

**Negotiating Group on Market Access**State of play of the NAMA negotiationsChairman's commentary

The mandate of the Non-Agricultural Market Access (NAMA) negotiations is contained in paragraph 16 of the Doha Ministerial Declaration which foresees the reduction or as appropriate the elimination of tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. The special needs and interests of developing and least-developed Members including through less than full reciprocity in reduction commitments are to be taken fully into account in the negotiations.

Annex B of the Decision adopted by the General Council on 1 August 2004 (WT/L/579) (hereinafter referred to as the "NAMA framework") was developed in order to help facilitate the Negotiating Group's efforts to fulfil the mandate laid out in paragraph 16 of the Doha Ministerial Declaration. Much work has been accomplished since the adoption of the NAMA framework, and the purpose of these comments is to give my assessment on where we stand on the various elements of that framework at this juncture, also taking into account the discussions at the last NAMA session. These comments are being provided on my own responsibility. My hope is that this commentary together with any developments which may take place in the next couple of weeks will provide me with the ingredients to prepare my final report to the TNC.

The structure of this paper follows the structure of the NAMA framework to the extent possible.

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**Formula**Paragraph 4

Any formula approach has to be assessed in light of paragraph 16 of the Doha Ministerial Declaration and it is incumbent upon each Member to make that evaluation. In particular, there is need to factor into such deliberations the special needs and interests of developing and least-developed Members including through less than full reciprocity in reduction commitments. The question of equity or an equitable outcome has also been raised on a number of occasions and I believe this to be a key aspect in any assessment exercise to be undertaken by Members.

Turning to the specifics of the formula discussions, all the proposals on the table are based on a Swiss Formula or variations thereof. However, the main questions remaining are how the coefficients are determined and their linkages to flexibilities. In summary, the options before the Negotiating Group are listed below in the order in which they were presented to the Negotiating Group

- (a) One coefficient for developed country Members, and a limited number of coefficients for developing country Members. The level of the coefficient for a developing country Member will depend on the option it selects from a menu of flexibilities which has a given level of ambition. (Chile, Colombia and Mexico)

- (b) Two coefficients, one for developed and another for developing Members. All Members will have recourse to a credit system, although such a system will be limited in the case of developed country Members. Credits will be given to developing country Members if *inter alia* they make less use of paragraph 8 flexibilities, thus resulting in lesser formula cuts. (Norway)
- (c) Two coefficients to be negotiated, one for developing and another for developed Members. The higher coefficient for developing country Members will be in lieu of paragraph 8 flexibilities. (US)
- (d) One coefficient for all Members, but the coefficient for each developing country Member may vary depending on the use made of paragraph 8 flexibilities. Less use of such flexibilities will result in a higher coefficient and consequently lesser formula cuts. (EC)
- (e) A coefficient for each Member based on the average of current bound rates of each Member (Ta) multiplied by a B coefficient modulated to reflect the level of ambition and whose value(s) will be determined by the participants. (Argentina, Brazil and India)
- (f) A coefficient for each Member based on the average of current bound rates of each Member (Ta) multiplied by a factor (B+C) where B represents value(s) to be determined by participants, and C the credits to be accorded to developing Members. (Antigua & Barbuda, Barbados, Jamaica and Trinidad & Tobago)

In general, the first four of these options foresee the use of one coefficient for developed country Members, and a limited number of coefficients for developing country Members. In addition to leaving the coefficients open for negotiations, these four proposals have another common feature in that they make linkages to flexibilities. In the case of options (a), (b) and (d) the coefficient applicable to a developing Member will depend on the extent to which recourse is made by that Member to flexibilities in paragraph 8 of the NAMA framework. In the case of option (c), a higher coefficient for developing Members will replace paragraph 8 flexibilities. The fifth and sixth options differ significantly from the first four. The fifth option foresees a coefficient for each Member which is subject to a formula cut and which is calculated largely on the basis of a fixed criterion; i.e. the average of current bound rates of that Member although to be multiplied by a yet to be negotiated coefficient(s) B which would establish the level of ambition. In addition, unlike the first four, this formula makes no linkages to the flexibilities in paragraph 8 of the NAMA framework but instead to the ambition in other negotiating areas relevant to market access. The sixth option is a variation of the fifth insofar as it foresees the addition of a credit system for developing Members which would factor in elements such as substantial tariff binding coverage, revenue dependence, loss of preferential market access and economic vulnerability.

At the last NAMA session at which time the sixth formula option was presented, it was made clear by those developing Members that their reason for submitting this option was that their concerns about the impact of the formula had not been met by the proposals on the table. They expressed the view that a key to meeting development concerns was differentiated coefficients at a sufficient distance to lead to significantly different outcomes for developed and developing countries. Some Members expressed willingness to further examine these concerns. However, it was observed by some that a tariff reduction formula is meant to do just that -- to reduce tariffs -- and it may be difficult for such an instrument to address a full spectrum of policy concerns. In this connection, some remarked that possible solutions to such concerns may be found through a more targeted approach outside of the formula, or it may be that the NAMA framework already accommodates such concerns. Members will need to be open to examining new ideas and creative solutions in this regard. In undertaking this exercise, it is also important to bear in mind the differences among developing Members in terms of their interests and concerns. This is necessary in order to ensure that a solution devised to address a Member's or a group's concern does not undermine the interests of other

developing Members. At the same NAMA session, a statement was made on behalf of a group of Members in which they provided an indicative list of results that they would wish to see as an outcome of the NAMA negotiations. In response to the statement, some Members expressed concerns and stressed that there was a need for the negotiations to be based on contributions by Members rather than exceptions in order to fulfil the mandate of paragraph 16 of the Doha Ministerial Declaration.

### **Elements regarding the formula**

#### Paragraph 5

##### *Product Coverage*

There is agreement in the Negotiating Group that the NAMA negotiations should encompass all products not covered by Annex 1 of the Agreement on Agriculture. However, technical work on product coverage will need to be pursued in order to clarify issues arising from *inter alia* Harmonized System nomenclature changes.

##### *Unbound Tariff Lines*

Members have recognized that achieving a full binding coverage on non-agricultural products is a desirable objective, without prejudice to the flexibilities provided in paragraph 8(b) of the NAMA framework.

There is also broad acceptance of the principle of applying formula cuts to such tariffs, on the understanding that a pragmatic solution is found for unbound tariffs at low applied rates, while keeping in mind the argument made that unbound tariffs at high applied rates are an equally sensitive issue for those Members maintaining such rates.

In general, the approaches which have been put forward for discussion in the Group may be grouped as follows although there are variations among them:

- (a) A non-linear mark-up
- (b) A target tariff average

At the last NAMA session, there was considerable discussion on how the non-linear mark-up approach could address the concerns raised by Members. There were also references made to equity. Some made the point that the treatment of unbound tariffs is inextricably tied to the formula and it will be difficult for them to agree on the methodology to apply to unbound tariffs for the purpose of applying a formula unless there is a common understanding on the structure of the formula. It is clear that the Negotiating Group will need to work on this issue in tandem with the formula.

##### *Ad valorem equivalents*

The Negotiating Group will need to draw up guidelines for the purpose of establishing *ad valorem* equivalents on non-agricultural products in accordance with the fifth indent of paragraph 5 of the NAMA framework. In this regard, Members have signalled a preference for a conversion method which uses the unit value methodology and the Integrated Data Base wherever possible. In case of data gaps, technical tariffs or distorted markets or any other problems specific to non-agricultural products, the Negotiating Group will need give further consideration as to the alternative solutions that may be used in such cases.

##### *Other elements*

Other elements regarding the formula are to be found under paragraph 5 of the NAMA framework (*base year, nomenclature, reference period for import data*) and they have not required further clarification. On *credit for bound autonomous liberalization by developing Members*, my sense is that work on this element may be more usefully undertaken once there is an agreement on a formula.

### **Flexibilities for developing country Members and LDCs under paragraphs 6, 8 and 9 of the NAMA framework**

Finalizing the details of these flexibilities is essential to a successful outcome in the NAMA negotiations with a view to achieving the right balance between ambition and flexibilities.

#### Paragraph 6

The treatment of and contributions to be made to the NAMA negotiations by developing country Members with low binding coverage (below [35%]) are contained in this paragraph. This paragraph envisages that these Members will be exempt from making tariff reductions through the formula, but that their contribution is expected to take the shape of binding [100%] of their non-agricultural tariffs at a certain level. Developing Members which have less than a 35% binding coverage are: Cameroon; Congo, Côte d'Ivoire; Cuba; Ghana; Kenya; Macao, China; Mauritius; Nigeria; Sri Lanka; Suriname and Zimbabwe. At the last NAMA session, the Negotiating Group considered a paper from a group of developing Members which proposed that Members falling under this paragraph should be encouraged to substantially increase their binding coverage, and bind tariff lines at a level consistent with their individual development, trade, fiscal and strategic needs. However, concerns were expressed by others about this proposal re-opening this paragraph by seeking to enhance the flexibilities contained therein.

#### Paragraph 8

A crucial element of the Negotiating Group's work to establish modalities is defining the relationship between the formula and paragraph 8 flexibilities. Some Members have made a direct link between this paragraph and the level of the formula cuts, while others have viewed this paragraph as a stand-alone provision which should not be affected by the level of such cuts. As the discussions stand currently, there appear to be the following options in terms of linkages between these two key elements:

- (a) Paragraph 8 flexibilities remain intact and are separate from the formula.
- (b) Paragraph 8 flexibilities are modified through a mechanism which creates trade-offs between the formula and such flexibilities.
- (c) Paragraph 8 flexibilities are eliminated in exchange for a higher coefficient for developing Members.

#### Paragraph 9

The difficulties of least-developed Members are recognized in this paragraph which foresees that these Members are not required to apply the formula nor participate in the sectorial approach. Their contribution to the Doha Round is expected to be the substantial increase in their level of binding commitments.

### **Sectorial Tariff Component**

#### Paragraph 7

The sectorial tariff component of the NAMA negotiations, another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration, is taking place in informal Member-driven processes based on the critical mass approach. It would appear that work has been ongoing in the following sectors:

Electronics/Electrical Equipment  
Bicycles and Sporting Goods  
Chemicals  
Fish  
Footwear  
Forest Products  
Gems and Jewellery  
Pharmaceuticals and Medical Devices  
Raw Materials

Members should continue to clarify aspects of these initiatives, as well as any other initiatives which may emerge. The clarification exercise should pertain to *inter alia* product coverage, participation and special and differential treatment. Transparency in this process is essential and substantive reporting in the multilateral setting is strongly encouraged. It is also understood that any outcome emerging from such initiatives will be applied on an MFN basis through the inclusion of such results in the schedules of concessions.

### **Improved market access for Least-Developed Countries (LDCs)**

#### *Paragraph 10*

Members recognize the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base. In recognition of this, a call was made to developed Members and others which so decided, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries. While efforts are being made in this direction, more must be done to encourage Members to provide this access.

### **Newly Acceded Members**

#### *Paragraph 11*

Members have agreed to the need to further elaborate on special provisions for tariff reductions for Newly Acceded Members in recognition of the commitments undertaken by them during their accession process. I believe that there is an understanding that such an exercise may be more usefully undertaken once there is an agreement on the formula. In this regard, at the last NAMA session, the Negotiating Group considered a paper by a group of newly acceded Members in which they seek the same flexibilities as LDCs and other vulnerable developing Members. Some Members expressed the view that the situation of these Members deserved consideration in the context of this paragraph.

### **Supplementary modalities**

#### *Paragraph 12*

The possibility of using the supplementary modalities contained in paragraph 12 of the NAMA framework remains open.

### **Elimination of low duties**

#### *Paragraph 13*

The subject of elimination of low duties by developed Members and other Members who so decide is under examination, and will need to be further deliberated in the Negotiating Group.

### **Non-tariff barriers (NTBs)**

#### *Paragraph 14*

NTBs are an integral and equally important part of these negotiations, and work on this component of the Negotiating Group's mandate has intensified. A considerable amount of time has been spent identifying and categorizing the notified NTBs, and now the Negotiating Group has entered a phase of examination and negotiation of such NTBs. The modalities being used in the NTB negotiations are bilateral, vertical and horizontal. It is essential, particularly in respect of the last modality, to have specific written negotiating proposals tabled as early as possible. While results on NTBs are desired at the earliest possible time, given the complexity of some of the issues, negotiations are likely to continue after the Hong Kong Ministerial.

Transparency in the process should be assured through substantive reporting in the multilateral setting. In addition, multilateral effect should be given to the results of NTB negotiations, which lend themselves to such an outcome, through *inter alia* incorporation of such results in Part III of the Schedule of Concessions.

### **Appropriate Studies and Capacity Building**

#### *Paragraph 15*

Members recognize that appropriate studies and capacity building are an integral part of the modalities. Several such activities have been and continue to be undertaken by the Secretariat. In this connection, it is clear that simulations of the various coefficients will need to take place on all tariff schedules before the Hong Kong Ministerial in order to allow developing country Members to ascertain the effects of the various coefficients on their own tariff schedules as well as on export markets of interest to them. The Secretariat continues to be available to respond to specific requests from developing country Members. In a statement made at the last NAMA session on behalf of some developing Members, the view was expressed that the issue of appropriate studies and capacity building had not been adequately discussed in the Group.

### **Non-reciprocal preferences and tariff revenue dependency**

#### *Paragraph 16*

The subject of non-reciprocal preferences is a complex and multifaceted one. Members will need to continue examining it carefully. In particular, defining the scope of the problem will facilitate such an examination. The concerns of all Members affected by this subject will need to be taken into account by the Negotiating Group in the course of its work on this matter.

More attention will need to be given by Members on the subject of tariff revenue dependency. It would be helpful if Members concerned by this issue are able to provide more information on the

problem as well as its scope. Such submissions are encouraged at the earliest possible time so that the necessary consideration may be given by the Negotiating Group to this issue.

**Non-agricultural environmental goods**

*Paragraph 17*

The Committee on Trade and Environment in Special Session is working towards a common list of environmental goods. A stock-taking will be required at the appropriate time by the Negotiating Group in light of paragraph 31(iii) of the Doha Ministerial Declaration.

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**What is required for end-July?**

I have described above what I believe to be the state of play on each of the elements contained in the NAMA framework. While I do recognize that Members have made substantive progress on many of these subjects, it has become evident to me that we have reached an impasse in the NAMA negotiations on the most fundamental element, the formula. If this situation persists beyond July, it will be an infinitely more difficult task to engage in the essential negotiation over the actual numbers to be plugged into the formula. For this reason, there is an urgent need for Members to resolve their differences over, at the very least, the structure of the formula. Ideally this convergence should occur by the end of July, so that we can move on to the negotiation of numbers in September. However, in order to facilitate such a convergence, collective guidance by Members would also be required on the methodology to be applied to unbound tariffs for the purpose of paragraph 5 of the NAMA framework and on the question of the linkages between paragraph 8 flexibilities and the formula.

I am troubled by the apparent hardening of differences over a number of elements of the proposed modalities that have become more pronounced this week. It should be obvious to all of you that it is impossible for me as Chairman to issue any text that would be capable of bridging such differences and attracting consensus. Of course, I will do what I am called upon to do in order to move these negotiations forward, but it is up to you to negotiate your way out of this impasse. Members must now be aware that continuing our deadlock into the fall will cast serious doubts on your willingness to successfully complete the NAMA modalities by the Hong Kong Ministerial. I realize that you need to make progress on a broad front for the Round to succeed, and that there are important linkages to other areas of the negotiations, but I urge all of you to seek convergence on the most pressing issues in the NAMA group – obviously on the basis that nothing is agreed until everything is agreed – and to give new momentum to these negotiations.

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