the wording of the Hong Kong Declaration remain. Two issues arise from these texts.

18. First, there is the matter of the indicators. As was clear from the informal discussions to this point, this issue has been integrated in our work. I think we have moved towards wanting to work on the hypothesis of numbers. That means, however, that we have to be prepared to find a way to deal with the unintended consequences identified above. There is no point persisting with discussions if we simply continue to advocate numbers at widely opposite extremes, with no real negotiating attempt to find a zone of engagement. We would then have to go back to the indicators exercise. Second, there remains the option of a review at the schedules stage without any prior numerical guidance – with or without agreed indicators of whatever character we define "guidance" to be. I detected a widespread unease with the idea that everything becomes subject to a tug of war at that

stage of the process. Irrespective of the considerations underlying that unease (and they clearly differ from Member to Member), a review at the schedules stage would put huge time-pressure on the later stages of the negotiations. It does not seem to me to be a preferred way to proceed. But, the fact is that absent any decision upfront, the process will drift that way regardless of whether Members are comfortable with that outcome.

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