The World Trade Organization's
Doha Development Agenda
The Doha Negotiations after Six Years
Progress Report at the End of 2007

NON-AGRICULTURAL MARKET ACCESS

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NON-AGRICULTURAL MARKET ACCESS

Overview

The negotiations on Non-agricultural Market Access (NAMA) are a key part of the Doha Round. Progress in them has long been seen, second only to the negotiations on Agriculture, as paving the way to completion of the negotiations as a whole.

The crucial step in NAMA, referred to in paragraph 16 of the Doha Declaration of November 2001, is to agree to modalities which aim to reduce or as appropriate eliminate tariffs, including 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 is to be comprehensive, without any a priori exclusions. The negotiations are to take fully into account the special needs and interests of developing and least-developed countries, including through less than full reciprocity in reduction commitments.

The chair of the NAMA negotiations, Ambassador Stephenson of Canada, issued *Draft NAMA Modalities* in July 2007 and these have since constituted the focal point of the negotiations. The Draft is not an official document but it can be consulted on the WTO website. The term "modalities" means a template of numerical and other parameters according to which WTO Members would submit new tariff schedules.

Major Positions and Groups in the Negotiations

Developed countries generally have low bound tariffs themselves, with some sensitivities as regards peaks and escalation. Their main aim is to obtain real market opening in the major developing economies.

The "NAMA 11," a grouping which brings together, *inter alia*, Argentina, Brazil, Egypt, India, Indonesia, the Philippines and South Africa, stresses the centrality of the development component of the Round and that developing countries are, under the terms of the mandate, to make lesser cuts than the developed countries.

"Small, Vulnerable Economies" (SVEs), stress that their economies are fragile and in many cases dependent on the production of a very limited number of goods so that they require special treatment in the negotiations.

The ACP Group is particularly concerned that reductions in tariffs in developed markets could undercut the margins of tariff preference which they currently enjoy.

Recently Acceded Members (RAMs) argue that they have recently made significant cuts in their tariffs in the process of accession to the WTO and that, accordingly, they should not be required to undertake significant further cuts at this stage.

The Least-developed Countries (LDCs) argue for exemption from formula cuts given the fragile state of their economies; for duty-free, quota-free market access with simple rules of origin; and, as with the ACP Group, they are concerned about preference erosion.

In addition to the above, there are other Members such as Singapore, Hong Kong, Chile and Mexico who, though not part of a grouping, are pro-liberalization tempered with sensitivity to the concerns of other developing economies. These Members, together with the developed countries, are sometimes referred to as the "Friends of Ambition."

Some developing countries have limited tariff binding coverage, meaning that there are as yet relatively few binding commitments in the WTO as regards maximum tariff rates. Some others may have undertaken wide binding coverage but significant gaps exist between some of the bound rates and applied rates (possibly as a result of autonomous liberalization). Still others however have relatively little room between bound and applied rates.

SITUATION AT THE END OF 2007

The position with respect to the main elements of the negotiations can be summarized as follows.

a) Formula

The Draft Modalities of July 2007 include a "Swiss formula"[1] with two coefficients which would in practice be applied by some 40+ Members. The coefficient for developed Members would be in the range of 8-9 and that for

[1] This is a harmonizing formula tariff cut with a built-in maximum tariff. It is so-called because it was proposed by Switzerland in the 1973-79 Tokyo Round negotiations. The formula is Z=AX/(A+X) where X = initial tariff rate; A = coefficient and maximum final tariff rate; and Z = resulting lower tariff rate at the end of the implementation period. For example, an initial tariff of 10% and a coefficient of 8 produces a final tariff of 4.44%; an initial tariff of 25% and a coefficient of 20 produces a final tariff of 11.11%.

developing Members in the range of 19-23. Cuts would be based on bound tariffs and implemented over 5 years for developed Members and 9 years for developing Members.

Developed Members argue that, under this scenario, the resultant ratio between average tariffs of developed and developing Members would widen. The NAMA 11 argue, to the contrary, that the percentage cut to be undertaken by developing Members would exceed that of developed Members. Strong criticism of the coefficient for developing Members contained in the Draft Modalities has been expressed by some, notably Argentina, on the grounds that it is too ambitious.

b) Flexibilities for developing Members subject to the formula

Under the Chair's proposal, developing Members subject to the formula can also avail themselves of one of two additional flexibilities – either applying less than formula cuts for up to 10% of non-agricultural tariff lines, provided that the cuts are not less than half of the formula cuts and that the tariff lines do not exceed 10% of the total value of non-agricultural imports; or keeping tariff lines unbound or not applying formula cuts for up to 5% of non-agricultural tariff lines, provided they do not exceed 5% of total non-agricultural imports. In addition, the Chair has proposed that those not availing themselves of the above flexibilities may, instead, apply a higher coefficient.

In response, several papers have been circulated on flexibilities. For example, Mercosur has proposed that 16% of tariff lines be subject to 50% of the formula cut, with no trade constraint; the Southern African Customs Union (SACU)[2] has also proposed enhanced flexibilities, without further precision at this stage; and the Philippines has also proposed expansion of flexibilities. At this stage, the response has been more favourable towards SACU than to the others.

Many Members have commented on the relationship between the formula cut and the flexibilities for developing countries. For some, this means that the flexibilities are far too limited for the level of cuts proposed, so that either the cuts should be reduced and/or the flexibilities should be increased. On the other hand, others see the flexibilities as threatening to close off sectors of trade that may be of interest not only to developed countries but also to smaller and developing Members, diminishing trade and development opportunities for the majority.

[2] See TN/MA/W/92 dated 29 October 2007

In further counter-reaction, a middle group of Members (Costa Rica, Mexico, Colombia, Peru, Singapore, Hong Kong China, Thailand and Israel) have indicated opposition to the further enhancement of flexibilities for developing countries, at the same time proposing that developed countries could undertake bigger cuts than those suggested by the Chair.

c) Flexibilities for Members with low binding coverage

The Chair has proposed that developing Members with a present binding coverage of less than 35% should be exempt from the formula cut. Instead, they should bind 90% of non-agricultural tariff lines at an average level that does not exceed 28.5%.

The position of those Members affected by this provision (of whom there are twelve)[3] has been that they should only be required to move towards 70% binding coverage. However some have recently shown some flexibility, indicating a range of 70-80%.

d) Small, Vulnerable Economies (SVEs)

The Draft Modalities define an SVE as a Member having a share of less than 0.1% of world NAMA trade for the reference period of 1999-2001 (or best available data). These Members need not apply the formula and flexibilities for developing countries. Instead they are asked to reduce their bound tariffs according to a three-tiered formula (with higher cuts for higher tariffs), resulting in overall average tariffs of not more than 22%, 18% and 14% in the tiers. In addition, 95% of all NAMA tariff lines are to be subject to a minimum cut of 10%.

In response, the SVEs themselves have proposed a two-tiered formula, which would result in average tariffs of 32% and 28% in the respective tiers. Moreover, they propose that where this process involves reductions from present levels which are greater than 40% in the first tier, or 30% in the second tier, they should have the additional flexibility to apply lesser reductions. In addition they propose that 90% of all tariff lines should be subject to a minimum cut of 5%, and that there should be a longer implementation period. While the NAMA 11 group have largely indicated willingness to go along with the SVE proposal, others have objected, particularly in relation to the target averages and the concept of "capping" of reductions.

[3] Cameroon; Congo; Cote d'Ivoire; Cuba; Ghana; Kenya; Macao, China; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe.

e) Least-developed Countries

Under the Draft Modalities, LDCs are exempt from formula reductions, but are expected to substantially increase their level of tariff binding. In addition, the *Decision on Measures in Favour of Least-Developed Countries* in Annex F of the Hong Kong Declaration of December 2005 is to be fully implemented. Under this decision, developed countries shall (and those developing countries in a position to do so should) provide duty-free and quota-free market access on a lasting basis for all goods originating from LDCs. Members facing difficulties in this respect are to provide such access for at least 97% of products and take steps to move progressively to 100%. Members are also to ensure that preferential rules of origin applicable to such products are transparent and simple, as a contribution to facilitating market access.

LDCs have continued to press their case by :

- requesting a road map for the final 3% of duty-free and quota-free tariff lines. However, this is rejected by the US;
- asking for a harmonization work programme on preferential rules of origin (in pursuit of the aspect of the Hong Kong Declaration referred to above that enjoins preference-giving countries to ensure that there are transparent and simple rules of origin as a contribution to facilitating market access for LDCs) . However it would appear that they are coming to accept that this will not command consensus at the present time, given that preferential rules of origin apply not only to LDCs. They may pursue the issue bilaterally, subject perhaps to a monitoring mechanism;
- advocating more concrete language in the modalities on capacity-building; and
- circulating a list of their products which are vulnerable to preference erosion (see also section below).

f) Preference Erosion

The Draft Modalities recognize that MFN liberalization resulting from the DDA will erode non-reciprocal preferences in respect of a limited number of tariff lines which are of vital export importance for the beneficiaries of such preferences. 23 such tariff lines are identified for the EC (mostly fish and apparel) and 16 for the US (all of which are apparel). In order to provide more time for adjustment, it is proposed that tariff reductions by the preference-granting countries should be over seven years rather than five.

The ongoing debate revolves around three elements:

- *the product list*. The proponents (ACP Group, LDC Group and a number of Central American countries) wish to expand the list; others object.
- *treatment*. Proponents would like a grace period with no cuts, followed by a longer implementation period. Others are opposed to a so-called "trade-based" solution.
- *"disproportionately affected Members."* This concerns Members - notably Pakistan and Sri Lanka – who consider that any special measures taken to soften the blow on preference beneficiaries will adversely affect them since they are competitive exporters of at least some of the products identified. Sri Lanka has proposed that tariff reductions should be implemented normally with respect to the disproportionately affected Members, but this has been objected to by other MFN suppliers.

g) Recently Acceded Members (RAMs)

The Draft Modalities identify 16 Members as recently-acceded, including China, Chinese Taipei, Croatia, Ecuador, Jordan, Mongolia, Oman, Panama, Saudi Arabia and Viet Nam. It is proposed that those RAMs applying the formula should have a grace period of two years before implementing tariff reductions plus an extra two years for implementation. Six RAMs – Armenia, FYR of Macedonia, Kyrgyz Republic, Moldova, Saudi Arabia and Viet Nam – would not be required to undertake tariff reductions beyond their accession commitments. Tonga and Cape Verde will probably be added to this list as the most recently acceding Members, as will Albania.

RAMs have previously proposed a two year grace period, plus five years extended implementation (as opposed to the two years proposed by the Chair), plus additional formula flexibilities. There is some openness among other Members to considering some form of special treatment for RAMs. However it seems unlikely that those applying the formula, such as China, Chinese Taipei, Croatia and Oman, will be able to obtain much beyond some extra time for implementation of their reduction commitments.

h) Non-tariff Barriers (NTBs)

A number of proposals have been made in this area.

Japan has proposed enhanced transparency on export restrictions and the EC on export taxes. However objections have been raised by Argentina, Malaysia, India and Indonesia. Other proposals with respect to forestry, electronics and labelling are TBT-related. But again, some reservations or notes of caution have been expressed on grounds of not wanting to modify obligations under the TBT Agreement. The United States has proposed a draft Ministerial Decision on Trade in re-Manufactured Goods (TN/MA/W/18/Add.16/Rev.1). A horizontal mechanism for monitoring future NTBs (TN/MA/W/88), is also under discussion and has support from a reasonably wide range of Members – the African Group, Canada, the EC, the LDC Group, NAMA 11, New Zealand, Norway, Pakistan and Switzerland.

i) Sectoral negotiations

The Draft Modalities recognize that a sectoral tariff reduction component is a key element in achieving the objectives of the DDA. Sectoral initiatives have been proposed by certain Members in : automotive and related parts; bicycle and related parts; chemicals; electronics/electrical products; fish and fish products; forest products; gems and jewellery; hand tools; open access to enhanced health care; raw materials; sports equipment; toys; and textiles, clothing and footwear. Members participating in sectoral initiatives were to intensify their work so that:

– the proponents could propose specific modalities for each initiative by the time of the overall establishment of modalities;
– Members intending to participate would so indicate within one month thereafter; and
– outcomes would be available for incorporation on a conditional basis in draft schedules of commitments within three months thereafter.

A recent paper from the proponents of the various sectoral initiatives (TN/MA/W/97) (sponsored by Canada, the EC, Hong Kong China, Iceland, Japan, Korea, New Zealand, Norway, Oman, Chinese Taipei, Singapore, Switzerland, Thailand, the UAE and the US) provides a useful summary of these initiatives, including some of the proposed modalities for tariff reductions. Some adjustments to timelines contained in the Draft Modalities are also proposed.

While progress to date on sectorals may be limited, this may be a reflection of the overall state of the negotiations. It is perhaps too early to say what the outcomes will be, but an intensification of activities on the part of proponents can be expected as the date for establishment of modalities nears.

SUMMARY AND ANALYSIS

Negotiations have been contentious since the Draft NAMA Modalities emerged in July 2007. There seems to have been little softening of positions in recent months and in some cases the level of rhetoric has increased, particularly from developing countries worried that the Chair is demanding too much from them in terms of the coefficient.

One reason for this hardening may be the relationship between the NAMA and the Agriculture negotiations. It has always been the political reality that the DDA has been agriculture-led. Faced with two sets of draft modalities, those on Agriculture being more complex and in parts less well developed, and those on NAMA being reasonably indicative of where the negotiations will come out, it is perhaps not surprising that some delegations – particularly those with offensive agricultural interests – would seek to tread water in NAMA. This is not to say that some of these same delegations do not have politico-economic constraints in NAMA as well.

It is worth recalling in this context that paragraph 24 of the Hong Kong Declaration of December 2005 instructs negotiators to ensure that there is a comparable high level of ambition in market access for Agriculture and NAMA.

Against the background of this general relationship with Agriculture, the key issue in the NAMA negotiations themselves is the balance between the levels of ambition in the formula and the main flexibilities for developing countries. There has been strong pressure from the NAMA 11 to increase flexibilities and a strong counter-reaction from those who have collectively been called the "Friends of Ambition" not to do so.

If this key balance can be found, it may well be possible to find accommodations in other areas of the negotiations – for example the SVEs, RAMs, preference erosion and LDC issues – relatively quickly. But whether and when that stage can be reached may be dictated by progress in Agriculture.

Overall, there appear to be no insuperable technical barriers to concluding the negotiations on NAMA. The parameters of the deal are reasonably clear.

The main questions are how to find the precise "landing zone" within these parameters, the balance with agriculture and whether there is the political will to conclude a deal.

The Way Ahead

Chairman Stephenson will continue his consultations in January 2008. Based on what we have seen so far, he may not have much room to make major changes in his approach. According to the timetable envisaged by Director-General Lamy, to which Members have so far not objected, revised Agriculture and NAMA texts are due to be circulated around the end of January 2008. A more horizontal process is envisaged thereafter, possibly led by the Director-General himself, with a view to finalizing modalities in both areas of negotiation by the end of February. However, history teaches us to be wary of deadlines in the context of WTO trade negotiations. Whether or not the plan comes to fruition depends very much on whether key Members have the political will to clinch modalities early in 2008. Establishing the modalities in Agriculture and NAMA would be the gateway to the final phase of the Round.