

Negotiating Group on Market Access

**DRAFT ELEMENTS OF MODALITIES FOR NEGOTIATIONS
ON NON-AGRICULTURAL PRODUCTS**

Revision

A. INTRODUCTION

1. In adopting on 19 July 2002 the Programme of Meetings of the Negotiations on Market Access for Non-Agricultural products (hereafter Work Programme), the participants in the Negotiating Group on Market Access (NGMA) stated that they will "aim at a common understanding on a possible outline of modalities by the end of March 2003 with a view to reaching an agreement on those modalities by 31 May 2003." With a view to facilitate such agreement, the Chair submits herewith a draft of "Elements of Modalities for Negotiations on Non-Agricultural Products," under his own responsibility.

2. This revised draft is based on the work carried out during the series of formal and informal session of the NGMA starting on 2 August 2002 and conducted in accordance with the Mandate provided by Ministers at Doha, and the Work programme thereunder adopted by the NGMA on 19 July 2002.

Paragraph 16 of the Doha Ministerial Declaration provides (WT/MIN(01)/DEC/1):

"16. We agree 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 country participants, 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 below. 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."

Furthermore, paragraph 4 of the Work Programme states (TN/MA/3):

"4. In accordance with paragraph 16 and other relevant provisions of the Doha Ministerial Declaration, special and differential treatment for developing and least-developed countries shall be an integral part of all elements of the negotiations under this Work Programme."

3. This draft does not claim to represent elements agreed in whole or in any part and is without prejudice to the position of participants. As it will become evident immediately in this draft, some parts are not fully elaborated, and some of the other points raised are not included. Thus, it is not in anyway comprehensive. Rather it should be seen as a set of basic elements for possible modalities, which will need to be adjusted, completed, refined, or further expanded upon.

4. It is hoped that these Draft Elements will further stimulate the constructive discussions which have taken place between participants so as to enable them to build up a consensus on modalities for negotiations on tariffs and non-tariff barriers. It is furthermore expected that in conducting these discussions the participants will keep closely in mind the importance of preserving the integrity of the WTO multilateral trading system as embodied in the WTO Agreements, building upon the market openings realized thus far as a major element in promoting trade and development, and incorporating special and differential treatment as an integral part of the negotiations.

Therefore the following elements are proposed:

B. TARIFFS

5. The proposed elements for modalities on tariff negotiations are outlined in the following four sub-sections, all of which are an integral part of the modalities for all participants.

1. Formula

6. The application of the formula will be based on the following elements:

- base rate: tariff reduction or elimination on all non-agricultural products¹ from the bound rates after full implementation of current concessions². However, for unbound items, the basis for commencing the tariff reductions shall be two times the MFN applied rate³;
- the base year for MFN applied tariff rates shall be 2001;
- non-ad valorem duties shall be converted to *ad valorem* equivalents according to the procedures in Annex I;
- HS nomenclature: negotiations to commence on the basis of Harmonized System (HS) 1996, and negotiations to be finalized in HS2002 nomenclature;⁴ and
- for import data, the years 1999-2001, hereinafter "reference period", shall be used in order to mitigate yearly fluctuations.

7. All non-agricultural tariffs shall be reduced on a line-by-line basis using the formula⁵ applied to the base rates outlined in paragraph 6:

¹ All products not covered by the WTO Agreement on Agriculture.

² Credit may be given for autonomous liberalization provided that the items were bound on an MFN basis in the WTO since the conclusion of Uruguay Round. Thus, in the following cases, credit will accrue by using the base rate that was in place before the autonomous liberalization took place, and the formula reduction would be applied to this higher basis. In the case of items that were not previously bound, two times the MFN applied rate or the new bound rate, whichever is higher, for the year the liberalization took place would be the basis. It is noted that in the cases of the Ministerial Declaration on the Expansion of Trade in Information Technology Products, further initiatives in the Pharmaceutical zero-for-zero sector, and certain other individual initiatives, the bound rate was reduced to zero and through the application of the formula, credits would not be relevant. Thus, for the remaining items, credit could be given for the tariff lines noted in the following WTO documents which have been given legal effect through certifications: European Communities (WT/Let/178), Hungary (WT/Let/441), India (WT/Let/374), Korea (WT/Let/302), Pakistan (WT/Let/424), Sri Lanka (WT/Let/398), and the United States (WT/Let/182).

³ When the MFN applied rate in the base year is less than 2.5 percent, 5 percent shall be used as the basis.

⁴ If Members so desire, they may commence with HS2002 nomenclature if the corresponding concordance tables are provided.

⁵ All numbers used in the formula will be rounded to one decimal point.

$$t_1 = \frac{B \times t_a \times t_0}{B \times t_a + t_0}$$

where,

t_1 is the final rate, to be bound in *ad valorem* terms

t_0 is the base rate

t_a is the average of the base rates⁶

B is a coefficient with a unique value to be determined by the participants

8. As an exception, participants with a binding coverage of non-agricultural tariff lines of less than 35 percent would be exempt from making tariff reductions through the formula. Instead, they would be expected to bind 100 percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions (27.5 percent).⁷

2. Sectorial Tariff Elimination

9. In addition to the application of the formula, a sector elimination approach is proposed with appropriate flexibilities for developing countries, in order to eliminate and bind all tariffs on products of particular export interest to developing and least-developed country participants. Therefore, the following sectors are proposed: Electronics & Electrical goods; Fish & Fish products; Footwear; Leather goods; Motor Vehicle parts & components; Stones, Gems, & Precious Metals; and Textiles & Clothing. Members will need to determine the product coverage applicable to these sectors.

10. The sectorial tariff elimination shall be achieved through three phases of equal length. The basis for elimination will be from the bound rates after full implementation of current concessions, or for unbound items, the MFN applied rates in 2001. The tariff reductions will occur in equal annual stages, as follows:

- developed participants and other participants who so decide, shall eliminate tariffs at the end of the first phase;
- other participants shall achieve tariff reduction and elimination as follows: 1) tariff reduction to a proposed level of not more than 10 percent⁸ at the end of the first phase; 2) maintain this level during the second phase; and 3) achieve elimination of tariffs at the end of the third phase.

3. Additional Provisions for Developing and Least-Developed Participants

11. Taking into account the relevant provisions of the mandate, and the special and differential treatment and "less than full reciprocity" already provided in the elements above, developing and least-developed participants shall have additional provisions as follows:

- a) for developing country participants, longer implementation periods for tariff reductions would be applicable. In addition, they would be given flexibility by a) being able to keep tariff lines

⁶ The calculation of tariff averages should not be biased by the disaggregation of Members tariff schedules. To reduce the bias introduced by the different number of tariff lines in Members' schedules, the HS standard nomenclature, an international standard up to the level of HS 6-digit subheadings, shall serve as basis for the calculation of simple tariff averages. The tariff average, shall be calculated in two steps:

- i) A simple arithmetic average of tariff line *ad valorem* duties or AVEs is used to calculate the tariff average for each non-agricultural HS 6-digit subheading
- ii) This HS 6-digit average is then used as basis to calculate the simple tariff average for each Member.

⁷ Final figure to be verified by the Secretariat.

⁸ If the rate (bound or in the case of unbound items, the MFN applied rate in 2001) is less than 10 percent, this lower rate shall remain in place.

unbound or b) not applying formula cuts, to up to 5 percent of tariff lines provided that no more than 1 percent (1 percent of tariff lines providing they do not exceed 1 percent of the Member's imports, calculated for the reference period) could be taken in one HS Chapter.⁹

- b) least-developed country participants shall not be required to undertake reduction commitments, as noted in paragraphs 7, 9, 10, 14, and 15. As part of their contribution to this round of negotiations, they are however expected to substantially increase their level of binding commitments.

12. Furthermore, as a contribution to the integration of the LDCs into the multilateral trading system and support for the diversification of their production and export base, it is proposed that developed participants and other participants who so decide, grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from LDCs by the year [...].

4. Newly Acceded Members

13. In addition to the provisions already set out in paragraph 11 above, and in order to take into account the extensive market access commitments undertaken as part of their accession which are still being implemented in many cases, participants could consider providing newly acceded Members the following mechanisms:

- a higher coefficient in the formula
- a longer implementation period
- a "grace period" which would commence after implementation of current commitments

5. Supplementary Modalities

14. It is proposed that participants supplement additional tariff reduction and elimination made through the formula and sectorial modalities above with zero-for-zero sector elimination, sectorial harmonization, and request & offer.

15. In addition, it is proposed that participants consider the elimination of low duties.

C. NON-TARIFF BARRIERS

16. The following elements are proposed for the modalities on NTBs:

- a) It is understood that the NGMA maintains overall responsibility for addressing non-tariff barriers (NTBs) as part of the Doha Declaration;
- b) The negotiating group will proceed with the identification and examination of the various types of NTBs;¹⁰
- c) After completing the identification, participants will aim to categorise the NTBs as well as clarify and seek additional information where necessary, and then proceed in the following manner:
- Selected NTBs, to be agreed upon by the participants, would be dealt with by the NGMA on the basis of modalities, which could include request/offer, horizontal, or vertical approaches;

⁹ These flexibilities do not apply to those products included in the sectorial tariff elimination approach.

¹⁰ In this respect, it is recalled that work has already been initiated with the notification of non-tariff barriers by participants.

- NTBs that have a specific negotiating mandate in the Doha Declaration in other areas should continue to be addressed in that body but information on the progress or outcome of those negotiations should be reported to this group for transparency;
 - Work on NTBs which relate to other areas of the Doha Declaration which currently do not have a specific negotiating mandate would progress in other fora but information on the progress should be reported to this group for transparency; and
 - NTBs that currently do not have a specific negotiating mandate would, after further clarification and if the group decides there is a need to send them to another WTO body, be reported to the TNC in order to be forwarded to the appropriate WTO body for action and reporting back.
- d) It is recognized that as the work progresses on NTBs, and without prejudice to the particular type of NTB and the modalities to be agreed upon, participants will need to take fully into account the principle of special and differential treatment for developing and least-developed participants.

D. APPROPRIATE STUDIES AND CAPACITY BUILDING

17. Paragraph 16 of the Doha Declaration and its reference to paragraph 50 provide, as part of the modalities, for appropriate studies and capacity building measures to assist least-developed countries to participate effectively in the negotiations. In this regard, but also in a broader sense, it is proposed that:

- Participants identify issues related to studies and other capacity building measures to further improve participation in the negotiations. In addition, the Secretariat will continue to initiate these matters when it undertakes work relevant to this negotiating group, including in cooperation with other international organizations.¹¹
- Participants initiate proposals to provide adequate delivery of technical assistance and capacity building measures related to the negotiations on non-agricultural market access, keeping in mind the measures already incorporated in the WTO Annual Technical Assistance/Capacity Building Plans for both 2002 and 2003.

¹¹ It is noted that to date, a number of relevant studies have been prepared or referenced, as follows: Selective Bibliography of Research on Market Access (TN/MA/S/1 + Add.1), Formula Approaches to Tariff Negotiations (TN/MA/S/3 + Rev.1 + Rev.1/Add.1 + Rev.2), WTO Members' Tariff Profiles (TN/MA/S/4 + Rev.1 + Rev.1/Corr.1), Formula Approaches to Tariff Negotiations – Secretariat Simulations using Members' Tariff Concessions (JOB (03)/67), Incidence of Non-*Ad valorem* Tariffs in Members' Tariff Schedules and Possible Approaches to the Estimation of *Ad valorem* Equivalents (TN/MA/S/10), and Market Access Issues Related to Products of Export Interest Originating from Least Developed Countries (TN/MA/S/7).

ANNEX I

Calculation of *ad valorem* equivalents

1. Where Members have non-*ad valorem* tariffs in their base rates, *ad valorem* equivalents (AVEs) for these rates will be calculated by the Secretariat using the following methodology:

- If import values and quantities are available in the IDB unit values shall be calculated at the tariff line level.
- If import values and quantities are not available in the IDB at the tariff line level unit values of the relevant HS 6 digit subheading of the Member's IDB data shall be used.
- If import values and quantities are not available in the IDB for a specific Member at the HS 6 digit level, world unit values, based on data available in the IDB and complemented by information in the UN COMTRADE database, shall be used.
- Non *ad valorem* tariffs for which AVEs cannot be calculated by the Secretariat because of the technical nature of the duties concerned shall be assumed to have an AVE equivalent to the tariff average (t_a) as used in the formula in paragraph 7 of this document.

2. However, if the Member concerned so desires, they may calculate AVEs themselves if it is done so in a transparent manner and uses the representative reference period. Full details of the method and data used for these calculations shall be included in the tables of supporting material for the draft offers and shall be subject to multilateral review. Members may ask the Secretariat for technical assistance in their calculation of AVEs.
