**JOB(06)/67** 27 March 2006

**Negotiating Group on Market Access**

**NAMA NEGOTIATING GROUP**
**Meeting of 20-24 March 2006**

Report by the Chairman on his consultations
*(22 March 2006)*

Let me begin by explaining the reason for this meeting.

You will recall that, during the course of our discussions at the last NAMA Week, I was asked by one delegation to consider convening transparency sessions during the course of the Week, rather than just at the end. This Member noted that small delegations have difficulty keeping track of all of the small group consultations – including those of the Chair – and that an additional transparency session would be extremely useful to them.

I was also mindful of the fact that I had chosen a Room "F" format for the consultations this week and that, since this is a restrictive format, there was an even greater need to provide transparency. I chose the Room "F" format because a believed that this was the most effective way to foster an intensive exchange on the issues. I also chose not to vary the participation in Room "F" from one issue to the next, since the issues are so intimately linked. I should note, in passing, that I have received representations from three delegations to express their discomfort at having been excluded from the consultations and I indicated to these Members that I would ensure a rotation of Members participating in small group consultations, to the fullest extent possible.

Let me now turn to the summary of the consultations.

For these consultations, twenty delegations were invited.

**Unbound Tariffs**

- All Members agreed that this was one area where progress had been made, as reflected in the Hong Kong Declaration.

- Many Members expressed sympathy for the concerns raised by a group of countries regarding the treatment of low applied unbound tariffs, and indicated a willingness to be flexible in the approach to address these concerns. (Note: one participant in the discussion took the floor after this statement to remind the Chair that concerns had also been expressed about high unbound tariffs.)

- In the discussion, it was noted that, as demonstrated by the simulations done by a group of countries, the difference between a low mark-up and a high mark-up was relatively small, after a Swiss formula is applied. However, some tariff lines will only be subject to a 50% formula cut and for these tariff lines, the difference was much more meaningful.

- A Member who had expressed the sensitivity about low applied unbound tariffs indicated that, if the mark-up was larger, the sensitivity was diminished. He also indicated that if the coefficients in the formula were more ambitious, again, the sensitivity was not as great.

- It was agreed by all Members that the issue of the number to be used for the mark-up could not be resolved in isolation (from the formula coefficients and the flexibilities in paragraph 8).

- Most Members indicated a preference for a simple solution and, more specifically, for a non-linear constant mark-up.

- I then asked Members whether they were prepared to agree on the methodology for the treatment of unbound tariffs separately from the number to be used. In particular, I asked whether those Members who had sensitivities would feel sufficiently protected if the only parameter left to be resolved was the number – either by having an agreed text with a bracket for the number and either no number in the bracket or a sufficiently wide range of numbers.

- All participating Members indicated that they could accept this proposal. It was agreed, however, that this issue would be revisited later during the Week.

- The majority of Members who expressed a view on the numbers themselves indicated that they were comfortable with the range used in the simulations (5–30). (Note: a couple of delegations took the floor after this statement to note that for them this range might not be sufficient).

**<u>Paragraph 8 flexibilities</u>**

- You will recall that there were some technical issues which were raised the last time we had a paragraph 8 flexibility discussion, namely:

  - How to define the term "no less than half formula cuts";
  - Did the reference to "Members' imports" mean only NAMA imports or total imports;
  - Whether the reference to tariff lines in this paragraph was to national tariff lines;
  - What was meant by the phrase "not exclude an entire HS Chapter"?

- Members present were willing to adopt what had been referred to as “the common sense” approach on all of these issues with the exception of the last one:

  - "No less than half formula cuts" meant 50% of the formula cut… or more if the delegations so wished.

  - The imports referred to NAMA imports.

  - The reference to tariff lines was to tariff lines at a national level.

- However, on the subject of not excluding an entire HS chapter, some delegations stressed the need for more discussion on this subject. In their view, excluding one tariff line from an HS Chapter would not satisfy this condition. This issue was of concern to them because excluding almost all of an HS chapter could effectively exclude all of their export trade to the developing Member making use of such flexibilities.

- Others took the view that one could only interpret this condition in strict legal terms; in other words, a developing Member using paragraph 8 flexibilities could exclude, if it so wished, only one tariff line from an HS chapter and still satisfy the condition. Any other interpretation would amount to reopening paragraph 8 and would require a new Ministerial Decision.
- One Member made the point that developing Members wishing to apply paragraph 8 flexibilities needed to be free to apply those flexibilities in the manner they deemed appropriate. The common sense solution, in the view of this delegation, supported by some others, was to have more transparency in the products to be covered by those flexibilities.

- On this question of transparency a long but inconclusive discussion was generated.

- Some Members stressed the importance of knowing what would be covered by paragraph 8 because it would build confidence and would allow informed decisions on numbers, such as the coefficient and the flexibilities. They stressed that they were not proposing the reopening of the mandate, as nothing in the mandate precluded such a practical exercise from taking place. Neither were they questioning the right of developing country Members to select the tariff lines. They argued that the advantage of transparency was that it would avoid having to assume the worst case scenario (i.e. that only products of export interest to them will be sheltered behind paragraph 8) and making decisions on the numbers accordingly. Additionally, some of them indicated that they were prepared to exercise the same transparency in agriculture.

- Others pointed out that the transparency issue was not part of the mandate or the July Framework. Additionally, the freedom to self select the lines would be put in jeopardy, because at the time such lines were made transparent there would be pressure from domestic lobby groups as well as trading partners to change them. The result would be that the use of paragraph 8 flexibilities, which was already limited, would be further curtailed. Additionally, Members having recourse to paragraph 8 did not know which option under paragraph 8 they were going to exercise in the absence of the coefficient. However, in terms of knowing a Member's sensitive tariff lines, one benchmark would be to look at where the high tariffs were located. For others, such a transparency exercise had to go hand in hand with what was happening in agriculture.

- One Member stated that using high tariffs as a benchmark for identifying sensitive sectors was not very accurate, as was illustrated by the simulation exercise. She recalled that at the previous stand-alone consultations on paragraph 8 flexibilities, there had been a suggestion of a two step approach which might be the possible middle ground on this issue. Under this two step approach, developing Members using paragraph 8 flexibilities would define the broad categories to be covered by such flexibilities by end-April, with specificity provided when the schedules are tabled by end-July. It was noted that this information was useful not only to developed Members but also to other developing Members.

- Some Members said that they could appreciate these concerns on transparency and were willing to go some way in accommodating such concerns on a bilateral basis. However, some Members indicated a preference for a multilateral transparency process, because a bilateral process would better serve large countries with greater negotiating leverage. Such a multilateral process was not deemed feasible by others.

- One delegation expressed the view that, if transparency was being sought on other flexibilities such as non-reciprocal preferences, the same should be applied elsewhere

- One delegation put a marker on a proposal it had submitted, which was to have as an alternative a higher coefficient in the formula if use was not made of paragraph 8 flexibilities. In this delegation's view, this approach would also avoid the issues which had been raised by some Members concerning paragraph 8 flexibilities, including the transparency issue.

- So, as an overall conclusion, Members present at the consultations were ready to adopt a common sense approach on the technical issues in para 8 as follows:

  - "No less than half formula cuts" meant 50% … or more if Members so wished.

  - The imports referred to NAMA imports.

  - The reference to tariff lines was to tariff lines at a national level. (Note: one delegation took the floor after the statement to express its concerns with this interpretation).

  - on "not excluding an entire HS Chapter" I think Members present were persuaded that it was not possible to reopen the language of the paragraph or to try to articulate a common definition of what this sentence meant. Given the existing text, the exclusion of a single tariff line would suffice to satisfy this condition, in strictly legal terms.

  - on the transparency issue, there is no consensus. But it is clearly an important issue, with roughly 30 interventions having been made by Members. We will need to come back to this question in the not too distant future.

  - I would note as a final point that there was no discussion as such of the numbers within the square brackets.

**The Formula**

- In beginning the consultations, I indicated that, however much I thought about it, there was no creative way I could start the discussion without asking the basic question of what coefficients Members were thinking of. I also invited Members to focus on the technical issue of the implementation period and the results of the simulation exercise as a possible starting point, now that Members had had some time to examine them.

- On the implementation period, a remark was made to the effect that the implementation period would depend on the extent of the formula cut.

- It is difficult to provide a detailed report of the discussion of the simulation exercise, because there were a lot of references to numerical examples. For example, some Members gave examples of what such-or-such coefficient would do to the markets of their trading partners, in terms of addressing high tariffs, tariff peaks and tariff escalation and also in some cases in terms of cuts in applied tariffs.

- The point was made that the simulations had allowed a group of Members to speak the same statistical language, but it also could be used to bolster their own positions.

- However there were a few points which did emerge from the discussions which I would like to share with you

    1) There was a reaffirmation of the fact that cuts would be from bound rates.
    2) The question of less than full reciprocity (LFR) in reduction commitments and real market access is I believe is at the heart of the problem.

- For some Members, LFR can only be interpreted by looking at the average tariff reduction in bound tariffs and an outcome which does not provide for lesser cuts in developing Members tariffs, as compared to developed Members tariffs, is a non-starter. For others, there are different indicators of LFR, such as end rates, duty collection versus duty paid on exports, trade involved and so forth. It is clear that interpreting LFR one way of the other will have implications on the level of the coefficients as well as the distance between the two coefficients assuming a simple Swiss formula.

- On real market access, the question of demonstrating such access to domestic constituents at the end of a five-year negotiating round was important for some Members, precisely in order to be able to justify providing such access in their own markets. However, the point was made by others that they had been giving greater access to their trading partners in an autonomous fashion over the past years, as evidenced by the strong growth in imports from such Members, and that they should not be penalized for having taken such autonomous liberalization measures.

- In terms of some of the coefficients which were mentioned in connection with a Simple Swiss Formula: for developed Members it ranged from 5 to 15, and for developing Members the range was from 10 to 30. (Note: one delegation took the floor after this statement to recall that coefficients of 1 and 2 had also been proposed for the ABI formula. In addition, one delegation took the floor to recall that a proposal has been made to provide additional flexibility to small and vulnerable economies.) Some Members indicated a willingness to be ambitious with respect to their coefficient - if the second coefficient followed suit.

- My overall conclusion is that these consultations did resemble the movie "Groundhog Day". I cannot report any progress at all. While we all agree where the plane takes off, there is no agreement where it can land. We need to break out of this “continuous loop” discussion and we need to do it quickly, if we are serious about 2006.

- In essence "the less than full reciprocity" camp and the "real market access" camp - as one delegation called them - need to find that landing strip together. (Note: one delegation took the floor after this statement to express the view that there are really three camps – including a “less than full reciprocity and real market access” group of developing countries.)

- The question I had at the end of this was how to intensify this process. It would be a mistake to wait for G-6, Agriculture or anybody else to decide or make breakthroughs before we decide to make progress: we could easily not be ready when it is time.

- Finally, one delegation proposed that the Secretariat develop simulations of the impact of different approaches on the economies of developing countries.