

Negotiating Group on Market Access**NAMA NEGOTIATING GROUP
Meeting of 20-24 March 2006****Report by the Chairman on his consultations**
(20 March 2006)

You will recall that, in presenting my proposed work program at the last NAMA Week, I indicated that I would be active in consulting on all issues but that the work program was not yet very detailed in respect of the weeks between NAMA Weeks. I subsequently sent a fax to all Members, advising them of the specific consultations I intended to convene last week. These included plurilateral consultations on: Paragraph 6 flexibilities; AVEs; Small, vulnerable economies; LDC issues; Product coverage; Non-reciprocal preferences, and Newly Acceded Members. As promised in my fax convening this meeting, I would like to begin by providing you with a summary of these consultations.

1. Paragraph 6 flexibilities

- Twenty-eight Members invited. Six were unable to attend.
- Good discussion. There was good participation and exchange among Members.
- Objective was to get a sense of the state of play of the discussions on the subject and to see how we might make progress.
- The proponents of the proposal indicated their readiness to make a contribution to the Round, but expressed concern that the conditions laid down in paragraph 6 - that is, a 100% binding and an average bound tariff equal to the level of all developing countries' bound tariffs in the Uruguay Round - were too harsh and did not take account of their concerns and their levels of development.
- While the proponents' paper (TN/MA/W/57) proposed relaxing both of these conditions, some of the proponents indicated a willingness to consider the relaxation of one or the other of these two conditions as a possible compromise solution. They stressed the importance of fulfilling the requirement of both special and differential treatment and less than full reciprocity in reduction commitments.
- Other Members argued that paragraph 6 should remain as is, because it already represented a good balance. It gave the required flexibility to these Members by exempting them from formula cuts and by providing a target average approach which allowed these Members to bind sensitive items at higher rates. These Members repeated several times that the paragraph provided for an average tariff, not a tariff cap, and that this provided very significant flexibility. In these Members' view, this paragraph did take account of special and differential treatment and less than full reciprocity. Many

Members agreed that the paragraph 6 countries had to do more than LDCs, but there were differing views on how the contribution of countries should be compared.

- In terms of conclusions, I would say there were positive elements:
- Nobody contested the 35% threshold.
- Most subscribed to the hundred percent coverage binding. The importance of such coverage was emphasized because it imparted predictability and transparency to the trading environment, although, the point was made that such benefits would be lost if bindings were at levels well above the applied rates.
- In terms of the proposed trade-off between the 100% binding and the 28.5% average tariff, several Members indicated that the predictability of the 100% binding was the priority. However, it was not clear whether such a trade-off was supported by all proponents, and there was no consensus on such a trade-off by other Members.
- Finally, there were many calls for greater precision from the proponents about what they had in mind regarding the average binding level they would propose and the precise nature of any other proposed flexibilities or amendments to paragraph 6.
- In terms of the way forward, I indicated that I would have a meeting with the proponents soon in order to get more clarity from them as to whether all paragraph 6 Members supported this idea of relaxing one or the other conditions in paragraph 6, and to obtain a better sense of what kind of average levels the proponents are thinking about. This consultation with the proponents, and a further plurilateral consultation among Members will be scheduled before the April NAMA Week.

2. AVEs

- Meeting with twenty Members
- This was certainly the most productive consultation with Members.
- Outstanding AVE submissions were promised before 31 March 2006.
- With respect to the approval of submissions already made (and those to be made before March 31), it was agreed that an opportunity for multilateral discussion and review of these submissions should be provided. I, therefore, propose to reserve time during the NAMA week of 19-21 April for such a review.
- One question was left open at the end of the discussion and that is whether there should be a period of time after which a submission should be considered closed. A small number of Members preferred to leave such a time period open, while most others agreed there should be a deadline for considering such submissions closed and agreed.
- After reflecting on this issue, it is my view that if, in the context of a multilateral review at the April NAMA Week, there are no comments or questions on an AVE submission, then we should treat this issue as closed. For the time being, however, I will continue to consult on this issue and will ensure that a specific proposal is made on this issue in time for the April NAMA Week discussion.

- So, the main conclusion is that all submissions will come in by 31 March, and we will have a multilateral review of all submissions at the NAMA week in April.

3. Small, Vulnerable Economies

- Thirty-one Members invited.
- This exchange was particularly encouraging because it was clear that a lot of bilateral and plurilateral meetings were taking place between the proponents and other Members.
- In terms of process, most Members agreed that we should pursue a three-step approach: (1) establish objective criteria to identify small and vulnerable economies; (2) identify the Members included in this category; and (3) negotiate their treatment. Some Members argued that a final resolution to this issue is not possible until the impact of the formula can be determined. Others argued that the issue must be resolved as an integral part of the April 30 modalities.
- On the substance, Members were unanimous that flexibility for small and vulnerable countries was mandated by Ministers.
- The question of the criteria generated considerable discussion. Many Members proposed that only NAMA trade should be used as the indicator of a small economy, with some referring to NAMA exports and others referring to NAMA exports and imports. These Members argued that the use of indicators of all exports would effectively create a new category of Members, which was expressly rejected by Ministers.
- The point was made that size was not an indication of vulnerability and that other indicators might be needed, such as: the importance of trade to GDP, revenue dependency and the degree of export diversification. Some Members were open to looking at such additional criteria as long as they were trade-based, while others argued for the use of some broader economic indicators. Several Members argued for simple, objective criteria.
- On the treatment of small and vulnerable economies, some Members stated that without knowing the final details of the formula, its impact on SVEs could not be assessed and discussion of the treatment at this stage was premature. However, these Members articulated several “principles” that should guide the decision on treatment. First, SVEs should contribute more to the Round than paragraph 6 and 9 countries. Second, the treatment should be consistent with the NAMA Framework and, therefore, a linear cut as proposed by the proponents could not be accepted. Some Members suggested that the treatment should use mechanisms already within the existing NAMA Framework. Third, some Members spoke of the need for a specific, targeted and proportionate response to the problems and concerns of SVEs, which needed to be specified on a tariff line basis. And fourth, several Members proposed that any solution must not have negative consequences for other developing countries.

- In response, the proponents stressed that global merchandise trade was a more appropriate indicator of size in trade terms. They also argued that a coherent approach was required across agriculture and NAMA. On treatment, it was difficult to draw a direct comparison between the small, vulnerable economies and paragraph 6 countries, but nevertheless the SVEs would be doing more than paragraph 6 Members because they were proposing to cut their tariffs. The proponents further stressed that they were not trying to create a sub-category of Members, but were trying to obtain flexibilities to meet specific concerns. They noted that there were precedents for this, such as the provisions for Net Food-Importing Countries.
- In terms of overall impressions, I am not sure how much was new in the discussion, but I was very encouraged that concerned Members are meeting and that there is a high level of engagement across different groups, which are very positive signs.
- In terms of moving forward, I proposed that I be debriefed on the consultations planned this week between the proponents and other Members. Based on that debrief, I would hold another consultation on this subject within the next two weeks.

4. LDCs

- Thirty Members invited
- Useful meeting,
- Issues of concern mentioned by LDCs were:
 - Enhanced market access: specifically, the timeframe for giving Duty-Free and Quota-Free (DFQF) market access to LDCs and the need to ensure transparent and simple preferential rules of origin (as contained in Annex F of Hong Kong Declaration(HKD)) and the need to adequately and appropriately reflect these in the NAMA modalities. One Member commented that these commitments are clearly laid out in the HKD and that additional modalities could only be a repetition.
 - Capacity building: it was argued that NAMA modalities should include appropriate delivery mechanisms for capacity building to assist LDCs address challenges that would arise from these negotiations.
 - Non-tariff barriers: here, 3 points were made:
 - First, that capacity building is needed for LDCs to meet legitimate standards applied by some Members.
 - Second, that flexibility in the deadline for the submission of NTB proposals is needed, to allow LDCs identify their NTBS for appropriate action in the NAMA negotiations.
 - And third, we were advised that LDCs had initiated consultations with WTO Secretariat for the purpose of identifying possible NTBs.
- Responding to these points, one Member noted that, with regard to flexibility on the deadline for submissions, the fact is that time was limited. Also, with regard to NTBs of

concern to LDCs, the Member cautioned that not all NTBs could be addressed, because some were legal measures, as in the case of standards.

- Sectoral elimination of tariffs: The proponents noted that the selection of sectors for tariff elimination where LDCs have an export interest could have adverse effects on their competitiveness, since this would entail erosion of preference margins. One Member expressed sympathy for the situation of LDCs and indicated that, while it would be difficult to agree to exclude whole sectors, they would be willing to look at LDC concerns on a line-by-line basis.
- Commodities: LDCs indicated that their trade related concerns related to commodities must be addressed in the course of the negotiations, as foreseen in paragraph 55 of the Hong Kong Declaration.
- Tariff bindings: Many Members recalled the common understanding that LDCs themselves will be the judge of the extent and level of bindings and that they would have to do this exercise in good faith. One Member suggested that the Chair proceed to develop final language on this issue for the modalities for Members' consideration as there appeared to be full consensus.
- Concerning my impressions, I was encouraged by the fact that the LDCs will be liaising with the Secretariat on this question of NTB notifications and proposals. Of course, the time remaining is rather short so I would encourage the LDCs and others to do this as quickly as possible.
- I would also note, as did many Members, that the challenge is for LDCs to put forward specific proposals on issues such as capacity building and commodities.
- In sectorals, there is also a call for details. In other words, to indicate which products included in a sectoral might cause concern.
- With respect to the way forward, it is my intention to consult again on these issues before the April NAMA Week, after LDCs have had the opportunity to liaise with the Secretariat on NTBs, and I will work on some language with respect to the general consensus on paragraph 9, as I noted above.

5. Product Coverage

- Twenty-two Members invited; some agricultural negotiators and customs experts also attended.
- The meeting got off to an excellent start, with one delegation indicating that they were prepared to change their position with respect to four tariff lines, reducing the number of outstanding lines. Beyond this, not much was achieved.
- For a few delegations, it is clear that it will be impossible, at least at this time, to change their positions. This concerns about eight tariff lines.
- With respect to the remainder of the outstanding tariff lines, the issue is linked to the creation of carve outs. While some prefer the option of carve outs, others prefer the

statistically easier option of the whole tariff line being considered agricultural or non-agricultural.

- In response to my question on how we can move forward on this issue, a suggestion was made to have an agreed list, but accompanied by footnotes to identify those tariff lines on which there was no agreement. This suggestion did not elicit a lot of support. The point was made that a list with such footnotes could not be an agreed list. Also such a list would create uncertainty. For example, would the NAMA or Agriculture formula apply to the footnoted tariff lines.
- So, it appears that this option of an "agreed list with footnotes" will be difficult to pursue.
- Some Members prefer to keep the option of fully agreed list on the table, even if at this point it looks like a difficult outcome to achieve.
- So, while the tariff lines on which divergences exist have now been reduced; on these no solution is apparent.
- As I said at the consultation, I am not sure how to square this circle. In any case, I believe it will be useful and necessary for me to continue to consult bilaterally and plurilaterally with Members to see how far I can take it.

6. Non-reciprocal preferences

- Thirty-three Members invited.
- Longest discussion (3.5 hrs). Extended to a second session to allow all Members to intervene.
- While I have not attended previous consultations on this subject, many Members remarked that the tone of this discussion was more constructive than in the past.
- The philosophy driving the two opposing camps on this issue remains the same and their position was rehearsed again in these consultations.
- But the difference was that Members used as their guide for future work on this subject the language in paragraph 20 of the HKD, which provides for intensifying work on the assessment of the scope of the problem with a view to finding possible solutions.
- Delegations debated what data should be used to carry out this assessment, with many Members calling for product and country-specific data from proponents, in order to permit more detailed analysis. In this regard, there was a request made to preference-givers to provide information on utilization rates.
- There were requests for greater specificity in the information provided by the ACP Group last year, i.e. which ACP Member was affected by which products etc. You will recall that the ACP Group had provided an illustrative list of 170 HS 6-digit tariff lines as items vulnerable to erosion.
- In this connection, the US delegation circulated an information sheet on the methodology they had used to examine this list of tariff lines, from the importing side. The original

170 HS 6-digit lines in the ACP list translated into 616 HS8-digit tariff lines in the US tariff schedule. However, when put through some of the filters used by the ACP in their vulnerability index, the number of vulnerable HS 8-digit tariff lines was reduced to 97. It was also noted that the sensitive tariff lines were concentrated in Chapters 61 and 62 of the HS and fish products.

- In terms of solutions, some noted that, for them, a trade solution to this issue was not acceptable, while the proponents noted that trade solutions were the only appropriate response.
- Others pointed out that the solution depended on the assessment of the scope of the problem, and, therefore, one should not exclude any solution *a priori*.
- The point was stressed that it was important to discuss this issue in a constructive manner otherwise there would be no scope for any progress in these discussions. As well, there was general agreement that a win-win solution to this issue must be found.
- So, in conclusion, very good exchange. Members are approaching the issue constructively, basing themselves on paragraph 20 of the HKMD.
- Different ideas as to how one could approach the question of assessing the scope of the problem. Of course I would note in this regard that the seminar on this subject is planned for 3 April which will help our work.
- In terms of next steps, I have proposed to meet a few days after this seminar, in order to take on board the information obtained from that seminar and see whether discussions among Members have been moved the issue forward. I would also ask those delegations to whom requests for data were addressed to respond positively.

7. Newly Acceded Members (NAMs)

- Twenty-six Members invited.
- Good exchange.
- Clear that Members are committed to finding specific provisions for the NAMs.
- In this connection, the following such possible provisions were mentioned by some NAMs: a longer implementation period, a higher coefficient, a grace period, partial exemption from formula cuts and total exemption from formula cuts for certain NAMs. One NAM spoke of a capping of such flexibilities to give comfort to other Members.
- Clearly, there is more or less agreement on each of these ideas. For example on a longer staging period, which appears to have substantial support, some Members were of the view that for those products for which accession commitments were still being phased in, a longer implementation period made sense. But for those products on which reductions had been fully implemented for many years now, longer implementation periods did not make sense.

- It was also evident from the discussions that Members do acknowledge that there are differences between the NAMs and that perhaps they need to be treated differently.
- In this regard, however, a fundamental question which was asked: who are the NAMs? What constitutes this group of Members.
- The point was also stressed by some NAMs that a solution to their concerns would need to be part of the modalities agreed to at the end of April, while other proponents indicated flexibility on the issue of timing, noting that the level of ambition in the formula would have a significant effect on their need for special flexibilities.
- On this last point, I indicated when I had presented my work program, that there was not a clear consensus on what shape the modalities would take by end April. Members had to make up their own minds. However, I made the point in these consultations that a response to the issue of the NAMs must be part of the outcome – the only question was when.
- So, overall the discussions were good. In terms of moving forward, I suggested that we would meet again on this issue before the April NAMA week at which time we would also address the question of "Who is a NAM?".

This concludes my report of the small-group consultations I have conducted since the last NAMA Week.
