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## **1 ANNEX 5 OF THE AGREEMENT ON AGRICULTURE**

### **1.1 Text of Annex 5**

#### ***Annex 5***

##### *Special Treatment with Respect to Paragraph 2 of Article 4*

##### *Section A*

1. The provisions of paragraph 2 of Article 4 shall not apply with effect from the entry into force of the WTO Agreement to any primary agricultural product and its worked and/or prepared products ("designated products") in respect of which the following conditions are complied with (hereinafter referred to as "special treatment"):

- (a) imports of the designated products comprised less than 3% of corresponding domestic consumption in the base period 1986-1988 ("the base period");
- (b) no export subsidies have been provided since the beginning of the base period for the designated products;
- (c) effective production-restricting measures are applied to the primary agricultural product;
- (d) such products are designated with the symbol "ST-Annex 5" in Section I-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and
- (e) minimum access opportunities in respect of the designated products correspond, as specified in Section I-B of Part I of the Schedule of the Member concerned, to 4% of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8% of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

2. At the beginning of any year of the implementation period a Member may cease to apply special treatment in respect of the designated products by complying with the provisions of paragraph 6. In such a case, the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4% of corresponding domestic consumption in the base period per year for the remainder of the implementation period. Thereafter, the level of minimum access opportunities resulting from this formula in the final year of the implementation period shall be maintained in the Schedule of the Member concerned.

3. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 1 after the end of the implementation period shall be completed within the time-frame of the implementation period itself as a part of the negotiations set out in Article 20 of this Agreement, taking into account the factors of non-trade concerns.

4. If it is agreed as a result of the negotiation referred to in paragraph 3 that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.

5. Where the special treatment is not to be continued at the end of the implementation period, the Member concerned shall implement the provisions of paragraph 6. In such a case, after the end of the implementation period the minimum access opportunities for the designated products shall be maintained at the level of 8% of corresponding domestic consumption in the base period in the Schedule of the Member concerned.

6. Border measures other than ordinary customs duties maintained in respect of the designated products shall become subject to the provisions of paragraph 2 of Article 4 with effect from the beginning of the year in which the special treatment ceases to apply. Such products shall be subject to ordinary customs duties, which shall be bound in the Schedule of the Member concerned and applied, from the beginning of the year in which special treatment ceases and thereafter, at such rates as would have been applicable had a reduction of at least 15% been implemented over the implementation period in equal annual instalments. These duties shall be established on the basis of tariff equivalents to be calculated in accordance with the guidelines prescribed in the attachment hereto.

#### *Section B*

7. The provisions of paragraph 2 of Article 4 shall also not apply with effect from the entry into force of the WTO Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d), as they apply to the products concerned, are complied with:

- (a) minimum access opportunities in respect of the products concerned, as specified in Section I-B of Part I of the Schedule of the developing country Member concerned, correspond to 1% of base period domestic consumption of the products concerned from the beginning of the first year of the implementation period and are increased in equal annual instalments to 2% of corresponding domestic consumption in the base period at the beginning of the fifth year of the implementation period. From the beginning of the sixth year of the implementation period, minimum access opportunities in respect of the products concerned correspond to 2% of corresponding domestic consumption in the base period and are increased in equal annual instalments to 4% of corresponding domestic consumption in the base period until the beginning of the 10th year. Thereafter, the level of minimum access opportunities resulting from this formula in the 10th year shall be maintained in the Schedule of the developing country Member concerned;
- (b) appropriate market access opportunities have been provided for in other products under this Agreement.

8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period shall be initiated and completed within the time-frame of the 10th year itself following the beginning of the implementation period.

9. If it is agreed as a result of the negotiation referred to in paragraph 8 that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.

10. In the event that special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be

bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.

*Attachment to Annex 5*

*Guidelines for the Calculation of Tariff Equivalents for the Specific Purpose*

*Specified in Paragraphs 6 and 10 of this Annex*

1. The calculation of the tariff equivalents, whether expressed as ad valorem or specific rates, shall be made using the actual difference between internal and external prices in a transparent manner. Data used shall be for the years 1986 to 1988. Tariff equivalents:

- (a) shall primarily be established at the four-digit level of the HS;
- (b) shall be established at the six-digit or a more detailed level of the HS wherever appropriate;
- (c) shall generally be established for worked and/or prepared products by multiplying the specific tariff equivalent(s) for the primary agricultural product(s) by the proportion(s) in value terms or in physical terms as appropriate of the primary agricultural product(s) in the worked and/or prepared products, and take account, where necessary, of any additional elements currently providing protection to industry.

2. External prices shall be, in general, actual average c.i.f. unit values for the importing country. Where average c.i.f. unit values are not available or appropriate, external prices shall be either:

- (a) appropriate average c.i.f. unit values of a near country; or
- (b) estimated from average f.o.b. unit values of (an) appropriate major exporter(s) adjusted by adding an estimate of insurance, freight and other relevant costs to the importing country.

3. The external prices shall generally be converted to domestic currencies using the annual average market exchange rate for the same period as the price data.

4. The internal price shall generally be a representative wholesale price ruling in the domestic market or an estimate of that price where adequate data is not available.

5. The initial tariff equivalents may be adjusted, where necessary, to take account of differences in quality or variety using an appropriate coefficient.

6. Where a tariff equivalent resulting from these guidelines is negative or lower than the current bound rate, the initial tariff equivalent may be established at the current bound rate or on the basis of national offers for that product.

7. Where an adjustment is made to the level of a tariff equivalent which would have resulted from the above guidelines, the Member concerned shall afford, on request, full opportunities for consultation with a view to negotiating appropriate solutions.

## **1.2 Exemptions from Article 4.2 by virtue of Annex 5**

1. The Uruguay Round Schedule XXXVIII of Japan applied special treatment in accordance with Section A of Annex 5, with respect to certain rice, and certain food products worked or prepared from rice. On 21 December 1998, Japan communicated a draft of modifications to Schedule XXXVIII

(in accordance with the GATT 1947 Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions<sup>1</sup>) so as to cease applying special treatment, with the proposed tariff equivalents calculated in accordance with the guidelines in the Attachment to Annex 5.<sup>2</sup> This draft was approved on 7 November 2000.<sup>3</sup>

2. The Uruguay Round Schedule XLII of Israel applied special treatment in accordance with Section A of Annex 5, with respect to sheep meat and certain dairy products. On 13 March 2001, Israel communicated a draft of modifications to Schedule XLII so as to cease applying special treatment as of 1 January 2001, with the proposed tariff equivalents calculated in accordance with the guidelines in the Attachment to Annex 5.<sup>4</sup> This draft was approved, effective 11 March 2013.<sup>5</sup>

3. The Uruguay Round Schedule LX of Korea applied special treatment in accordance with Section B of Annex 5, with respect to certain rice and certain food products worked or prepared from rice. On 20 January 2004, Korea notified that it wished to enter into negotiations on the question of whether there could be a continuation of the special treatment set out in paragraph 7 of Annex 5.<sup>6</sup> On 30 December 2004, Korea submitted a draft containing modifications of Schedule LX, in accordance with the Decision of 26 March 1980, with a view to extending special treatment of the designated products for an additional 10 years until 2014.<sup>7</sup> This draft was approved on 7 April 2005.<sup>8</sup> The multilateral review provided for in the modifications was conducted in 2009 by the Committee on Agriculture.<sup>9</sup> On 30 September 2014, Korea communicated a draft containing modifications to Schedule LX with a view to terminating the application of special treatment on the designated products and subjecting them to ordinary customs duties as of 1 January 2015.<sup>10</sup> The certification process was completed in January 2020.<sup>11</sup> The modified schedule became effective as of 5 January 2021 upon Korea's completion of its internal procedures.<sup>12</sup>

4. The Uruguay Round Schedule LXXV of the Philippines applied special treatment in accordance with Section B of Annex 5, with respect to certain rice. On 20 January 2004, the Philippines notified that it wished to enter into negotiations on continuation of the special treatment set out in paragraph 7 of Annex 5.<sup>13</sup> The Philippines communicated a draft containing modifications of Schedule LXXV on 8 July 2005 and 27 September 2006, in accordance with the Decision of 26 March 1980, with a view to extending special treatment for seven years, until 30 June 2012.<sup>14</sup> The draft was approved, effective 27 December 2006.<sup>15</sup> The Philippines later obtained a waiver from the General Council that required the Philippines to subject rice to ordinary customs duties no later than 30 June 2017 in accordance with the terms and conditions contained in the waiver.<sup>16</sup> On 17 October 2019, the Philippines communicated a draft containing modifications to Schedule LXXV with a view to terminating and ceasing the application of special treatment on rice pursuant to paragraph 10 of Annex 5 of the Agreement on Agriculture, and the expiry of the waiver.<sup>17</sup> The certification process has been ongoing in view of the reservations.

5. The Accession Schedule CLIII of Chinese Taipei applied special treatment in accordance with Section A of Annex 5, with respect to certain rice and certain products worked or prepared from rice. On 30 September 2002, Chinese Taipei communicated a draft of modifications to Schedule CLIII so

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<sup>1</sup> BISD 27S/25.

<sup>2</sup> [G/MA/TAR/RS/57](#).

<sup>3</sup> [WT/Let/362](#).

<sup>4</sup> [G/MA/TAR/RS/78](#).

<sup>5</sup> [WT/Let/882](#).

<sup>6</sup> [G/L/668](#).

<sup>7</sup> [G/MA/TAR/RS/98](#).

<sup>8</sup> [WT/Let/492](#).

<sup>9</sup> [G/AG/W/71](#); [G/AG/R/56](#).

<sup>10</sup> [G/MA/TAR/RS/396](#).

<sup>11</sup> [WT/Let/1461](#).

<sup>12</sup> [WT/Let/1506](#).

<sup>13</sup> [G/L/677](#).

<sup>14</sup> [G/MA/TAR/RS/99](#) and [Rev.1](#).

<sup>15</sup> [WT/Let/562](#).

<sup>16</sup> [WT/L/932](#).

<sup>17</sup> [G/MA/TAR/RS/559](#).

as to cease applying special treatment, with an explanation of calculation of tariff equivalents.<sup>18</sup> The draft was approved, effective 22 June 2007.<sup>19</sup>

### **1.3 Price gap methodology for calculating tariff equivalents provided for in the Attachment to Annex 5**

6. In connection with a waiver decision of 14 November 2001 for the EC-ACP Partnership Agreement, the European Communities agreed to reform its banana regime so as to replace its then WTO-inconsistent measures with a tariff-only regime for banana imports. In 2005, the European Communities proposed a plan to implement a tariff-only regime, and pursuant to procedures provided in the waiver decision, eight banana-exporting countries requested arbitration regarding whether the envisaged rebinding of the EC tariff would result in at least maintaining total market access for MFN banana suppliers, taking into account all EC WTO market-access commitments relating to bananas. The Arbitrator found:

"The European Communities has used the price gap methodology that was used in the Uruguay Round agriculture negotiations for the conversion of non-tariff measures to tariff equivalents. Using the correct prices, this methodology would produce an estimate of the tariff equivalent that, all other things being equal, would confer the same level of protection to domestic producers as the border measures being replaced by the tariff equivalent. Correctly applied, the price gap methodology would be broadly neutral in its effects on domestic producers and on total imports. Thus the price gap methodology would accurately reflect the level of protection accorded to domestic or EC growers from foreign competitors. However, the standard price gap formula does not take into account how the competitive relationship may change between imports from different sources, i.e., MFN and preferential banana suppliers."<sup>20</sup>

7. The European Communities later made a revised proposal, also calculated using the price gap methodology. In a second arbitration concerning this revised proposal, the Arbitrator again considered that "the price gap guidelines in the Attachment to Annex 5 of the *Agreement on Agriculture* provide guidance as to how such a price gap calculation should be performed." The Arbitrator considered whether the data that the European Communities used in calculating the internal and external prices for bananas were consistent with the terms of in paragraph 2 of the Attachment.<sup>21</sup> The arbitrator also expressed the view that the price gap calculations should be based on the most recent representative reference period because this "minimizes the need for ad hoc adjustments to be made to the data and corresponds as closely as possible to the trade regime as applied".<sup>22</sup>

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<sup>18</sup> [G/MA/TAR/RS/88](#) and [Corr.1-2](#).

<sup>19</sup> [WT/Let/578](#).

<sup>20</sup> [WT/L/616](#), para. 69.

<sup>21</sup> [WT/L/625](#), paras. 81 and 106.

<sup>22</sup> [WT/L/616](#), para. 83.