

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



## INTRODUCTION

What I have tried to do in the attached is to challenge you. Not, I hope, in what you will consider to be a gratuitous or reckless manner. It has been done in the way it has because we are at the very end of this exercise one way or the other. And now is the time for honest talk –for telling it how one sees it in the hope that sincerity might at least promote a greater seriousness of purpose amongst us all and, thereby, facilitate the decision-making we so desperately need now. That at least is what you have all said you want to happen, and I certainly have no other reason to disbelieve it. Nor is this just a matter of what members have conveyed to me. It is a matter of admitting the objective facts staring us in the face. If we do not get serious momentum over the next few weeks (I hesitate to say months) we will either fail or we will put this whole exercise in the freezer for some considerable time until a better generation than us can thaw it out.

I do my best to be an objective observer and to be as even-handed as a Chair is supposed to be. Even allowing for that, I have to say I am a bit perplexed about why, if this is what we all believe, there are not already more tangible signs of movement. But I well understand the negotiating realities and it does seem that what sometimes seems to be an obvious need just cannot be put together. What is one to do in such circumstances? Clearly you, as Members, are in control of this exercise. I could just sit back, play it careful and wait for what has manifestly failed to happen, to just happen. There is never any shortage of undertakings coming from all sorts of places that this will "really happen" this time.

I hope so. And if it does, so much the better. I have no illusion about what a Chair can do if the will is not there. And I have no inflated view of a Chair's capacity to spot solutions. Even if they are analytically sound, they have to be politically sustainable and a Chair cannot invent that.

But, when all is said and done, you as Members have given the clear direction to me that you want the Chair to move to focus this process multilaterally. That, it seems to me, needs to be done in a way that promotes serious engagement-that sharpens the appetite for decision. I see no point in claiming to play that role, but in practice hiding behind bureaucratic obfuscation and general mealy-mouthedness. So I have tried to do this in a direct way. I have done it this way for two reasons (which are, of course, closely connected). First, one needs to cut to the chase and to stop beating about the bush. That needs to be underlined. Second, you are entitled to know where my own thoughts are drifting as we get closer and closer to the point of no return. If we are going to move next to decision-making I have to tell you what I think you need to know, and you need to tell me where and when I have got it wrong in the hope that, together, we can get it closer to being right when we try to close.

What, in broad terms, have I tried to do?

In a number of areas I have tried to say where I think the basic centre of gravity is. Not absolutely precisely because the last bits are rarely there, but the parameters. Some are more clearly expressed as close to a final suggestion than others. I am the Chair. I am trying to be impartial. It is not a matter of what I think is fair or right or even where the majority is. It is a more hard-nosed view of what I think is within the realm of the possible. Of course I could be wrong. But what I would appeal to you to do is not to repeat what your preference is, but to suggest where, if I'm wrong, what better option there is to get agreement. I know well enough what preferences are. But what we have to discern now is where we can reasonably end up.

In some other areas I have made some suggestions in an effort to try to prepare us to get closer. They might not run as suggestions –and they are certainly not a finished article-but I hope they will at least facilitate a more practical approach from you as Members. I have even felt that it is worth taking one last look at some issues because the time is seriously running out if we do not.

In these and other areas I can well imagine there is scarcely a Member that will agree with what I have suggested. That in itself, I would be tempted to say, is possibly the best recommendation I could hope for.

So this is not a passive observation or a series of "dumb questions". We are well past the time for that. We need next to move to a revised text to work off. This is the precursor to that revised text. You are at the very least entitled to have first my clear sense on where I am seeing things moving (or not moving) as I prepare myself to do that revision. I need now to hope that one way or another this experience helps clarify your decision-making. I in turn hope to profit from your reactions to it. As I said to you in the last agriculture informal, what I am looking to hear now is actual rationales for why things suggested or proposed in this document will not work and, more to the point, what might work better. Simply saying that one agrees or does not agree is not going to move us forward either.

Two final remarks. First, this is the first instalment. I simply have not had time to cover all the issues in the framework in this way by today. I am committed to doing all of them. Of course they need to be done and we will not have a coherent picture without them all. The ones that are omitted will be covered by the next instalment in a week or so. Second, this is only the Chair's paper. You are in control. If there are things you like or at least think might be close to being true, even if not particularly liked, that is fine. If there are things you don't like that is also fine. I can only call it as I see it. Either way you always hold all the cards. Even when I move next to draw up a draft text it is for me to propose but for you to dispose. That is at once your ultimate safeguard and your ultimate responsibility. My responsibility is much less, but no less serious. It is to be honest, to be frank and to give you the best advice I can without fear or favour. I hope you will feel I have at least done that.

Crawford Falconer

Chair

## I. DOMESTIC SUPPORT

### A. OVERALL CUT

1. On the basis of the Hong Kong Ministerial Declaration I am working on the following thresholds as applicable.

Bands	Thresholds (US\$ billion)
1	0-10 & all developing countries
2	10-60
3	> 60

2. The following range of reductions, noted in the first Draft Text, remain where we need to settle this.

Bands	Thresholds (US\$ billion)	Cuts
1	0-10 & all developing countries	31%-70%
2	10-60	53%-75%
3	> 60	70%-80%

3. Let me state up-front how I intend to proceed here and in the sections that follow. I do not honestly feel I would be doing anyone a favour by hiding behind the technicalities of saying everybody's position might prevail. That would be safe and bureaucratic. We are well past the need for bureaucratic safety. There is a need for calling a spade a spade rather than a digging implement tailored to certain terrestrial conditions.

4. We are to achieve "effective cuts in trade-distorting support". It remains difficult to conceive how any number that leads to an actual increase in overall support could be sensibly described as being an "effective cut". For that reason I think it is fair to say that wherever we end up, it will neither be at 53 in the second band nor below 70 in the third band. Those figures will simply have to be higher than that.

5. I will start with the U.S. It is frankly inconceivable that the US will come out of this negotiation with an entitlement to spend more on overall trade distorting domestic support than it had when it came in. Now it is true that that might be a brave statement, but probably not for the reasons you might first think. It is brave because the Members' track record – your collective track record – might actually suggest otherwise. After all, it is indeed a fact that it was the Membership as a whole that gave the United States- in the July 2004 framework – the entitlement to potentially spend even more than 22 billion that it did not previously have. So maybe I am wrong to assume that you would all be willing to do something similar again!

6. But I don't think so. So, whatever the reasons might have been back then, as an observer of this process trying to be objective, I do not believe there is the slightest chance that the Membership will wear that now.

7. So, for the United States, the number for overall trade distorting support will simply have to be less than 22 billion. My guess is that, if we end up with an agreement at all this year, the number will be in the teens. That still leaves quite some leeway but I believe it is already implicitly quite a bit narrower than that.

8. I know there are some that argue for the very low teens. As Chair, my sense is that that is not inconceivable, but it would be a real stretch in negotiating terms. I cannot rule it out, but I have to say that I have the clear sense that, quite apart from anything else, it would require a political commitment on market access for both developed and developing countries that would be difficult to conceive based on what I am hearing right now.

9. Looking at it from the other end of the spectrum I remain of the view that, just as it is a real stretch for me to see the very low teens being doable, I see it as a real stretch for the overall number to end up being even still as high as what the US Uruguay Round commitment was i.e. 19 billion, even allowing for the incontrovertible fact that the US is currently envisaging a significant shift – within its overall commitment- from AMS to blue. But that also reflects a view that we still have in play a market access possibility and an export subsidy outcome that would underpin the credibility of going lower than that number.

10. I have referred to a certain judgement on what is doable taking into account access and support. I dare say there will be some (or possibly even many) who would like to rush to say that there is no connection - or that there should not be – any connection between these matters. I am not going to debate the technicalities of that one way or the other as if it was a legalistic issue under the framework. The time for that sort of argy bargy is surely long past. I cannot help but emphasise that there is, in reality, a manifest political connection in the broadest terms (i.e. it doesn't literally apply with mathematical precision to every detail of every Member's commitments. And it is manifestly not a dollar for dollar equation) and everybody knows that and acts on it in their private debates even if they are moved to deny it publicly. All I would emphasise is that it, of course, works both ways.

11. That said, it would be an over-simplification to say that it is just access that is at issue. It is also a question of what the balance will be as between the overall number and what has come to be called the "disciplines" on domestic support (but which are to all practical intents and purposes numbers also, principally as relate to product specific support). But you will see below my best efforts to read where various centres of gravity are on those two main areas. I have used this "centre of gravity" concept as the best way I can express where I have the feeling that the effective or implicit zone of engagement at least de facto exists. So it is not (yet) a defined and precise point in the particular area concerned: it has parameters which could be stretched "up" or "down". Because there are possibilities to go "up" or "down" and because I think there are attendant negotiating linkages connected to these "in play" possibilities, my reading is that, as far as OTDS is concerned, the centre of gravity for what is actually in play here for the U.S. is certainly below 19 and somewhere above the very low teens.

12. I understand that the EU has signalled already that it could be prepared to go to a 75% cut which, if applied, would take its OTDS figure down to around 27.5 billion euros. But I believe it has been stated that this is conditional, as it were, on the EU maintaining a 10% margin only with the U.S. I have seen analysis which opines that the EU is at least "technically" capable of going as high as over 80%, given that its domestic reforms would seem to leave it sufficient headroom to meet even these kinds of levels. But this, it seems to me, is an unlikely stretch not so much for technical reasons, but as reflecting a political judgement on what the "balance" of an outcome would be. But, trying to make an informed conjecture on what those kinds of considerations would be, and allowing for the various negotiating positioning that is going on, I would have thought we will have to end up, at a minimum with an EU cut above 70% and that a cut up in the vicinity of 75-80% or thereabouts is still at least notionally in play depending of course on what else is ultimately doable in this and other pillars of the negotiations.

13. In the case of Japan, which is in the second band, I believe that wherever the outcome for the cuts in the second and third band comes out, reflecting the U.S and E.U. ultimate limits, Japan will (on the assumption that for them, as for all others, there is a sufficient balance overall in the negotiations) be able to at least match such an outcome comfortably.

14. Hong Kong has made it clear that Developing Country Members with no AMS commitments are to be exempt from the overall cut in TDS. That is a given. The issue of what the cut should be for developing country Members more generally remains to be so explicitly resolved. It seems to me that the specificity of the conditionality for full exemption for this range of developing country Members (i.e. those with no AMS) reflects a manifest rationale: i.e. that the complete lack of an AMS was a specificity that alone warranted this limiting case degree of deviation from the norm. But we are under a clear direction also under the Framework that, on domestic support more generally as regards special and differential treatment, "modalities to be developed will include...lower reduction coefficients." So, reflecting that language and respecting the specificity of Hong Kong, I would infer that *complete* exemption is as per Hong Kong only, but there is no question that for developing countries the reduction rate should still be lower than for developed. How much lower? I have the sense that two-thirds is about right. Plus there is entitlement to a longer phase in. Taken together I would have thought that would do the trick. If, however, this would still have the effect of disproportionately affecting any particular developing Member appropriate flexibility would be found.

#### B. DE MINIMIS

15. For developed countries, we have a threshold commitment that is at least a 50% cut. I take that now as a firm minimum working hypothesis to this point. We could seek to raise that to a straight agreed percentage number (80% has been mentioned). But I actually think it is more useful to say that there should be a cut of *at least* 50% with an additional amount sufficient to ensure that the OTDS commitment arrived at is met net of blue and AMS commitments. I think it is a better way to put it, because I think it better reflects the negotiating realities. The fact is that, technically there is unused headroom in this area and it is very hard to see, analytically, how such entitlements are ever going to be used in any case. So there is room here to get to whatever overall number is politically sellable, once the key political decisions on AMS and Blue numbers and disciplines have been met.

16. It is clear in the framework that developing countries which allocate almost all de minimis support for subsistence and resource-poor farmers will be exempt from reductions. Based on Hong Kong, we have gone further in this by specifying generally that developing countries with no AMS commitments are to be exempt from reductions in de minimis. It is conceivable that there are some other developing countries that fit neither criterion but, if so, the mandate in fact specifies that reductions for developing countries (unqualified) need to take into account the principle of special and differential treatment. My sense is that doing nothing for any such countries cannot be reconciled with the express terms of the framework (those words have to be given meaning), but that complete exemption from reduction was something that was expressly reserved for those in a very specific position (otherwise it would have simply said all developing countries in the first place-which it does not). The answer therefore lies somewhere in between. My sense on this is that a two-thirds commitment here would be about right i.e. 30% with an additional amount (if necessary) to ensure the overall OTDS commitment arrived at is met.

## C. FINAL BOUND TOTAL AGGREGATE MEASUREMENT OF SUPPORT

*Thresholds and Cuts*

17. It is my working hypothesis that that the EC is in the top tier, the U.S. and Japan are in the second tier and all other Members are in the bottom tier. I am also using, for working purposes a modified version of the cuts in the top two bands as compared to my Hong Kong summary because I think it is a more faithful characterisation of where we actually are at for the moment.<sup>1</sup> Unless and until there is some final determination, it will remain my working hypothesis.

<b>Tiers</b>	<b>Cuts</b>
1	37-60%
2	60
3	70

*Additional effort*

18. On that working hypothesis (it being, of course, clear that this that would have to change if the working hypothesis would change) I believe the "additional effort" attainable in the second tier would at least go very close to achieving an outcome effectively equivalent to a third tier cut.

19. For developing countries, I have the sense that it will be around two-thirds of the cuts for developed countries. There will also be more extended phasing. If this would, for any particular member, still be deemed to lead to a manifestly disproportionate outcome, suitable moderation could be applied. Continued access to the provisions of Article 6.2 of the Agreement on Agriculture is a given.

*Commodity-specific AMS Caps*

20. There is a very strong body of support for the view that AMS for developed countries should be capped at the product specific levels for 1995-2000. The United States has rejected this, opting for 1999-2001. The extent of the difference this gives to expenditure entitlements is very considerable in the case of certain products.

21. There is no agreement yet and this is fundamental. Conceptually though I would like to focus this by canvassing three options before entertaining any wisdom of Solomon type pronouncements.

22. The first is the most straightforward i.e. that the United States should move to accept from day one what every other Member would be generally able to accept i.e. the 1995-2000 base period. There is a variant of that. Namely that the United States would be entitled *to start* from the results that the 1999-2001 would give you at the product specific level, but would, by the end of a fixed implementation period, have accepted the levels that the 1995-2000 would deliver.

23. A second option is to makes some kind of enduring substantive compromise, but at least exhibiting some kind of a rationale. One possibility would be, for instance, to use the relative shares

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<sup>1</sup> Of course, these are conditional figures. For instance, while the European Communities has indicated it could be prepared to go as far as 70% in the top tier, they make it clear that this is acceptable only if the United States will go to 60% in the second tier. The United States for its part, however, has only indicated preparedness to go to that 60% if the European Communities is prepared to go as high as 83% - which it has not indicated it is prepared to do.

of commodities that existed in the (relatively high spending) 1999-2001 period, but to apply those shares to the overall 1995-2000 expenditure period. That would tend to give you commodity specific outcomes toward the middle of the two ranges.

24. A third option would be to essentially go with the 1995-2000 period but be prepared to modify it with some kind of constrained ad hoc adjustment to give a modest degree of flexibility. This could be along the lines of, for instance, permitting an overrun of e.g. 10% for no more than two commodities over the lifetime of the implementation period, and that, if resorted to for a particular one of those commodities, it could not be resorted to more than once in a three year cycle.

25. That still leaves some other (albeit, comparatively, of secondary importance) matters to resolve. The point has been made, more generally, that the product specific "capping" is meant to be precisely that i.e. it is not meant to be the primary driving engine for AMS *reductions* (although these are clearly meant to happen also at the commodity specific level, not least because the framework makes express reference to at least some of this occurring). Reduction is principally via the AMS reduction modality. Caps are caps. On that basis the logic of the base period is essentially a matter of fairness: not to have some kind of attempt to gerrymander the outcome –whether that is up or down. It is essentially to get a fair and reasonable (nothing can ever be perfect) basis upon which to set the caps.

26. On this basis the point has been made that unyieldingly applying any base period could conceivably create some anomalies. At the extreme, a Member could have a notional "entitlement" to AMS but happen not to have spent *anything* in the period ultimately selected. Therefore it would be effectively completely deprived of its AMS "entitlement" even though it formally retains that entitlement. Now, some might say "too bad", but in fact the way that is meant to be dealt with is by direct and formal AMS cuts, not by means of indirect effect. Of course, that is an extreme case which will not I think happen in those terms, but it does seem to me that there are some more limited situations where anomalies could arise.

27. We cannot provide for every conceivable variation without undermining the whole point of disciplines but I can see two situations that could be germane, and I have the feeling that the world would not end if we provided for them. The first situation is where a Member spends below product specific de minimis in the base period. Under "normal" circumstances that might have fluctuated up over that threshold. I am inclined to suggest as a rough and ready rule that they could still have an ongoing AMS entitlement but no higher than the "old" de minimis (i.e. 5% of v.o.p.)

28. The second situation is where there has been product specific support above de minimis *after* the base period, whatever it is ultimately determined to be (and we are seriously looking at a period that will end no later than 2001 at most). One option is, again, to take the "well too bad" approach: a base period is a base period. On the other hand, the base period is not meant to be more than a methodology-if its application creates a degree of artificiality or anomaly in the outcome it does not serve its proper function. For that reason my rough and ready suggestion is that if such a situation does arise, the average of the most recent two *notified* post base period years could be the basis for any such products.

29. For developing countries, there should be, to be consistent with the terms of the framework, special and differential treatment. Applied to a "capping" exercise it would seem to me to translate into proportionate flexibility. I don't see any of this, frankly, as make or break. If, for instance, we were to end up with a six year 1995-2000 period for developed countries, developing countries should certainly have the option of going with that, should they choose to do so. But I feel there should certainly also be entitlement to a couple of options. Having also the option of choosing a somewhat more extended period (e.g. 1995-2004) seems to me to be a starter. I wouldn't press the analogy too far but this gives you something like one-third "more" by way of timing-based flexibility. The other alternative is that a developing Member could opt for a ceiling that represents some percentage of its product specific de minimis entitlement-say one and a half or two times that amount.

## D. BLUE BOX

30. I am working on the hypothesis that we will ultimately agree to shrink the currently permissible overall ceiling for developed countries from 5% to 2.5%. It remains to be determined whether this is to apply from day one or it is something that will be arrived at only at the end of the implementation period. I see no reason to have complicated options for this. We take a clear-cut decision one way or the other.

### *One Member exception from the overall ceiling*

31. There has been a long-standing understanding that, for one Member which had placed a disproportionately large percentage of its trade-distorting domestic support in the blue box (it should be stressed that this relates to the "old" blue box only), this could have the unintended (and perverse) practical effect of deterring that Member from moving from Amber to Blue.

32. I see two options for that Member –which could be defined (if need be) as having an amount greater than 40% of its trade distorting support during the base period in the blue box. They would not be bound by that 2.5% percent ceiling. By way of "compensatory" commitment, however, they would either accept a cut in their blue box commitment equivalent to the overall cut in trade distorting support for developed countries or they would accept a cut in blue that was the same as the cut for AMS.

### *Other disciplines*

33. I don't see all that much point in over-complicating the political choices in this. After months and months of around the houses discussions on this, it really comes down to a basic decision: does one effectively –directly or indirectly- also constrain at a commodity specific level. I say that this is what it is all about because all the reasons "for" come down to avoiding "too much" subsidy expenditure on a particular commodity or commodities, and all the reasons "against" come down to the view that this is too "intrusive" i.e. too constraining at a commodity specific level.

34. Here, it is my view that we need to focus in on what I would venture to suggest are more serious options and avoid too much by way of ambit claims or proposals that do more to complicate than to illuminate the choices we face.

35. One clear option, analytically, is that we have parallel caps at a commodity specific level along the same lines as is envisaged for the Amber (AMS) box. There would, of course, have to be some variation in application of this approach given the difference between historical spending under old blue and lack of historical spending for new blue. The EU would be prepared to do this based on its historic spending patterns for old blue. Thus it would be caps at average levels of support for the UR implementation period (1995-2000)

36. This could not be applicable to the United States in a purely technical sense as it has no such historical pattern. But there is a proxy variant that could be envisaged in a purely technical sense. For instance, caps could be established by multiplying the share of the maximum expenditure provided for in national legislation for each crop (expressed as a percentage) by the total expenditure available for the blue box. This could even be given a margin of tolerance, e.g. 10%. But, the United States has not hitherto been prepared to contemplate such a specific approach on the grounds that this is too intrusive.

37. If product specificity of this kind is, indeed, a no-go area, we are left with seemingly only one other category of pure blue box discipline: some version of what has come to be called "anti-concentration". One option that has been suggested is that one has a maximum percentage of the overall Blue Box ceiling that cannot be exceeded for any given product.

38. But, as noted above, what this is all about is still how much money can or should be spent on particular commodities. It is about trying to stop the overall amount being shifted into one or two products. In fact, there are all sorts of permutations and combinations that one can invent under this rubric of "anti-concentration". But, if product specific amounts are a non-starter then all so-called "anti-concentration" variants that are in actual fact only devices to extract a product specific cap by another name are also non-starters, as no-one is going to be taken in. So there is little point trying to over-complicate this. Is there a genuine willingness to take a ceiling limit one way or another or not?

#### E. COMBINED AMBER AND BLUE COMMODITY SPECIFIC CAPS

39. This, presumably, is why there has been a latter day interest in bypassing all of this. Hence the suggestion that we go down the route of so-called "merged" blue and amber commodity specific caps.

40. If this was to be done, it would have to have certain safeguards built – in. Most important, it could not be a device to simply circumvent what would otherwise be the required AMS commodity – specific caps. How could that be done?

41. Although it would be a "combined" cap, it would still have to be made up of the AMS and blue elements. So you would still (at least analytically) have to arrive at the component elements to make up the combined cap. So the purely analytical elements will still have to reflect the judgements for your AMS and Blue elements outlined above. I won't repeat all that here.

42. In addition, nobody has ever suggested that this would ever over-ride the AMS commodity-specific commitment (whatever it would be determined to be in its own right). Thus, that would always function as a ratchet within any "overall" commitment. In other words, a Member could spend up to its full AMS entitlement, but it would never be entitled to exceed that entitlement by utilising its implicit blue entitlement for AMS purposes.

43. But it could (indeed is precisely designed to) work the other way around. In other words, it could "spend" its AMS entitlement in Blue. On this model, the only real question would be how far that entitlement to spend would go. What limits would apply to the transferability of that AMS entitlement?

44. The presumption has been that the overall blue box cap is still binding. Thus, even if a Member had a formal entitlement to spend up to its full AMS limit for any and all commodities in blue instead of in AMS, it could not, as a practical matter do so. That formal entitlement could not ever be exercised comprehensively because the overall Blue box cap would kick in and preclude it ever happening.

45. It would still, however, permit product concentration in blue. Indeed, on the face of it, it would lead to more capacity for that to happen than the situation would have been with the blue box as a stand-alone commitment. That is not difficult to comprehend given that, under this schema, you have the potential to throw all of your AMS spending into blue as well as whatever you would otherwise have been entitled to do under pure blue. There is a certain logic to that as Amber is more distorting than blue but if that was still considered to be problematic, the only way to deal with this would be to have further conditions on the combined entitlement.

## II. COTTON

46. It was clear in Hong Kong that trade distorting domestic subsidies for cotton production are to be reduced "more ambitiously" than under "whatever general formula" is agreed, and it should be implemented over a shorter period of time than generally.

47. I note that it doesn't just say "more" than the general formula. It says "more *ambitiously*". So, whatever "more" will ultimately be, it is not to be, on this reading, a minor or modest or marginal additional undertaking. It must itself have the quality of being ambitious in its own right and that "ambition" is to be measured from the point of the "general" and not from the starting –point of zero. In other words it will be ambitious by measuring its outcome in relation to the general formula not just per se.

48. Of course, what is crucial here is what could be described as the "general formula". At issue, essentially, is AMS and Blue box. The other general figure is, of course, for Overall TDS. None of these are determined, so it is not as if we have a fixed point, right now. But what is clear is that one cannot make sense of what either the Framework or Hong Kong means unless there are commodity specific reductions for Cotton irrespective of what is ultimately determined in respect of other commodities.

49. For AMS, we are generally supposed to be doing "capping" rather than commodity specific reductions per se (although the framework itself envisages there will be "some" reductions). So, strictly speaking, the only way we can reasonably interpret the Hong Kong wording is in relation to the only thing that is indeed "general" in respect of AMS for reduction, i.e. the general formula itself. As you will see from the above, I have the sense that, wherever we ultimately come out, 60% is at least in play as a "general" for a tier two country and 70% for a tier one country.

50. For Blue, we still do not know if we will do commodity specific at all in any sense of the term. Unless and until we do, we can orient ourselves only by means of the general blue box reduction that seems to be in play, which appears to be around 50%. If there was, however, an anti-concentration discipline of some sort, that could give us another general standard to potentially operate from.

51. For overall trade distorting, we are still to negotiate, and you have my views that what is formally on the table will, in the end, have to go higher.

52. Concretely, we have the proposal by the proponents. It remains in play as it is clearly capable of delivering the requisite standard from Hong Kong. I have nothing new to add at this point other than the obvious observation that Members rarely get exactly all of what they are seeking. But if the "general" benchmarks are indeed as outlined above – and I can simply find nothing else that would plausibly meet the meaning of that term – we do have a rough zone that is effectively at issue: where the proponents are suggesting concretely, and where, above the general (which for AMS looks to be at least 60% and for overall will be somewhere above 53% for a tier two country), an increment could sensibly be said still to be "ambitious".

53. Of course, were we to go to combined blue and AMS caps, this will provide us with another potential benchmark of the "general".

### **III. EXPORT COMPETITION**

#### **A. EXPORT SUBSIDIES**

54. I think it is now inevitable that entry into force of this agreement could not now occur before 1 January 2009. That aspect of the draft text should therefore be modified, including the mid-point which now shifts to the middle of 2011. This means we have, effectively, a five year implementation period if we maintain the integrity of the 2013 date. A "substantial part" is to be realized by the end of the first half of the implementation period. I have the rough sense that that will end up being somewhere between 50% and two-thirds being achieved by the mid-point. But the oddity of having your mid point in the middle of a year giving you a two and a half year split may also direct us to the sensible outcome: do 50% by the end of the second year (i.e. end 2010), leaving 50 percent for the last three years.

55. I would sense the above essentially for value. We are wide apart on value versus volume commitments. As regards volume, this is still to be resolved, with flatly opposed views. I think this negotiation has some way to go, and is not unrelated to other elements in this pillar. The only observation I would make at this stage is that the existing agreement on agriculture has specific volume commitments as well as value commitments. This is not meant as a general point of principle, but as practical matter of fact which has a bearing on our effective starting point henceforth. It is difficult for me to see that either systemically, or in any other negotiating sense, it is going to prove realistic to imagine that in this negotiation we will end up backtracking on (in the sense of loosening) previous concrete commitments. So it is hard for me to imagine that, at the very least, the existing volume commitments do not remain an effective floor even if the view that there should be no further quantity reductions henceforth was to ultimately prevail.

## B. FOOD AID

56. Although the possible new disciplines on food aid that are contained in Annex K of the possible draft modalities are not without their fair share of square brackets these either represent relatively minor differences or they require relatively clean decisions. It is time to make them

57. There should be some general provisions which would apply to all food aid in all circumstances. It should be: needs driven; untied from commercial exports of goods or services; and should not be linked to market development objectives of the donor Member. There have been differences on whether food aid should be exclusively in grant form. However, there is little support for the view that food aid should be given on concessional terms. Furthermore, there are provisions under export credits for exceptional circumstances in any case. I think therefore the only general position that will now run is that food aid is to be in fully grant form.

58. There has been some support for including a definition of emergency situation into WTO rules on food aid, but it seems to me at least clear that WTO has no business trying to set itself up as the authority to pass judgement on these things. It simply has no credibility as it does not have the expertise to do so; nor is it its function to set itself up as some kind of judge and jury on such matters within the international system. The definition that has been under consideration is that of the World Food Programme (from WFP/EB.1/2005/13 and WFP/EB.1/2005/4-A/Rev.1). It might be worth reflecting, moreover, that this is not the first definition used by the WFP and that other international organizations use slightly different definitions. Therefore, in the absence of a compelling reason to override the definitions used by those that are responsible for administering and delivering food aid the furthest it would seem to me to be reasonable to go as regards a definition is to include the WFP definition as a reference.

59. As to what entity should have the right to declare an emergency, current international law seems to be quite clear – it is a sovereign government or, in exceptional circumstances, the Secretary-General of the United Nations. I assume we do not intend to absurdly endeavour to overturn this, so the rules we are to develop must respect this situation.

60. But the more practical question is how we arrive at an operationalisation of what this would mean in terms of triggering access to a safe harbour, as it were. The key steps in the process related to emergencies are the needs assessments and the emergency appeals process. For us, the issue has been what entities would have status for these purposes.

61. I have heard no credible basis to question that they should be relevant United Nations agencies (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. So they are clear. They would be the standard a priori accepted "triggers". It's not clear to me what problem there would be with a "relevant international intergovernmental organisation" if it is genuinely international.

62. Where there has been more doubt or questioning has been over the following: the country where the emergency exists; relevant regional humanitarian organisations, non-governmental humanitarian organizations or private charitable bodies.

63. It might be more straightforward to develop WTO rules on the Safe Box if all emergencies followed the sequence of an event causing an emergency, declaration of an emergency, needs assessment and an appeal by a recognised institution. But the real world is not so tidy. The reality is that there will be occasions when it is neither feasible nor humanly conceivable that action would be withheld, pending ideal processes to work their way through. I have heard no persuasive arguments to deny this, and irrefutable actual instances have been cited. It would be absurd if we were to believe we were doing a sensible job if we were to end up prescribing rules, the practical effect of which would be to interfere with genuine humanitarian responses to emergency.

64. So, we cannot deny that there have been, and can be, situations where there is a need to respond to an emergency before there is a UN agency declaration/needs assessment etc. Normally, that would be triggered by an appeal from the relevant Government. But situations can arise where the relevant Government does not do so, but there is an undeniable emergency humanitarian situation within its jurisdiction. And the international awareness could well be generated by a non-governmental organisation. Therefore, provision needs to be made in the Safe Box for these situations. They will, presumably, not be the norm, in any case, so the sensible approach is to make it clear that we provide for additional notification criteria for these situations and an ex-post declaration of an appeal by one of the organizations or agencies recognised above as being qualified to make the needs assessments and emergency appeals.

65. As regards regional intergovernmental organisations, this cannot be settled in the abstract. We need a list. Unless someone comes up with a bona fide reason to reject a candidate, it goes on the list. We can always ask the experts for an opinion if we don't know the answer ourselves. We get an advisory opinion and they go on the list or not.

66. There seems to me to be reasonable comfort with the concept of "non-governmental" organisation, but because it can be a rather imprecise term (as can "private charitable organisation"). There is a concern we don't leave the door open to e.g. organisations that are effectively (even if not technically) commercial organisations. I would suggest this is resolved through sensible drafting. The non-governmental or charitable organisations would need to be defined as having a demonstrable recognised role, standing and track record in the eyes of the international humanitarian organisations. No effectively commercially based or influenced entity would have that standing unless they were on a positive list endorsed as such by the relevant UN agency etc. And surely it is not beyond us to ask their advice if we have some problem figuring it out for ourselves.

67. Finally, under the Safe Box is the question of the duration of the emergency, or more correctly, how long could food aid be provided within the Safe Box. Although some continue to favour a predefined period of time, I remain persuaded by the logic that if we don't have the expertise to determine when an emergency exists we have no more expertise to determine when it has ended. This is something that should be decided by those recognised agencies that are responsible for the needs assessment and the emergency appeal in the first place. What may be sensible is to provide is that it remains open to a Member, at any time, to seek advice from the relevant UN /international humanitarian agency on such a matter in the event that there is no autonomous advice. If so, WTO would be bound by that view.

68. In the case of in-kind food aid in non-emergency situations, I know well that there is a strongly held view by many that this should simply be eliminated and replaced by fully cash-based food aid. But I have seen no progress on this issue and my sense is that this will simply not be the outcome over the next few weeks and months. I can see, therefore, two main approaches. First, there is a strict disciplines approach to in-kind food aid. The disciplines that I would envisage being applied to in-kind aid would be: that it is based on a needs assessment conducted by a recognised agency

(such as the United Nations or the Red Cross); that it is targeted to an identified vulnerable population; and that it is provided to address specific developmental objectives or nutritional requirements. Other organizations with direct responsibility in this area, such as the Consultative Sub-Committee on Surplus Disposal of the FAO, may have or could develop additional rules in the coming period. We should allow for whatever occurs there by way of progress to be applicable here. Second, there could be an acknowledgement of the desirability of moving to cash-based. That could be coupled with a commitment to work on ways to get to that goal with a review of these disciplines in say four years. In addition there could be a commitment now-short of full elimination-to have moved at least a certain percentage to cash-based by that four year review point.

69. On re-exports of food aid I think we are effectively there. What is to be prevented is the commercial sale in country A of food which was intended as food aid in country B. However, we do not mean to interfere with food aid being moved from country B to country C when it is part of a UN programme.

70. I do not have the sense that we will, in the time available to us, get agreement to flat elimination of monetization. The disciplines route seems to be the only option, along the lines of the following: only under exceptional circumstances; to fund activities that are directly related to the delivery of the food aid to, or facilitating procurement of agriculture inputs, where necessary, by the final recipients. Furthermore, it could be provided that monetization is under the auspices of, or at the very least subject to review and comment by, the core UN humanitarian agency and the recipient governmental authority, with a view to ensuring that there is minimal risk of commercial displacement and disincentive to local production. We could have a review of monetization, too, in four years time with a directive to update the disciplines in light of the views provided by those agencies.

71. To ensure that food aid complies with the rules it is essential that we develop appropriate provisions on monitoring and surveillance, particularly for non-emergency food aid and for emergency food aid provided before an appeal is made. Such notification requirements would have to cover both ex-ante and ex-post and a means to ensure compliance with these requirements would also be needed.

### C. EXPORTING STATE TRADING ENTERPRISES

72. I would envisage continuing to use a short chapeau followed by substantive provisions on: the definition of a STE; disciplines on export subsidies, government financing, underwriting of losses and monopoly powers; special and differential treatment; and monitoring and surveillance. Concerning the chapeau, this was one of the rare sections of the Proposed Draft Modalities which did not include square brackets and so I see no need to change it

73. Concerning the definition of an exporting state trading enterprise, there is really a straightforward choice: we use the current definition as provided in the Understanding on the Interpretation of Article XVII and amend it slightly so that it refers to STEs involved in the sale for export of agricultural products; or we venture into broadening this definition to include enterprises which have been granted advantages with respect to exports of agriculture products and enterprises which enjoy *de facto* exclusive or special rights, privileges or advantages or concepts of this kind. Frankly, I am wary about the wisdom of going for substantive changes to a definition which has already been well-established, all the more so as I get no clear sense that anybody really knows where any more substantive modified drafting actually leads, and they certainly have a great deal of difficulty in being able to explain what is "in" and what is "out" with such wider definitions as have been variously proposed, let alone whether this is an operationally reliable way of distinguishing ste's from "private" enterprises rather than confusing that distinction inadvertently. Thus, unless I hear compelling arguments to the contrary, I would opt for prudence.

74. There has not been any objection to the wording proposed in the Possible Draft Modalities for the elimination of export subsidies so my working assumption is that we will go with that.

75. For government financing and underwriting of losses there are still disagreements as to whether the list of measures covered by government financing and underwriting of losses should be exhaustive or indicative. If it is government financing or government underwriting of losses that are at issue, that is what is the principal obligation. The forms that come afterwards, and are specified, are presumably to leave no doubt that they are what is meant, so there can be no a priori argument about those. I do not know if there are other forms, but the point is surely that the main category is applicable and that there could conceivably be something else even if we cannot think of it right now. It would be, in principle something for a panel to evaluate on the basis of the facts. Therefore, the preferred solution is that the list of practices under government financing and the underwriting of losses will be indicative and not exhaustive.

76. A decision is also required concerning whether exporting STEs should be allowed to have monopoly powers. There were strongly held views that the use of monopoly powers should be prohibited and equally strongly held views that they should not be prohibited. Although the wording of the Hong Kong Declaration does not refer to a prohibition but to disciplines on the future use of monopoly powers it also refers to the elimination of all forms of export subsidies. I do not think there is any reason why the first option in the first draft text would not be consistent with the framework and the Hong Kong declaration, and my working assumption is that we will now at least end up with that. My sense is also that we will, in the end, go further than that. Where I am less clear is whether we will have a blanket proscription of export monopoly powers for the enterprises concerned, or an entity –based list of them. But we will, in my view have one or the other with a 2013 end – date.

77. The mandate requires we give special consideration for maintaining monopoly status for STEs in developing countries which enjoy special privileges to preserve domestic consumer price stability and to ensure food security. To some extent this would be addressed if all Members were permitted to have exporting STEs with monopoly status. However, if, as I suggest, the monopoly status of exporting STEs will end or at least to some extent, then we need to consider what special consideration should be given to maintaining such status for STEs in developing countries.

78. The rules which were discussed earlier considered a two pronged approach: to explicitly permit monopoly powers for agriculture STEs in developing countries for those STEs which enjoyed special privileges to preserve domestic consumer price stability and to ensure food security; and, in addition, to apply this exception to STEs which had a limited share of world trade. This would appear to be a reasonable approach as it respects the mandate and exempts those entities which could have practically no impact on world markets.

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

79. The mandate for the negotiations is to ensure the elimination, by end-2013, of export credits, export credit guarantees and insurance programmes with repayment periods of more than 180 days and which are not in accordance with disciplines we are to agree. These disciplines are meant to cover, inter alia, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade. In addition such programmes should be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially-oriented discipline.

#### **Export Credits, Export Credit Guarantees or Insurance Programmes with repayment periods beyond than 180 days**

80. Although the mandate is unambiguous on the elimination of export credits by end 2013 we have to consider the timetable for this elimination. I do not yet believe the simplest solution is effectively out of reach: i.e. to eliminate export credits immediately from the start of implementation.

In my view it is down to a choice between that and deciding to have immediate elimination of credits of over 180 days for any product for which there were no reduction commitments in a Member's Schedule plus the phasing out of export credits for other products in parallel with the phasing out of direct export subsidies. Clearly, such a programme for elimination could not be construed so as to imply the creation of any right to provide export subsidies in excess of the quantity and budgetary outlay commitments set out in Members' Schedules.

**Export Credits, Export Credit Guarantees or Insurance Programmes with repayment periods of 180 days or less**

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

81. Two basic approaches to addressing export credits emerged during last year's negotiations. One approach would focus on having a short self-financing period and a narrow range of permitted export financing instruments as a simple means of ensuring market consistency. Under this approach the only financial instrument would be pure risk cover.

82. The other is a broader and more rules orientated approach which would appear to have more support among Members. This would permit a wider, though still limited, range of financial instruments than only pure risk cover.

83. The proposal to limit the permitted financial instruments to risk cover would actually prevent a Member from providing export credits – although it is explicitly stated in the mandate that the disciplines to be developed are to cover export, guarantees and insurance programmes. Although it is a valid negotiating position to seek to restrict the programmes permitted to risk cover only, it does not match the mandate and, in my opinion, the more general requirement to eliminate export subsidies in this area can be achieved through disciplines on export credits, including direct financing support and government-to-government credit agreements.

84. Therefore, I see no need to change any of the section on forms and providers of export financing support in Annex I of the Possible Draft Modalities, apart from removing the square brackets which means export financing support provided through state trading enterprises would also be explicitly covered by these rules. I am aware there is another set of rules on exporting STEs but, unless I hear convincing arguments to the contrary, I see no reason to exclude from the list of providers of export financing support an entity of the state that can provide such support.

*Self-Financing*

85. There are some extreme views of what should be the period for self-financing that is of sufficiently short duration so as not to effectively circumvent real commercially-oriented disciplines. The two extremes that have been proposed are of 1 and 15 years. One year is too short, even for credit cycles of 180 days. Fifteen years is far too long. In fact, these two positions oversimplify the issue. It would appear more reasonable to pursue an idea which was raised during last year's consultations which would apply a two step process for assessing self-financing: (a) an initial assessment period, of say 2 years, at the end of which, if the export credit programme has not been self-financing, the Member would be required to take steps to remedy the situation; and (b) a longer period of, say 5 years, at the end of which the Member would have to show that the programme had indeed been self-financing.

*Maximum repayment term*

86. Unlike some other areas of the Framework, the section on the maximum duration of export credits is very clear – 180 days with no exceptions. While this is probably not appropriate for some agriculture goods, such as breeding stock and vegetable reproductive material, the Framework does not leave much room for doubt. So absent agreement from all it will have to remain as agreed – 180

days for all agricultural products. Of course, a maximum period of 180 days is meaningless unless we know when to start counting. Although various proposals were made, I think the bulk of opinion was that it should be the date of arrival, or the weighted mean date of arrival for credits covering more than one shipment.

#### *Other disciplines*

87. In addition to self-financing and the maximum repayment term, disciplines are also needed on payment of interest, minimum interest rates, risk premiums, risk sharing and foreign exchange risk. Although there were some differences concerning these sections of the possible draft modalities they did not appear to be insurmountable. I do not intend to get into developing disciplines on financing calculations as some had suggested. But disciplines may be needed relating to loss preventative measures particularly as this is related to the self-financing period.

### **Special and Differential Treatment**

88. There are two elements of special and differential treatment which we need to consider. The first concerns developing countries that provide export credits, and the second is developing countries that receive export credits.

#### *Least-developed and net food-importing developing countries*

89. The mandate requires that the disciplines on export credits make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries. Linked to this is the question of what, if any, rules should apply in exceptional circumstances which cannot be adequately covered by international food aid, commercial export credits or preferential financing facilities.

90. The fact is that relevant situations have arisen in the past and will probably arise in the future, therefore, provision should be made for more flexible terms to apply in these situations. In my opinion the most practical way to proceed would be to permit export financing arrangements if the importing developing country requests them and to notify all Members so that all exporters would have the opportunity to respond. Details of any export financing measures taken to meet such a request would have to be notified to the Committee on Agriculture.

91. In terms of export credits provided by exporting developing countries, there will be a longer implementation period but there is no indication in the mandate that by the end of this period the repayment period for export credits should be any longer than 180 days. But concerning other disciplines, I would suggest that more flexible terms should apply to the self-financing period, minimum interest rates, premiums and risk sharing provisions.

## **IV. MARKET ACCESS**

### **A. TIERED FORMULA**

92. I am operating on the working hypothesis now that we have four bands for developed countries, and that the thresholds for those bands are those in the G20 proposal. I am also working on the current hypothesis that there will be a clean linear-based approach for cuts within those bands.

93. I do not feel I have something that yet warrants being called a working hypothesis as regards the cuts within the bands. But things are becoming clearer – to me at least. First, I do feel that it needs to be said (and I have said it already orally so there is nothing new in this) that I simply do not see anything below the EU proposal commanding consensus as the general approach. To my mind, therefore, the centre of gravity is, for the purposes of the general approach, squarely between the US and the EU positions on cuts for developed countries. I will simply add that, this late in the

negotiation, it is a reasonable presumption that neither of those positions will in the end actually prevail. So I would have thought that it is a reasonable prediction from any dispassionate observer that the centre of gravity is actually somewhere inside those parameters - or not at all.

94. Second, it does seem to me that the most crucial issue from which everything else will follow is what the cut would be in the top band where the range formally remains between 60%(EU) and 85% (US). I am only too well aware that the Members concerned are utterly adamant that they will never move from their positions on this. Well, I can't help but observe – and this requires no special insight- that this will eventually happen, and that I will at least venture the prediction that one will have to move up and the other will have to move down or we will simply not have a deal. So what I am using as my tentative practical orientation is that when we settle the cut in the top band, there will be a roughly proportionate tiering down from there in each of the other bands. It also seems to me that there is no point in pretending that this issue of the top band cut can, or will, be settled separately from the question of what the deviation will be (see below) when it comes to sensitive products.

95. Now, having stated where I believe the centre of gravity to be for a general approach, I do not dismiss the need to attend to any issue of disproportionality, should that arise for some Members. I believe that that can be largely assessed by assessing the status of tariffs in the top band. It is true of course that some could take the view that the more tariffs there are in the higher band the more reason there is for more liberalisation to occur there, but we cannot be blind to acknowledging there can be a significantly different degree of impact that takes things out of the realm of the norm. Most developed countries have less than 10% of their tariffs in the top band. I would suggest that a disproportionality provision could be applicable where there is manifestly different situation. I would suggest that where greater than say 25%- 30% of tariffs are in the top band (assuming the G20 threshold of 75% is applicable), this provision could be made available.

96. But this would not be a "free ride" as it were. It would be a means to offer carefully calibrated flexibility. I would suggest that it be exercised via an approach to sensitive product status outlined below.

97. We do not have any requirement under the framework to specify an overall average cut, but I sense an increasing readiness to talk about that, whether or not it ultimately coalesces into a precise figure (as was the case on the Uruguay Round). It will ultimately be a function of the cuts in the tiers so cannot really be determined in isolation from where we end up on those. Of course, in this area (perhaps even more so than in some others) you as Members are highly careful as to how your cards are played. In this area, if not everywhere else, whatever I say will be disagreed with by everybody. But I think it needs to be said if for no other reason than that you are entitled to know what my perceptions are (so you can correct them as need be).

98. What I have said above is that I sense the centre of gravity is, overall, between where the US and the EU are. I cannot precisely and mathematically translate that into a single figure, not least because that zone could swing a bit numerically and because there are all sorts of technicalities that muddy the picture (are we "counting in" sensitives, are we using tariff line basis or not etc.) But what I think it is important to say is what I believe is at least "still in play". I think there is well and truly "still in play" an outcome that would deliver an overall cut above 50%. Of course, it could conceivably come down below that if certain things do not happen (some of which are in the other pillars and, conceivably, elsewhere in the negotiations upon which I have no particular mandate to speak). That said, I frankly doubt that it is conceivable that it could come down to what I would call very much below that figure. But the "above" is, still to play for, knowing that my own view that it will be less than what the US is currently pressing for.

99. As far as cuts for developing countries are concerned, I remain of the view that the centre of gravity is for what I have called in the past a "two thirds" cut. Of course this means different things to different people. But, sooner or later (and it seems to me we are now "later" in this exercise), we are going to have to make up our minds. I know some are firmly of the view that there should be a two

thirds cut within the bands but that the thresholds should be different too, the practical consequence of which can as a practical matter actually take us quite a way away from two-thirds overall.

100. One practical way is to try the following. First, there will indeed be an overall outcome figure that is a minimum target: two-thirds of the average cut for developed countries. The preferred manner to get to that target is that a developing Member applies the same thresholds and two thirds of the cuts within the bands. But, if application of that approach would lead to an overall cut in excess of two-thirds of the developed country average, the developing Member would still have to apply two-thirds of the cuts within each band but may modify all the thresholds by such a fixed percentage (it needs to be fixed in order avoid any incentive to manipulate this unpredictably) as would lead to the overall two-thirds cut. In no case would the thresholds be more than is envisaged in the G20 proposal.

101. This needs of course to be supplemented by comment on various other proposals on e.g. sve's, ram's as well as a developing country equivalent of the disproportionality concept which will come with my next instalment.

## B. SENSITIVE PRODUCTS

### *Selection*

102. My report to the TNC noted that proposals extended from as little as 1% to as much as 15% of tariff lines. That remain formally the case, but I frankly believe that the general centre of gravity is now actually much more convergent than that. I would estimate it to be higher than 1% certainly but not above 5%. That said, there remains a question about whether that is manageable for all developed Members, notably those which might be otherwise subject to a disproportionate impact through cuts in the top band. I believe it is not, so I have a more concrete proposal below to deal with that possibility.

### *Treatment*

103. To begin with, as regards the issue of deviation from the tariff cut for sensitives, I have the sense that the centre of gravity is at somewhere between 1/3 and 2/3 of the cut. Obviously, one-third of a 60% cut in the top band is a 20% cut. I doubt if a net cut that is less than that in the top band is likely to fly. Conversely, two-thirds of an 85% cut is 56.6%. I doubt that a net cut that is higher than that in the top band is likely to fly.

104. I am inclined to think that if this is close to the range we end up with there will be an emerging consensus also for the principle that the TRQ applicable should be greater/smaller correlated with the maximum/minimum deviation.

105. On the combination of tariff cut/deviation and TRQ expansion, there is still clearly a gap in ambition. But on the cut/deviation it is a matter of settling the numbers - and if my guesses on where we are prove not to be totally out of kilter, this is not out of our reach. What, however, has made this worse –and worse than it in fact needs to be- is that we have lacked even a common structure on the TRQ element.

106. I would suggest that what we need now above all else is to get some such kind of structure to work off on that element. That will not guarantee that we can get to a resolution of the ambition issue. But the objective should be to find a structure that can facilitate at least a straight negotiation over numbers when the moment for such a trade-off is right.

107. To begin with, let me underline that I respect that the existing positions on TRQ expansion remain the starting point. Just to emphasise, what I am suggesting below is not what you would call your "operational" modality. There are manifestly competing views on whether this should be consumption based, import-based, pro-rata based or whatever. I take no position on that here and

positions remain on the table. Where we end up on that can remain moot for the time being. What I am suggesting here, however, is that we have an "outcome description" structure which allows us to at least talk to each other in the same language. It is there to "evaluate outcomes"; not itself to be the modality to get to them. Indeed I would argue that you could still fit any one of them into this approach as needs be.

108. So, as regards how we would "evaluate outcomes" let's start with what one might call, conceptually, the "limiting case". This is the situation where, despite the acceptance of the tariff cut (with the permitted maximum flexibility), there would not be any trade flowing over that tariff cut. So, conceptually speaking, the "logic" of a situation where minimal tariff cut occurs is that there should be "maximum" "compensation" via the tariff quota expansion figure. The reason is pretty straightforward: this is the only way that trade will actually occur.<sup>2</sup>

109. Conceptually, this gives us our "situation one" position; viz. net effect of general tariff cut plus deviation used is still not going to lead to imports over the resultant tariff<sup>3</sup>. For this situation we have a "default" tariff quota expansion outcome (expressed in terms of percentage of domestic consumption). Let's say it is x%<sup>4</sup>

110. But this is not going to be the only (or indeed the most frequent) situation that needs to be dealt with. There will be situations where imports will indeed be likely to occur over the MFN cut, even if the maximum flexibility is used. The argument goes that this would mean a Member would be providing the full TQ access (notionally reflecting a situation where there would otherwise be no trade) plus having to face imports over the MFN tariff wall too.

111. Now, one could say well that's just the way it is. But on the assumption we want to negotiate as opposed to simply exchange well-established views we have a practical question to deal with: is there a reasonable (but not inordinately complex) way to distinguish between these two situations. The only plausible proxy that I have heard that can be explained in less than 5 minutes is that the situation at issue could be identified as being one where there are significant imports already occurring at the mfn rate (say coming in at over y% of domestic consumption). There is a certain logic to this: the fact that imports are already significantly occurring does tend to suggest that – ceteris paribus (albeit it's a pretty big ceteris paribus) - any cut will further increase the import propensity.

112. If there is buy-in to the logic of this one could consider that, for those cases, the TQ expansion rate will be moderated in relation to the "default" rate. Conceptually this gives us our "situation two" position; viz. where imports are already in excess of (say) y% of domestic consumption, the required tariff quota expansion would be reduced to (say) two-thirds of the default commitment.<sup>5</sup>

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<sup>2</sup> I know that one can take the view that it's too bad if the cut isn't far enough to permit any trade. But I have not heard anyone explain how we would then meet the mandate to achieve substantial improvement. Be that as it may, I think this is an essentially academic point in any case because, in that event, anyone wanting to ensure trade would argue for a higher tariff cut – in which case we go round in circles and end up (re) debating the tariff cut instead. Which will not get us anywhere in any case.

<sup>3</sup> Of course there is a vital empirical question of how that is to be ascertained as a practical matter. It is ultimately a function of such matters as initial tariff, internal price, elasticities and cross-elasticities of supply and demand. They can be debated. There is one proposal which takes a particular view on how that can be modelled or proxied. For present purposes it is not proposed to settle here and now the precise methodology. The key question is to get settled the basic conceptual framework.

<sup>4</sup> It can of course be calibrated up/down if we end up having a sliding scale element, as I suspect we will. This is applicable elsewhere in this section but for clarity I simply talk about a "single" TRQ.

<sup>5</sup> This, of course, would not be meant to be adopted as a mere device to circumvent the "default" position. There are various ways in which this could be guarded against. For instance, it could be provided also that if overall imports fail to expand by at least a net amount equivalent to what would have been required under the default, there will be a minimum commitment the following year to at least ensure that expansion via a TQ.

113. Now there is also the issue that has been raised of what, for want of a better term, might be called "equity". On this view, there are Members which have actually provided tariff quota access to a certain degree for certain products via TQ's. But there are others which seem –for whatever reason– not to have got to at least an equivalent starting point. The argument goes that simply having a standardised tariff quota outcome in fixed percentage terms for all developed Members would lead to a perpetuation of such "inequity".

114. If there is something to this – and it is true that there is some variability of starting points as a purely factual matter – the remedy is not too difficult to conceive of in purely structural terms. As I understand it, the argument is made essentially in relation to situations where there are neither significant imports at MFN (if there were, it would be covered by "situation 2" above and should not therefore represent any particular anomaly) nor at existing TQ levels.

115. This gives us the "situation three" position; viz where there are particularly low imports. In this case, where imports are below a minimum (say)  $z\%$  threshold you have to do the larger of either bringing yourself up to that threshold or accepting the default formulation. (based on such information as I have I am not expecting there would in fact be many cases where getting up to the threshold would be "larger" than going with the default.)

116. This also, it is argued, should have its equivalent application in cases where there are relatively "large" levels of imports under TRQ's. This is where a case is made for what I described in my previous reference papers as some "tapering". Again the solution need not be that complicated in purely structural or technical terms. One sets a ceiling (again, in terms of what the "outcome" would be in terms of domestic consumption percentages) which, when attained, entitles the Member to diminish the amount of TRQ increase that would "otherwise" be required for that product. The logic would perhaps be that that threshold would be equivalent to whatever has been set as the benchmark for "significant" imports at MFN for the purposes of establishing a "situation two" case. On that basis, imports above that same percentage of imports (this time, though, at TRQ) would be the benchmark.

117. This gives us our "situation four" position; viz where imports under TRQ are already substantial (above, say  $y\%$  of domestic consumption), the TRQ would be (say) three quarters of the default percentage.

118. Now all of this, it might be argued, could be relatively stable if there was likely to be easy agreement on the number of special products and the depth of cut in the tariff–with the latter being particularly important as relates to the cut in the highest band.

119. But, as I foreshadowed above, there is a view that, for some developed Members, what would otherwise lead to a balanced outcome would be disproportionate in their case. There is, it seems to me, two options. One is that those Members just have to grit their teeth and bear it.

120. If not, this would presumably be because Members are persuaded that there could be a disproportionality issue to deal with. If so, it is a question of what structure would potentially be able to accommodate this.

121. One way to deal with this would be to set an entitlement to a larger number of sensitive items than would otherwise be agreed. But this would have to be triggered by the existence of some plausible "test" for "disproportionality". One option would be to assess whether such a Member would have to be doing "disproportionately more" than others. One straightforward candidate for that would be that the Member concerned would be taking a much bigger "hit" than others in terms of where the tariff cut is deepest i.e. the top band. One could suggest, for instance that this would be available only

to those Members that had more than (for instance) 25-30% of their tariffs in the top band (see section above).<sup>6</sup>

122. In such a case, the Member(s) concerned would have a somewhat greater entitlement to sensitive product numbers. But, if the logic is to give some greater flexibility, as it were, to deal with their more particular situation, there would need to be some counter-balancing on the "other side". So, there would be an entitlement to have somewhat greater number of sensitive products but the "quid pro quo" for this would have to be that there was a commitment to give a somewhat larger TQ commitment than the default situation.

123. This gives us our situation five position; viz. where a Member has more than (say) 25-30% of its tariffs in the top band it can have (say) 1/3 more sensitive products than otherwise. However, to balance this it would be required to provide (say) one-third more than the default commitment by way of TQ expansion to balance this greater flexibility.

#### C. TARIFF CAPPING

124. I have nothing to add on the question of tariff capping.

#### D. SPECIAL PRODUCTS

125. We are, in my view, a long way apart on existing positions and there is no point in pretending otherwise. In my view this means there is all the more reason to try to go into new territory here. Old territory (i.e. standardised existing positions) is all too familiar. But, to be honest, those positions will not work. And everybody knows it. So it is not as if we have any choice other than trying something that might do so. Let me be clear: my basic view remains that, objectively, this issue is not in fact the heart of our problem. There are other areas which are, objectively, far more important in these negotiations. And they are rightly to be described as the make or break issues. But that does not mean that the whole negotiations could not also sink over this issue. You will all be familiar with the old adage about the risk of the vessel being lost for a want of a ha'porth of tar. It would be, frankly, ludicrous for the ship to sink over this issue. And it doesn't need to happen. We owe it to ourselves to make sure that does not happen here. So let's find a way to fix this. I don't have the magic answer, but I would like us to get out of our respective trenches. To that end I venture the following elements for reflection. You will see also that I have been rather textually precise in some parts of this. I don't like to be, but I have heard so much of this textual exegesis on this issue that I feel I have to at least enter into the spirit of things and go to some lengths to explain why I am suggesting what I suggest.

126. First, we are fated to deal with the number. To my knowledge, it has not been *seriously* engaged even at this late stage in the process. But it can, of course, happen. And if that is the way we go, we just continue to sit in limbo unless and until we get serious convergence on a number that works for everybody. Hopefully you will forgive me for observing that I am sceptical about that being likely to happen spontaneously. This is simply because I see no easy reason to believe that what has manifestly failed to occur to this point is going to miraculously happen tomorrow or the day after tomorrow when I cannot see any change on the fundamentals. In other words there is no serious sign of the ground being prepared for that.

127. So, if there is a belief that this is indeed the way to go, things will need to happen now to get us into a position to do an end game horse-trade. What might that be? Forgive me, but here –as elsewhere- I am not going to encourage heads in the sand. You already know-because I made it plain a long time ago-that I do not believe that a position that there should be "at least" 20% of tariff lines will prevail. Nor, for that matter, do I believe that an alternative ambit position that says there should

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<sup>6</sup> There might also be a case for considering a situation where a Member might be disproportionately affected by having a rather different tariff structure at e.g. 6 digit rather than 8 digit such that the absolute number was not effectively different.

be "three or four" will prevail. The *de facto* zone of engagement over numbers –if indeed there is a decision to ever go for a number-(not an unambiguous *a priori* requirement on my reading of the 2004 framework I would add) is obviously considerably narrower to anyone that is not partisan in this exercise. But I say *de facto* for a reason: I have no evidence (although I do not know what is going on in purely bilateral discussions) that anyone is actually talking about this.

128. You will have seen above that I have convinced myself at least as to where the rough centre of gravity is for developed country (default) sensitive products i.e. somewhere between 1 and 5%. Strictly speaking there is NO connection in numerical terms between sensitives and specials, but my sense is that, politically, the specials number will simply have to be larger than sensitives. So that gets you above 5%. How far above? I am guessing perhaps even more here than in some other places but I would say you would be looking at between 5 and 8% for specials on the assumption that you are looking at between 1 and 5% for sensitives. It may be, of course, that some sort of unified grossed up figure of both specials and sensitives could be arrived at, based on certain conditions, such as that non-use of sensitives could be added to specials at some sort of "discounted" rate so that there is a grossed up quantum as it were. I have heard, informally, some ideas on that. But nothing seriously engaged. That said, it is to me perfectly conceivable that for *some* Members the number could well need to be legitimately higher and, indeed, that, as a practical matter, it would not be a problem for Members. Here we face the fundamental problem of trying to go for a "one size fits all" approach. But, of course, *if* we have to drive a bus through this exercise (and you determine that) my best guess for what that bus number would have to be is somewhere in that range.

129. Now, you are all perfectly entitled to disagree with my perception. But you will also have to explain to me how, in negotiating terms, we are ever going to get to a conclusion if it is not somewhere around these sorts of parameters. If even moving into these zones provokes howls of outrage then all I would say is that what is presently on the table by way of extremes is clearly never going to fly as a basis for agreement. And if it is true that we only have a matter of a few months or weeks -if that- to get to modalities it defies any negotiating logic that we will do it from a standing start. We will have to make steps. By which I mean discernible movement on numbers. If even this does not start to get people moving then we at least have to be honest with ourselves: either we are NOT in fact going to ever negotiate a specific number for specials (because, in effect ANY number is either "too high" for one side of the debate or "too low" for the other side of the debate, which is in fact exactly the situation we are in right now), or we are never going to have an agreement on this at all.

130. So, absent movement on numbers, we will have to rely even more heavily on other elements. I am well aware that efforts are being made bilaterally to deal with this, although I have not any reliable basis to judge whether, let alone how, this will resolve our negotiating conundrum. Presumably, if enough interested parties are able to satisfy themselves through bilateral understandings that they are having their respective needs met, we no longer have a problem. If that was to be achievable "behind the scenes" then presumably the more general question of the "numbers" becomes somewhat academic. Participants are going to be a lot more relaxed about the "Numbers" as a general proposition if their products are taken care of. As Chair I can hardly say anything discouraging about processes that might fix things that way.

131. But can I plead here above all for being sure that there is not an element of wishful thinking at work. Or, to put it another way, it is essential to stress the need for realism about what is going on. I would emphasise four elements. First, because the "real business" has been dealt with at the product specific level, the negotiating logic as far as the *general* approach is concerned will inevitably be towards the higher end of the spectrum. On that basis, it could conceivably be higher than where I have made my guess. Second, any such process will have to be transparent and inclusive: everybody that has a potential stake will have to have their interests taken care of otherwise we will eventually have a huge problem with "outsiders". And I have not got the sense that there are many Members engaged in this. I find that difficult to reconcile. Third any outcome will simply have to be MFN: it is clear from my consultations that the Membership at large will not accept country specific deals, quite

apart from whether or not they would be WTO consistent in any case. Fourth, the product of what is done in such a way would have to be on the table in matter of weeks on the assumption that we are going to get all this done in the timeframe we all say we are working to. So this must be pretty well advanced by now. If not, it is time to recognize that it will not be in place in time to do the job.

132. Hong Kong clarifies that self-designation is to be *guided* by indicators, and that those indicators are to be *based on* the criteria. If something (in this case "indicators") is a guide, it must be capable of telling you where to go: it has to be able to describe a path. To be a guide worthy of the name it must be intelligible and accessible to the reader. It has to be transparent. Which means, operationally, it has to be objectively and intrinsically intelligible: it is the *indicator itself* that is providing the guidance, so it would fail to do that if there was a need for some kind of supplementary interpretation to be additionally required from elsewhere. Something describing itself as a guidebook would get consigned to the dustbin if, upon opening it, you were told: the writer knows how to get around Geneva but he hasn't got a map to give you -suggest you go and ask a cab driver if you can find one. In this case we are also to have a particular *kind* of guide: it is to be *based* on criteria. If something is "based" on something it has to be grounded in it: it has a relationship of dependency. It doesn't just have a "vague relationship" or "connection" or a "loose association". It has to be capable of exhibiting a discernable rationale. Or taking this together and putting it more prosaically: these "indicators", to be worthy of the name would have to transparently, objectively and intelligibly exhibit their rationale.

133. That leads me to the working conclusion that for something to be an indicator it should, at the very least, have to be open at least to empirical observation or reasonably capable of verification. It is hard for me to avoid the conclusion that, generally, we should have a preference for transparency and predictability. Be that as it may, it would seem to be unavoidably germane in this particular situation. Based on the above, I would suggest that there should at least be a strong presumption that there is a rationale for indicators involving data that can be tested for in a straightforward manner by utilising internationally recognised sources (provided of course the substantive conceptual connection is warranted). Of course, it may well be that "internationally recognised" sources are not available. But the Member concerned does have access to its national data even if this is not "internationally recognised". But this, in principle, should still be something that could be shared and therefore inherently publicly available. Anything that was not capable of such verification or transparency would not be a viable indicator.

134. Then there is treatment. I have to go back to the framework to try to discern what would be – if one was trying to be objective- a reasonable way to go about this. I go back to the text. First, the plain wording is, in my view, significant: "These products "will be eligible for *more flexible treatment*." (italics added). It does not actually say-as it could have said- "these products will be exempt from tariff cuts". Indeed, only four paragraphs later there is such a statement so there can be no doubt that Members knew well enough how to say that in as many words if they wanted to do so. You may recall that they said –in respect of least developed countries: [they] "are not required to undertake reduction commitments". That, however, is not what the framework says in respect of special products. It does not say reduction commitments will not be required. Nor does it even say that reduction commitments will not be required for some products. On the contrary it talks about them receiving "treatment". If something is to be exempt, it is free of any undertaking whatsoever. But these special products are in fact to receive "treatment". To take an interpretation of this which is effectively to say that they are to be taken out of the ambit of having any treatment is flatly inconsistent with the plain language of the framework. So, the word "treatment" makes it clear enough that, in plain English, *something* has to *happen* to these products. So what is that "something" that is going to occur, which is referred to as "treatment"? It is clearly, in the context in which this occurs, the application of the actions specified in paragraph 39; most notably: tariff reduction formula and implementation period. So, that is what the "treatment" of those products would be. If the word treatment is to be given meaning, these categories of action remain applicable to these products –they are not to be removed entirely from them. Rather that treatment is to be "more flexible"- which I

would interpret to mean that the tariff reduction and the implementation period are to be applied with flexibility. This is a decisively different thing from saying these things are NOT to be applied at all.

135. Now, how, I would ask myself, could one reasonably construe what that "flexibility" might more concretely be determined to be? It presumably can only be assessed in relation to what the default position would be. Of course, we have yet to determine what that "default" would be. But for present purposes you already have –for better or worse–my thoughts about where various of those centres of gravity might be. So I would simply try to orient myself in relation to those centres of gravity as a hypothesis.

136. In the event that I was not completely wrong that the centre of gravity should be roughly two thirds cuts for developing countries (including suitable allowance for any disproportionate impacts), how would one characterise the rough numerical parameters of such flexibility for "special" products? To begin with the very concept of "flexibility" suggests an element of variability—that it is not just a rigid and one-size-fits-all concept. At the same time it cannot be so elastic as to be indeterminate. So my rough and ready sense is that you are looking at something that can accommodate a range i.e. having a minimum and a maximum. Conceptually the "maximum" is already there: it is whatever tariff cut would "otherwise" be required if the basic tiered formula was to apply to that item. In any given instance, that depends on what the cut and the band would be. Quite apart from anything else, I do not think it is practicable to try to calibrate different shadow "minima" for each and every band and cut. Such rigidity is, in any case, also hard to reconcile with the concept of flexibility. That being so, my sense is that what is needed is to arrive at a floor which would then give us the outer parameters for tailoring of the flexibility envisaged. What might that floor be?

137. I cannot be precise, but my rough and ready sense is that, no matter where we come out exactly on the tiers and bands, the cuts envisaged would seem to be in ranges from at least the mid-twenties tiering upwards into the thirties and indeterminately at this point beyond (i.e. depending on the precise bands and on the assumption of two-thirds being the basic principle applicable). So I would draw the rough and ready sense that if you are going to have floor that is genuinely flexibly related to these default cuts and still meaningful as treatment you are somewhere in the range of 10-20%.

138. So, as I would read it, that would be the range: you would have the freedom to tailor the actual rate struck downwards from whatever rate cut would otherwise apply under the tiered formula, but you would at the very least have to make a minimum cut. My guess for what it is worth is that that would need to be struck in a zone that seems to me to be somewhere around 10-20%. Members would of course be free to go higher than that (but still less than the tiered cut otherwise applicable) should they choose to do so.

#### E. SPECIAL AGRICULTURAL SAFEGUARD

139. My sense is that, at the very least, there will be a very considerably reduced coverage for the special safeguard mechanism in the event that it is agreed to continue with it.

#### A FINAL THOUGHT ON DEVELOPING COUNTRY MARKET ACCESS

140. I do not doubt that what I have said above underlines how difficult decisions remain. It also reflects my best effort to try to divine a way through all this that meets the framework but that might actually be negotiable. As I say, if it doesn't fly we know that nothing else will fly either. So you will have to come up with something new otherwise we will get no deal –and the same can of course be said of other things.

141. I will venture one observation, though. I am not proposing this. But it is just that it is so late in the day that if we are going to find some last minute rethink is needed it had better be now that we

do it. So if any idea that we ought to do a rethink is to be dismissed let's make sure it is dismissed now and we definitively accept that we try to do this squarely within the terms we have set ourselves.

142. My observation is this. I sometimes have the sense that in the framework we made things absurdly complicated for ourselves and that this is the fundamental reason why we have come to realise we are in such difficulties now. Some Members at that time were driven to want to maintain the "integrity" of the tiered formula as it would apply to developing countries also. But it was a very radical departure from the past, and, although it was in the end agreed, the "quid pro quo" was a corresponding set of provisions reflected in the framework, all of which have the practical effect (and I would say intent as well, but that is neither here nor there) of counterbalancing that seeming zeal to have a tiered formula applicable to developing countries. Interestingly enough the "tiered formula" as it related to developed countries was in fact a consolation prize (if I may be so bold as to say it) for having failed to reach agreement among themselves on a pure Swiss formula. I am rather of the personal view that the drive to insist in the framework on a tiered formula for developing countries actually had more to do with the psychological desire to "at least" get a tiered formula and the perception that this would be less achievable unless it also applied at least in principle to developing countries as well.

143. While the tiered formula appears to have been an article of faith, it is an irony that as a matter of fact among developed countries it is not in fact so decisive as those that were its principal proponents at the time had hoped it would be. By which I mean the spreads are closer, there is much more recognition that sensitives are make or break and more interest than at that time on overall cut. Don't get me wrong. It is there, and it is a given. It will –and has to be- respected as far as developed are concerned.

144. My real point is to ask the question as it relates to *developing* one last time before it is too late. Is it in fact the case that, given where we are now, it is so decisive for developing? Because every time it is, as it were, on the left hand side of the ledger, the inevitable consequence is that there seem to be all sorts of complications inevitably piling up on the right hand side of the ledger. Such that we have got to the point that I don't frankly think many or any Members really concretely know what it is that they are actually expecting to have to do or "give" on the one side or "receive" on the other. As I say, don't get me wrong. The way the framework is written, that is the job we have to do. And, respecting that, I have said above all that I have said. But for one last time, if this is not going to work on any scenario anyone can imagine, is there some other way that actually works for everyone and is basically in keeping with the thrust of what we are meant to achieve on the basis of Doha? After all, combined amber and blue for domestic support is an idea people are exploring and that is not in the framework per se.

145. So here's a radical thought to discard if you choose: Would it in fact not be better to use a different approach entirely: drop the tiered approach, drop the complicated flexibilities, two-third proportionalities, all the specials debate etc. etc. all of which threatens to amount to an ever more complicated and ever-cascading exercise in stalemate negotiation and counterbalancing complications. And just go to something more simple and straightforward and, above all, clear: where everybody knows what they are doing and which, quite frankly, most developing Members could probably reasonably manage given what is going on in the real world. For instance one could cut through all the bands and proportions and just go for a straight overall average cut target for developing countries to meet however they choose, provided they simply make a minimum specified cut (which is of course well below the average target) on each line. It was good enough for developed countries in the Uruguay Round. Wouldn't it be basically good enough for developing in this one? And where, for some developing countries, even this would still have a disproportionate impact, you have a provision to manage that for them. And the formulation that was actually used last time in the Uruguay round doesn't look to me like a bad candidate to actually use this time for developing.

146. As I say, I have to try. All you have to say is no. In which case we go back to what we have been doing up to now. But I just want to be sure that that is in fact what you want to do.

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