

**Committee on Agriculture
Special Session**

**REVISED DRAFT MODALITIES FOR AGRICULTURE
SENSITIVE PRODUCTS: DESIGNATION**

1. This paper, like TN/AG/W/6 and 7, is much more like work-in-progress than is the Revised Draft of Modalities itself (TN/AG/W/4/Rev.4). In these papers, it is not my intention to put forward precise suggestions for modalities because such precise suggestions as I have made in the fourth revision (which is actually the fifth revision of modalities which I have done if you start with TN/AG/W/3) were the result of convergence to the point where I felt such progress could be captured.
2. Rather than propose a single solution to the designation of Sensitive Products, this working document sets out the issue and indicates a way forward which could, hopefully, operate as a platform to get to closure. My reason for issuing this, and the other working documents, in this more formal format is to ensure that it is distributed in the same way and at the same time as the fourth Revised Draft Modalities for Agriculture itself.
3. Based on constructive consultations to this point, we have progressed over differences on Sensitive Products, but we are still short of a clean text, let alone agreement on key matters.
4. As regards Japan and Canada they are signalling unambiguously that they cannot limit themselves to 4 per cent of sensitive products. Canada has signalled it desires 6 per cent and Japan 8 per cent. Various ideas have been tried but nothing has commanded consensus. One could just leave it at that for political decision – in a certain sense the text *per se* now presents it that way which seems to be the fairest thing to do in the circumstances when you simply do not have agreement on such a sensitive matter.
5. But the constructive engagement we had did suggest certain lines of possibility and, one of these days, a solution is actually going to have to be found that works for everyone. In that spirit, and based on what I have heard, the best I can suggest as regards Canada is that the following could represent options – they are not intended as last word legal drafting – from which a final decision could be made. Adjustments could obviously be made to these options, but if this is ever going to be resolved, my sense is that it something close to what is outlined below could be a way to create a springboard to closure.
- 6.

Either:

Canada may also have access to the maximum number of tariff lines provided for in the second sentence of paragraph 71 provided that (a) for each tariff line that is additional to the 4 per cent¹ under paragraph 71 first sentence, they provide an additional 1.5 per cent of domestic consumption to the 4 per cent of domestic consumption provided for under paragraph 74 for those additional lines (i.e. 5.5 per cent of domestic consumption for each additional line over the 4 per cent limit); and (b) for all of the 4 per cent of tariff lines

¹ This presentation assumes that the two-thirds deviation is used and there are no other adjustments. If the one-half or one-third deviation or there were other adjustments made as provided for in the Revised Draft Modalities for Agriculture, then the figures that follow should be adjusted accordingly.

referred to in paragraph 71 first sentence, they provide an additional 0.5 per cent of domestic consumption to the 4 per cent of domestic consumption provided for under paragraph 74 (i.e. 4.5 per cent of domestic consumption for the default 4 per cent of tariff lines).

Or:

Canada may also have access up to the maximum number of tariff lines provided for in the second sentence of paragraph 71 provided that an additional 1 per cent of domestic consumption is provided for each and every tariff line declared to be sensitive (i.e. 5 per cent of domestic consumption for each and every tariff line declared to be sensitive).

7. As regards Japan, I have not to this point had the impression that either of the above two options would work. Nor have I had any basis from the consultations to suggest any other approach that might generate convergence. Of course, Japan has tabled its own proposal as regards access to a total of 8 per cent of tariff lines for Sensitive Products.

8. However, this is not, of course, just a question of numbers for Sensitive Products viewed in clinical isolation from everything else. There would be questions as to whether or how this affected those observing the default number and how it affected other elements in the text.

9. As regards paragraph 76, some changes have been made to the text within square brackets – which remains, as an issue, of real contention despite ongoing consultations. I have no emerging consensus by way of compromise or alternative. The best I can suggest as a possible alternative is the following – proffered more in hope than expectation of agreement:

Alternatively, certain Members² may retain no more than 2 per cent of their tariff lines in excess of 100 per cent ad valorem for no longer than four years after the implementation period of paragraph 61. In addition, each year following the implementation period, they shall reduce one-quarter of retained lines to 100 per cent ad valorem.

² Iceland, Japan, Norway, Switzerland