

Medlemmerne af Folketingets Europaudvalg
og deres stedfortrædere

Asiatisk Plads 2
DK-1448 København K
Tel. +45 33 92 00 00
Fax +45 32 54 05 33
E-mail: um@um.dk
Telex 31292 ETR DK
Telegr. adr. Etrangeres
Girokonto 300-1806

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Til underretning for Folketingets Europaudvalg vedlægges Kommissionens udkast til modalitetspapir for landbrugsforhandlingerne i WTO, som Kommissionen har fremlagt med henblik på fremlæggelse på vegne af EU i WTO-forhandlingerne.





EUROPEAN COMMISSION
AGRICULTURE DIRECTORATE-GENERAL

Directorate AI. International affairs I, in particular WTO negotiations
AI.1. WTO, OECD, United States of America and Canada

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NOTE FOR THE ATTENTION OF THE 133 COMMITTEE

Subject: **The EC's Proposal for Modalities in the WTO Agriculture Negotiations**

Origin: DG AGRI. I.1

J. Pacheco (tel. +00322 29 61528 – fax +00322 52416)

F. Coturni (tel. +00322 29 67585)

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THE EC 'S PROPOSAL FOR MODALITIES IN THE WTO AGRICULTURE NEGOTIATIONS

Introduction

The WTO negotiations in agriculture started in early 2000 under Article 20 of the Agreement on Agriculture and received clear guidelines under the Doha Ministerial Declaration in November 2001. Since then, Members have submitted a large number of negotiating proposals, which has enabled a much better understanding of the various positions regarding the multilateral reform process.

The EC has actively participated in this process by putting forward a comprehensive negotiating proposal in December 2000 as well as several specific papers on subjects of interest to the EC.

The current phase is designed to meet the 31 March 2003 deadline foreseen in Doha for establishing modalities. A draft paper is to be prepared by the Chairman of the Special Session of the Committee on Agriculture and to be circulated in advance of the Special Session meeting of 25-31 March. This paper is expected to include proposals concerning the parts of the AoA that should be modified as well as the guidelines that are to lead to the new commitments.

This deadline is rapidly approaching. The EC therefore feels it is the moment to submit a detailed proposal for a comprehensive reform package of multilateral rules applicable to agriculture. This should also contribute to a more focused discussion on the elements of the AoA that deserve modification in order to achieve the objectives of a fairer and more market-oriented agricultural trading system. The EC proposal is to be seen as a comprehensive balanced approach and a package with equal importance attached to all its constituent elements.

The submission of this proposal on the negotiating modalities is a reaffirmation of the EC's strong commitment to the WTO reform process. It clearly demonstrates the EC's determination to do its part to arrive at an agreement within the deadlines which have been fixed in the Doha Ministerial Declaration.

The EC's aims in the negotiations

The EC's overall objectives in the negotiations are further substantial liberalisation on a fair and equitable basis and the right to maintain a model of agriculture which addresses the need to ensure environmental protection, rural development, food safety and other consumer concerns. These objectives are consistent with the domestic reforms that the EC has carried out in the last ten years.

The EC recalls that the reform process aims at raising standards of living through a further liberalisation and expansion of trade. Therefore, participation of developing countries, and in particular the least developed, in the international trade system should be promoted as one of the key elements to reduce poverty.

In this context, the EC also recalls the commitment made by WTO Members at the Brussels Conference on the Least Developed Countries (LDCs) to abolish all

obstacles to imports from LDCs, a commitment that only few Members, including the EC, have complied with.

These objectives are perfectly in line with the Doha Declaration on agriculture which matches the need to establish a fair and market-oriented system with the recognition of Special and Differential Treatment for developing countries as well as of non-trade concerns. This includes the recognition of the objective of developing countries to ensure their food security and the improvement of their population's access to, and availability of, food.

The EC believes that the Uruguay Round structure constitutes a well-consolidated agreed framework which has proven its effectiveness, thus offering the best guarantees of meeting the tight deadlines fixed in Doha. Maintaining this structure and combining it with serious joint efforts by all Members is the most straightforward way to achieving ambitious further progress down the road defined in the Agreement on Agriculture.

The proposal

The EC's contribution consists of proposals concerning the overall architecture of the new agreement as well as of proposals regarding specific commitments. It also contains amendments to the Agreement on Agriculture which are presented in the Annex to the present paper. The EC also proposes that the Ministerial Conference or the General Council adopt two authoritative interpretations under Article IX.2 of the WTO Agreement concerning Article 5.7 of the SPS Agreement and Article 2 of the TBT Agreement.

As regards the percentages of reduction, the EC recalls that, in order to arrive at a satisfactory outcome within the deadlines foreseen, proposals by Members should be consistent with the key guiding parameters laid down in the Doha Ministerial Declaration. As a sign of its commitment to ambitious results, the EC has included substantial and quantified proposals in the areas of market access, export competition and domestic support.

The constituent elements of the proposed negotiating package can be outlined as follows:

Market access

- The EC strongly supports the emphasis in the DDA on improved market access for developing countries. All developed countries and all advanced developing countries should provide duty-free and quota-free access to their markets for all imports from the Least-Developed Countries. Such a commitment should be formally adopted at the Cancun conference.
- Developed countries shall use all appropriate means to ensure that zero duty access for developing countries' exports of agricultural products represents no less than 50 % of their total imports from developing countries.
- All developed countries and those developing countries which are in a position to do so from a development perspective should make significant efforts to

substantially improve market access focusing in particular on products originating in developing countries. This requires *inter alia* the adoption of a formula of tariff reduction which does not shield any one developed country Member from making a comparable contribution. This formula should be an overall average reduction of 36 % and a minimum reduction per tariff line of 15 % as was the case in the Uruguay Round. Such a formula would achieve the objective of "burden sharing" above and, on the other hand, would also provide flexibility for developing countries.

Furthermore, such a formula would avoid the drawbacks for developing countries of the so-called Swiss formula which would apply indiscriminately to all Members. In the view of the EC, it is necessary to accommodate the developmental concerns of developing countries as foreseen in the DDA.

In this respect, the EC would agree to developing countries assuming substantively lower commitments if this is necessary for them to attain their legitimate objectives regarding food security and other multifunctional concerns; the EC would also agree that LDCs contemplate a minimum level of commitment commensurate with their development needs.

- The negotiations should achieve the objective of significantly reducing tariff escalation on products of particular interest to developing countries by reducing the level of relevant *ad valorem* and specific tariff protection.
- With regard to Tariff Rate Quotas (TRQs), a set of rules and disciplines should be defined to increase the transparency, the reliability and the security of the management of TRQs such that the concessions granted result in real trade opportunities.
- The Special Safeguard Clause (SSG) has proved to be a very useful adjunct to the process of tariffication. A similar instrument should continue to give Members the confidence to liberalise trade by protecting them against sudden and unforeseen fluctuations in prices and volumes.
- On Geographical Indications (GIs), an essential part of the value of many agricultural products is the geographical indication which, if not protected, seriously erodes this value. Proposals have already been made in the context of the TRIPS negotiations. The EC's approach to geographical indications in the context of the agriculture negotiations is complementary to the TRIPS negotiations. The EC's objective is to negotiate in this context specific commitments in order to guarantee fair market access opportunities for those wines, spirits and other agricultural and food-stuff products whose quality, reputation or other characteristics are essentially attributable to their geographical origin and traditional know-how. To this end, a list of names currently used by producers other than the right-holders in the country of origin should be established so as to prohibit such use.

Export competition

- An average substantial cut in the volume of export subsidies and an average 45 % cut in the level of budgetary outlays should be foreseen, provided that flexibility is

given in dealing with the different products and on the condition that all forms of export subsidisation are treated on an equal footing. In this context, the EC is ready to eliminate export subsidies for certain key products, such as wheat, oilseeds, olive oil and tobacco, provided that no other form of export subsidisation is given for the products in question by other Members.

- The trade-distorting element of export credits for agricultural products should be identified and subjected to strict discipline. Article 10.2 of the Agreement on Agriculture gives a broad mandate to develop disciplines for export credits. The failure to agree on such disciplines has made more urgent the need for clarification. It is thus imperative that detailed rules for export credits be agreed upon. The EC's proposal regulates the form which export credits may take and subjects them to reduction commitments equivalent to those presently applicable under Article 9 of the Agreement on Agriculture. Specifically, state supported amounts of all export credits and the volumes covered by those amounts should be bound and reduced according to the same percentage reductions made in other export subsidies, while moving export credit terms towards commercial terms with a maximum repayment term. Appropriate qualifications to this principle could be foreseen in clearly defined cases of exceptional circumstances essential for food security.
- Food aid in kind should be provided only for well-defined vulnerable groups or in response to well-recognized emergencies and humanitarian crisis and not, as is often the case today by some Members, as a surplus disposal mechanism. Appropriate international bodies should therefore assist the WTO in identifying countries and situations that strictly justify food aid operations. In addition, all food aid should be in fully-grant form in order not to increase the debt burden of vulnerable countries and Members should provide whenever possible direct cash contribution for the purchase of food within the recipient country, or from other developing countries.
- In respect of the operation of State Trading Enterprises (STEs), the EC proposes that cross-subsidisation, price-pooling and other unfair trade practices in exports be disciplined. No export should take place at a price less than the price paid by such State Trading Enterprises to the producers of a particular product. To that effect the operation of STEs should be subject to mandatory notification and full transparency, in particular with regard to acquisition costs and export pricing.

Domestic support

- The EC is committed to further substantial reductions in trade-distorting domestic support. The EC is therefore in favour of a 55 % reduction in the Aggregate Measurement of Support (AMS) starting from the final bound commitment level. To allow for rapid progress within the agreed deadlines, the current definition of domestic support and the Uruguay Round reduction method should be maintained as this guarantees that all Members will be subject to effective disciplines.
- As suggested below, the application of any such formula should be modulated to accommodate developing countries' concerns, in particular with regard to food security and rural development.

- Support categorised as blue box has proved to be less trade-distorting than amber box domestic support and has been an essential mechanism for reducing the most trade-distorting support. In order to facilitate further reductions of this most trade distorting support the provision of Article 6 (5) of the AoA should be maintained.
- As regards non-product specific domestic support, a clear definition of crop specificity should be set up and indicate that such measures in any given year should not be related to, or based on, the type or volume of production, the prices, domestic or international, or the factors of production employed.
- Experience has shown that the de minimis exception allowing Members not to include certain expenditure in the calculation of Current Total AMS has been used by some Members as an important loophole in disciplining trade-distorting support. This provision, foreseen in Article 6(4)(a) of the AoA should be eliminated for developed countries.
- In order to maintain support for trade reform, society needs to be reassured that certain societal goals such as the specific domestic support needs of developing countries, the protection of the environment, rural development and animal welfare may be achieved without obstacles created by the WTO. Support granted for the achievement of such goals should therefore primarily be provided through the green box on the condition that such measures are well targeted, transparent, and implemented in no more than minimally trade-distorting ways.

Peace clause

Members conforming to the revised Agreement on Agriculture should not be subject to actions based on other WTO Agreements, in respect of matters regulated under the Agreement on Agriculture. The continuation of the peace clause is the logical corollary of the specific nature of the Agreement on Agriculture.

Base and implementation periods

As regards the base period, the EC believes that the Uruguay Round final bound commitment levels should be taken as the base. As far as the new commitments are concerned, such as on officially supported export credits, the most recent period for which statistics are available should be taken as a reference.

As to the implementation periods, the EC proposes that the new commitments be implemented over six years for developed countries and ten years for developing countries commencing in the year 2006.

Non-trade concerns

To meet societal concerns and to ensure trade can occur in a stable environment it is essential to clarify rules to increase predictability. The EC proposals to liberalise trade and decrease trade-distorting domestic support are conditional upon key non-trade concerns being adequately addressed.

- On food safety, in order to clarify the use of precaution, a strict definition of the criteria for its application should be established in accordance with Article 5.7 of

the SPS Agreement as interpreted by the Appellate Body in such cases as “Hormones” and “Japan varietal testing”.

- On mandatory labelling, Members should clarify through a common understanding the criteria and guidelines for the implementation of mandatory labelling requirements in respect of food and agricultural products.
- On food security for developing countries, which refers to the ability of the household to secure, either from its own production or through purchases, adequate food to meet its needs, measures may include supporting those agricultural activities that can improve farmers’ incomes, thereby increasing their capacity to purchase food.
- The EC proposes that measures that aim at protecting the environment, which is relevant to both developed and developing countries, should be accommodated in the Agreement on Agriculture. Such measures should be well targeted, transparent, and implemented in no more than minimally trade-distorting ways.
- As regards rural development, the EC believes that both developed and developing countries have the right to choose to preserve or develop the economic and social environment necessary to maintain rural population. Agricultural activities and farm diversification can contribute to the economic and social viability of rural areas and thus to a balanced territorial development. Moreover, agricultural systems can promote environmental value by maintaining farmed landscapes and conserving biological diversity. Farming also has a role to play in protecting people from the effects of certain natural disasters. The provision of these environmental services is unlikely to be assured by market forces alone. Measures designed to foster rural development should therefore find appropriate coverage in the Agreement on Agriculture.
- On animal welfare, the EC proposes to exempt compensation of additional costs to meet animal welfare standards from reduction commitments where it can be clearly shown that these costs stem directly from the adoption of higher standards and thus are not, or at most minimally, trade distorting.

Special and Differential Treatment for Developing countries

The EC is by far the largest market for the exports of agricultural products from developing countries . In the period 1997-1999, the EC imported an average of US \$ 35.5 billion of agricultural products from developing countries. This is more than the US, Japan, Canada, Australia and New Zealand together.

The EC recognises the need to ensure that all Members, and in particular the developing countries, fully benefit from the expansion of world trade. The key is to create opportunities for increased market access for developing countries, while recognising the importance of food security and accepting the need for the most fragile developing countries to maintain protection in order to have adequate time for adaptation.

On these grounds and bearing in mind the fact that agriculture is central to the livelihoods of the world's poor, the EC proposes the following package of enhanced measures in favour of developing countries:

- developed countries and advanced developing countries should provide duty-free and quota-free access to their markets for all imports from the Least-Developed Countries;
- developed countries shall use all appropriate means to ensure that zero duty access for developing countries' exports of agricultural products represents no less than 50 % of their total imports from developing countries;
- the negotiations should achieve the objective of significantly reducing tariff escalation on products of particular interest to developing countries by reducing the level of relevant *ad valorem* and specific tariff protection;
- as was the case in the Uruguay Round, lower reduction rates as well as a longer implementation period should be agreed for developing countries;
- appropriate ways to address the problem of excessive rates of inflation should be examined, including the possibility to express commitments in stable currency/basket of currencies;
- the EC reaffirms its commitment to well targeted, sustainably financed technical assistance in order to promote the sustainable and economic development of developing countries. The EC has already funded trade related assistance by providing €680 million during the period 1996-2000 and is committed to continue.

Moreover, a “food security box” should be foreseen. It should include the following measures:

- in order to facilitate the implementation of further tariff reductions and with a view to meeting the developing countries' concerns on agricultural products which are sensitive from a food security perspective, a Special Safeguard instrument should be extended to developing countries;
- experience is beginning to show that present requirements in the Agreement on Agriculture should be adapted to allow developing countries the possibility to support their agricultural sector for developmental reasons. Therefore, we suggest that the *de minimis* clause foreseen in Article 6(4)(b) of the AoA be reviewed in order to provide enough flexibility;
- the specific domestic support needs of developing countries should be examined in order to facilitate the adoption of targeted domestic support policies related to key agricultural products, notably to contribute to food security and agricultural diversification.

Members agree that the following provisions of the Agreement on Agriculture shall be inserted/modified:¹

Part I

Article 1

Definition of Terms

(...) "non-product-specific" support means support provided in favour of agricultural producers in general and which is not related to, or based on, the type or volume of production, prices (whether domestic or international), or the factors of production employed;

(...) "export credits" means export credits transactions supported by or on behalf of governments or implying any other forms of government involvement direct or indirect. This includes support provided by special institutions controlled by and/or acting under the authority of governments, in particular state trading enterprises;

(...) "geographical indication" means an indication which identifies an agricultural good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin and which is protected in the laws and regulations of that Member;

(...) "originating" when used in relation to the territory of a Member, or a region or locality thereof, means that an agricultural product is produced or processed within the territory, region or locality of the Member concerned;

Part III

Article 4

Market Access

3. Members shall ensure protection of the geographical indications referred to in Annex W in accordance with the individual commitments undertaken and included therein.

The protected names are exclusively reserved to the agricultural products originating in the place indicated by the geographical indication in question and can no longer be used after the phase out period. Geographical indications not included in annex W will continue to benefit from the protection provided for in Articles 22 and 23 of the TRIPs Agreement.

Any use of indications protected by virtue of this Agreement for products originating

¹ In Italic, the parts to be added/modified.

in a geographical area other than the true place of origin shall be prohibited, even when:

- a) the true origin of the product is indicated;*
- b) the geographical indication is used in translation;*
- c) the indications are accompanied by expressions such as "kind", "type", "style", "imitation", "method", or the like.*

Where indications protected by virtue of this Agreement are homonymous, protection shall be granted to each indication, provided it is traditionally and consistently used, its use for that purpose is regulated by the country of origin, it does not falsely represent to the public that the goods originate in another territory and consumers are not misled as to the true origin of the product.

Article 4 bis

Tariff Rate Quotas (TRQs)

- 1. The administrative procedures and allocation methods for TRQ management shall not be trade-restrictive in application and shall be administered in a reliable and transparent manner.*
- 2. The following provisions, shall also apply to administrative procedures for TRQ management:*
 - (i) An importer shall not be treated less favourably than another on the basis of degree of foreign affiliation or ownership.*
 - (ii) Members shall ensure that the quantities attributed to each importer shall be economically significant, having regard to the nature of the product covered by the tariff rate quota. If the quantity available to each importer is no longer economically viable, applicants shall be entitled to withdraw their application and the quantities shall be reattributed.*
 - (iii) In order to facilitate quota fill and the access to tariff rate quotas, Members shall ensure that licences issued are actually used to the largest possible extent. To that effect, some form of security shall be provided, such as lodging an appropriate guarantee that shall only be released upon proof of actual importation.*
 - (iv) Quantities that are not allocated, assigned or used shall be redistributed in time to allow them to be used before the end of the period covered by the quota. If a tariff rate quota is allocated on a country-specific basis, the possibility to reallocate to other countries shall be provided.*
 - (v) The period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude*

imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements.

(vi) Publication of a notice announcing the opening of a tariff rate quota shall be made in adequate time, setting out the allocation method chosen, the conditions to be met by licence applications, time limits for submitting them and a list of the competent national authorities to which they must be sent.

3. *An indicative list of allocation methods whose use, in isolation or in combination, depends on the specific characteristics of a product and its market, is established in Annex X.*

Part IV

Article 6

Domestic Support Commitments

(Paragraph 4(a) is deleted. Paragraph 4(b) is moved to paragraph 6 of Article 15).

(Paragraph 5 is re-numerated and becomes paragraph 4).

Part V

Article 8

Export Competition Commitments

Each Member undertakes not to provide export subsidies, *export credits and food aid* otherwise than in conformity with this Agreement and with the commitments as specified in that Member's schedule.

Article 9 bis

Export credit commitments

1. *Export credits, as defined in Article 1 (...), provided in forms such as insurance, guarantees, direct credits/financing, refinancing, or interest rate support and with a repayment period exceeding the terms foreseen in paragraph 3 a) of this Article shall be subject to supported amount and quantity reduction commitments in accordance with paragraphs 1-5 of Annex Y.*

2. *The export credit commitment levels for each year of the implementation period, as specified in a Member's Schedule, represent:*

i) in the case of supported amount reduction commitments, the maximum level that may be allocated or incurred in that year in respect of the agricultural product, or group of products, concerned; and

ii) in the case of quantity reduction commitments, the maximum quantity of an agricultural product, or group of products, in respect of which export credits may be granted in that year.

3. a) *A the end of the implementation period, the repayment term for export credits shall not exceed (...) days, except for the following products:*

- Breeding cattle

(...) year(s) for contracts up to and including \$150.000

(...) year(s) for contracts exceeding \$150.000

- Agriculture vegetable reproduction material, i.e seeds, seed potatoes and other such agricultural materials which are being exported for reproduction purpose

(...) year(s)

b) *The repayment term is the period beginning at the starting point of credit as defined in point c) and ending on the contractual date of the final payment. Repayment terms for each product or group of products shall be reduced each year over the implementation period.*

c) *The starting point of credit is defined as not later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period.*

4. *Credit terms and conditions of export credits shall be subject to the commitments foreseen in paragraphs 6-14 of Annex Y.*

Article 10

Prevention of Circumvention of Export Competition Commitments

1. a) *Export subsidies not listed in paragraph 1 of Article 9 shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments; nor shall non-commercial transactions be used to circumvent such commitments.*

b) *Export credits not covered by Article 9 bis shall be prohibited.*

2. Any Member which claims that any quantity exported in excess of a reduction commitment level is not subsidised *or provided under an export credit*, must establish that no export subsidy *or export credit*, whether listed in Articles 9 and 9 bis or not, have been granted in respect of the quantity of exports in question.

3. a) *Members donors of international food aid shall ensure that:*

i) food aid shall be provided to the recipients exclusively in fully-grant form ;

ii) food aid operations shall only be provided in-kind in response to the needs of well-defined vulnerable groups or in response to an emergency and humanitarian crisis or post-crisis situation, under the framework of, or following appeals from, the United Nations, such as the Consolidated Inter-Agency Appeal, the FAO/WFP Crop and Food Supply Assessment Missions (CFSAMs) and the Joint Food Assessment Missions (JFAMs).

iii) food aid shall fully respect the provisions of Article IX(e)(I) of the Food Aid Convention, which require that the provision of food aid is not tied directly or indirectly, formally or informally, explicitly or implicitly, to commercial exports of agricultural products or other goods and services to recipient countries.

b). Members shall report to the Committee on Agriculture on the amount, content, channelling, recipients, and other related modalities of all their food aid operations.

c). Food aid operations which are not in conformity with these provisions shall be counted against the Member's export subsidy reduction commitments, or otherwise prohibited under this Agreement.

Article 12 bis

State Trading Enterprises

In order to prevent export distorting practices by State Trading Enterprises and by enterprises with exclusive or special privileges (including marketing boards), as defined by Article XVII GATT 1994, no export shall take place at a price less than the price paid by such State Trading Enterprises to the producers of that particular product. To ensure that the above-mentioned obligations are respected, all Members shall notify to the Committee on Agriculture all useful and detailed information on the commercial operations of their respective State Trading Enterprises, notably regarding acquisition costs and export pricing.

Part IX

Article 15

Special and Differential Treatment

1. *Developed countries and advanced developing countries shall provide duty-free and quota-free access to their markets for imports from the Least-Developed Countries subject to the conditions laid down in the relevant provisions of Members' legislation.*

NOTE: The EC stands ready to discuss further provisions for Developing Countries on the following subjects:

- *a minimum duty free access in favour of developing countries' exports of agricultural products;*
- *lower reduction rates as well as a longer implementation period;*
- *a form of Special Safeguard for "essential food security agricultural products";*
- *a significant reduction of tariff escalation on products of particular interest to developing countries by reducing the level of relevant ad valorem and specific tariff protection;*
- *a review of the de minimis clause for the AMS exemption for developing countries;*
- *exemptions for domestic support measures for agricultural products considered essential for food security and for the diversification of agricultural production;*
- *the rates of inflation and the possibility of expressing commitments in agreed currencies or baskets of currencies.*

ANNEX 2

DOMESTIC SUPPORT: THE BASIS FOR EXEMPTION FROM THE REDUCTION COMMITMENTS

12. Payments under environmental programmes/*animal welfare payments*

(a) Eligibility for such payments shall be determined as part of a clearly-defined government (...) programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.

(b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme."

ANNEX W

LIST OF GEOGRAPHICAL INDICATIONS

A. GEOGRAPHICAL INDICATIONS ORIGINATING IN

ANNEXE X

ALLOCATION METHODS FOR TRQs

1. *First come-first served: importers are free to import at the lower in-quota tariff until the quota is filled. No prior allocation of import shares to importers takes place. Imports are permitted to enter at the in-quota tariff rates until such a time as the tariff quota is filled; then the higher tariff automatically applies. The first come-first served tariff quotas is managed in accordance with the chronological order of date of acceptance of import declarations by the custom authorities.*
2. *Simultaneous examination: imports are allocated in proportion to the quantities requested when the applications for licences are submitted. If demand is less than the tariff rate quota, licences for all requests are issued. If demand exceeds the tariff rate quota, a reduction coefficient is applied to all the quantities requested.*
3. *Historical importers: importers' shares are allocated, or licences issued, principally in relation to past imports of the product concerned. However, one part of the tariff rate quota is reserved for traditional importers while the other is set aside for newcomers in order to foster market competition.*
4. *Auctioning: the right to import is allocated on the basis of a competitive bidding system. Importers submit sealed bids specifying the amount of the quota as well as the price per unit they are ready to pay to purchase the right of import. The competent authorities establish a cut-off price, set at a level so as to ensure that the quantity at or above the cut-off price equals the quantity available under the tariff rate quota. Then two options are possible: a) each applicant offering a price at or above the cut-off price receive the licence requested and is charged the price he has offered, or b) all applicants offering a price at or above the cut-off price receive the licence requested and all pay the same cut-off price.*

ANNEX Y

EXPORT CREDITS COMMITMENTS

Modalities on reduction commitments

1. *Supported amounts in respect of export credits and the quantity of exports of an agricultural product on which such export credits may be provided shall be subject to reduction commitments according to the same percentages established for export subsidies.*
2. *The base period for the purposes of reduction commitments shall be the years ...to*
3. *Base levels reduced in each year of the implementation period in accordance with paragraph 4 below shall constitute the annual quantity and outlay commitment levels.*

Product Specificity of Commitments

4. *Outlay and quantity commitment levels shall be established for all products or groups of products in any case where exports of such products are benefiting from officially supported export credits, including in particular:*
 - (i) *Cereals and cereals preparation*
 - (ii) *Oilseeds and oilseeds products*
 - (iii) *Breeding cattle*
 - (iv) *Cotton*
 - (v) *Agriculture vegetable reproduction material*
5. *This listing shall not preclude the scope for negotiating commitments on particular products within groups of products or on other groups of products.*

Credits terms and conditions

6. *General terms*

The Members shall continue to respect customary terms and conditions for agricultural products which have traditionally enjoyed less generous credit terms and conditions than the maximum allowed under the Agreement, and shall do everything in their power to maintain such customary credit terms and conditions.

7. *Repayment of principal*

In cases where the repayment term is [one year] or more, the principal sum of an export credit shall be repaid in equal and regular instalments not less frequently than

every six months, with the first instalment to be made no later than six months after the starting point of credit.

8. Payment of interest

In cases where the repayment term is [two years or more], interest shall not be capitalised during the repayment term, and shall be payable not less frequently than every six months, with the first payment occurring no later than six months after the starting point of credit.

Interest excludes:

- Any payment by way of premium or other charge for insuring or guaranteeing supplier credits or financial credits. Where official support is provided by means of direct credits/financing, the premium either may be added to the face value of the interest rate or may be a separate charge.

- Any other payment by way of banking fees or commissions relating to the export credit other than annual or semi-annual bank charges that are payable throughout the repayment term.

- Withholding taxes imposed by the importing country.

9. Cash payments

Cash payments of a minimum of 15% at or before the starting point of credit shall be required to the purchasers of exported agricultural products, which are the subject of official support if the repayment term is [two years or more]. No official support for such cash payments shall be provided other than insurance and guarantees, i.e. pure cover, against the usual pre-credits risks.

Cash payments are payments from the buyer's own resources received for agricultural goods exported. These exclude retention payments due after the latest appropriate starting point of credit.

The amount of the minimum cash payment is established by reference to the export contract/shipment value.

The export contract/shipment value means the total amount to be paid by the buyer, excluding interest.

10. Risk sharing

Where is no cash payment, a Member shall not cover 100% of the value of a transaction. However, in recognition to the Marrakech Decision on Least Developing Countries and Net food-importing developing countries, a Member may waive the cash payment and risk-sharing requirements for these countries.

11. Minimum Interest rates

A Member providing official financing support through direct/financing, refinancing, or interest rate support shall not provide exports credits at rates below those which

they actually have to pay for the funds so employed, (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit) or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

If the repayment term is [two years or more], a Member providing official financing support shall apply the minimum interest rates in conformity with the Arrangement on Guidelines for officially supported export credits as referred in Annex I of ASCM (Item k-2). The Members shall apply the relevant Commercial Interest Reference Rates (CIRRs) in conformity with such an agreement (cf Annex on minimum interest rates - CIRRs).

12. *Validity period for export credits*

Credit terms and conditions for an individual export credit or line of credit shall not be fixed for a period exceeding six months when the repayment term exceeds (...) days.

13. *Exceptional circumstances*

Better terms could be provided in the event of a sudden and significant deterioration in a nation economy which may have far-reaching consequences such as social deprivation or unrest provided this not displace commercial sales nor distort market practices and that it raises no objection by other Members.

14. *Premium*

Premium shall be charged, shall be risk-based and shall not be inadequate to cover long term operating long-term operating costs and losses in accordance with international obligations. Consequently, the accumulated cash flow (premium income plus recoveries minus operating costs and claims plaid) shall break even over a rolling period of (...) years.

**REQUEST FOR AN AUTHORITATIVE INTERPRETATION PURSUANT TO
ARTICLE IX.2 OF THE MARRAKESH AGREEMENT ESTABLISHING THE
WORLD TRADE ORGANISATION**

Members hereby adopt the following authoritative interpretation of the conditions under which Article 5.7 of the SPS Agreement may be invoked:

- 1. The measures shall be proportionate and no more trade restrictive than is required to achieve the level of protection which a WTO Member has determined to be appropriate.*
- 2. The measures shall not be discriminatory and therefore identical or similar situations should not be treated differently.*
- 3. The goal shall be to achieve consistency in the application of the level of protection, by avoiding arbitrary or unjustifiable distinctions in the levels members consider to be appropriate in different situations.*
- 4. The measures adopted presuppose examination of the benefits and costs of action and lack of action. This examination shall consider whether another measure is reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive on trade.*
- 5. The measures, although provisional, may be maintained as long as a more complete risk assessment cannot be conducted because the scientific data remain incomplete, imprecise or inconclusive and as long as the risk is considered to be too high relative to the chosen level of protection. However maintenance of the measures shall depend on the development of scientific knowledge. Therefore, the regulatory authorities shall re-evaluate the data and the measure once new scientific information is obtained.*
- 6. The measures shall be based upon scientific evidence, coming from qualified and respected sources, but not necessarily that of the majority of the scientific community.*

**REQUEST FOR AN AUTHORITATIVE INTERPRETATION PURSUANT TO
ARTICLE IX.2 OF THE MARRAKESH AGREEMENT ESTABLISHING THE
WORLD TRADE ORGANISATION**

Members hereby adopt the following authoritative interpretation of the conditions under which Article 2 of the TBT Agreement may be invoked in respect of agricultural products:

- 1. WTO Members have the right to choose the level they deem appropriate for consumer information and protection as regards the characteristics and the production and processing methods of agricultural products. Such consumer information shall be considered to be a legitimate objective in the sense of Article 2.2 of the TBT Agreement.*
- 2. WTO Members have the right to provide information to consumers on the characteristics of a product, its process and production methods, including the manner in which animals or plants are reared or grown, the organic or non-organic nature of the production process, the modified properties of agricultural products.*
- 3. Depending on the level of consumer information and law enforcement chosen by a TBT Member, mandatory labelling schemes for food and agricultural products can be the least trade restrictive alternative. They shall be presumed not to create as such an unnecessary obstacle to international trade*
- 4. WTO members shall ensure that, at all stages, the creation of a mandatory labelling scheme is conducted in a transparent manner, in particular the drafting of criteria and the operation of schemes. All interested parties shall have the opportunity to be involved in a meaningful way as early as possible.*