

NOTE ON NON AGRICULTURAL MARKET ACCESS (NAMA) BY DAN OWOKO, NAMA FOCAL POINT FOR THE AFRICAN GROUP IN THE WTO, GENEVA

Introduction

The Liberalisation of Trade in Industrial or manufactured goods is a major part of the World Trade Organisation (WTO)'s Doha work programme. These negotiations of industrial tariffs are more formally referred to as "non-agricultural market access" (NAMA) and are mainly on three main components:

- a) Reduction of industrial tariffs from the bound levels;
- b) Increasing the binding coverage through commitments of binding on the current unbound levels of tariffs; and
- c) Non-tariff barriers.

The considerations of the tariff reductions and increasing of the binding coverage are mainly driven by the fact that majority of developed countries generally have full binding coverage while a large number of developing countries have comparatively low binding coverage. Equally, developed countries have generally low levels of tariffs averaging around 5% but with some high tariffs on products of export interest to developing countries. The developing countries on the other hand have generally high levels of tariffs averaging around 28%-30%.

Over the various rounds of negotiations in the past, countries lowered their bound tariffs and increased their binding coverage in the course of exchanging concessions with each other.

NAMA in the Doha round

The Doha round of negotiations was launched in November 2001 and formed the basis of the current Work Programme of the World Trade Organisation and is being conducted within the framework of three decisions in the WTO. These decisions are namely;

- i) The Doha Ministerial Declaration of 14th November 2001,

- ii) The July 2004 framework adopted by the WTO General Council on 1st August 2004, and
- iii) The Hong Kong Ministerial Declaration of 18th December 2005.

But more specifically, the negotiations on Non-Agricultural Market Access (NAMA) are mandated under Paragraph 16 of the Doha Ministerial Declaration which states “We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate 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. Product coverage shall be comprehensive and without a priori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of article XXVIII bis of GATT 1994 and the provisions cited in Paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity building measures to assist least-developed countries to participate effectively in the negotiations.

The NAMA negotiations began early 2002 with the initial discussions anchored around agreeing on the modalities of the negotiations but as Cancun approached, the differences among members increased and it became clear that an agreement on modalities would not be possible at the conference. It was then agreed that members instead aim at modalities framework based on the principles and key features but without numbers.

Whereas the Cancun Conference ended without any declaration, the draft Ministerial Declaration that had been prepared for the conference and issued on the 12th September 2003 by the Conference Chairperson, the Mexican Foreign Minister Luis Ernesto Derbez finally substantially became part of the “July Package”. In the case of NAMA, and despite strong objections from the African, Caribbean and Pacific (ACP) countries that the text the as it were potentially would lead them to further deindustrialisation, more poverty and unemployment, the Derbez text still ended up as the framework for modalities on NAMA (Annex

B) in the July Package through a decision of the WTO General Council's Special Session of 26-31 July 2004.

During the Hong Kong Ministerial Conference in December 2005, the Declaration adopted the "Swiss Formula" for tariff reductions in pursuant to paragraph 16 of the Doha Declaration. Additionally, the declaration reaffirmed the sensitive need for Special and Differential Treatment including Less Than Full Reciprocity; the sectoral initiatives were to be pursued on a non-mandatory basis. Equally important from the declaration was the recognition of the consequences of MFN-Liberalisation on preferences. The scope of the problem was to be carefully assessed and appropriate solutions suggested. However negotiations have been going in Geneva over the years up to last year, July 2008 that witnessed a failed Mini Ministerial. A subsequent attempt for another Ministerial in December of the same year did not take off after the WTO Director General, Pascal Lamy realised that it was bound for imminent failure. However the progress achieved in the failed July 2008 Ministerial have been locked in the December 6th 2008 modalities draft which is now the agreed basis for further negotiations. There are some delegations that are opposed to the December text as a basis for further work.

SO WHAT ARE THE AFRICAN GROUP'S REMAINING CONCERNS ON THE LATEST DECEMBER 2008 TEXT?

1. Although the December 2008 modalities draft text does not capture all the interests of the African Group, we are in principle supportive of the text as the basis for negotiations. The group is against any back tracking because it took a lot of resources both human and financial to reach thus far and hence the need to preserve the progress made.
2. Paragraph 16 of the Doha declaration is clear that developing country special needs and interests will be taken into account including through "less than full reciprocity". This is a key principle in NAMA which the group is not convinced is reflected in the draft particularly in regards to the proposed range of coefficients and flexibilities. In fact it has been a long held position of the group that the minimum coefficient spread between the developed and developing country that reflects to true principle of LTFR

is 25 percentage points. The application of such an outcome would result in most tariffs ending up very low and therefore unable to support industrialisation and also taking due caution on regional integration initiatives such as the SACU. For that the African group supports South Africa and SACU on their position for additional flexibilities beyond those accorded to other developing members as it based on genuine developmental concerns that are shared by the group.

3. The anti-concentration clause (ACC) is a late inclusion in the negotiations and we object its link to flexibilities. The ACC limits developing countries applying the formula from completely omitting an entire sector or near a whole sector from full formula tariff cuts). The December draft modalities states on ACC, that “full formula tariff reductions shall apply to a minimum of either 20% of national tariff lines or 9% of the value of imports of the Member in each HS Chapter”. We view this as a further constraint to the already limited flexibilities afforded so far and more debate is necessary on the whole concept of ACC and its applicability to African developing countries.
4. The Sectoral initiatives negotiations in which willing participants would voluntarily come together and agree to lower their tariffs in selected sectors to zero or very low levels have become a major controversy. This relates to the interpretation of the mandate as to the participation, whether mandatory or non-mandatory. Some developed countries insist that some developing countries must take part in at least one or two sectoral initiatives from among key sectors such as Chemicals, Industrial machinery and electronics, etc. This is reflected in the December draft modalities as “...certain countries (listed in an Annex Z) have committed to participate in negotiations in at least two sectoral initiatives...”and there by completely contradicting the “non mandatory nature of sectoral initiative”. In addition, we see sectorals as a source of further erosion of preferences beyond the formula reduction and therefore would want see the final outcome of modalities omit all products in the preferences basket from any eventual voluntary sectoral initiatives.

5. On non-reciprocal preferences, the December draft texts is fairly stable but the unresolved issue of disproportionately affected countries (DAC's) remain very thorny and of major concern to many African countries. Although an agreement on the differentiated coefficient(s) and flexibilities are yet to be finally agreed upon, it is stipulated that Preference receiving Countries will experience substantive tariff preference erosion as a consequence of tariff reduction by the developed countries. This will ultimately result in a fall in the preferential margins currently enjoyed by those countries under the various GSP schemes operated by the developed countries. The African and Caribbean countries have been raising serious concerns about preference erosion and have fought hard to have some key product lines shielded from further liberalization for at least the next ten years so far.

However, the United States does not offer any preferential market access to Asian countries while the European Union offers preferential market access to all LDCs under the Everything But Arms (EBA) initiative. The African and Caribbean countries on the other hand get preferential market access through AGOA and CBI into the US market and presently through Cotonou Partnership Agreement into the EU.

This has been the key concern for some Asian countries such as Pakistan, Sri Lanka (for both US and EC markets), and Bangladesh, Cambodia and Nepal (for the US market only) that they will continue to be disproportionately affected from any delay in liberalization of markets for which they do not enjoy any preferential treatment.

During the July Ministerial of 2008, the disproportionate effect was recognized and after some hard negotiations among key concerned members including some African LDC's, a compromise was reached to subject five tariff lines each (at HS 8) for normal tariff reduction in the case of Pakistan and Sri Lanka in the US and EC markets; and five tariff lines each in the case of Bangladesh, Cambodia and Nepal into the US market for a similar treatment. Thus, Annex 4 of the December 6th 2008 draft modalities is a manifestation of those negotiations and the annexes 2, 3 and 4 reflect the balance that was compromised.

It is widely held view within the African group that no attempt should therefore be made to re-open those annexes for any negotiations as that would rock the delicate balance that was painstakingly agreed upon.

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