

WORKING DOCUMENT No. 10

SENSITIVE PRODUCTS

Designation

1. Each developed country Member shall have the right to designate up to [4] [6] per cent of [dutiable] tariff lines as "Sensitive Products". Where such Members have more than 30 per cent of their tariff lines in the top band, there is an option to have the number of Sensitive Products increased to [6][8] per cent, subject also to the conditions outlined in paragraph 6 below. Where application of this methodology would impose a disproportionate constraint in absolute number of tariff lines because tariff concessions are scheduled at the 6-digit level, the Member concerned may also increase its entitlement to [6][8] per cent.
2. Developing country Members shall have the right to designate up to one-third more of tariff lines as "Sensitive Products".

Treatment - tariff cut

3. Developed country Members may deviate from the otherwise applicable tiered reduction in final bound tariffs on products designated as Sensitive. This deviation may be at a minimum of one third and a maximum of two thirds of the reduction that would otherwise have been required by the tiered formula. A Member may also make a reduction of one half of the otherwise applicable reduction.
4. Developing country Members shall have the right to deviate by a minimum of one third and a maximum of two thirds of the reduction that would otherwise have been required by the tiered formula applicable to developing countries. They may also make a reduction of one half of the otherwise applicable reduction.

Tariff quota expansion

5. Tariff quotas arrived at through the use of the Sensitive Products provisions pursuant to paragraphs 1 and 2 above and 6 to 9 below shall, for developed country Members, result in new access opportunities equivalent to no less than [4][6] per cent of domestic consumption expressed in terms of physical units where the maximum deviation of two thirds is used. Where the minimum deviation of one third is used, the new access opportunities shall be no less than [3] [5] per cent of domestic consumption. Where one half deviation is used, the new access opportunities shall be no less than [3.5] [5.5] per cent of domestic consumption.¹
6. Where a Member is entitled to, and chooses to exercise its entitlement to have a higher number of Sensitive Products pursuant to paragraphs 1 and 2 above, the relevant amounts specified in paragraph 5 will be maintained for all products, as a minimum, but the Member will have an obligation to ensure that a higher overall average of [4.5] [6.5] per cent of domestic consumption is also achieved. In addition, if after application of its tariff reduction commitments a Member still wishes to retain more than 5 per cent of its [dutiable] tariff lines in excess of 100 per cent *ad valorem*, it shall meet this additional latter requirement increased by a further [] per cent.
7. Where the existing bound tariff quota volume already represents 10 per cent or more of domestic consumption, and the minimum or median deviation is used, the expansion in the tariff quota volume under paragraph 5 above need not be more than [2.5][3.5] per cent of domestic consumption. Where the existing bound tariff quota volume represents 30 per cent or more of

¹ See attached Annex regarding the calculation of these tariff quota expansion commitments.

domestic consumption, the expansion need not be more than [2] [3] per cent of domestic consumption.

8. For developing country Members, the tariff quota expansion shall be two thirds of the amount for developed country Members. For developing country Members, domestic consumption shall not include self-consumption of subsistence production.

9. Expansion of the tariff quota for a Sensitive Product shall be on a most-favoured-nation basis only.

ANNEX

Basis for the calculation of tariff quota expansion

Either:

1. Where, for any product, a Member has a tariff quota bound in its Schedule and wishes to designate any tariff line within that product coverage as Sensitive, the defined percentage of tariff quota access to be provided shall be calculated in terms of the percentage of domestic consumption of the entire product, irrespective of whether, for any number of tariff lines within that product coverage, the Member concerned has taken the full (i.e. "non-Sensitive") tariff cut.

2. Where the domestic consumption data for the product in question is available from recognized international sources such as FAO or OECD, it shall be used. If it is not so available, existing national data shall be used. In the calculation of domestic consumption at that product level, all consumption must be included in the calculation, whether for direct human consumption, industrial use, animal feed, etc. This data must be provided in a transparent manner using a commonly-agreed supporting data template. Where this data does not currently exist at a national level, it shall be arrived at through a balance sheet approach (i.e. imports + production – exports +/- stocks). Calculations shall be provided in a transparent manner using a commonly-agreed supporting data template.²

Or:

3. Where, for any product, a Member wishes to designate only a certain number of tariff lines within that product as Sensitive, it is free to do so (provided the total number of tariff lines remains within the defined numerical limit on tariff lines that may be declared Sensitive). Where verifiable domestic consumption data exists for those tariff lines, the amount of the tariff quota access to be provided for them shall be the defined percentage of that domestic consumption figure for those tariff lines. Where verifiable domestic consumption data does not exist for those tariff lines at the time of adoption of these Modalities, the following four-step method of calculation shall apply:

4. Step 1: 6-digit level: Where domestic consumption data exists aligned to the 6-digit tariff level, it shall be used. The supporting data shall be supplied and verified in the commonly-agreed supporting data template. Where that data does not exist already at the 6-digit level, a proxy shall be used as follows. The volume of world trade for a given 6-digit tariff line shall be expressed as a percentage of total world trade for the whole product category within which that 6-digit tariff line exists. That percentage is applied to the particular Member's total domestic consumption of that product category to give the domestic consumption figure at the 6-digit level.

5. Where this product consumption data is available from recognized international sources such as FAO or OECD, it shall be used. If it is not so available, existing national data shall be used. In the calculation of domestic consumption at that product category level, all domestic consumption must be included in the calculation, whether for direct human consumption, industrial use, animal feed, etc. This data must be provided in a transparent manner in a commonly-agreed supporting data template. Where this data does not currently exist at a national level, it shall be arrived at through a balance

² There must be an agreed approach for product coverage for purposes of domestic consumption as regards the role of more highly processed products. Either there shall be a multilaterally agreed list of which 6 digit basic and more highly processed tariff lines trade will count (and how) for any given product so that an agreed basis for balanced calculation shall be found, or more highly processed products imports shall be factored out of the calculations.

sheet approach (i.e. imports + production - exports+/- stocks). Calculations shall also be provided in a transparent manner using a commonly-agreed supporting data template.³

6. Step 2: 8-digit level: Where domestic consumption exists aligned to the 8-digit tariff level, it shall be used. The supporting data shall be supplied and verified in a commonly-agreed template. Where that data does not exist already aligned to the 8-digit level, a proxy shall be used. At the national level, the share of imports for any 8-digit tariff line within a 6-digit heading shall then be applied to the estimate of (or actual, if available) 6-digit consumption figure determined in Step 1 above to derive a proxy for domestic consumption at the 8-digit level.

7. Step 3: base TQ calculation: The tariff quota expansion is determined by applying the defined percentage expansion to the 8-digit level domestic consumption figure arrived at under Step 2 above.

8. Step 4: adjustment to base TQ calculation: The application of this proxy approach can have the effect of further and artificially accentuating low trade allocation to tariff lines which have been low traded precisely because they have been subject to relatively higher tariff restraint within the product category concerned. In order to offset this disproportionate effect, there shall be a safety-net provision whereby, as an absolute minimum, [for each and every 8-digit tariff line there shall be a floor minimum access of at least [1] [3] per cent of domestic consumption of the total product] [and] [a proportionality principle shall apply whereby the tariff quota expansion amount shall be calculated as the percentage of the number of 8-digit tariff lines within any given product category declared as Sensitive applied to the domestic consumption figure for the total product] [,with the greater of the two applicable].

9. Where there are separate tariff lines for in-quota and out-of-quota trade, they shall be combined and treated as one tariff line under this approach.

10. Imports for re-export (including where the obligation to re-export is in a processed form) shall not be counted as "imports" under that tariff line under this approach.

11. Under whichever of these approaches is selected:

- (a) The calculations shall be made available to all Members so that, at the time of the adoption of these Modalities, Members will be in a position to know precisely what the actual volume of tariff quota expansion shall be at a tariff line level, should a product be subsequently declared as Sensitive.
- (b) Existing scheduled tariff lines shall be the basis for all calculations. There shall be no sub-categorization of tariff lines beyond existing scheduled commitments.
- (c) The base period shall be the most recent period for which data is available, i.e. 2003-05 unless this would be, for some particular product, a manifestly unrepresentative period due to exceptional circumstances.
- (d) For any given product category, [a single tariff quota with a single in-quota tariff shall be scheduled, irrespective of how many tariff lines are designated as Sensitive] [a maximum of [two] tariff quotas shall be scheduled for any given product category within which there are Sensitive Products, but only where, for the distinct tariff lines concerned, there is a differential margin of more than [x] per cent in the import unit values of the tariff lines concerned. All the tariff lines below that threshold would go into the first tariff quota, and all the tariff lines above that threshold would go into the second tariff quota].

³ *Idem.*