

Negotiating Group on Market Access

Chairman's Introduction to the Draft NAMA Modalities

1. As requested by the Members, I have prepared the attached draft modalities in respect of Non-agricultural Market Access (NAMA), for their consideration. In preparing these draft modalities, I have been guided by:

- the mandate for the NAMA negotiations as articulated in the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), Annex B of the Decision Adopted by the General Council on 1 August 2004 (the "NAMA Framework", WT/L/579) and the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC);
- the consensus among Members, where such consensus has been clearly expressed in the Negotiating Group process;
- the views of Members, presented in formal proposals and statements, in informal written submissions, and in oral interventions through hundreds of hours of Negotiating Group meetings, plurilateral and bilateral consultations on issues on which an explicit consensus has not been reached ; and
- my own judgement - not as a substitute for the judgement of Members but to prompt a real negotiation among them.

2. To better situate my draft modalities and the final phase of negotiations, I would offer the following general observations, which I hope will guide Members.

3. First, if I have been invited to propose the modalities it is because Members have been unable to bridge their positions themselves. The first corollary of this statement should be obvious to all Members: you will have to change your positions to reach an agreement. As a further logical consequence, however, it is almost certain you will be disappointed with my proposed modalities since, by definition, they cannot fully reflect any Member's position but rather a compromise between their positions. I have tried to build on the ideas of Members and to balance, as best I could, competing interests. At the same time, I have tried to fulfill the mandate you have given me - to move the negotiations forward by proposing specific outcomes, not rehearsing everyone's position, and challenging all to compromise.

4. Second, my proposed modalities rest on a principle that is almost unanimously held in the Negotiating Group - the principle that all must contribute. There are important differences among Members about how this principle should apply in specific circumstances and there is an important caveat: that Members should be asked to contribute at their individual level of capacity to do so. However, Members agree that the proposed modalities must invite a real contribution from all and I have not shied from proposing real contributions.

5. Third, the mandate directs us to give special attention to the needs of developing countries. This is intended to be given effect in the prescribed architecture of the modalities, including: different coefficients in the formula for developed and developing countries; exemptions or reduced reductions for some sensitive tariff lines for developing countries subject to the formula; differentiated contributions from small, vulnerable economies, developing countries with low levels of tariff binding coverage and Least Developed Countries; and consideration of the effect of tariff reductions on preference receiving countries. My proposed modalities respect this mandate.

6. As part of this broader development mandate, “less than full reciprocity in reduction commitments” is required. However, it is difficult for the Chairman to assess with confidence whether less than full reciprocity has been achieved, since the positions of the Members are very polarized and there has never been an agreed definition of reciprocity.

7. In prior rounds of negotiation, efforts to agree a definition have been unsuccessful, because Members have insisted on using their own yardstick to measure reciprocity, typically on the basis of the estimated trade flows for their specific exports in markets of principal interest. In the present Round, many developing Members have argued that reciprocity can only be interpreted as a requirement for developing countries that apply the formula to reduce their bound tariffs less than developed countries, measured in percentage terms. Other Members have argued that the mandate for less than full reciprocity describes the modalities as a whole (including all the flexibilities and the outcomes for all developing Members) and that some consideration must be given to the value of reductions in dutiable tariff lines, applied tariffs and tariff peaks.

8. This is a difficult issue to resolve, but there are extreme arguments on both sides that can be set aside. On the one side, reductions in bound tariffs that have no effect on current applied rates are portrayed as having no value, an argument at odds with the frequent calls by exporters for greater certainty and assurance against future tariff increases. Many developing countries have autonomously reduced their tariffs since the Uruguay Round, thereby increasing the difference between their bound and applied tariffs. Locking in that liberalization is both a concession and a contribution to the present Round. On the other side of the debate, the logic of the mandate is sometimes reduced to the absurd by the argument that this Round was only intended to provide market access for developing countries. These positions had their rhetorical uses in the “debating club” phase of the Negotiating Group process, but, as we move towards real negotiations, most Members have signalled a willingness to adopt a “reasonable” stance and to admit the need for balance between the political and commercial interests of all Members ... but without abandoning the unambiguous commitment to a development outcome in the Round. In this context and taking all elements into consideration, I am confident that my proposed modalities satisfy the requirement for less than full reciprocity in reduction commitments.

9. Fourth, paragraph 24 of the Hong Kong Declaration specifically requires a comparably high level of ambition in market access in agriculture and NAMA and, in a more general sense, a balance between ambition in all elements of the negotiations. However, just as in the case of assessing reciprocity, Members have not agreed a common methodology for measuring that balance. On the contrary, Members have insisted that the final assessment of balance must be their own, based on their individual interests, and they have been clear that I cannot and should not presume to decide this balance for them.

10. Still, some consideration must be given to the balance of ambition in these proposed modalities and I have attempted to do so in very broad terms. That is, I have proposed a range of ambition in market access in NAMA that I believe could be consistent with the outcome of the agriculture negotiations which remain a moving target. My judgement is informed by the input I have received from Members. Of course, some Members will disagree and will judge the offer on the agriculture side insufficient. Should this be the case, allow me to recommend that Members focus their efforts on improving ambition elsewhere, rather than reducing it, for all, in NAMA.

11. Fifth, it seems reasonable to me that, in an organization of 150 Members at different levels of development, with diverse commercial interests and highly varied NAMA tariff schedules, it is difficult to articulate general rules (modalities) appropriate to every Member’s specific circumstances. The differentiated treatment of groups of Members under the agreed mandate is intended to address this issue and certainly helps resolve the problem in large measure. For some individual Members, however, there may remain a compelling case for further adapting the modalities based on a disproportionate impact under the general rule. I would strongly recommend to Ministers that they listen carefully to specific arguments and address them through appropriate and specific measures, rather than by adjusting the general rules in the direction of the lowest common denominator. The latter course might deliver a result that is comfortable for all, but not worth having.

12. Sixth, I would recommend to Ministers that, in assessing these proposed modalities, they adopt the first of Stephen Covey's *Seven Habits of Highly Effective People* - to start with the end in mind. After the modalities I have proposed have been applied, developed countries will have bound tariffs below 3% on average, and tariffs peaks below 10% even on their most sensitive products. The two largest developed Members will have more than 90 percent of their duties below 5 percent and less than 2 percent of duties between 7 and 8.5 percent - their new tariffs peaks. In the developing countries applying the formula, bound tariffs will be below 12 percent on average, and only a handful will have averages above 15 percent. In these same countries, 80 to 90 percent of bound duties will be lower than 15 percent, dramatically reducing the "overhang" in their tariff schedules. Relatively weaker developing economies will have higher average tariffs and greater flexibility in how they structure their tariff schedules, but will nevertheless contribute to the market access outcome, significantly reducing their tariff binding overhang and achieving very high levels of tariff binding coverage.

13. Finally, I would observe that, in much of the rhetoric of Members, the negotiations have been portrayed as simply a confrontation between the interests of developed and developing countries. This rhetoric does not reflect the reality. In respect of every modality in the NAMA negotiations, developing countries' interests and positions are diverse and they are as often opposed as are the positions of developed and developing economies. Developed Member interests are also different, so much so that it would seem quite odd indeed if a Member were to take any position on behalf of "the developed countries". In my consultations with Members, as many developing countries have argued the need for greater access to developing country markets as have developed countries. Whether these negotiations succeed or fail, it is important that they be understood for what they are - not a struggle between rich and poor but a search for balance between the many competing interests of Members. This task is not made easier by the fact that the tariff schedules of Members are varied and do not always correlate well to their economic circumstances or level of development ... except when stated as collective averages and, as one Member famously put it: "I don't export averages."

14. Having made these general points, I would like to turn to my specific proposals and offer some comments.

The Formula

15. There is an almost unanimous view that a simple Swiss formula with two coefficients should be adopted. Recent proposals to supplement or replace the Swiss formula with a linear cut or average cut in order to facilitate convergence on the formula were greeted with considerable concern by most Members - developed and developing - who view the Swiss formula as the principal achievement of the NAMA mandate. Where additional flexibility is judged necessary by Ministers to address specific concerns, the clear majority of Members would prefer them to use the flexibilities already provided in the mandate - that is, to balance the level of ambition in the formula with the exemptions and/or trade volume constraints in paragraph 7 (Flexibilities for Developing Members Subject to the Formula).

16. As regards the coefficients in the formula, the extreme positions propose a difference of 5 and 25 points between developed and developing countries. Based on my consultations with Members, neither of these positions will find consensus. Between the two extreme positions, there is a large group of Members that seek or can accept an outcome in the ranges I have proposed. In respect of both coefficients, the proposed range is not in the mathematical middle between the extreme positions: it is the middle ground as Members have defined it in my consultations.

Elements Regarding the Formula

Product Coverage:

17. I have proposed a list of NAMA products in the HS2002 nomenclature to which all NAMA modalities will apply. My proposal is for an agreed list, which records, without prejudice to the rights of other Members, a number of longstanding deviations from the list by specific Members. The majority of Members have indicated their preference for an agreed list with no deviations. However, as a result of the sensitivity of the classification of products for two Members, it has been impossible to reach consensus. As a result, I have proposed a second-best approach: an outcome that achieves an agreed list and does not alter the rights of Members.

Mark-up for Unbound Tariffs:

18. Considering the harmonizing effect of the Swiss formula, the majority of Members have expressed flexibility on the issue of the mark-up for unbound tariffs. The remaining sensitivities are the effect on low unbound tariffs, on the one hand, and the impact on line-by-line outcomes, on the other. To balance these concerns, I believe a mark-up of 20 points would be appropriate and, on the basis of my consultations, I believe this could achieve consensus among Members.

Implementation Period:

19. I have proposed implementation periods in the middle of the ranges proposed by Members, with equal annual tariff reductions (no back-loading) and twice as long for developing Members as for developed. This is consistent with the unanimous advice I have received from the Members, including their gentle exhortations to “keep it simple, stupid”.

20. I concur with the view of many Members that the implementation periods are closely linked to the level of ambition in the formula and that they should be adjusted to reflect more or less ambitious tariff reductions. I would note, however, that the implementation period is also linked to the issue of preference erosion and recently acceded Members, for which extended implementation periods are proposed. The majority of Members have argued that such extended implementation periods should not unduly delay their access to the benefits of the Round and this argues for limiting the overall implementation period.

Ad Valorem Equivalents:

21. There has been consensus on this issue for some time. However, I would note that the issue extends beyond the application of the formula and that I have included provisions related to the conversion to ad valorem equivalents in all modalities under which tariffs will be bound.

Flexibilities for Developing Members Subject to the Formula

22. The majority of Members have indicated that they can accept these flexibilities as structured and at the levels proposed in the NAMA Framework. That is what I have proposed, with one addition and an important caveat.

23. There is reasonable support for the proposal by Mexico that Members be permitted to elect not to exclude tariff lines from the full application of the formula in exchange for a higher coefficient, or lower

reduction, on all tariffs. I have, therefore, proposed this additional flexibility, while being careful not to overcompensate these Members.

24. I would note that other Members have also proposed expanded flexibilities in specific circumstances. In particular, South Africa has proposed that consideration should be given to the impact of the application of the formula on the Southern African Customs Union, which took deeper tariff reductions than other developing Members in the Uruguay Round. As well, they argue that the impact of the formula tariff reduction on South Africa would have a negative effect on other members of the customs union, which comprises Members at significantly different levels of development. Some support was expressed by other Members, but the proposal was not yet fully articulated and the response from other Members was preliminary. I am, therefore, unable to conclude on this question without further consultation. It is my view, however, that this second argument presents a dilemma: an exception based on regional tariff arrangements would establish a very difficult precedent in multilateral trade negotiations. For this reason, I would counsel Members to consider the case for any exception for South Africa on the basis of disproportionate impact of the modalities.

25. Finally, transparency in the use of these flexibilities is a source of continuing concern to some Members and has resulted in renewed calls for an explicit understanding on the last sentence of the NAMA Framework, which directs that the flexibilities not be used to exclude entire HS chapters. No specific proposal has been made in this connection, but the continuing concern clearly signals that increased bilateral transparency will be required to bring the negotiations to closure.

Flexibilities for Developing Members With Low Binding Coverage

26. There is a consensus on the benchmark for the application of these flexibilities, that is less than 35 percent binding coverage. There is also wide acceptance of the target rate at which the tariffs of these developing Members should be set, that is 28.5 percent, based on a calculation of the average tariff of developing Members (excluding least developed countries) after full implementation of current concessions. The outstanding issue was the number of tariff lines that should be bound, between the 100 percent proposed but not agreed in the NAMA Framework and the 70 percent proposed by the Members with low binding coverage.

27. In my consultations on this question, the majority of Members have argued for a high level of tariff binding. They note that binding is the principal contribution of these Members to the Round, since the proposed average tariff will make little contribution to the market access outcome. At the same time, Members have expressed flexibility on the level of tariff binding, often noting the flexibility offered other developing Members to exclude tariff lines from the full formula reduction.

28. I have proposed that 90 percent of tariff lines be bound at an average tariff of 28.5 percent. This proposal offers very considerable flexibility to Members with low binding coverage, allowing them the freedom to structure their tariff schedules as best suits their development needs. It will also fully protect their tariff revenues and will have no negative effect on the operation of customs unions. At the same time, this will contribute a high level of certainty for exporters and a solid basis for future tariff reduction negotiations.

29. As regards the implementation of this modality, I have proposed that the new bindings required to reach the total of 90 percent of tariff lines be made immediately upon the entry into force of the modalities, at any tariffs rates deemed appropriate by the Member subject to this modality. These Members would then be given the standard implementation period to achieve the average tariff of 28.5 percent.

Sectoral Negotiations

30. I do not expect sectoral negotiations to be completed by the time the modalities are established, so I have provided only for a post-modalities process to complete the negotiations. The timing I have proposed is, of course, indicative and could be finalized only when the modalities are agreed. The roadmap is, nevertheless, intended to commit Members to a transparent process to sufficient progress in the sectoral negotiations to integrate the results, on a conditional basis, into draft schedules and, on an unconditional basis, into final schedules.

31. Sectoral negotiations will remain Member-driven, a supplementary (and subsequent) modality to the formula and non-mandatory in respect of participation. However, these negotiations remain a key element in meeting the mandate in the NAMA Framework and the outcomes will, unavoidably, be taken into consideration by Members in assessing the balance of concessions in the Round.

Small, Vulnerable Economies (SVEs)

32. In my July 2006 report to the Trade Negotiations Committee (TN/MA/W/80), I proposed that consensus had been reached on the trigger for access to the flexibilities for SVEs. Specifically, I noted that Members had agreed to abandon the search for benchmarks of vulnerability and had accepted a single eligibility criterion based on the value of NAMA trade, that is less than 0.1 percent of world trade in non-agricultural products.

33. On the question of the treatment of SVEs, while Members remained divided - then and now - on the architecture of the flexibility (a formula tariff reduction with expanded flexibilities or a target average tariff reduction as proposed by the proponents), they widely agreed that the central question was the level of contribution to be made by these Members to the Round.

34. As regards the architecture of the modality, I have proposed the tariff average approach, in three tiers based on average bound tariffs, and including a minimum line-by-line tariff reduction. I believe that this architecture is appropriate because it facilitates differentiated treatment of a very diverse group of Members. A tiered approach would provide for some degree of harmonization of tariffs among them, with the Members with the highest tariffs making the greatest reduction. Moreover, based on my consultations, I believe that this architecture is the more likely to find consensus, provided the level of contribution to the Round is satisfactory.

35. With respect to that contribution, I have proposed target tariff averages of 14, 18 and 22 percent, together with a minimum line-by-line tariff reduction of 10 percent on 95 percent of tariff lines. This would ensure a minimum contribution to the market access outcome in the Round, while providing a very significant flexibility in how that contribution is made. SVEs would reduce their average tariffs in reasonable proportion to other developing countries but would be permitted greater flexibility in how to structure their tariff schedules. This approach is consistent with the development needs of small, vulnerable economies.

36. Special consideration of Fiji is proposed, in view of its low level of binding coverage and the fact that 100 percent of tariffs lines are to be bound by SVEs.

Least Developed Countries (LDCs)

37. In respect of the issues of tariff reduction and market access for LDCs, I have proposed modalities on which there was consensus at the time of my July 2006 Report to the Trade Negotiations Committee. I have, however, amended this language to reflect developments since that time and avoid redundancy.

38. On the issue of improving rules of origin for duty-free, quota-free market access, neither the proponents nor the Members more broadly have a precise idea how they wish to proceed. Certainly, there is no consensus I can report or propose at this stage on the basis of the discussion in the Negotiating Group. I would note that harmonizing preferential rules of origin may not be the optimal solution and that there are best practises among Members that could be readily adopted to enhance the effectiveness of these programs. However, I expect that bilateral engagement on this issue will be required to fulfill the commitment to provide more transparent and simple rules of origin that contribute to facilitating market access for LDCs.

Recently acceded Members

39. The mandate for the negotiations directs Members to take into consideration the extensive market access commitments of recently acceded Members and the fact that, in some cases, these tariff reductions are still being implemented. We also have guidance from the General Council with respect to which Members should be considered recently acceded for the purposes of these modalities, that is all Members which have acceded since the establishment of the WTO in 1995. However, the exact nature of the consideration to be given to these Members is not defined.

40. In view of the diversity among recently acceded Members - the depth of their market access commitments, the length of time since their accession and implementation of their accession commitments, the strength of their economies and the extent to which they have benefited from NAMA trade - there is wide support for a differentiated response to their circumstances.

41. As I indicated in my July 2006 Report to the Trade Negotiations Committee, there is a consensus that Moldova, the Kyrgyz Republic and Armenia should not be required to undertake tariff reductions in this Round, particularly in light of their economic circumstances. It is also my judgement, based on my consultations, that the Former Yugoslav Republic of Macedonia, Saudi Arabia and Viet Nam should be excused from further market access commitments, in view of their very recent accession and the depth of their market access commitments.

42. There is wide agreement that recently acceded Members with less than 0.1 percent of world NAMA trade should have access to the flexibilities for SVEs and I have proposed that the lowest band of the SVE tariff reduction modality be amended in order to allow them access to these flexibilities. It is my view, however, that SVE modalities provide sufficient flexibility for these Members and I have, therefore, not proposed an extended implementation period for these Members.

43. As regards recently acceded developing countries that will apply the formula, it is widely agreed that they should have access to the flexibilities that would normally apply, plus an extended implementation period. I have, therefore, proposed that these Members should have a 2-year grace period after completion of accession commitments, on a line-by-line basis. That is, individual tariff lines should be allowed a 2-year "rest" between the end of accession reductions and the commencement of DDA cuts. Obviously, this grace period would apply only to tariff lines on which accession commitments were not fully implemented 2 years before the entry into force of the DDA. In addition, I have proposed a 2-year extension of the implementation period for DDA reductions on all tariff lines. These are more generous implementation provisions than have been proposed by many Members. However, all Members have supported the use of the implementation period to address this issue and, in my view, this represents the minimum that could be considered to respect the mandate.

Non-Tariff Barriers (NTBs)

44. Real progress has been made in giving shape to the vertical and horizontal proposals on NTBs. However, these negotiations are not yet sufficiently advanced to propose either the adoption or rejection of modalities for specific proposals. I have, therefore, focussed these modalities on the forward process, including moving to text-based negotiations.

45. It is clear from my consultations that these proposals enjoy varying degrees of support among the Members and that, as they must achieve consensus to form part of the single undertaking, serious consideration should be given to restructuring or withdrawing some of these proposals.

46. As regards bilateral NTB proposals, the negotiations are Member-driven and, until Members advise of a mutually agreed outcome, I cannot take these issues into modalities.

Capacity-Building Measures

47. There is consensus on this language and a commitment to assist LDCs and other Members at an early stage of development to take advantage of the market access that these negotiations will provide.

Non-Reciprocal Preferences

48. While preferences have been much debated in the Negotiating Group, the guidance I have received from Members remains very limited. In spite of this, I have pursued the mandate provided by Ministers to the best of my ability. This mandate was to determine the scope of the preference erosion problem and to develop possible solutions to the problem.

49. As regards the scope of the problem, very useful work has been done to define the most important tariff lines and the most important export markets. Focussing on a very limited number of tariff lines and the two principal preference-granting markets (the EC and US) - including further filtering the list to ensure proportionality by eliminating tariff lines on which exports to these markets are not significant - the lists in Annex 2 and 3 to my proposed modalities clearly capture the most important and sensitive exports of preference beneficiaries. The exports of these countries are highly concentrated in a few tariff lines and it is, therefore, possible to capture the bulk of the problem with a short list of lines. There is wide acceptance among the Members that this approach to defining the scope of the problem is sound and acceptable, although preference beneficiaries argue for the inclusion of additional tariff lines.

50. As for how to solve the problem, there is less agreement. All Members agree that the underlying problem of preference-receiving countries is their heavy dependence on a limited number of export products and their limited supply-side capacity. All Members, therefore, agree that development assistance must play an important role in addressing this problem, but that the impact of such assistance will likely be in the medium or long term.

51. Many Members also accept a limited trade response to the problem, seeing this as bridging to longer term solutions. More specifically, many Members have expressed support for a limited extension of the implementation period for tariff reductions, on a limited number of tariff lines of principal interest to preference-receiving Members. This describes the proposal I have made in these draft modalities.

52. My calls to consider alternative or supplementary measures such as improving rules of origin to make remaining preferences more effective, maintaining the margin of preference where feasible (this is of limited application, since many preferences are already at zero tariff), or deepening and accelerating market access on other products of interest to preference beneficiaries have met little support from the Members.

53. Finally, some Members have argued that they would be disproportionately affected by the extension of the implementation period, since they trade very heavily - and in similar economic circumstances - on these same tariff lines. The case presented by these Members is very compelling. However, my proposed modalities respond to these concerns by limiting the overall implementation period for the Round, providing only a short extension to that implementation period for tariff lines of critical importance to preference beneficiaries and by further narrowing the list of tariff lines to which the measure would apply.

Non-Agricultural Environmental Goods

54. Until Members can agree the approach to addressing environmental goods in the Committee on Trade and Environment in Special Session (CTESS) there is little chance they will agree the treatment of such goods in the NAMA modalities. As regards treatment, however, it is my view that, in singling out these goods in the NAMA mandate, Ministers intended a more ambitious outcome than for other goods. Any other interpretation would be to give no meaning to the language in the mandate.

Draft NAMA Modalities

Preamble

1. In paragraph 16 of the Doha Ministerial Declaration, we agreed "to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without *a priori* exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed Members, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 50 of the Doha Ministerial Declaration. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations."
2. Further to the Doha Development Agenda (DDA) mandate, and building on the results reached in Annex B of the General Council Decision of 1 August 2004 (the "NAMA Framework") and paragraphs 13 to 24 of the Hong Kong Ministerial Declaration, we hereby establish the following modalities for the non-agricultural market access (NAMA) negotiations which shall be applicable to all non-agricultural tariff lines as defined in Annex 1.
3. We also agree that the results of the application of these modalities shall be reflected in schedules of concessions which shall be submitted and finalized in the Harmonized System 2002 nomenclature and prepared in accordance with document JOB(06)/99/Rev.1. We furthermore agree that initial comprehensive draft schedules shall be submitted no later than three months after the establishment of modalities.
4. These modalities do not create a new category or sub-category of WTO Members, nor do they create a precedent for future negotiations. In applying these modalities, existing bindings shall not be raised except as provided by Article XXVIII of GATT 1994.

Formula

5. The following formula shall apply on a line-by-line basis:

$$t_1 = \frac{(a \text{ or } b) \times t_0}{(a \text{ or } b) + t_0}$$

where,

t_1 = Final bound rate of duty

t_0 = Base rate of duty

a = [8-9] = Coefficient for developed Members

b = [19-23] = Coefficient for developing Members

Elements regarding the formula

6.
 - (a) Product coverage shall be comprehensive without *a priori* exclusions.
 - (b) Tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, we adopt a constant non-linear mark-up

of 20 percentage points to the MFN applied rate in the base year to establish base rates for commencing tariff reductions.

- (c) The base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November).
- (d) All non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of the methodology outlined in document TN/MA/20 and bound in *ad valorem* terms.
- (e) The reference period for import data shall be 1999-2001.
- (f) The tariff reductions for developed Members shall be implemented in 5 equal rate reductions and for developing Members in 9 equal rate reductions. The first reduction shall be implemented on 1 January of the year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years.

Flexibilities for developing Members subject to the formula

7.

- (a) Developing Members subject to the formula shall be given the following flexibility:
 - (i) applying less than formula cuts for up to 10 percent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 10 percent of the total value of a Member's non-agricultural imports;
 - or
 - (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 5 percent of non-agricultural national tariff lines provided they do not exceed 5 percent of the total value of a Member's non-agricultural imports¹.

We furthermore agree that this flexibility shall not be used to exclude entire HS Chapters.

- (b) Where developing Members subject to the formula do not use the flexibility in sub-paragraph (a) above, they shall apply a coefficient of $b + 3$ in the formula.

Flexibilities for developing Members with low binding coverage²

8.

- (a) As an exception, developing Members with a binding coverage of non-agricultural tariff lines of less than 35 percent will be exempt from making tariff reductions through the formula. Instead, they shall bind 90 percent of non-agricultural tariff lines at an average level that does not exceed 28.5 percent.
- (b) These tariff lines shall be bound on 1 January of the year following the entry into force of the DDA results at initial bound rates.
- (c) The initial bound rates shall be established as follows: for bound tariff lines the existing bindings shall be used, and for unbound tariff lines the Member subject to this modality will determine the level of the initial binding of those tariff lines.

¹ It is understood that the options in sub-paragraph 7(a)(ii) (keeping tariff lines unbound or not applying formula cuts) may be combined but cannot together exceed the 5 percent of tariff lines and the 5 percent of non-agricultural imports.

² Developing Members concerned are: Cameroon; Congo, Côte d'Ivoire; Cuba; Ghana; Kenya; Macao, China; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe.

- (d) The overall binding target average shall be made effective at the end of the implementation period as follows: the tariff reductions shall be implemented in 9 equal rate reductions. The first reduction shall be implemented on 1 January of the second year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years.
- (e) All duties shall be bound on an *ad valorem* basis. Existing bindings on a non *ad valorem* basis shall be converted to *ad valorem* equivalents on the basis of the methodology outlined in document TN/MA/20.

Sectoral negotiations

9. The sectoral tariff reduction component is another key element to achieving the objectives of Paragraph 16 of the DDA. Participation in sectoral initiatives is on a non-mandatory basis. Such initiatives shall aim to reduce, harmonize or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, over and above that which would be achieved by the formula modality, in particular on products of export interest to developing Members.

10. Progress has been made in a variety of sectoral initiatives, where discussions among participants have focused on: defining the critical mass which may include the share of world trade and level of participation of competitive producers; the scope of product coverage; the implementation period for tariff reduction or elimination; and special and differential treatment for developing-country participants.

11. At the Hong Kong Ministerial Conference, Ministers instructed Members to identify sectoral initiatives which could garner sufficient participation. Sectoral initiatives currently proposed are: automotive and related parts; bicycle and related parts; chemicals; electronics/electrical products; fish and fish products; forest products; gems and jewellery; hand tools; open access to enhanced health care; raw materials; sports equipment; toys; and textiles, clothing and footwear.

12. Members participating in sectoral initiatives are instructed to intensify their work in accordance with the following timetable and with a view to incorporating any outcomes of such negotiations on an unconditional basis in their final comprehensive draft schedules:

- (a) by the establishment of modalities (EOM), the proponents of each sectoral initiative shall propose the specific modalities to be applied to the products covered in each initiative;
- (b) by the EOM plus 1 month, Members intending to participate in a sectoral initiative are encouraged to so indicate to the proponents of the relevant sectoral initiative as well as to the Secretariat; and
- (c) by the EOM plus 3 months, the participants in the sectoral initiatives shall incorporate any outcomes of such negotiations on a conditional basis in their comprehensive draft schedules.

Small, Vulnerable Economies

13. With the exception of developed Members, those Members having a share of less than 0.1 percent of world NAMA trade for the reference period of 1999 to 2001 or best available data as contained in document TN/MA/S/18 may apply the following modality of tariff reduction instead of the formula modality which is contained in paragraphs 5, 6 and 7 above.

- (a) Members with a bound tariff average of non-agricultural tariff lines:³

³ See document TN/MA/S/4 and Corr.1 for the bound tariff averages of Members.

- (i) at or above 50 percent shall bind all their non-agricultural tariff lines at an average level that does not exceed an overall average of 22 percent;
- (ii) at or above 30 percent but below 50 percent shall bind all their non-agricultural tariff lines at an average level that does not exceed an overall average of 18 percent; and
- (iii) below 30 percent shall bind all their non-agricultural tariff lines at an average level that does not exceed an overall average 14 percent.

Fiji shall be deemed to fall under (i).

In addition, 95 percent of all non-agricultural tariff lines shall be subject to a minimum cut of 10 percent.

- (b) All tariff lines shall be bound on 1 January of the year following the entry into force of the DDA results at initial bound rates.
- (c) The initial bound rates shall be established as follows: for bound tariff lines the existing bindings shall be used, and for unbound tariff lines the Member subject to this modality will determine the level of the initial binding of those tariff lines.
- (d) The overall binding target average shall be made effective at the end of the implementation period as follows: the tariff reductions shall be implemented in 9 equal rate reductions. The first reduction shall be implemented on 1 January of the year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years.
- (e) All duties shall be bound on an *ad valorem* basis. Existing bindings on a non *ad valorem* basis shall be converted to *ad valorem* equivalents on the basis of the methodology outlined in document TN/MA/20.

Least Developed Countries (LDCs)

Flexibilities for LDCs

14. LDCs shall be exempt from participating in the formula for tariff reduction and the sectoral approach. However, as part of their contribution to the DDA, LDCs are expected to substantially increase their level of tariff binding commitments. Individual LDCs shall determine the extent and level of tariff binding commitments in accordance with their individual development objectives. All new tariff binding commitments shall be on an *ad valorem* basis. For existing bindings which are not on an *ad valorem* basis, LDCs are encouraged to convert them to *ad valorem* equivalents on the basis of the methodology outlined in document TN/MA/20 and bind them in *ad valorem* terms.

Market Access for LDCs

15. The *Decision on Measures in Favour of Least-Developed Countries* contained in Annex F of the Hong Kong Ministerial Declaration (the "Decision") shall be fully implemented as agreed.

16. Accordingly, by the time Members submit their comprehensive draft schedules of concessions, developed Members shall, and developing Members declaring themselves in a position to do so should:

- (a) inform the WTO of the products that are currently covered under duty-free and quota-free market access for LDCs;
- (b) notify the internal procedures by which they will implement the Decision; and

- (c) provide an indication of the time frame within which they intend to fully implement the Decision as agreed.

Recently Acceded Members (RAMs)⁴

17. The RAMs shall apply the modality provided for in either paragraphs 5, 6 and 7 or paragraph 13, as applicable.
18. In addition, the RAMs applying the formula shall be given:
- (a) a grace period of 2 years which shall apply on a line-by-line basis and which shall begin as of the date of full implementation of the accession commitment on that tariff line; and
- (b) an extended implementation period of 2 equal rate reductions to that provided in paragraph 6(f) to implement their Doha commitments. The first reduction shall be implemented on 1 January of the year following the entry into force of the DDA results with the exception of those tariff lines covered by (a) above where the first reduction shall be implemented on 1 January of the year following completion of the grace period. In both these cases, each successive reduction shall be made effective on 1 January of each of the following years.
19. Armenia, Former Yugoslav Republic of Macedonia, Kyrgyz Republic, Moldova, Saudi Arabia and Viet Nam shall not be required to undertake tariff reductions beyond their accession commitments.

Supplementary Modalities

20. Members may use the request & offer approach as a supplementary modality. Members engaging in such negotiations shall incorporate any outcomes in their final comprehensive draft schedules.

Elimination of low duties

21. Members are asked to consider the elimination of low duties.

Non-tariff barriers (NTBs)

22. The reduction or elimination of NTBs is an integral and equally important part of the objectives of paragraph 16 of the DDA. More specifically, initiatives in this area shall aim to reduce or eliminate, as appropriate, NTBs, in particular on products of export interest to developing Members and to enhance market access opportunities achieved through the tariff formula modalities and sectoral initiatives.
23. Progress has been made in the identification, examination and categorization of NTBs. Discussions have focused on defining the nature of the barriers, the scope of products affected and potential solutions. Negotiating proposals including legal texts and bilateral requests have been submitted on a number of measures including on horizontal issues such as export taxes, export restrictions and remanufactured goods as well as on vertical initiatives such as electronic products, textiles, clothing, footwear and travel goods, and wood products. Proposed legal texts on a procedure for resolving future NTBs are also under discussion.
24. Without prejudice to the final result on any of the current proposals and requests, and while noting that substantive differences remain in Members' positions on some of the proposals, text-based negotiations are now required to obtain results in line with the mandate. To facilitate the text-based

⁴ Albania, Armenia, China, Chinese Taipei, Croatia, Ecuador, Former Yugoslav Republic of Macedonia, Georgia, Jordan; Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Saudi Arabia and Viet Nam.

negotiations, Members are encouraged, where possible, to merge similar proposals. Members are also encouraged to work towards the mutually satisfactory resolution of bilateral requests.

25. Members are instructed to finalise their work as early as possible before the submission of the final comprehensive draft schedules in order to allow for sufficient time to multilateralize the outcomes through *inter alia* incorporating the outcome of the negotiations where appropriate into Part III of their schedules.

26. Any outcome shall take fully into account the principle of special and differential treatment for developing and least-developed Members.

Capacity-Building Measures

27. Members are committed to exploring and enhancing effective delivery mechanisms to assist LDCs, and Members in the early stages of development, through trade capacity-building measures to assist them in addressing challenges that may arise from increased competition as a result of MFN tariff reduction and inherent supply side capacity constraints. These mechanisms shall be designed to enable LDCs, and Members in the early stages of development, to take advantage of increased market access opportunities and shall assist them to meet technical standards/requirements and to address product and market diversification as well as to overcome other non-tariff measures.

Non-reciprocal preferences

28. MFN liberalization resulting from the DDA will erode non-reciprocal preferences in respect of a limited number of tariff lines which are of vital export importance for developing Members beneficiaries of such preferences. As a result, and in order to provide these Members with additional time for adjustment, the reduction of MFN tariffs on those tariff lines shall be implemented in 7 equal rate reductions instead of 5 equal rate reductions by the preference-granting developed Members concerned. The first reduction shall be implemented on 1 January of the year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years. The relevant tariff lines shall be those contained in Annex [2] for the European Communities and in Annex [3] for the United States.

Non-agricultural environmental goods

29. The Committee on Trade and Environment in Special Session (CTESS) is working with a view to reaching an understanding on environmental goods. Members are instructed to take guidance from this work and initiate negotiations, without prejudging their outcome, on the reduction or, as appropriate, elimination of tariffs and NTBs on non-agricultural environmental goods.

Annex 1
Product Coverage of Non-Agricultural Products at the tariff line level
in the Harmonized System 2002 Nomenclature

The modalities for non-agricultural products shall cover the following products:⁵

(a) Fish and fish products defined as:

<u>Code/ Heading</u>	<u>Product Description</u> ⁶
Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates
05.08	Coral and similar materials, unworked or simply prepared but not otherwise worked; shells of molluscs, crustaceans or echinoderms and cuttle-bone, unworked or simply prepared but not cut to shape, powder and waste thereof
05.09	Natural sponges of animal origin
0511.91	-- Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3
1504.10	- Fish-liver oils and their fractions
1504.20	- Fats and oils and their fractions, of fish, other than liver oils
1603.00 ex	- Extracts and juices fish or crustaceans, molluscs or other aquatic invertebrates
16.04	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs
16.05	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved
2301.20	- Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates

(b) Chapters 25 to 97, except the following agricultural products:

<u>Code/ Heading</u>	<u>Product Description</u> ⁶
2905.43	-- Mannitol
2905.44	-- D-glucitol (sorbitol)
2905.45	-- Glycerol
33.01	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils
3302.10 ex	--Of a kind used in the manufacture of beverages

⁵ The following deviations are noted without prejudice to the rights and obligations of Members and without creating a precedent for future negotiations. Firstly, Japan will schedule as non-agricultural products the following HS2002 Codes: 1212.20 (Seaweeds and other algae), 1302.31 (Agar-agar) and 2106.90ex (Other food preparations not elsewhere specified or included, with the largest single ingredient consisting of products specified in sub-heading 1212.20 by weight; Hijikia fusi-formisu; and seaweed products). Secondly, the following Members will schedule some of the HS2002 Codes and Headings covered by paragraphs (i) and (ii) as agricultural products: the European Communities (1603.00ex and 3302.10), India (1603.00ex and 1605), Turkey (1603.00ex, 1604 and 1605) and Switzerland (05.08, 0511.91, 1504.10, 1504.20 and 2301.20).

⁶ The product descriptions for HS Codes with ex-outs are specific and do not cover the entire 6-digit HS Code.

<u>Code/ Heading</u>	<u>Product Description</u> ⁶
35.01	Casein, caseinates and other casein derivatives; casein glues
35.02	Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter), albuminates and other albumin derivatives
35.03	Gelatin (including gelatine in rectangular (including square) sheets, whether or not surface-worked or coloured) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 35.01
35.04	Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed
35.05	Dextrins and other modified starches (for example, pregelatinised or esterified starches); glues based on starches, or on dextrins or other modified starches
3809.10	- With a basis of amylaceous substances
38.23	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols
3824.60	- Sorbitol other than that of subheading 2905.44
41.01	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split
41.02	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on or split, other than those excluded by Note 1 (c) to this Chapter.
41.03	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter
43.01	Raw furskins (including heads, tails, paws and other pieces or cuttings suitable for furriers' use), other than raw hides and skins of heading 41.01, 41.02 or 41.03
50.01	Silk-worm cocoons suitable for reeling
50.02	Raw silk (non-thrown)
50.03	Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)
51.01	Wool, not carded or combed
51.02	Fine or coarse animal hair, not carded or combed
51.03	Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock
52.01	Cotton, not carded or combed
52.02	Cotton waste (including yarn waste and garnetted stock)
52.03	Cotton, carded or combed
53.01	Flax, raw or processed but not spun; flax tow and waste (including yarn waste and garnetted stock)
53.02	True hemp (<i>Cannabis sativa L.</i>), raw or processed but not spun; tow and waste of true hemp (including yarn waste and garnetted stock)

Annex 2
European Communities

Tariff line	Indicative product description
0302.32.90	Yellowfin tunas (<i>Thunnus albacares</i>), fresh or chilled, other than for the industrial manufacture of products of heading 16.04
0302.69.99	Other fish, fresh or chilled, excluding livers and roes
0303.79.98	Other frozen fish
0304.10.38	Other fish fillets and other fish meat, fresh or chilled
0304.20.19	Frozen fillets, of other freshwater fish
0304.20.94	Other frozen fillets
0306.13.50	Shrimps of the genus <i>Penaeus</i>
0306.13.80	Other shrimps and prawns
0307.49.18	Other cuttle fish (<i>Sepia officinalis</i> , <i>Rossia macrosoma</i> , <i>Sepiola spp.</i>), frozen
0307.59.10	Other octopus (<i>Octopus spp.</i>), frozen
1604.14.11	Tunas and skipjack, in vegetable oil
1604.14.16	Tunas and skipjack, fillets known as 'loins'
1604.14.18	Other preserved or prepared tunas and skipjack
5701.10.90	Other carpets and other textile floor covering, knotted, whether or not made up, of wool or fine animal hair
6105.10.00	Men's or boys' shirts, knitted or crocheted, of cotton
6109.10.00	T-shirts, singlets and other vests, knitted or crocheted, of cotton
6110.12.90	Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted, of Kashmir (cashmere) goats, for women's or girls'
6110.20.99	Other jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted, of cotton, for women's or girls'
6110.30.99	Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted, of man-made fibres, for women's or girls'
6203.42.35	Other trousers, bib and brace overalls, breeches and shorts, of cotton, for men's or boys'
6205.20.00	Men's or boys' shirts, of cotton
6214.20.00	Shawls, scarves, mufflers, mantillas, veils and the like, of wool or fine animal hair
7601.10.00	Unwrought aluminium, not alloyed

Note: The 23 tariff lines correspond to the tariff structure notified by the European Communities to the Integrated Database (IDB) for the year 2005, which is in the HS2002 nomenclature. The product descriptions are indicative only.

Annex 3
United States

Tariff line	Indicative product description
61046220	Women's or girls' trousers, breeches and shorts, knitted or crocheted, of cotton
61051000	Men's or boys' shirts, knitted or crocheted, of cotton
61071100	Men's or boys' underpants and briefs, knitted or crocheted, of cotton
61082100	Women's or girls' briefs and panties, knitted or crocheted, of cotton
61091000	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of cotton
61099010	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of man-made fibers
61102020	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
61103030	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
62019220	Men's or boys' anoraks, windbreakers & similar articles nesoi, not knitted or crocheted, of cotton, not cont. 15% or more by wt of down, etc
62034240	Men's or boys' trousers and shorts, not bibs, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc
62046240	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of cotton, nesoi
62046335	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, nesoi
62052020	Men's or boys' shirts, not knitted or crocheted, of cotton, nesoi
62064030	Women's or girls' blouses and shirts, not knitted or crocheted, of manmade fibers, nesoi
62113200	Men's or boys' track suits or other garments nesoi, not knitted or crocheted, of cotton
62113300	Men's or boys' track suits or other garments nesoi, not knitted or crocheted, of man-made fibers

Note: The 16 tariff lines correspond to the tariff structure notified by the United States to the Integrated Database (IDB) for the year 2005, which is in the HS2002 nomenclature. The product descriptions are indicative only.
