

## Non-Agricultural Market Access (NAMA)

The Doha Ministerial Declaration specified that the NAMA negotiations shall aim, by modalities to be agreed, to reduce or, as appropriate, eliminate tariffs. This would include 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 Doha Ministerial Declaration also specified that product coverage would be comprehensive and without *a priori* exclusions; take fully into account the special needs and interests of developing country and LDC Members, including through less than full reciprocity in reduction commitments.

The aims and objectives are, therefore, clear – what are being negotiated are the modalities. In 2003, at the Cancun Ministerial Meeting, conference chairman and Mexican trade minister, Luis Ernesto Derbez, submitted a text (the Derbez Text) which proposed a framework for modalities in NAMA. This was rejected by the ACP/African/LDC groups on the grounds that it was seen to be predominantly representative of the interests of developed countries without taking into account interests and needs of developing countries.

After Cancun, the chairman of the negotiating group dealing with NAMA, Ambassador Stefán Jóhannesson from Iceland, continued to use the Derbez text as the basis for discussion and, eventually, the main elements of the Derbez text found its way into the July Framework (Annex B, which is based on the Derbez text). As is known, the July Framework was adopted by the WTO General Council in Geneva, with developing countries agreeing to the text because it included a paragraph, which states: “Additional negotiations are required to reach agreement on the specifics of some of these elements. These relate to the formula, the issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities for developing-country participants, the issue of participation in the sectoral tariff component and the preferences.”

Annex B of the July Package gave the Negotiating Group on Market Access a framework on which to work with in determining modalities. It recognised that a formula approach is needed to reduce tariffs, and reduce or eliminating tariff peaks, high tariffs, and tariff escalation.

The Hong Kong Declaration, amongst important decisions on special and differential treatment for developing countries, reaffirmed commitments made in Doha and in the July Framework, adopted a Swiss Formula approach to reducing or eliminating tariffs, tariff peaks and tariff escalation, in particular on products of export interest to developing countries; and take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments and noted the progress made to convert non *ad valorem* duties to *ad valorem* equivalents.

Although considerable work and some progress has been recorded since the Hong Kong Ministerial Declaration, the deadline set out in the Hong Kong Declaration to “establish modalities no later than 30 April 2006 and to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006” has obviously been missed. The Draft Modalities of July 2007 and February 2008, despite their limitations, represent a step forward in the negotiations in that, in the case of the NAMA text at least, the text proposes language that the Chair believes is as close to the final as possible. Unlike the text proposed by the Agriculture negotiations, the NAMA chair proposes a single position, rather than a series of alternative options.

Issues that still need to be resolved in NAMA include the following:

- Product Coverage: Members continue to disagree on what products should be covered by the NAMA Modalities so the Chair is proposing that a list of products to which the Modalities should be applied should be attached as Annex 1, which is, in fact, a negative list as it refers to fish and fish products in Chapters 1-24 and other exclusions in Chapters 25 to 97.
- Formula and Coefficients: The LDCs are exempt from applying a tariff reduction formula so does not have a direct interest in either the formula that will be used or in the coefficients. However, the Group does have indirect interests in that if tariffs are

reduced significantly for products of export interest to LDCs this will reduce the margin of preference enjoyed by LDCs and, by implication, their market access into developed and developed countries.

The formula to apply on a line-by-line basis has been agreed as the simple Swiss formula but there are differences of opinion as to which coefficients should be used. The Chair's Draft Modalities of July 2007 suggested coefficients of 8 to 9 for developed country Members and 19 to 23 for developing country Members but there has been no convergence. LDCs may wish to see higher coefficients (i.e. above 10) for developed countries so as to preserve their preference margins but this position will not be in line with the positions of other, non-LDC developing country Members. If LDCs assume that developing countries will offer duty-free, quota-free market access (DFQFMA) in products of export interest to them then LDCs may also wish to see higher coefficients for developing countries. However, if developing countries will not offer economically meaningful DFQFMA to LDCs then it would be in the best market access interests of LDCs for developing countries to apply low coefficients (i.e. below 19).

Prior to the Hong Kong Ministerial the ACP Group of countries proposed a Vulnerability Index and the African Group proposed a similar Correction Coefficient to address the problem of preference erosion but neither of these proposals seems to have been viewed favourably by the Chair.

Some developing country members have suggested that "nuisance duties" of below 2% to 5% should be eliminated by developed countries but the Chair has not adopted this position.

Members remain divided as to how to treat mark-ups of unbound tariffs so the Chair is proposing a constant non-linear mark-up of 20% or 30%, with these figures being in brackets, depending on the value of the applied rate.

- Flexibilities for developing country members subject to the formula: The Draft Modalities of July 2007 made specific proposals on flexibilities but there has been no consensus on the Chair's proposals. Instead, there have been a number of other proposals made and there is also divided opinion as to whether additional flexibilities should be made available to all developing country Members or based on exceptions according to individual circumstances.

The Chair has also proposed text for flexibilities for developing country members with low binding coverage (Cameroon, Congo, Cote d'Ivoire, Cuba, Ghana, Kenya, Macao, China, Mauritius, Nigeria, Sri Lanka, Surinam and Zimbabwe); sectoral negotiations, participation in which is on a non-mandatory basis; and Small and Vulnerable Economies (SVEs)

- Least Developed Countries: The Chair's Revised Draft Modalities confirms that LDCs shall be exempt from tariff reductions both through the formula and through sectoral initiatives. LDCs will, also, not be required to make mandatory concessions. However, as part of their contribution to the DDA, LDCs are expected to substantially increase their level of tariff binding commitments. The Chair's text clarifies that individual LDCs shall determine the extent and level of tariff binding commitments in accordance with their individual development objectives. All new tariff binding commitments shall be on an *ad valorem* basis. For existing bindings which are not on an *ad valorem* basis, LDCs are encouraged (as opposed to the obligation of other members to schedule all bound tariff lines in *ad valorem* terms) to convert them to *ad valorem* equivalents on the basis of the methodology outlined in document TN/MA/20 and bind them in *ad valorem* terms.

In terms of market access for LDCs, the Chair does not go any further than what has been proposed in the Hong Kong Declaration and this falls short of modalities for duty-free, quota-free market access. This language falls far short of the request to have language which reflects:

- A commitment by developed country Members to ensure duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by the end of 2008;
- A commitment by developed country Members to grant duty-free and quota-free market access for the remaining 3 per cent of products originating in LDCs by the end of 2009 at the latest; and
- A commitment by a larger number of developing countries to progressively implement, beyond the current market access duty-free and quota-free market access to products originating in LDCs through a non discriminatory and non reciprocal instrument, according to the principles contained in WTO document WT/L/304 of 17 June 1999, starting from April 2008.

The Revised Draft Modalities also do not address the concerns the LDCs have in terms of Rules of Origin. The Chair simply suggests that the Committee on Trade and Development shall monitor implementation of the DFQFMA and Rules of Origin provisions. The LDC Group has been specific on what it would like to see addressed in the NAMA modalities in terms of rules of origin, this being that Members should base their preferential rules of origin for products originating in LDCs on the model Rules of Origin in TN/MA/W/74 and that Members should engage in discussions to finalise the draft protocol on rules of origin attached to document TN/MA/W/74 starting from April 2008 and to be concluded not later than the end of 2009.

The LDCs have also requested that Members should agree on a system to be put into operation, as part of the operational modalities of the Doha Round, to effectively monitor and assess the adoption by WTO Members of the duty free quota free commitment as well as realistic, simple and transparent rules of origin for products originating in LDCs.

- Recently Acceded Members (RAMs): The Chair proposes that RAMs are provided with flexibilities in applying the formula but does not mention additional flexibilities for LDC RAMs.
- Non-Tariff Barriers (NTBs): The Revised Draft Modalities specify that progress has been made in the identification, examination and categorisation of NTBs. The Chair's text suggests that initiatives in this area shall aim to reduce or eliminate, as appropriate, NTBs, in particular on products of export interest to developing Members and to enhance market access opportunities achieved through these modalities; that proposals should be finalised as early as possible before the submission of final comprehensive draft schedules; and that negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed Members.

It should be noted that LDCs have, in general, not notified their NTBs and have not been actively engaged in the discussions on NTBs, although this is an area which affects LDCs' market access.

- Capacity Building Measures: The Chair's text restates that Members are committed to enhancing trade capacity-building measures to assist Members in the early stages of development, and in particular Least Developed Country Members, to address their inherent supply side capacity constraints and the challenges that may arise from increased competition as a result of MFN tariff reductions. These measures, including the Enhanced Integrated Framework for Least Developed Countries and other Aid-for-Trade initiatives, shall be designed to enable such Members to take advantage of increased market access opportunities, including through diversification of export products and markets, and to meet technical standards/requirements and address other non-tariff measures.
- Non-Reciprocal Preferences: The Chair's Revised Draft Modalities notes that MFN liberalisation will erode non-reciprocal preferences in respect of a limited number of tariff lines which are of vital export importance for developing Members beneficiaries of such preferences. The Chair proposes that, in order to provide these Members

with additional time for adjustment, the reduction of MFN tariffs on those tariff lines shall be implemented in [7] equal rate reductions by the preference-granting developed Members concerned. The first reduction shall be implemented on 1 January of the [second] year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years. The relevant tariff lines for the EC (40 lines – up from the 23 lines listed in the Draft Modalities of July 2007) and the US (25 tariff lines - up from the 23 lines listed in the Draft Modalities of July 2007) are listed in Annexes 2 and 3.

Some WTO Members are of the opinion that the solution to preference erosion lies in provision of Aid for Trade and should not be part of the NAMA negotiations, The Chair appears to have recognised this position and suggested compromise language to the effect that preference granting Members are “urged” to increase their assistance to preference receiving Members through mechanisms such as the Enhanced Integrated Framework for Least Developed Countries and other Aid-for-Trade initiatives. They are also “urged” to simplify the rules of origin in their preference programmes so that preference receiving Members can make more effective use of such preferences.

Special provision is made for Pakistan and Sri Lanka. It is considered that they will be adversely affected by the preferences provided to preference-receiving countries, especially in textiles and garments and the Chair proposes that the tariff reduction on the products of special interest to them (5 tariff lines each) should be reduced in [5] equal rate reductions in the relevant preference granting markets. The first reduction shall be implemented on 1 January of the year following the entry into force of the DDA results and each successive reduction shall be made effective on 1 January of each of the following years.