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SOUTH CENTRE COMMENTS ON DRAFT MODALITIES FOR AGRICULTURE (JOB 07/128, 17 JULY 2007)

SYNOPSIS

This note contains comments on the Draft Agriculture modalities submitted by the Chairman of the WTO Committee on Agriculture in Special Session. While the text will be discussed, amended and, if agreed, adopted at a later stage, it is a capital document as it will constitute a yardstick against which positions will be assessed.

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INTRODUCTION

1. The Chairman of the Committee on Agriculture in Special Session circulated draft modalities for agriculture on 17-07-07. This text builds upon the two challenge papers that were circulated in May, to which countries were invited to respond and provide alternatives. These papers which were qualified as biased towards developed country interests. Against that background, this text includes new elements related to concerns raised by developing countries. However, the inclusion of these elements does not imply that these concerns have been addressed.

2. This document does not contain the same level of detail in all its sections. In this sense, the sections on export competition and domestic support are more developed than the one on market access, which contains some gaps. This section lacks specific recommendations for decision on issues of interest for developing countries. Areas requiring further work prior to drafting specific modalities include, for instance: Special Products (SPs), Special Safeguard Mechanism (SSM), fullest liberalization of trade in tropical and diversification products, erosion of long-standing preferences, tariff escalation and commodities. For some of these areas, the Chairman seems to suggest negotiating on a product by product basis, in case the general approach does not address the concerns of countries concerned. Issues such as sectoral initiatives, differential export taxes, geographic indications and monitoring and surveillance disciplines are not covered in this draft.

3. In addition to the above mentioned missing elements of modalities, numbers appear in brackets in the sections on formula, reduction of Overall Trade-Distorting Support (OTDS) and Sensitive Products. The ranges proposed by the Chairman for these areas suggest the "exchange rate" between pillars would be as follows:

Domestic Support (Overall Trade Distorting DS)	Market Access	
	Developed countries:	Developing countries:
EU: 23,44 OR 27,57 billion Euros	Maximum tariff reduction (highest tier): 66-73%	Average tariff reduction: 36-40%
US: 11,74 OR 17,14 billion USD (US)	Sensitive products: 4-6% of tariff lines	Sensitive products: 6-8% of tariff lines

4. Given the fact that (a) on certain issues only a number needs to be agreed while in others there is no specific drafting suggestion for modalities and (b) there is an increasing pressure to show results in the negotiations, there could be

a push to obtain decisions in September-October, on the elements of the modalities that are more developed. It is worth noting, in this sense, that some developing countries had opposed this course of action on grounds that they are not able to assess the balance in the final outcome and that, by delaying solutions on negotiating issues of their interest and concern, they lose negotiating leverage.

I. DOMESTIC SUPPORT

5. The first point to note with regards to this pillar is that the implementation period for domestic support commitments has not been included in this text.

A. Overall Trade-Distorting Domestic Support (OTDS)

6. In comparison with the tiered formula proposed in the previous text, the Chairman has increased the percentages of reduction in the three tiers of the formula:

Table 1: Tiered formula for OTDS

Tiered formula		Countries concerned	OTDS after implementation of reduction commitment[1]
OTDS > USD60 billion	75 OR 85 % cut	EU	23.44 OR 27.57 million Euros
USD60 billion ≥ OTDS > USD10 billion	66 OR 73 % cut	US, Japan	11.74 OR 17.14 million USD (US)
OTDS ≤ USD10 billion	50 OR 60 % cut		

7. The Chairman also suggests that developed countries with high relative levels of OTDS (defined as more than 40 per cent of the total value of agricultural production) shall undertake an additional reduction. This provision would be applicable to Japan but not to the US.

8. The proposal contained in this text calls upon developed countries for commitments below the "very low teens" proposed by the G-20[2]. Furthermore, the proposal does not seem to be reducing the level of OTDS below its current level of subsidy in the case of EC (who would be merely "binding" changes derived from its CAP reform) nor the US (as figures for spending in recent years were reported as 10.8 billion USD). In this sense, most developing countries had signaled that without effective reduction of OTDS, the development gains from this round would be eroded.

[1] Based on the document "*Agriculture Negotiations: Agriculture Domestic Support Simulations*". WTO Document JOB(06)/151 dated 22 May 2006
[2] 12 billion USD, in the case of the US

9. In relation with Special and Differential Treatment (S&D) provisions, an exemption from reduction commitments for developing countries with no AMS commitments (as per the decision made in Hong Kong) and for Net Food-Importing Developing countries (NFIDCs) has been included.

B. Amber Box (Aggregate Measure of Support-AMS)

1. Tiered formula

10. The Chairman maintains the numbers he proposed in the challenge paper for the highest tiers of the formula (applicable to the EU-70% and the US-60%). These numbers remain in brackets. In contrast, he has added thresholds to the formula. The thresholds proposed coincide with the ones included in the previous modalities[3] text. However, they are far still apart from the G-20 proposals.

Table 2: Tiered formula for AMS

Final Bound Total AMS	Reduction rate	Applicable to	AMS after implementation of reduction commitment[4]
AMS > USD40 billion	70 %	EU	21.148 Million Euros
USD 40 billion > AMS > USD 15 billion	60%	US	7.640 Million USD
USD 15 billion > AMS	45%	Developed G-10 members	

11. In his previous challenge paper he proposed a range (47-60%) in the lowest tier of the formula (final bound AMS less than or equal to USD15 billion). In this text, he introduced a change, suggesting a specific number (45%). Members classified under this tier would also be expected to make an additional effort. This effort would amount to an "*additional effort*" of one half of the difference between reductions required in the second and third tier.

12. An additional effort is proposed for developed country members with a high relative level of bound AMS commitments. This provision would be applicable to Japan.

13. In relation with S&D provisions, developing countries with AMS commitments will be required to undertake two thirds of the cut undertaken by developed countries in the third tier; they will have a longer implementation period and they shall have continued access to provisions of article 6.2 of the

[3] WTO. Draft Possible Modalities on Agriculture. Document N° TN/AG/W/3, 12 July 2006
[4] Based on the document "*Agriculture Negotiations: Agriculture Domestic Support Simulations*". WTO Document JOB(06)/151 dated 22 May 2006.

Agreement on Agriculture (AA)[5]. In addition, an exemption from reduction commitments is suggested for:

- NFIDCs
- Small income Recently Acceded Members (RAMs) with economies in transition and
- Investment subsidies or input subsidies generally available to agriculture, interest subsidies to reduce the cost of financing as well as grants to cover debt repayment.

2. Product-specific AMS caps

14. On commodity specific caps, the Chairman develops specific drafting language to amend existing article 6.3[6] of the AA. Although the base period supported by the majority of members is 1995-2000, he provides several alternatives aimed at accommodating US concerns, who had expressed its unwillingness or inability to accept it.

15. He also proposes alternative options for particular situations of members that may be specially affected by a particular base period chosen: either because they are effectively denied of an entitlement in case they provide less than the de minimis level for a particular product over the base period identified; or because they provided more than the product specific de minimis for certain products over the years after the base period chosen. These flexibilities are addressed mainly to developed countries.

16. In relation with S&D provisions, the Chairman suggests the possibility of developing countries choosing among options. Whether one option or the other would provide for a larger ceiling will depend on the particular circumstances of each developing country. The options are as follows:

(a) The average applied levels of expenditure during the base period 1995-2000 or 1995-2004; or
(b) Twice the members' product specific de minimis level or
(c) 20 percent of annual bound total AMS in any chosen year.

[5] In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS

[6] A Member shall be considered to be in compliance with its domestic support reduction commitments in any year in which its domestic support in favour of agricultural producers expressed in terms of Current Total AMS does not exceed the corresponding annual or final bound commitment level specified in Part IV of the Member's Schedule.

3. De minimis

17. The Chairman suggests a 50 or 60 percent cut in the de minimis levels. This means reducing both the product-specific and non-product specific de minimis from 5 to 2.5 percent or 2 percent.

18. Developing countries would have to apply two thirds of the reduction of developed countries (which is equivalent to 33 or 39 percent). In relation with S&D provisions, the Chairman suggests flexibility provisions for RAMs, consisting of an allowance of an additional five percentage points from developing countries' base line and a longer implementation period.

19. At earlier stages of the negotiations, decisions were reached concerning exemptions from reduction commitments for:
- Developing countries with no AMS commitments (Hong Kong Ministerial Declaration - 2005)
- Developing countries who use AMS spending largely to support subsistence or resource-poor farmers (July Framework[7] - 2004)

20. The Chairman reflects this decisions in this text and adds a reference to exemptions in the following specific cases:
- Recently acceded, small, low income members with economies in transition[8]
- NFIDCs.

21. With this addition, most developing countries are covered by exemptions to reductions of the de minimis

<u>C. Blue Box</u>

22. Under current WTO disciplines, measures that classify as Blue box (see highlighted cells in table 3) imply a production-limiting component. These measures have mainly been used by the EU).

23. The Chairman proposes to amend these disciplines to:

(a) *Allow direct payments where production-limiting requirements are not present*. This new "blue box" responds to concerns raised by the US. The US is planning to notify under this "new" Blue Box its countercyclical payments for the period 1998-2004.

(b) *Establish a cap on Blue Box spending* (ceiling of 2.5 percent of the total value of agriculture production). It is worth mentioning that, prior to the 2004 Framework Agreement, a 5 percent ceiling for the Blue Box was proposed and that, in October 2005, the US suggested reducing this ceiling to 2.5

[7] WTO. Doha Work Programme: Decision adopted by the General Council on 1 August 2004. WT/L/579 dated 2 August 2004

[8] These countries are not listed in the paper, nor are the criteria or circumstances characterizing such members referred to in the text.

percent. Given the level of the US' countercyclical payments for the period 1998-2004, the 2.5 ceiling is not constraining. In fact, the US could still increase those payments without exceeding this ceiling.

24. In addition, the Chairman suggests that, for members with at least 40 percent of their OTDS placed in the Blue Box during the base period, the reduction commitment will be the same as for the member's final bound AMS and a short implementation period "*may be considered*".

25. The Chairman suggests the following additional criteria for the Blue Box:

Table 3: The "old" and the "new" Blue Box

Blue Box disciplines: The value of the following direct payments shall be excluded from a Member's calculation of its Current Total AMS:		Additional criteria
"Old" blue box (Current article 6.5 of AA)	(a) Direct payments under production-limiting programmes if: (i) such payments are based on fixed and unchanging areas and yields; or (ii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production; or (iii) livestock payments are made on a fixed and unchanging number of head.	A cap for product-specific blue box spending. Thus, the value of support for any product must not exceed the average value of support provided to that product in the period 1995-2000
"New" blue box (proposal for an article 6.5.b.)	(b) Direct payments that do not require production if: (i) such payments are based on fixed and unchanging bases and yields; or (ii) livestock payments made on a fixed and unchanging number of head; and (iii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production.	A limit to the proportionate share of any product (110 or 120 percent) in the overall limit for blue box payments (2.5 percent of the total value of agriculture production)

26. In addition, the Chairman provides for the possibility of increasing Blue Box support beyond limitations permitted under article mentioned above. In this case, the member concerned will be required to offer compensation in the form of a one-for-one irreversible reduction in Amber Box support. In the case of cotton, this compensation entails a reduction in Amber Box of two-to-one.

27. Although Blue Box spending has not been used by developing countries to date, the Chairman suggests S&D provisions (a 5 per cent cap rather than 2.5 per cent) and appear to encourage switch from Amber to Blue Box spending.

D. Green Box

28. The Chairman suggests amending Annex 2 of the AA in order to extend the developmental elements of the Green Box and to control the updating of direct payments to farmers. He included some improvements for programs of interest of developing countries in relation with the previous draft. The suggested amendments include:

- Policies and services related to farmer settlement, land reform, rural development and rural livelihood security on developing countries
- Natural disaster relief (and government-funded insurance payments) for producers in developing countries where production loss is less than 30 percent of a previous average.
- Tight criteria on the updating of base periods on which decoupled income support, structural adjustment assistance, and regional assistance programmes are calculated in developed countries. Softer conditions apply for developing countries.
- While, for developed members, the limit for disaster relief payments and government insurance payment is a loss of more than 30 per cent of average production, that floor does not apply where crops or animals are destroyed to prevent pests and diseases.

29. Although his suggestions seem to comply with the negotiating mandate aimed at ensuring that *programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered*[9] by the future Green Box, agriculture modalities, in its current form, do not deliver on disciplines guaranteeing that the use of the future Green Box, by developed country members, will be non or minimally trade-distorting.

30. In this sense it is worth recalling that, during the negotiations, many developing countries raised concerns in connection with the potential trade-distorting effects of the green box. Such concerns were at the origin of clear negotiating mandates aiming at (a) reviewing and clarifying the Green Box criteria to ensure that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production and (b) improving obligations for monitoring and surveillance for the Green Box[10].

E. Cotton

31. The Chairman has included the formula proposed by Cotton 4 countries (C-4), which calculates a higher reduction for AMS for cotton. The formula is to be applied to the average payments notified from 1995 to 2000. The blue box cap applicable to cotton would be one third of that generated by the methodology generally applicable. Blue and Amber Box reductions would be implemented in a

[9] Paragraph 16 of the Framework Agreement (Doha Work Programme: Decision adopted by the General Council on 1 August 2004. WT/L/579 dated 2 August 2004)
[10] *Idem*

period which is one third of that otherwise applicable. Developing countries with Amber or Blue Box commitments on cotton would make reductions amounting to two thirds of those applicable to developed members and implemented over a longer period.

II. MARKET ACCESS

A. Tiered Formula for Tariff reductions

32. In his previous proposal[11], the Chairman had suggested using the thresholds proposed by G20 for developed countries, for both developed and developing countries. The S&D provisions he suggested included a lower reduction percentage per band (2/3 of cut by developed countries) and a lower overall tariff reduction (2/3 of overall target for developed countries) that, if exceeded, could derive in adjustments of the thresholds. The formula proposed by the Chairman in the present text, is as follows (see table 4)

Table 4: Tiered formula for tariff reduction

Developed countries		**Developing countries-general**		**Small and vulnerable condition**	
Thresholds	Reduction	Thresholds	Reduction	Thresholds	Reduction
> 75%	[66%-73%]	> 150%	[44%-48%]	> 150%	[34%-38%]
75% ≥ X ≥ 50%	[62%-65%]	130% ≥ X ≥ 80%	[41%-43%]	130% ≥ X ≥ 80%	[31%-33%]
50% ≥ X ≥ 20%	[55%-60%]	80% ≥ X ≥ 30%	[37%-40%]	80% ≥ X ≥ 30%	[27%-30%]
20% ≥ X ≥ 0%	[48%-52%]	30% ≥ X ≥ 0%	[32%-35%]	30% ≥ X ≥ 0%	[22%-25%]
No provision for overall average reduction		Maximum average reduction: [36%-40%]		If overall average cut is higher than [24] percent, members would apply lesser reduction, at their discretion	

33. In relation with the formula for developed countries:

- Provisions on maximum caps have not been included. Given the highly skewed nature of their tariff profile, the lack of caps coupled with flexibilities provided in the context of SePs, could have negative implications from the perspective of market access opportunities for exports from developing countries.
- The lack of reference to an overall average reduction impedes assessing tariff reduction commitments of developed countries in light of the "proportionality principle" [12]

[11] Contained in his challenges paper "*Communication from the Chairman of the Committee on Agriculture*", Special Session (Job 2989, dated 30 April)

[12] In the context of current Agriculture negotiations, this principle was set out in the G-20 proposal in the following manner "The formula shall guarantee neutrality in respect of tariff structures and proportionality of tariff reductions based on the principle of less than full reciprocity between developed and developing members so as to ensure a fair and equitable

Table 5 Tiered formula for tariff reduction proposed by the G-20

Developed countries		**Developing countries**	
Bound tariffs (X) within the band	**Will be reduced by linear cut:**	**Bound tariffs (X) within the band**	**Will be reduced by linear cut:**
> 75	75%	> 130	40%
75 ≥ X > 50	65%	130 ≥ X > 80	35 %
50 ≥ X > 20	55%	80 ≥ X > 30	30 %
20 ≥ X > 0	45%	30 ≥ X > 0	25 %
Overall tariff reduction	At least 54% on average	Overall tariff reduction	Maximum 30%, on average

34. In connection with the formula for developing countries, the Chairman included new ideas for modalities, for instance:

- He replaces the thresholds previously proposed by the ones suggested by the G-20 for developing countries. It is worth noting that reduction rates per band proposed by the G-20 are less onerous than the ones currently suggested (2/3 cut of developed countries).
- He suggests a range for the maximum overall average tariff reduction (36-40 percent)

35. He suggests a differentiated treatment, from other developing countries, for "*countries facing an unsustainable burden due to application of tariff reduction formula*" (see third column in table 3 above). He identifies Antigua and Barbuda, Barbados, Belize, Botswana, Cameroon, Congo, Cote d'Ivoire, Dominica, Dominican Republic, Fiji, Gabon, Ghana, Grenada, Guyana, Jamaica, Kenya, Mauritius, Namibia, Nigeria, Papua New Guinea, Saint Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, Swaziland, Trinidad and Tobago and Zimbabwe as countries having a "*small and vulnerable condition*".

36. In the case of the Small Vulnerable Economies, the tiered reduction applicable (see third column in table 3 above) will apply as long as the average reduction does not exceed 24%. If average reduction exceeds 24%, SVEs will be entitled to apply lesser reduction at their discretion.

outcome". In this sense it suggested that overall average reduction of tariffs by developing countries cannot exceed two-thirds of the average reduction undertaken by developed countries. This principle was also reflected in the 2004 Framework Agreement suggesting that proportionality will be achieved by requiring lesser tariff reduction commitments (lesser tariff reduction commitments in each band of tiered formula) or TRQ expansion commitments from developing countries.

37. In addition, he mentions the application of the tiered formula for small and vulnerable members is a priori excluded for countries with ceiling bindings: these countries would only apply an average tariff reduction.

B. Sensitive products (SePs)

38. In this new text, the Chairman insists on the maximum number of tariff lines mentioned before. He reiterates that developed countries may designate 4 to 6 percent of lines as sensitive and that in the event that more than 30 per cent of their tariff lines fall in the top band of the tiered formula, they may nominate 6 to 8 percent.

39. Along the lines of his previous paper, the Chairman maintains the position of having different options for the treatment of SePs. In this sense, developed countries would have the possibility of deviating from the generally applicable reduction rate by a "minimum of one third deviation from the formula and a maximum of two thirds".

40. New elements included in this text include:

- Provisions on SePs for developing countries. They (a) would have the right to designate up to one third more tariff lines than developed countries (5.3 to 8 percent) and (b) "*will have the right to reduce bound duties on products designated as Sensitive by no less than two thirds of the reduction that would otherwise have been required by the tiered formula*".
- Clearer correlation between deviation and TRQ expansion based on domestic consumption. In this sense, he suggests that if the maximum two thirds deviation is used, an increase in access of no less than 4 percent or 6 per cent of domestic consumption of the product concerned should take place through TRQ expansion. If the minimum deviation of one third is applied, the additional access should be 3 percent or 5 percent of domestic consumption.
- Provisions for TRQ expansion for developing countries. Their tariff quotas shall be two thirds of the amount for developed and self-consumption of subsistence production will not be counted as domestic consumption

41. Concerns of developed countries with different tariff structures are addressed in great specificity: (a) there are specific proposals on numbers and treatment of SePs for developed countries and (b) a number of exceptions to TRQ expansion. Given the complexity of the options proposed, an assessment of their impact on market access with proposed flexibility provisions for developed countries becomes difficult. It is worth noting that when the previous text was circulated developing countries expressed concerns over the fact that these exceptions and specific proposals could hinder market access to developed country markets. The same elements of concern prevail in the current text.

42. In his previous challenge paper, the Chairman proposed some elements of decision relating provisions on SePs to provisions on SPs. For instance, he established a link between the number of SPs and the number of SePs. It is worth

mentioning that, in the present text, he mentions a number (similar to the one mentioned before for SPs) for sensitive products whereas, in his previous text, he was silent on SePs provisions for developing countries. This could be interpreted as meaning that the Chairman has a target number in mind and that this maximum number would be available, for developing countries, either for SePs or for SPs.

C. Special and Differential Treatment (S&D)

1. Special Products (SPs)

43. In his previous challenge paper, the Chairman developed his thinking on SPs. He suggested a two-track approach in order to designate SPs: (a) agreeing on a minimum number of tariff lines available and (b) using indicators to determine the SPs that can be designated. In addition, he proposed linking the number of SPs to the number of Sensitive Products and suggested that a maximum of 5-8% of tariff lines could be designated as SPs. He also suggested (c) verifying the process of designation of SPs, (d) using indicators for which data is publicly available only and (e) reducing tariffs on products designated as SPs. Additional flexibilities for recently acceded members and SVEs (ability to designate more SPs) have been suggested.

44. In this new paper, he further develops certain aspects of the indicator-approach that would have to be discussed in September, suggesting that thresholds and parameters within the indicators would have to be negotiated. He notes that if further work after September proves that the indicator path is overly complex, he suggests considering his previous proposal related to the use of the Uruguay Round formula for developing countries, with no additional flexibilities.

45. Taking into account points raised previously by the G-33, the ACP, the LDC and the SVE groups, the following points are worth noting:

- *Self-designation of SPs*. The suggestions made by the Chairman concerning the need to negotiate thresholds and parameters within the indicators could be interpreted as constraining the scope for self-designation, as provided by the Hong Kong mandate. Furthermore such a course of action appears as almost impossible given the fact that developing countries have different productive systems and practices.
- *Use of verifiable national data as the primary source*. The Chairman suggests in his paper that national data should be "*available in a form that is accessible to other members*". This suggestion seems to imply the verifiability of data as pre-condition to designate SPs. As many developing countries may not have all their national statistics uploaded in a website, it might be worth insisting on an interpretation of the phrase "*open to verification* " that guarantees the

process will not become overly burdensome and negate the self-designation mandate mentioned above.

- *Exemption from tariff reduction*. Along the lines expressed in his previous challenges paper, the Chairman does not seem to consider exemption from tariff reduction as a possible treatment for SPs. The need for exemption in some of the lines has been advocated for by many developing countries in view of their development concerns and tariff structures. This need is illustrated in several studies conducted jointly by ICTSD and FAO[13].
- *Exemption from TRQ commitments*. The Chairman is silent on the issue both in his challenge paper and in this document.

2. Special Safeguard Mechanism (SSM)

46. In this area, the Chairman does not include specific modalities language. A positive element of the paper is the clear statement he makes stressing that the Hong Kong Ministerial mandate requires SSM to include "two distinct triggers" thus an import volume and a price trigger working independently.

47. However, he notes that divergences persist on key elements to draft a decision on the design and operationalization of the mechanism in the future. For instance, he outlines the following elements of divergence, to further work on them during the following phase of negotiations:

- *Applicability of SSM only to domestically produced products and substitutes of these products*. The majority of developing countries had advocated for availability of SSM for all products as deciding on specific products and sectors that may be vulnerable to import surges is impossible. In addition, as per his previous paper, he has included a reference to "substitutes" to domestically produced products. The concept of substitutable production is not very clear in a WTO legal sense: the Safeguard Agreement[14] refers to "like or directly competitive products" to define the ambit of application or product scope of safeguard measures. It would be useful to seek clarification from the Chair as to the meaning of the word "substitutable production", in order to understand the potential implications of using this approach for defining the product scope of the SSM.

- *Limits to the capacity of triggering the mechanism*. In his view, triggers should be designed in a manner that it ignores "normal" trade fluctuations and hence, he proposes establishing benchmarks to measure volume and price fluctuations. The Chair however, does not elaborate on the meaning of normal trade and how such trade should eventually be protected from the application of an SSM.

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[13] ICTSD/FAO. Indicators for the Selection of Agricultural Special Products : some empirical evidence. Information Note 1. July 2007
[14] i.e Article XIX of GATT and its Understanding

During the negotiations, suggestions have been made for establishing a minimum level of imports (e.g. defined as the average import volume of a particular product over a period to be determined) upon which no additional SSM duties could be applied. Such provisions would work as minimum market access commitments for developing countries and could seriously undermine the effectiveness of the SSM. If this is indeed the approach suggested by the Chair, developing countries may want to guard him against taking this approach in the modalities. Defining "normal" trade is not a simple issue: what may be considered normal trade flows over a particular period of time could still represent a level of imports which could affect domestic production and cause havoc on the local market. If the reference period to define what constitutes "normal" trade is one of particularly low prices, most likely the resulting import levels would be high.

- *If preferential trade is to be counted in when calculating the trigger, then the remedy must also apply to preferential trade*. The concern had been raised by members that by virtue of regional or bilateral trade agreements, certain trading partners may be excluded from the application of the SSM even if imports from such partner represent a significant proportion of overall imports and may in fact explain the import surge.

- *The mechanism should be not be complicated or burdensome to use*
- *Remedies that exceed Uruguay Round rates should not be applied*, with the exception of LDCs.

48. When the previous challenges paper was circulated, developing countries highlighted that overly prescriptive provisions might render the mechanism ineffective to deal with concerns that motivated developing countries to submit this proposal, namely food security, livelihood security and rural development.

3. Preference erosion

49. This subject area is identified by the Chairman as requiring further work in September. In the case of preference erosion he maintains the position presented in his second-instalment challenge paper, i.e.:
(a) Excludes the possibility for a trade solution for preference erosion on bananas and sugar,
(b) Minimizes the extent of the problem and
(c) Suggests reducing the list of products affected by erosion of long-standing preferences according to criteria such as: the significance of a particular item for the exporting member in a particular market, the magnitude and consequences of the tariff cut, the source of the competition.

50. To guide the discussions in September, he proposes a list of products for the European and US market for which the loss of the margin of preference

would be of more than 10 percentage points, trade value is significant and margin of preference is at least 5%.

51. At this stage, the following elements are worth noting, taking into account earlier discussions on the issue:

- Only maintaining the preference margin where possible and establishing a longer implementation period. Other trade-based solutions (such as designation of sensitive products and commitments related to quotas) seem to be excluded from the Chairman's proposal. No suggestion for this "longer implementation period" is included in this text. It is worth noting that in the draft modalities on NAMA implementation of tariff reduction commitments over a longer time period of additional 2 years was proposed.
- During the negotiations, some developing countries had noted that the importance of certain products may not be reflected in terms of trade value but in terms of their contribution to overall agricultural trade, employment and revenue sources. Hence it is worth noting that approach suggested by the Chairman is not considering these other factors of importance to some developing countries.

4. Small Vulnerable Economies (SVEs)

52. Additional provisions for flexibilities for SVEs have been included in this text. The definition of who is a small vulnerable economy has been clarified in a detailed Annex. The additional flexibilities proposed take the form of (a) a specific tiered formula applicable to small and vulnerable members and (b) a provisions to be able to designate a higher number of SPs than other developing countries. (See above sections N° II.A and II.C.1).

5. Other S&D Issues

53. The Chairman refrained from drafting specific modalities on: tariff escalation, tropical and diversification products and preference erosion because wide divergences persist among members. For some of these areas, the Chairman seems to suggest negotiating on a product by product basis, in case the general approach does not address the concerns of countries concerned. Some developing countries expressed concern over the fact that this course of action delays solutions on negotiating issues of their interest and concern and hence, they lose negotiating leverage.

54. The issue-area "Commodities" is an example of a situation where the Chairman suggests dealing with problems after the general approach has been used and negotiating on a product-by-product basis. In this sense, he suggests the extent to which tariff escalation affecting commodities has been addressed could be measured by (a) the difference between bound duties on the identified

primary and processed products and (b) guaranteeing that it does not exceed a specified number of percentage points at the end of the implementation period.

55. In this negotiating area, the Chairman proposes that, in the event that the adverse effects of tariff escalation are not eliminated (either through the application of the tiered formula or through any mechanism agreed to deal specifically with tariff escalation) commodity-dependent developing countries would be free to identify products of interest to them in order to obtain a solution to tariff escalation through a bilateral process.

56. It is worth mentioning that proponents of the commodities initiative were not only seeking to address the trade-related aspects of commodities problem but also to ensure fair and remunerative prices to commodity producers. He also indicates that joint action might be achieved through the adoption of intergovernmental commodity agreements.

III. EXPORT COMPETITION

1. Export subsidies

57. This text contains elements that were already proposed in the previous draft modalities for instance the elimination of export subsidies by end 2013. A decision was already made in this respect, at the Hong Kong Ministerial Conference. This decision provided for a progressive elimination, with a substantial part being realized by the end of the first half of the implementation period.

58. The text contains square brackets in connection with the way in which the quantity outlay commitments will be eliminated. In this sense, the Chairman suggests two options for language. The first option requires their reduction in equal instalments based on the final Uruguay Round ceilings. The second option suggests a standstill in quantity commitments at the lower of two measures: the quantities actually being exported at the start of the implementation period or the bound final Uruguay Round levels reduced by 20 per cent. It is worth mentioning that nothing in the Framework agreement or the Hong Kong Ministerial Declaration foresees special flexibilities with respect to quantity commitments.

59. In contrast with the previous challenges paper, in this text the Chairman has added S&D provisions such as: (a) a different period for the elimination of export subsidies by developing countries (although the exact date is not mentioned) and (b) continued access to provisions of article 9.4 of the Agriculture Agreement[15] until the end of 2018.

[15] During the implementation period, developing country Members shall not be required to undertake commitments in respect of the following export subsidies (provided that these are not applied in a manner that would circumvent reduction commitments): (1) to reduce the costs of marketing exports of agricultural products (other than widely available export

2. Export credits, export credit guarantees or insurance programmes

60. The Chairman suggests wording for a new article 10.2 of the AA. The suggested disciplines include: a maximum repayment period of 180 days – excepting for seeds and for breeding cattle (12 months maximum and 24 months, respectively); minimum interest rates; premiums to cover non-payment risk; risk sharing; foreign exchange risk; self financing and rescheduling.

61. In comparison with the July 2006 modalities text, most of the brackets related to disciplines in this area have been eliminated. However, few brackets remain in connection with certain figures of the proposed disciplines and with respect of the schedule to phase the maximum repayment term of 180 days

3. Agricultural Export State Trading Enterprises

62. Annex D contains the Chairman's suggestions for disciplines in respect of a new article 10bis of the AA. In this text, the elimination of trade distorting practices is required by 2013. However, the elimination of monopoly powers by 2013 remains in square brackets, as this issue has been a highly controversial one.

63. This text contains the following references to S&D provisions:
- STEs in LDCs will retain the right to use monopoly powers.
- Monopoly powers will be retained (a) in the case of developing countries which use monopoly powers to preserve domestic consumer price stability and to ensure food security or (b) if the share of the enterprise in world exports of the product concerned is less than 5 percent and such that over three consecutive yeas it does not exceed that level.

4. International Food Aid

64. In the course of these negotiations, discussions have evolved towards creating disciplines favoring untied, in cash food aid. The opposition of the US towards such disciplines should be noted.

65. Most of the proposed disciplines for a new article 10.4 are very similar to those included in previous modalities drafts. Provisions included in this text include, for instance, that (a) all food aid needs to be needs-driven, to be fully in grant form and delinked from market-development objectives of donor countries, (b) in kind-in aid should not have an adverse effect on local or regional markets and (c) members should make "best efforts" to move to cash-based food aid.

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promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight and (2)internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments

66. Elements that appear bracketed in this text include: the prohibition of monetization of food aid within the safe box and provisions on monetization outside the safe Box. In addition, elements related to the role of NGOs in declaring an emergency, also appear unclear for decision in this text.

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

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