

Making Hong Kong a Success : Europe's Contribution - Brussels, 28 October 2005

Some progress has now been made on domestic support and export competition between the "FIPS", although much still remains to be done in these two pillars. Positions are still far apart on market access, and there is a general understanding that further progress is urgently needed in this respect to help the negotiations move forward.

The EU will therefore continue to contribute to the negotiations on agriculture on the basis of the Doha declaration and of the July 2004 Framework Agreement in order to achieve the objectives we all set ourselves there, and in particular the key objective of achieving "substantial improvements in market access".

In spite of the progress made, the major gaps in the other two pillars of the negotiations on agriculture have a direct bearing on market access. These shortfalls are even greater in other areas of the negotiations (NAMA, services, rules, development), where progress has been held back by the nearly exclusive emphasis on agriculture. Only a major, concerted effort can make all these issues catch up in time for Hong Kong and thus respect the basic principle of an overall negotiation leading to a single undertaking. These issues are an essential part of the Doha declaration, the Framework Agreement, and of our internally agreed negotiating mandate, as set out in the letter of 19 October to Pascal Lamy.

All participants have domestic constraints and political limitations. In the EU, the Commission negotiates on the basis of mandates decided by the Council of Ministers. A negotiator can only allow himself to use all the flexibility contained in his agreed mandate if his counterparts make it worth his while to do so. The Commission is prepared to work in this spirit: while the EU's contribution on agricultural market access must necessarily continue to remain within the Commission's negotiating mandate, as laid down by the Council, we are prepared now, in order to push forward the Round, fully to use the flexibility provided within these limits provided that our main negotiating partners, including the FIPS, enter into a final negotiation on agriculture on the terms suggested below. For these reasons, the confirmation of the attached outline of a potential EU contribution to the negotiations on agriculture is fully conditional on the following:

1) As we said during the restricted meeting on Wednesday evening last week, we can only make such a far reaching offer if it is agreed amongst us that we are in an end game in the agriculture negotiations. In practical terms, given the urgency, the FIPS should agree by 8 November, on a definitive basis, the key aspects of all the agriculture negotiations in each pillar. If successful, this should be formalised between us.

2) The two other agriculture pillars (export and domestic subsidies) are important in their own right but also of crucial importance for market access. For example, EU access to overseas markets would be put at an unacceptable disadvantage if only the EU were to scrap its export refunds and if other practices that distort competition as much (short term export credits, commercially motivated food aid, State trading enterprise cross subsidisation, etc.) were left to continue without comparable disciplines. The same is true for domestic subsidies: the EU has reformed, others have not. This distorts competition through unfairly subsidised imports into our own and third country markets. This is, in particular, the case for counter-cyclical type schemes. In all these aspects, there is still much catching up to be done by our partners to create a fair and acceptable basis for a deal on agriculture by 8 November.

3) In order to demonstrate to our increasingly sceptical Member States and civil society that this is not going to become an agriculture-only Round, we need to agree to move speedily and substantively forward on the other issues. In order to ensure that a high level of overall

ambition can be achieved in the Doha Round, it is essential at this point in the negotiations for Members also to make tangible progress in these other areas in a clear and reasonable way. We have to see agreement amongst us on 8 November on the principles and objectives that will achieve substantial improvement in overall market access:

- in NAMA, through a simple Swiss formula that cuts into applied tariffs;
- in services, through complementing the request/offer approach with ambitious individual, mandatory numerical targets;
- in anti-dumping, by agreeing to negotiate between now and HK a list of issues to be resolved including all major impediments to international trade created by abusive recourse to antidumping;
- in development, by agreeing that in HK there will be a package of agreement-specific proposals, a Trade Related Assistance package, and a duty-free/quota free access for LDCs by a date certain and in no case later than the overall conclusion of the DDA.

Hong Kong must then formalise comparable progress towards and adopt full modalities in areas other than agriculture, and in particular NAMA, Services, Rules and Development.

In other words, if – as we hope - we agree on agriculture, this can only be definitively confirmed by the EU in Hong Kong if by then we have achieved comparable agreement in these other areas of the negotiation. This is, after all, the essence of the “Single Undertaking” and we would expect other participants in the DDA to hold the same position.

We are of course not expecting such comparable detailed results to appear before 8 November. They will, however, all have to be there by Hong Kong, to constitute an ambitious outcome expressed in terms of full modalities in all areas. We therefore propose to start with agriculture, agree the substance of it between us by 8 November, and give each other an explicit political commitment to pursue the objectives mentioned above so as to open markets and reduce distortions to international trade in all market access areas, rules and development.

This would have to be sufficiently clear and explicit that each of us could justify back home why he or she has agreed to proceed with and finalise agriculture first.

For the sake of clarity among us, the substance of our negotiating objectives in these other areas are set out in an annex following the section on agriculture.

Agriculture

All three pillars of the agriculture negotiations (export competition, domestic support, market access) are closely connected. They all aim, one way or the other, at improving market access and establishing fairer conditions for trade in agriculture. Major progress was made last year when the EU offered, on a conditional basis, to eliminate export subsidies. Nevertheless, other forms of export subsidisation create comparable distortions. The EU has also made major efforts in terms of moving from trade-distorting domestic subsidies to decoupled support. More importantly, the movement shown by other major developed countries, including the moves announced by the United States, fall short of constituting meaningful reform. This is not only a political question of ensuring a comparability of effort. It is also a very important economic question, to the EU and others, intimately linked to market access: how can we justify the opening of our markets while the nature of the subsidies maintained elsewhere alters market access opportunities ?

Therefore, although there are many unanswered questions to be addressed in market access, the other two pillars also present outstanding questions to solve if we are to achieve a balanced, fair and satisfactory outcome.

Domestic support

When we agreed at Doha to “substantial reductions in trade distorting domestic supports” few envisaged the EU taking the radical steps that it has taken since then. We are prepared to consolidate this reform and bind it fully into these negotiations. But we assume no-one is asking us to reform twice simply because we are reforming then negotiating (unlike the US). We are prepared to make the following commitments:

- AMS reduction: reductions should be based on three bands. We are prepared to accept that the EU be in the top tier and to concede that the US only be in the second tier. Japan could either be placed in the top band or in the second tier with an additional contribution. We are prepared to go as far as a cut of 70% and to accept a lower effort by the US of 60% (a 10% gap between us has been previously accepted as the norm). Our 70 % cut and its binding in the WTO would ensure that we do not roll back our already very significant reform. It is, however, not clear that a 60 % cut by the US would have the effect of bringing about reform, as others have already pointed out. Our acceptance of a cut of 60 % therefore depends on the US making more important efforts in other respects than have been proposed so far (see below). As regards the third band, a cut of 50% should be foreseen. For those countries belonging to the third band and having a relative high level of AMS compared to their total value of agricultural production, the AMS reduction should be complemented with an additional effort.
- Product-specific AMS caps: the basis for the calculation of the ceilings should be the whole implementation period.
- De minimis support should be reduced for all developed countries by 80%, in both product-specific and non-product-specific support, against the present 5% level allowed for developed countries.
- Blue Box support: the objectives and principles of the July 2004 Framework Agreement should of course be implemented. This includes the 5% ceiling and the commitment to negotiate new criteria to ensure that blue box payments are less trade-distorting than AMS measures. It is therefore essential to develop disciplines to govern the new Blue Box in order to avoid that highly trade-distorting payments are moved into this new box without significant changes. These cannot be achieved by introducing product specific ceilings nor by lowering the 5% overall ceiling. It has to be done by freezing the existing price difference between linked support prices and by limiting the price gap to a percentage of the base price difference.
- The overall reduction in trade-distorting support subsidies should be based on three bands thus reflecting the level of ambition on trade-distorting support. We are prepared to cut by 70% and could accept a 60% in the second band. As for the AMS, the cut in the third band should be 50% and should be complemented by an additional effort.
- On the Green Box, we all recall the importance that WTO members have attached to moving away progressively from trade-distorting agricultural support to Green Box support. This is a fundamental policy objective that we share and have adopted. We are, of course, prepared to review and clarify green box criteria to ensure that there is no, or at most minimal, trade distorting effect.

- The EU recognizes the great importance attached by developing countries to S&D treatment in this pillar, and is prepared to work actively and constructively to find solutions. This will, as far as we are concerned, not become a stumbling block to the successful conclusion of these negotiations.

Export competition

Despite the EU's offer to phase out export subsidies, negotiations have shown little progress on full parallelism in the elimination of all forms of export subsidies. We reiterate our offer to eliminate, by an end date to be agreed, all export subsidies as scheduled, provided that other Members fulfil their commitments as set out in the Framework Agreement:

- Export Credits : it was agreed in the Framework to eliminate all export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days. For export credits with a maximum repayment period of 180 days it was agreed to introduce disciplines against those aspects of such credits that constitute subsidies or otherwise distort trade. It should now be agreed to establish the "short-term self-financing" principle as a core rule. At the end date, officially "supported" agricultural export credit agencies should be able to demonstrate on an annual basis that they charged adequate premia to ensure such self-financing. Moreover the scope of officially "supported" export financing should be narrowed down with only guarantees for pure risk cover being permitted.
- State Trading Enterprises : Members should end the use of all exporting STEs' statutory privileges and regulatory benefits that have trade-distorting effects (illustrative non-exhaustive list: price-pooling, anti-trust immunity, direct and indirect preferential (re)financing conditions, preferential transport services, use of monopoly powers including single-desk selling and exclusive utilization of preferential market access quotas).
- Food Aid: the agreed objective is to phase out food aid that leads to commercial displacement. There is, however, no reason why this should lead to a lowering of developed country Members' commitment towards adequate food aid levels. The EU has already decided to move to a "cash only" system. If the primary motivation of food aid is humanitarian and not commercial, it is difficult to understand why this should not be acceptable to others. We therefore propose gradually to move towards "untied" and "in-cash" food aid. "In-kind" food aid should be subject to strict disciplines during the implementation period and remain permitted only in exceptional, genuine emergency situations under criteria to be agreed.

As in the case of domestic support, all these actions are an essential part of opening up markets and removing distortions. Although difficult to quantify with great precision, these aspects of export support have at least as great a cumulative distorting effect on world trade as direct export refunds, perhaps even more.

Market access

The Doha Declaration calls for substantial improvements in market access and states that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations.

The Framework Agreement lays down the guiding principles in this pillar, including the need for substantial improvement in market access, while recognizing the right for

Members to designate an appropriate number of sensitive tariff lines (more on developing countries below).

- Tariff reduction formula: the Framework Agreement also establishes that “Progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products”. The EU has already agreed to move away from its previously held approach to that presented by the G 20 in July. We did so to promote consensus, and on the continued understanding that there would be a two third ratio between the efforts made by developed and developing countries. This middle ground is important to sustain if we are going to retain the overwhelming support of WTO members. That is why we cannot accept the extreme approach of the US. If followed, it would potentially destroy agriculture in many sectors, in developed and developing countries alike. The objective on which we all agree is that of “substantial improvement in market access”. We are therefore prepared to accept the G20’s linear approach which could be based on the following parameters :

| | <i>Developed countries</i> | | <i>Developing countries</i> | |
|------------------------|-------------------------------|--------------------|-------------------------------|--------------------|
| Number of bands | 4 | | 4 | |
| Thresholds | <i>Thresholds within AVEs</i> | <i>Linear cuts</i> | <i>Thresholds within AVEs</i> | <i>Linear cuts</i> |
| | 0 ≤ 30 | 35 % (20% - 45%) | 0 ≤ 30 | 25 % (10% - 40%) |
| | >30 ≤ 60 | 45 % | >30 ≤ 80 | 30 % |
| | >60 ≤ 90 | 50 % | > 80 ≤ 130 | 35 % |
| | > 90 | 60 % | > 130 | 40 % |

Capping:

100

150

At the same time this proposal is conditional on acceptable provisions being developed on the other elements of the market access pillar. These are:

- Flexibility: in order to reflect the provision of the Framework Agreement that a tiered formula would take into account the different tariff structures of Members, tariff reductions between a minimum of 20 % and a maximum of 45 % should be allowed in the lowest band, provided that the average cut in the band is respected. This is intended, in particular, to avoid having to insist on a significantly higher number of sensitive products than that indicated below.
- Sensitive products: Members are entitled, in accordance with the Framework Agreement, to select their sensitive products. In the case of the EU, we have about 2200 tariff lines. On the basis of the approach to linear reductions indicated above, we will require a maximum of around 8 % of total tariff lines depending on the outcome of the overall agricultural negotiations. To respect both the spirit and the letter of the Framework Agreement the treatment of sensitive products should result in substantial market access that will nonetheless still be lower than that granted by the result of the full tariff cut. Otherwise, the notion of a sensitive product would be rendered irrelevant.

Members will have the choice of selecting the desired deviation from the tariff cuts for a sensitive tariff line based on a sliding scale that respects a minimum deviation of one third and a maximum deviation of two thirds of the tariff cut in the band within which the line falls.

The increase in TRQ, expressed as a percentage of current imports of the tariff lines in question, would result from the division of the tariff cut deviation, expressed in percentage points, by the effective border protection¹. This is done to reflect the relationship between the deviation to be applied and the effective border protection of the tariff line in question.

To take into account the fact that sensitive products should result in substantial market access that will nonetheless still be lower than that granted by the result of the full tariff cut, the above percentage would be adjusted by a coefficient of 0.8.

The above approach respects the requirement of the framework agreement that the higher the deviation from the corresponding tariff cut, the higher the TRQ expansion.

The following table provides the range of possible TRQ expansion per sensitive tariff lines, expressed as a percentage of total current imports, under 3 alternative assumptions of tariff cuts deviation.

However, these figures do not represent the total level of market access to be provided by the EC. The most important market access will be provided through the tariff cuts themselves on these lines.

| Tariff cut deviation | Band I (0-30) | Band II (30-60) | Band III (60-90) | Band IV (> 90) |
|----------------------|---------------|-----------------|------------------|----------------|
| 20 % points | 12% - 16% | 10% - 12% | 8% - 10% | 5% - 8% |
| 30 % points | 18% - 24% | 15% - 18% | 13% - 15% | 7% - 12% |
| 40 % points | 25% - 32% | 20% - 24% | 17% - 19% | 9% - 16% |

Appropriate rules will need to be developed where a sensitive tariff line appears in more than one TRQ, or where under an existing TRQ there are both sensitive and non sensitive tariff lines.

We wish to keep open the option of TRQ creation for the time being. We would like to have little or no recourse to this possibility, but this will depend on other aspects of the negotiations, including in particular the SSG.

- Special Safeguard Clause (SSG): the SSG should be kept for the following products: beef, poultry, butter, fruits and vegetables and sugar.
- Geographical Indications (GIs): improving the protection of GIs is an integral part of market access in agriculture. European agriculture is to an ever increasing extent focusing on high value added products for which suitable protection of the equivalent of a trade mark, ie geographical indications, is obviously essential. Without such protection, our products are exposed to unfair competition on world markets. In this context the EU has the following objectives:
 - The protection available today for GIs for wine and spirits under Article 23 of the TRIPS Agreement should be extended to all products. This means that the obligation to provide the legal means to prevent use of a GI and the obligation to refuse or invalidate trademarks containing or consisting of a GI, should be extended to all cases concerning products of the same kind not originating in the place indicated by the GI. We understand the concerns expressed by certain

¹ Tariff cut deviation / (1 + AVE)

Members that this could oblige them to invalidate existing trade marks, legally valid in their countries. We accept that this would be a major problem and are prepared to resolve the problem in the same manner that it was resolved for wine and spirits in the Uruguay Round, ie by adjusting the exceptions of Article 24 of the TRIPS Agreement accordingly (WT/GC/W/547). In brief, this implies that existing trade marks would not be affected. This would obviously be a very major concession by the EU.

- As stipulated in Article 23.4 of the TRIPS Agreement, a multilateral system of notification and registration of GIs should be established. The register should be open to GIs for all products and have legal effects for both participating and non-participating Members not having lodged a reservation to the registration of a GI. Again to address the concerns expressed by certain Members, the EC has also adjusted its proposal on the multilateral register (WT/GC/W/547).
- In addition, for a limited number of well known GIs which are being used in third countries in a manner highly detrimental to our market access objectives, their use by others than the right holders should be prohibited. In other words, it should not be possible to invoke the exceptions provided for in Article 24 of the TRIPS Agreement to refuse protection to the GIs on this short list. The EC would be equally prepared to review this third element of its proposal to address the concerns of other Members in relation to trademark rights.
- Market access and developing countries: we are prepared to accept the application of a two thirds ratio to the respective contributions by developing and developed countries. It is also clear that the rural development, food security and/or livelihood security needs in developing countries are of such importance that they must take precedence over purely commercial objectives. These objectives, and Special and Differential treatment more widely, have to be reflected in all aspects of the negotiations, including in the context of their right to designate an appropriate number of products as Special Products, eligible for more flexible treatment.

Conclusion

In this Round, there are guiding principles at the heart of the negotiation. First, that levels of ambition between, and within, the different blocks of negotiation should be broadly comparable. This is not, by any means, an exact science. But it is not acceptable for members to engage in a "race to the bottom" in ambition. This will only reduce the possibility of agreement and the benefits available for all.

Second, levels of effort are not identical between developed and developing countries but they should be broadly proportionate across the negotiation. That developing countries in a position to do so (with exceptions for LDCs) should contribute 2/3rds of the effort of developed countries, is the general rule we should seek to maintain. Last, if the Hong Kong Ministerial is to retain its original goals, very intensive work and negotiation is required. The EC stands ready to join in this in the knowledge that our offers and conditions described today will not remain on the table indefinitely, and cannot be sustained at all unless there is an immediate resumption of parallel negotiation in all aspects of the DDA.

Annex: EU Requirements for Progress In non Agricultural Issues

Non agricultural market access (NAMA)

- We seek agreement on a simple Swiss tariff cutting formula, applied line-by-line, leading to substantial improvement in real market access through cuts in the applied duties of developed and more competitive developing countries, on the understanding that developing countries should do less.

Details:

- Developed countries: simple Swiss formula with a coefficient 10, with no flexibilities/exclusions for any product. The highest duty will be 10 %.
 - Advanced Developing countries: the same Swiss formula with a coefficient 10 and flexibilities of paragraph 8. Developing countries, through the flexibilities in paragraph 8, will cut their applied tariffs less than developed countries overall. However, the figures in the brackets in paragraph 8 remain to be agreed and the highest tariff should not be higher than 15%.
 - Poorer developing including least developed countries: Remain covered by paragraphs 6 and 9 of the Framework Agreement.
 - Unbound duties: Marked up by 10 percentage points before reduction.
- Non-tariff barriers: Need for agreement on the elimination of export duties or their binding at low levels.
 - The EU is ready to negotiate on other issues and to address the specific concerns of developing countries, in particular preference beneficiary countries and recently acceded Members, compatibly with the conditions set out before.

Services

Hong Kong must achieve modalities and targets in the services sector that will result in new or substantially improved market access. This will require agreement on:

- A quantitative target applicable to the offers of all WTO Members, except LDCs and other small and vulnerable developing countries in a similar situation. A target for new or improved commitments of developed members would be 139 of the 163 services subsectors; for developing countries a lower target would apply that is equivalent to two thirds of the target for developed members, i.e. 93 sub-sectors.
- Specific qualitative parameters for the services offers that will strike a balance in terms of ambition between the 4 modes of supply.
- The launch of sectoral negotiations in key sectors to achieve quality offers for critical masses of WTO Members, in particular construction, computer and related services, distribution services, environmental services, financial, telecommunications, maritime transport plus certain sub-sectors of professional and business services.
- Participation of developed WTO Members in these sectoral negotiations for at least 12 of the 16 sectors identified by the Chair of services negotiations; and of developing WTO Members in at least 8 sectoral negotiations out of the 16 sectors. LDCs and other small and vulnerable developing countries would have no obligation to participate.
- Revised services offers, to be submitted by [xx/yy] 2006, reflecting the qualitative and quantitative parameters and the outcome of sectoral negotiations.

Anti-Dumping

The EU, along with other WTO members, have longstanding proposals which now need to be negotiated. We will need agreement at HK that Members negotiate tighter disciplines in at least the following areas, and with the explicit aims set out below:

- Prevention of abusive use of the anti-dumping instrument: reduce the risk of abusive initiation of investigations and devise stricter rules on substance and process of AD proceedings (in particular for reviews) in order to avoid or terminate measures which are proven to be unnecessary.
- Avoidance of excessive measures: Introduce (a) the mandatory application of a Lesser Duty Rule in order to limit measures to what is needed to remove injury to domestic industry; (b) an Economic Balancing Analysis or public interest test to give those affected by measures (that is, not only exporters/importers and domestic producers, but also industrial users, consumers, etc.) the opportunity to have their views taken into account in the decision on whether measures should be applied or not.
- Increase of Transparency: Establishment of procedures to enable interested parties to defend their rights and make authorities more accountable.
- Substantial reduction of costs of AD proceedings
- Enforcement: More uniform and predictable enforcement of AD duties.

Development

The bulk of developing country gains will flow from ambitious results in the main negotiating areas of the DDA. But a significant additional development package for the poorer developing countries should at a minimum include the following:

- Agreement in Hong Kong, by all developed countries, to grant full duty/quota free access for all products from least developed countries, together with an undertaking by more competitive developing countries to take steps in this direction.
- Agreement that least developed countries should not be asked to open their markets in the current negotiations and that market opening commitments of other developing countries will reflect their level of development (though without creating new country "categories").
- Agreement on the 28 SDT proposals prepared for Cancun and on the 5 LDC proposals, and a commitment by all members to address all implementation issues in the remainder of the DDA negotiations.
- Commitment by all members to address the issue of preference erosion, including in the context of the negotiations on NAMA and agriculture, through a combination of trade-related and supply-side related responses in Hong Kong, so as to provide the countries concerned with at least the outlines of a substantial package of measures to be finalised in the remainder of the DDA and that will be part of the end-result of the Round.
- Agreement by developed Members on an aid-for-trade package in Hong Kong along the lines of the Gleneagles G8 summit, subsequently jointly proposed by the IMF/World Bank. This package would be based at a minimum on improving the Integrated Framework and start building up this programme to be in place no later than 1 January 2007, together with commitments from donor Members to increase their trade related aid.

- In respect of cotton we must have definition and agreement on specific action to overcome the distortions to trade on cotton created by developed countries, including dates and modalities for early implementation.