

25 May 2007

**COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON  
AGRICULTURE, SPECIAL SESSION**

SECOND INSTALMENT<sup>1</sup>

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<sup>1</sup> Please note that the covering note of the first instalment of this document applies equally to the second instalment.



## A. SPECIAL SAFEGUARD MECHANISM

1 There are, frankly, too many variables on this issue with positions that are too wide apart for me to be in a position to even begin to define a centre of gravity on this issue. It will remain that way unless and until there is at least some material convergence in positions. Here we are effectively still facing ambit claims. The most I can offer is a few observations or suggestions.

2 First, I hope we have finally put behind us various efforts to renegotiate what was clearly agreed in Hong Kong. There is no question that what was clearly agreed and understood was that there are two distinct triggers: import volume and price.

3 Second, I take it as axiomatic that if we retain a current special safeguard, the terms of an SSM will, in broad terms, give greater flexibility to a developing Member for SSM use than would be the case for use of the SSG. This I won't even begin to argue on any technical or legalistic grounds. Irrespective of any such considerations, it reflects a political reality in my view. Mind you, I would not necessarily read overly much into that. As you will be aware, my sense is that even if the SSG is retained, it will be, at the very least, very sharply reduced in its coverage.

4 Moreover, there are some important factors to take into account. The SSG was not just a blanket "let out" for developed countries as sometimes seems to be perceived these days in casual conversation. It reflected a certain rationale – or at least it had a certain restriction for eligibility. The product coverage of the SSG was only for those products that were tariffed in the Uruguay Round and not for all products. And, the reason why a number of developing countries did not have access to it was because they had the option of going for ceiling bindings instead of tariffing – and a considerable number certainly availed themselves of that. There may be some analogies here that will eventually prove useful to us if and when we get into a more serious effort to converge.

5 Third, the plain language is that this is to be a "Special" Safeguard Mechanism. If this is a mechanism which would, when applied, be capable of being triggered literally hundreds of times in any given year, how is this to be reconciled with something that is "special"? My simple observation is that, as a pure negotiating matter, I find it difficult to see that there will ever be agreement from Members that there will be an unconstrained entitlement to use of a measure that could impose tariff increases – including increases above existing Uruguay Round rates – applicable to hundreds of tariff lines in any given year by each and every developing country Member. This is simply an observation, but I think it reflects a certain negotiating reality that we should try to deal with. I would hope that we could more seriously deal with this in a spirit that aims to make this instrument workable and responsive to genuine need. I suspect that the concept to focus on is how to reasonably ensure that "normal" trade is not disrupted while genuinely "special" situations are able to be responded to flexibly.

6 Fourth, the object is to provide a special safeguard that responds to the needs of farmers in developing countries, that is, rural development, food security and livelihood security needs. While I have not heard any compelling argument for arbitrarily restricting the coverage of the SSM (i.e. a priori numerical constraint), I have not heard any compelling argument why the Measure should be an entitlement simply to raise tariffs based on price and volume movements per se (i.e. a pure measure of protection unrelated to the criteria for special and differential treatment in paragraph 39 of the framework referred to above). I suggest we work on narrowing this. I would suggest we look seriously at the concept that it should be in principle applicable anywhere there is domestic or substitutable production. Absent that, the rationale for having an SSM seems less clear.

7 Fifth, I would offer the view that, at least as Chair, I remain to be persuaded of the view that non – preferential mfn suppliers should be obliged to bear the "cost" of any import surges or price declines attributable to preferential sources. I have yet to hear a convincing explanation of why

increased imports from a preference receiver can get counted “in” when calculating whether you have a global surge or not but then the measure is not applied to those sources but only to mfn sources. If preferential suppliers get counted in for one, they should be counted in for the other. If they get counted out for the purposes of the initial calculation, fine; then they can be counted out for application of the measure also.

8 Sixth, as regards the quantity trigger, one basic choice delegations face is whether to have a simple single trigger and single remedy or a number of triggers and an escalating series of remedies. I cannot help but observe that if the aim is to have something simple (which I thought it was) then a single trigger/single remedy approach would seem more appropriate. The current Article 5 has a default trigger of 125 per cent of imports compared to the most recent 3 year period for which data are available.

9 The duration of application of the remedy under the SSG is for the rest of the year in question. I think there is a certain logic to this that is of more general application. If it was for 12 months after initial application, it would have the effect of reducing the annual average for imports for the following periods.

10 Seventh, as regards the price-based SSM, the idea that the price-based Special Safeguard Mechanism should depend on the CIF import price of a consignment compared to some average price appears to be generally accepted. It also appears to be generally accepted that the remedy would be based on the difference between the import price and the trigger price, that is the lower the import price relative to the trigger the greater the additional duty that could be imposed. The two main ideas that have been put forward are for an annual average or a monthly average both based on import prices for the previous three years for which data are available. I would feel that an annual average would be more representative than a monthly average.

11 It also appears to be generally accepted that the remedy would be based on the difference between the import price and the trigger price. That is, the lower the import price relative to the trigger the greater the additional duty that could be imposed. However, that leads to two further questions: (i) should the price be allowed to fall by x per cent below the trigger before any remedy could be applied; and (ii) should the remedy fully or partially offset the decline in price. The current SSG does require that the import price be more than 10 per cent below the trigger price and the remedy does not fully offset the difference between trigger minus 10 per cent and the actual import price.

## **B. TROPICAL AND DIVERSIFICATION PRODUCTS**

### *Coverage*

12 In the Reference Paper on tropical products of 17 May of last year I pointed out that, over the past 50 years or so, there have been many attempts to put together the definitive list of tropical products. None succeeded. The closest thing is the indicative list used in the Uruguay Round. And that, apart from anything else, begs the question of “diversification” products. But maybe it can at least help us a bit. The Uruguay Round list was not exhaustive, but it was indicative. At the very least I think it is entirely reasonable that the Members should not be stepping too far back on what at least they could largely go along with in the Uruguay Round. That list of seven product categories was not then definitive. But tropical products that were suitable for at least indicative status then should not now be willy-nilly excluded (apart of course from the fact that non-agricultural tropical products are not our business here) from such status (with all due respect to the consequences of global warming). So that list should be as close as possible to an *acquis*. Perhaps the way to approach it is to suggest that, as regards the Uruguay Round indicative list, only a very limited number of lines (to be fixed) could now be taken out of consideration as tropical by any Member but, if so, this should not be costless, as it were. For every tariff line excluded from the list, a multiple of alternative tariff lines (to be fixed) from the more extensive list in Job(07)/31 should be added.

13 The more significant operational question should be what *else* would be considered to be tropical or diversification that is not on that list.

14 I see only three options. One is that we get multilateral agreement on an extended list. As I say, I don't see it happening out of nowhere and I would very much urge Members not to engage on overly wishful thinking on this any more. Two is that we take the proponent list (net of Uruguay round indicatives) and get a rejection process: if you object, then it is not on a list for you, but if you do not object, then it is on for you. There would, however, have to be an up-front condition reflecting what I would venture is a reasonable concept: that we are making advances over where we were in the Uruguay Round on this as well as on all other things. So, in that spirit, no importing Member can object to everything new on that list – otherwise they are effectively staying on the same position that they had in the Uruguay Round. Plus I would suggest that – as a rule of thumb – there would have to be at least say a one-third or one-half increase in the number of lines eligible for that status this time around as compared to the Uruguay Round. There is also a need to provide a short rationale as to why the Member concerned does not consider it to be tropical or diversification: this simply so that none surrender too readily to any temptation to object for the sake of objecting. I wouldn't want to oversell such an idea, but if Members were to act in good faith and only object where they had a genuine disagreement on its tropical and diversification status it might at least mean some tangible improvement over where we are today. Three, you get no pre-agreement and you just leave it to the bilateral process. Good luck is all I can say on that.

#### *Treatment*

15 Various proposals have been made. The most recent was for reduction to zero for tariffs of between 0-25% and reduction by 85% for tariffs greater than 25%. Another was to apply the maximum reduction applicable under the tiered formula, an additional effort where there was tariff escalation and elimination of in-quota duties. Between these two a solution will have to be found. It would seem to me that there is some logic to the proposal that tariffs at the lower end of the spectrum should be reduced to zero – although the lower end of the spectrum may be somewhat lower than 25%.

16 Otherwise, I can only interpret the term according to its plain meaning and in its context. The term “fullest liberalization” occurs in the context of the Framework. It cannot have a subjective meaning according to the whim of each and every Member. What can possibly be the standard of “fullest” from within the context of the Framework? It would seem to me to mean that the tariff cuts applicable could be no less than the largest that occur within the framework. Otherwise, it would not be the “fullest” liberalisation. At a minimum, that suggests that the tariff reduction applied to the top tariff band (which, under a tiered formula, can normally be presumed to be the “fullest” liberalisation cut) should at least apply to all tropical and diversification products. If, elsewhere, there turns out to be treatment that is “fuller” than that, that would presumably be the prevailing benchmark.

### **C. SMALL, VULNERABLE ECONOMIES**

17 From the mandate it is clear that the modalities should address the fuller integration of small, vulnerable economies into the multilateral trading system but without creating a sub-category of Members. In the proposals made by the group of small, vulnerable economies, three distinct elements have been raised: the definition of what is a small, vulnerable economy; how their concerns relating to improving market access may be addressed; and how their export interests may be addressed.

18 In order to define what is a small, vulnerable economy, there is a proposal from the group which states that they are Members with economies that, in the period 1999 to 2004, had an average share of world merchandise trade of 0.16 per cent or less and world trade in non agricultural products of 0.1 per cent or less and world trade in agricultural products of 0.4 per cent or less. In the absence of any contrary view I will take that this definition is acceptable. I would also assume that in

submitting their draft Schedules any Member that claims that its economy meets these criteria would provide verifiable supporting data.

19 The group of small, vulnerable economies proposed that their export interests should be addressed by a modality that would require all Members to provide enhanced improvements in market access for products of export interest to SVEs. I do not recall any delegation disagreeing with this proposal.

20 While the proposal made by the SVE group is independent of proposals on Special Products generally, I would note that it does follow very closely that of the G-33. However, at this stage there is no consensus among Members on the designation and treatment of Special Products. Therefore, I feel that, at this stage, there is little I can usefully add beyond noting that, as regards my own comments on special products, I would have envisaged that some form of additional flexibility – whether in terms of number and/or treatment – under Special Products –reflecting the potentiality of disproportionate impact – would appear to have been the most appropriate means for addressing the specific import concerns of small, vulnerable economies.

#### **D. GREEN BOX**

21 There was a considerable amount of time spent last year in looking at various proposals for amendments to the Green Box and some degree of convergence emerged. This is not necessarily reflected as clearly as it warrants in the Draft Possible Modalities as that document recorded all formal positions and not the informal progress that had been made. While we may not yet be (quite) at the point of specific textual amendments, I think we are at the point where some things can be spelt out more clearly.

##### *Fundamental requirement and basic criteria*

22 I have noted that there have not been any proposals that paragraph 1 of Annex 2 should be amended. It won't be.

##### *Government service programmes: General Services*

23 There does not seem to be any objection to extending specific coverage of paragraph 2 of Annex 2 to specifically cover land reform programmes in developing countries and include associated administration and legal services. But there are some objections to wording that would extend it to cover other programmes related to other objectives, such as rural development and infrastructure provision. I feel we will be able to draft even in such areas in a way that is not too open-ended and avoids fundamental inconsistency with paragraph 1. In other words I remain of the view expressed earlier in my reference papers. I would also note that the chapeau to paragraph 2 specifically states that General Service programmes are not restricted to the list in subparagraphs (a) to (g).

##### *Public stockholding for food security and domestic food aid*

24 There is some support for the proposal that footnote 5 of Annex 2 should be amended so that the acquisition of stocks for food security should not be accounted for in the AMS or that such stocks acquired with the objective of supporting low-income or resource-poor producers would not have to be accounted for in the AMS. I remain at least of the view expressed in my reference papers on this as a way to respond. The deletion of the phrase “provided that the difference between the acquisition price and the external reference price is accounted for in the AMS” from the end of footnote 5, as proposed by the African Group, might be a more clear-cut way to achieve this.

25 There is also support for proposal to amend footnote 5 & 6 to cover the acquisition of food stuffs at subsidized prices when procured generally from low-income and resource-poor producers in developing countries with the objective of fighting hunger and rural poverty. However, there are also

concerns that such amendments could cover programmes that have objectives other than the acquisition of stocks for food security or the provision of domestic food aid. This it seems to me is a matter of getting the right terms of the amendment.

*Direct payments to producers*

26 I have not detected any major objection to the proposals that some of the paragraphs 5 to 13 of Annex 2 should be amended to explicitly cover pilot programmes and new programmes in developing countries. In addition, there did not seem to be any objection to amending paragraph 8 to permit compensation for losses of less than 30 per cent of the average production in cases of destruction of livestock or crops for disease control purposes.

27 I also detected during consultations last year that there was real progress emerging on the issue of fixed and unchanging base periods. I think this is doable. It is a matter of getting the drafting right so that it would not have the perverse effect of deterring Members from moving into the Green Box. The concept is clearly to draft in a way that provide for occasional changes in base periods provided these were not done in a way that implied a link to prices or production. There is a certain logic in taking the view that if it is workable in paragraph 6 it should be commensurately workable elsewhere (e.g. 11 and 13) but I sense a greater reticence there than in paragraph 6 that needs to be addressed.

28 Beyond that, I have the impression that there is a strong reluctance to entertain much more by way of amendments to Annex 2. Of course a number of Members would prefer things otherwise, but I doubt that view will prevail. However, I do consider that this means, as a practical consequence, that there is an absolute requirement to have much more precise and effective provisions on transparency, monitoring and surveillance. This is something that I feel will need to be done in any case, but it will be inescapable and it will not be relatively light-handed if indeed there turns out to be a relatively scaled down level of textual amendments beyond the areas noted above.

**E. LEAST-DEVELOPED COUNTRIES**

29 It has been clear for some time that least-developed countries will not undertake any reduction commitments and will have full access to all special and differential treatment provisions. It has also been clear since the Hong Kong Ministerial Conference that they will get improved market access for their exports to developed countries and to those developing countries declaring themselves in a position to do so. Therefore, the modalities will have to reflect the agreement already reached on these points and translate them into agriculture specific terms.

30 The Hong Kong Ministerial Conference states that developed countries shall, and developing countries declaring themselves in a position to do so should, provide duty and quota-free market for at least 97 per cent of products originating from least-developed countries by the start of the implementation period. Those that do not provide duty and quota-free market access for all products originating in least-developed countries would be required to take steps to progressively achieve this objective. Unless there is any objection, I will assume that this applies specifically to agriculture tariff lines just as it does to all tariff lines. That is, duty and quota-free access for at least 97 per cent least-developed countries' agriculture exports will be provided from the start of implementation by developed countries and developing countries declaring themselves in a position to do so.

31 Furthermore, although it may mean repetition between agriculture and other areas of negotiations I would also suggest that the agriculture modalities would also refer to the other issues relating to market access for least-developed countries that have been agreed to, in particular, to rules of origin.

32 Finally, I don't think – at least on agriculture – that we should rest on our laurels just with the 97%. Even if that last 3% cannot be achieved by the commencement of the implementation period, it is something to aim for at least by the end.

#### **F. COTTON – MARKET ACCESS**

33 The Hong Kong Ministerial Declaration is quite clear concerning what developed countries must do in terms of improving market access for imports of cotton from least-developed countries – they are to provide duty and quota free access for cotton exports from them from the commencement of the implementation period. Therefore, the issues before us now are whether to extend duty and quota-free access into developed countries for cotton from other developing countries and whether the modalities should include market access by developing countries for imports of cotton from other developing countries.

34 One approach that might be considered would be to repeat in the modalities for cotton the language from the Hong Kong Ministerial Declaration on least-developed countries. That would mean wording that would state that developed countries will, and developing countries declaring themselves in a position to do so should, provide duty and quota free access for imports of cotton from least-developed countries. If there is no objection this could be extended to cover imports from all developing countries as well.

#### **G. RECENTLY ACCEDED MEMBERS**

35 Following the consultations undertaken last year by the Chairman of the General Council, I understand that we now have some clarity on the definition of what are the Members that recently acceded to the WTO for the purpose of modalities that would address the particular concerns of recently acceded Members. This would mean that all Members that acceded to the WTO since the conclusion of the Uruguay Round, except those that have since joined the European Communities and those that are classed as least-developed countries, would be able to avail themselves of specific flexibility provisions.

36 Having defined what are the Members that will be able to avail themselves of specific flexibility provisions we now need to consider the substance of these provisions. However, before doing so, it may be necessary to get some clarity on the status of some of the Members that recently joined the WTO. I have noted that some of these Members have stated clearly that they are developing countries and that they will apply the modalities that apply to developing countries. I have also noted that those three RAMs that were unable to accede to the WTO with developing country status would like to avail themselves of the flexibility provided for under special and differential treatment. There is also the group of low income, recently acceded Members with economies in transition that have proposed that they should be eligible for further flexibility.

37 If I hear no dissenting opinion, I will assume that consensus applies to the proposal that all RAMs will be able to apply all provisions relating to developing countries' special and differential treatment in the areas of domestic support and market access. In addition, those RAMs that have acceded with the status of developing countries will, as other developing countries, be eligible to whatever flexibility provisions might be agreed for export competition. Similarly, if I hear no dissenting opinion, the three Members that have proposed that they, as low income, recently acceded Members with economies in transition would be exempt from reductions in support and protection would have this reflected in the draft modalities.

38 Consensus on these suggestions would provide more flexibility for some RAMs but it does not provide additional flexibility for those that acceded to the WTO with the status of developing countries. But the mandate requires that the extensive market access commitments undertaken at the time of accession should be taken into account and, presumably, this applies to those that joined with the clear understanding that they joined as developing country Members.

39 You will not be surprised that I do not see RAMs obtaining everything that is asked for: it will be less, at least in some respects. Herewith some thoughts in that spirit.

40 It is my sense that Saudi Arabia and Vietnam as very recently acceded Members should not be subjected to further new Doha Round undertakings. FYROM is not, strictly speaking, in quite that same period, but absent any objection from Members, I am inclined to see them in the same category.

41 There is a proposal that small low income recently acceded members with economies in transition should not be required to undertake reductions in final bound total AMS and the *de minimis* level together with the proposal on investment and input subsidies in TN/AG/GEN/24. I do not see this as fundamentally problematic and something that could be accommodated.

42 On domestic support, there is a specific proposal on treatment of RAMs as regards *de minimis* cuts. As you will have seen from my first paper it is in fact my view that the Framework can only be interpreted to mean that there should be special and differential treatment for developing countries generally as regards the cut in *de minimis* but that that could not be interpreted so far as to mean there should be no cut at all – a matter which is expressly reserved to least-developed countries only under the framework. For what it is worth, my sense was that a two-thirds commitment was about right generally i.e. 30% with an additional amount (if necessary) to ensure overall OTDS commitment arrived at is met. I would apply the same logic here: if it had been intended to give no cuts whatsoever to RAMs it would have said so and the only category for which this is expressly reserved is least developed countries. But that does not mean no flexibility whatsoever. I would suggest an additional 5 percentage points is about right, i.e. a 25% cut rather than a 30%.

43 As far as market access tariff cut *phasing* is concerned, I am aware that there appear to be only three RAMs Members that would have a situation for some products where their accession implementation stretches to 2010 or 2011 i.e. beyond the (now) earliest possible Doha implementation period of 1 Jan 2008. For those products concerned I think it would be reasonable that accession implementation not overlap with new commitments so, for *those products*, my inclination is that it would be reasonable that Doha implementation commence 12 months after the date of final implementation of accession commitments (i.e. delay until full accession implementation plus a twelve month pause).

44 I am not aware to this point that this is an issue for domestic support commitments deriving from accession implementation commitments so it is not evident to me that there is a practical point at issue here.

45 As far as market access *cuts* are concerned, the various proposals that have been received suggest lesser cuts (50% of the reduction for developing countries under the tiered formula has been proposed) and exemption from reduction for bound duties of 10 per cent and below.

46 As I say above, I happen not to believe that Members – even RAMs - will actually obtain the entirety of what they seek. In this case, as it happens, I am certain that it will be less. I could just sit and wait and see where we get to on all the substantive areas and then just see what actually comes out in the wash here. But I have – for better or worse - at least given you some sense (such as I have) as where I think some of the market access approaches at the more general level might come out. So I will – for better or worse - share with you some such sense as I have of how such scenarios could play into a RAMs outcome also.

47 I could just about foresee circumstances in which Members will eventually accept that, because RAMs commitments are generally at the relatively low end of the protection scale (some developing RAMs have tariff profiles on agriculture that would put developed Members to shame), there should, indeed, be some moderation of the tariff cutting formula that would otherwise apply. But the notion that this should be as much as a straight half of the reduction that would otherwise apply will, I anticipate, be deemed by some to be too high an amount. My guess is that the degree of

flexibility that might be ultimately sellable could be around an additional 5% per band (i.e. a cut in each band that is 5% less than generally applicable). If we ended up with an overall target cut for developing countries, it would also be clear that the specificity of the outcome derived from the band-specific commitment would be to the determinant for the RAM concerned, and if that turned out to be less than the target as a consequence, that would prevail over the target.

48 It might well be that that is as much as the traffic will prove to bear, full stop. But I would hazard the guess that there could even be a preparedness to go also in the direction of the below 10% threshold exemption. After all, this element is in fact more directly reflective of the rationale for RAMs flexibility (namely the comparatively low tariff profile of such Members). But not in a totally unconditioned way. I would suspect that if this was also to be an element it would be more along the lines of a general moderation of the tariff cut otherwise applicable to for tariffs below 10% or an exemption for some proportion less than the entirety.

49 There is an (unquantified) proposal from RAMs for additionality also on SP/SSM. My sense is that there might be some preparedness to have some more specific provisions for these, but my sense is that it will have to be an overall balance *vis a vis* the above elements on lesser cut and below 10% special provisions. If the weight of the additional specificity of measures for RAMs is to be principally in the area of SP/SSM additionality I suspect we would end up with lighter flexibility in the cut and below 10% elements than what I am surmising above might prove doable. If on the other hand, the weight of the additional flexibility was to be principally on overall cut and below 10%, I suspect we would end up with lesser additionality on SP/SSM. It might even wash out as something approaching an optional approach.

50 All of the above is on the scenario that we end up with the tiered formula. As you know, I am not proselytising for what was described in my first instalment as a “radical thought”. I should simply say that the extension of what I had written there was to have had its sequel here as regards RAMs. That approach would have a generally more moderating or flexible aspect than the tiered approach in any case so I would have thought that the specific degree of flexibility thereby warranted for RAMs would have diminished in overall significance as a general rule. But it would have been my intention to suggest that in the case of developing RAMs, there could have been a somewhat reduced overall cut target from that generally applicable for developing Members and that, for tariffs below a certain level – and 10% would have been a plausible candidate – at least a certain amount of these could have been exempt from any cuts- i.e. that there would not have been the requirement for the minimum tariff cut on each and every line for those at least.

## **H. TARIFF ESCALATION**

51 This issue is scarcely anywhere in serious negotiating terms. Are you prepared to do anything about it? I can scarcely myself try to invent something out of nothing. If I was honest about this – and I will try to be so – I could only conclude that your revealed preferences to this point are that you would expect this to drop by the wayside.

52 If that is not the case, it is time to do a lot and to do it very quickly. To recall: the mandate requires that the modalities address tariff escalation through a formula which Members are to agree. Therefore, as a general rule, if, after application of the tiered formula, the bound tariff on a processed product is greater than the bound tariff on the commodity product from which it was derived something must be done about it. Presumably, by addressing it, we mean either removing the escalation entirely or reducing the degree of escalation. It is to be noted also that paragraph 36 of the Agreed Framework that refers to tariff escalation is a general paragraph and not one that is under the heading of “Special and Differential Treatment”. Therefore, while this is an issue that is of particular interest to developing countries, the modalities that will address escalation should not be limited to tariff lines of special interest to developing country Members only.

53 We have two fundamental problems. Where is this “tariff escalation” and where is the formula?

54 As anyone who has had the misfortune to plod through a tariff schedules knows, it is, in some cases, quite easy to identify the primary product and the products derived from it. But in other cases it is very difficult because several primary products make a pizza. That leads to a first question: how can we define processed products and their primary parent? Having the answer to this leads to the test – is the tariff on the processed product higher than the tariff on the primary parent? If the answer is “yes” then we reach the last question: what is the formula to address the escalation?

55 Concerning the list of products, there are two choices. One is that we leave it to Members to define them as they prepare their draft Schedules and we leave it to other Members to check during verification. I would doubt that such an approach would work. I expect that it would simply never happen in practice and we would be well advised not to kid ourselves that it would.

56 Alternatively, we could have an *a priori* list of primary products and the processed products derived from them. A number of proposals were received last year which, when combined, did appear to be quite expansive. But I never had the impression these were seen by Members (other than those proposing them) as anything with a status more than ambit claims. Be that as it may, we are nowhere near agreeing anything on this. Even assuming we do agree to a list based approach, we also need to consider whether exceptions would be allowed or not.

57 I have to confess that there has been an utter paucity of realistic negotiation over this and I cannot make any other observation than that there is not the slightest thread of an approach that has come through as a possible way forward on this. When are you going to do it? I cannot frankly see any realistic chance of doing it within the time frame you have effectively set yourselves for modalities unless there is a quantum leap in efforts on this front. Otherwise the best I can foresee is that this effort would parallel the preparation of schedules on the understanding that what is agreed by the time of presentation of schedules will be included in them - albeit that that is a fraught expectation at best.

58 Although the test (if the post-reduction tariff on the processed product is higher than the post-reduction tariff) is simple enough we do need to consider what degree of escalation is significant enough to require that it be addressed. The Framework does not mention anything about addressing escalation above particular levels – indeed it seems to be very clear “tariff escalation will be addressed through a formula to be agreed”. That does not give much scope for flexibility. If there is escalation the formula will be applied. Does it preclude any flexibility e.g. tailored to Sensitive Products and Special Products? But if you apply that in its purity, how does it relate to the tiered formula? Does it override it? But we are still struggling with the tiered formula in the first place! Is all of this to be potentially capable of trumping the tiered formula otherwise agreed?

59 So, let us for the moment assume (fantasise might be the better verb) that we do (eventually) know what the products are - what should the formula be? Various proposals have been made, such as the lesser of reducing to the tariff on the primary product or applying a factor of 1.3 or, if the processed and primary product were in the same tier, applying the lesser of reducing to the tariff on the primary product or the reduction of the next tier (or x% more if they were both in the higher tier).

60 To me, at least as a purely technical observation, the latter modality does appear to be more oriented towards the tiered formula and would remove the need to negotiate the factor to be applied, except for those tariffs in the top tier. For these one could at least consider such ideas as a reduction for the processed product of the standard reduction for the top tier plus the difference between the third and fourth tiers, but I am frankly seized of a certain unreality in all this given what we have been focussing on up until now as regards trying to settle the tiered formula itself, not to mention sensitive products (among others). I am somewhat doubtful that, politically, there is going to be much appetite for accepting that application of this element will turn out to materially transform the outcome that

would otherwise apply by dint of application of the tiered formula *per se*. Now, one might well say (at this late stage) well, that's too bad -that's what the mandate says. But if that is in fact so why have we been hearing so little about this up until now?

## I. TARIFF SIMPLIFICATION

61 The Framework says simply that the issue of tariff simplification remains under negotiation. Thus, there is no agreement or indication concerning whether and, if so how, the modalities will address tariff simplification. However, I have not detected any opposition from those that use some of the more complex forms of tariffs that they would be opposed to at least some degree of simplification. Nor have I heard any indication from any delegation that it intends to bind its tariffs in a form more complex than the current binding. However, positions remain far apart and the proposals range from binding in *ad valorem* only terms to simplifying highly complex matrix tariffs.

62 If Members do agree to simplify tariffs we need to consider whether this is something to be left to individual Members and that we will all see the results in their draft Schedules and have the opportunity to question the degree of simplification and the methodology used during verification. On the other hand, if we are to require that all tariffs be bound in *ad valorem* only terms or even simple *ad valorem* and simple specific duties, then the modalities would need to specify the methodology that should be used.

63 Whatever the views of some Members, it seems clear to me that at this late stage of the negotiations we are most unlikely to get agreement for binding agriculture tariffs as *ad valorem* only or, in plain English, it is not going to happen. I am also aware that it took over seven months to agree to the methodology for converting non *ad valorem* tariffs into their tariff equivalent just for the purpose of putting tariffs in the right band for the tiered formula. And this methodology is not yet complete. That does not give me much hope that we might agree to a methodology for a predetermined degree of simplification.

64 Given the absence of guidance from the Framework, or any subsequent agreement to deal with this (remember the framework says simply that it is "under negotiation"; it does not even reach the status of an explicit requirement to "address" simplification), the differences in position and the time needed to negotiate and agree to a methodology that would be needed to convert complex tariffs to more simplified ones, at this stage I do not currently see any other feasible outcome in the little time remaining to us than such elements as modalities that specify that no tariff may be bound in a form more complex than the current binding and that complex matrix tariffs will be simplified in a transparent and verifiable way. It is just possible that on the latter point there could be something more concrete that would be forthcoming but that would depend on largely unilateral undertakings from Members concerned, it seems to me, rather than something of overall general application. But it is up to you to prove me wrong in my prognosis.

## J. LONG-STANDING PREFERENCES AND PREFERENCE EROSION

65 I am firmly of the view that the central question is a practical one: just exactly what is the extent of our potential problem? I revert to the recent WTO Staff Working Paper<sup>2</sup> which reports that the risk of preference erosion for agricultural products is concentrated on a relatively small range of products, with almost 85 per cent of potential impact (across the most affected Members) coming from sugar and fruits and vegetables (most of which is due to bananas). "A small proportion of losses also come from animals and products thereof (which is mainly beef) and beverages and spirits."

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<sup>2</sup> Non-Reciprocal Preference Erosion Arising From MFN Liberalization in Agriculture: What Are The Risks? – WTO Staff Working Paper (Low, Piermartini and Richter), ERDS-2006-02, March 2006.

66 So, the relatively big numbers (as regards *risk* – and this it should be emphasised is not necessarily actual) appear to be in sugar and bananas. And they are key areas for what would be specifically covered by “long-standing” preferences.

67 Well, as regards bananas my sense is that there will need to be a specific settlement on this one, of which the Doha Round *per se* is not the principal determinant. And everyone knows that and is acting on it accordingly. Bananas will be settled or it won’t be. Let’s not kid ourselves: it is not going to sleepwalk to a solution through whatever generalised approach we have on tariff formulas in the Round. It will be a banana-specific outcome and it will only work as a full and final settlement by all involved. I believe that, as they say, “efforts are being made”. Not much more that can be usefully said right now. It is there for the time being as what the Canadians might call “the moose on the table”.

68 Sugar? It is certainly conceivable that there will be, technically, some reductions in the mfn duty rates for sugar in the key developed country markets. Strictly speaking one cannot be sure what the exact impact will be because one does not know what precisely will be done by way of tariff cuts, one does not yet know whether or not sugar will be declared sensitive and, if it is declared sensitive, the treatment is not currently settled either.

69 Even allowing for those uncertainties, it seems that whatever the numerical reduction in mfn tariffs might end up being, it is hard to imagine that the consequence of that will be to either fundamentally open up the markets concerned to non-preferential suppliers or to drive down internal prices to any significant degree that would alter the returns to current preferential exporters selling into the market. By comparison to what is already affecting the EU internal domestic price (i.e. internal reform) it seems reasonably safe to say that mfn tariff cuts are a marginal issue. In other words the real effects on preferential suppliers are way outside what might conceivably happen pursuant to the Round.

70 So what does that leave us with? In macro terms it is difficult at this point to see major areas of concern. Indeed, none have particularly turned up in the consultations we have had to this point. This does not, of course, mean that they are not there. There are certain possibilities – the Malawi tobacco case is one – that might well crop up. But this highlights the likelihood that we are not going to end up with a one-size-fits-all approach in agriculture.

71 It is to be presumed that there will be tariff cuts that do affect some products where there are either long-standing or other preferences in the sense that margins of preference will always drop when mfn duties drop. The real issue is not the pure technical mathematical fact. The real question is what makes a material difference such that it warrants a specific response and what might that response be.

72 At best I can offer some sense of possible orientation by way of a conceptual “sieve”.

73 First, there is the question of significance for a particular trade item for the exporting Member in the particular market. I have reservations about taking some overall formula and saying this is the definitive numerical threshold for assessing significance. But it might be at least of some indicative help. It is our best conceptual safeguard against taking some kind of abstract and theoretical approach and obliging ourselves to focus on the real problem. If there is a product that is going to represent a particularly significant percentage of exports that would suggest at least something to look for. What is the number? Twenty percent has been mooted in the past. I am not proposing that number is the magic one: it might be a bit higher or a bit lower. The key point is that high product export dependency/intensity in a particular market is *a priori* relevant.

74 But that’s only the first level of the sieve, as it were. The question is then what is the extent of the liberalisation in respect of that item that is actually going to occur? There are, it seems to me, two key linked elements: the magnitude of the tariff cut and the real-world consequences of it.

75 By way of pure magnitude, again, I have a reticence about a hard and fast rule. There are always exceptions that are conceivable, but I would have thought that, *generally*, a relatively “low” drop in absolute ad valorem terms is unlikely to make a huge real world difference. Plus, I confess that I don’t know yet what the phase in period will be, but let’s use a hypothetical just to orient ourselves. Say the standard was five years. So you would be looking at say cuts phased in over five years. I would have thought that any *ad valorem* tariff in single digits that was going to be phased down over five years was not going to *generally* effect a major and unmanageable adjustment. Even if that was going to entail going to zero (e.g. as a result of tropicals specificity) that is less than two *ad valorem* points per annum, and, in most cases (given the tariff formulae doing the rounds), it’s going to be no more than three or four *ad valorem* percentage points stretched out over up to five years. Currency fluctuations in a week can be more than that. So I am not saying a hard and fast rule, but, by and large, I would have thought that it is unlikely that anything cut from current rates in single digits would warrant specific attention. Even if you go as high as 15% you are probably talking a maximum absolute cut that goes as high as around seven or so *ad valorem* points.

76 That, in addition, is on the assumption that mfn trade is in fact a principal source of competition in any case - which often it is not. As the WTO study makes clear, it can be often the case that the real competition is in fact occurring in relation to existing preferential suppliers – whether under FTAs or under other preferential arrangements.

77 But, be all that as it may, I would have surmised that the area where there may be some greater likelihood of material effects is going to be where there is (a) export intensity; and (b) the cuts are taking place in rates higher than 15% ad valorem and the gross size of the cuts is going to be higher than 10 *ad valorem* points over the life of the implementation period.

78 To the extent that there are such items that raise questions (and, as I have indicated above, it seems to me we are not talking about a large potential universe of items), I do not think it will prove to be the case that we are going to deal with the situations through a one-size-fits-all approach. The matter is further complicated by the possibility that there will be items in play where there are tariff quotas at issue.

79 I would only suggest a couple of orienting observations that would perhaps make sense in light of the above. First, if there is a case where, for the product concerned, the cut in the margin of preference is large, that would suggest to me that – to the extent there is an issue at stake for the preference receiver concerned - that the first best approach (if it is an option depending on what the tariff regime is for the item concerned) would be to maintain the margin of preference for the preference receiver.

80 Second, if there is a case where, for the product concerned, the cut in the margin of preference is large and sudden (and preference margin maintenance is not an option), that would suggest to me that – to the extent there is an issue at stake for the preference receiver concerned, the best manner of tailoring a solution could be to smooth that suddenness i.e. suggesting a somewhat longer implementation period than the default.

81 Third, tariff quota treatment raises issues here of a very specific kind, but these remain unclear generally at this point. I would simply note that here too there is a more tailored approach that could be adopted.

82 I would only emphasise again that addressing preference erosion does not necessarily limit the solution to being trade-based. Indeed non-trade-based solutions, or combinations of trade-based and non-trade-based solutions, may present the most appropriate means of addressing preference erosion of any kind and indeed have value in their own right. There is a need to be concrete about targeted technical assistance programmes and other appropriate measures, provided by the preference-granting Member, for more effective utilisation of existing preference schemes, for assisting long-

standing preference-receiving Members to diversify their export base and additional financial assistance and capacity building to address supply constraints more generally.

#### **K. COMMODITIES**

83 Some or all agricultural commodities will benefit from modalities related to the tiered formula for tariff reductions, tariff escalation and the fullest liberalization of trade in tropical and diversification products. We have a draft in paragraph 15 of the draft modalities that is currently in square brackets. I have the sense that that is something which is, in fact, a reasonable expectation and could be agreed. But it is fair to say that if we go down that route, that is something that would probably only be doable after the general modality specificity and before the finalisation of submission of draft schedules. Is there a sense that when we take into account what the centres of gravity are shaping up to be more generally and what the reach of tropical and diversification products might be as part of that, that there is likely to be a large residuum that would need to be dealt with that would fit this category of “commodities”?

84 We have had proposals on non-tariff measures, technical and financial assistance and the relationship of Article XX (h) to arrangements by commodity producers. I have to say that I have detected very little way by way of emerging agreement on these proposals to this point. Despite that, I would have thought that, at the very least, there was scope for action in the area of technical and financial assistance as regards diversification and capacity building. As regards producer agreements, even if it is not the case that Members prove to be in a position to agree to concrete proposals in this regard right now would it not at the very least be possible to agree to this as a matter for expedited study and report?

#### **L. OTHER ISSUES**

85 I have nothing at this point to add on paragraphs 35, 48, 49 or 50.

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