Chair's Draft NAMA Modalities
Against the Core Mandate of Less Than Full Reciprocity

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The Chairperson of WTO NAMA (Non Agricultural Market Access) negotiations, Ambassador Don Stephenson circulated his latest draft modalities on 8th February 2008. The document is a revision of drafts circulated in July 2007 and is based on WTO Members' latest positions in the discussions since September 2007.

The modalities are the Chair's assessment of what might be agreed for the formulas for cutting tariffs, use of coefficients for developed and developing country Members and related provisions such as additional flexibility to developing country Members and preference erosion. This was circulated at about the same time the latest draft modalities on agricultural market access were circulated. It is worth recalling that many developed countries want deep cuts on industrial tariffs from large developing countries like India and Brazil in lieu of bringing down their huge trade distorting farm subsidies. Eventually the WTO Members want to negotiate an acceptable balance between the depths of cuts (the "level of ambition") in agricultural and non-agricultural tariffs and agricultural subsidies as well as the size of cuts that they desire in each area. There are other issues to be negotiated as well.

Therefore, these drafts are still not the final word. They put the possible areas of agreement on paper so that the WTO Members can react and further revise the texts, apart from settling the numbers from the ranges provided. They are the Chairpersons' views on what governments might be able to agree – based on what Members have proposed and debated over seven years of negotiations and their responses to the Chairs' previous papers.

This note is a critical appraisal of some aspects of the draft modalities on NAMA.

1. Introduction

1.1 On 8th February 2008, along with draft agriculture modalities, draft text on NAMA modalities was also circulated. For a desired developmental outcome of the Doha Round of trade negotiations, it is a prerequisite to balance the interests/concerns of WTO Members under the two major pillars of trade liberalisation – agriculture and industrial products. It is no secret that developed countries want enhanced market access for their industrial goods in large developing countries like India, Brazil in lieu of agreeing to phase-out their huge trade-distorting farm subsidies.

1.2 In NAMA negotiation, the main issues are coefficients in the formula for tariff cuts, product coverage, flexibilities for developing countries, and preference erosion. Developing country WTO Members want that the agreement must adhere to the core mandate of the Doha Development Agenda on NAMA - the less than full reciprocity for developing country members in their reduction commitment. However, the latest draft modalities do not address the core concerns of a large number of developing countries.

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2. Use of Coefficients in Swiss Formula

2.1 In the Hong Kong Ministerial Declaration it was agreed to apply a Swiss formula with coefficients with the aim of reducing non-agricultural tariffs. This formula implies that countries with higher tariffs will have to make substantially higher tariff reductions. It means developing countries, who normally apply higher tariffs than developed countries, end up making higher cut if the Swiss Formula is applied with single coefficient. This is contrary to the core mandate – the less than full reciprocity in reduction commitment for developing countries.

2.2 In order to respect the mandate of less than full reciprocity differential coefficient was proposed for developed and developing countries. The NAMA-11 group calls for ensuring "less than full reciprocity in reduction commitments" through an appropriate spread between the coefficients. A Swiss formula with two coefficients, based on reductions from bound rates, may also deliver on this mandate, provided that there is a difference of at least 25 points between the coefficients for developed and developing countries. This is imperative to take into account their respective levels of industrialization and competitiveness; social and economic situations; and their capacity to bear the costs of adjustment.[3] Many developed countries, however, demanded a co-efficient of 10 for themselves and that of 15 for developing countries.

2.3 In the revised draft modalities issued on 8th February 2008, the Chair stuck to his earlier proposal (July 2007) of a coefficient between 19 and 23 to cut industrial tariffs in developing countries and 8 and 9 for industrialised countries. In the revised draft, the Chair said there were sharp differences among members on these numbers as they are divided into three groups. The same proposal was thoroughly criticized and rejected by NAMA-11 in July 2007. The NAMA-11 statement submitted to the Chair on 25 July 2007 reads as follows:

"The NAMA-11 has demonstrated in several submissions to the Negotiating Group on Market Access that at least a 25 point difference in the coefficients of developed and developing countries will be required to meet the mandate of less than full reciprocity. Instead the Chair's paper has reduced this spread by about half of the 25 points and has only offered a reduction of 1 or 2 points for the developed country coefficient. Therefore, the imbalance in the contributions between developed and developing countries will be considerably exacerbated, turning the concept of less than full reciprocity on its head and thus, making the developing countries the major contributors of the Round."

2.4 The proposed coefficients are very much closer to the original developed country Members' demand of coefficients of 10 and 15, a difference of 5 points between developed and developing countries. The NAMA-11 has calculated that this amounts to an average percentage cut of 25% for developed countries and an average cut of 65% to 70% for developing countries.[4] It means if the proposed coefficients are fed through the Swiss Formula, the respective cuts for developed and developing countries would not be very different from the one based on developed country Members' proposal. This clearly goes against the principle of less than full reciprocity, which is not acceptable to a larger group of developing countries.

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[3] NAMA-11 Ministerial Communique, 29th June 2006, TN/MA/W/79

[4] "Market Access for Non-Agricultural Products, Communication from the NAMA-11Group of Developing Countries", 8th June 2007, TN/MA/W/86

3. Flexibility for Developing Countries

3.1 In July 2004 Framework text it was agreed that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility:

- applying less than formula cuts to up to [10]% of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or
- keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5]% of tariff lines provided they do not exceed [5]% of the total value of a Member's imports.

3.2 A larger group of WTO Members comprising of ACP (Africa, Caribbean and the Pacific), the Africa Group, the NAMA-11, and Small and Vulnerable Economies (SVEs) through their joint submission reiterated the demand of flexibility. The statement reads as follows:

"Flexibility is a crucial element addressing the development dimension of this round. De Developing countries have demonstrated their diverse need for flexibilities, for both tariff lines and trade covered. Some have suggested that there should not be limits to the trade covered as is the case in agriculture; some have submitted that there is the need for additional flexibilities to preserve the common external tariff in customs unions; some to address social economic and labour concerns; and others to address concerns arising from a large number of low applied and unbound tariffs. The final outcome of this Flexibility is a crucial element addressing the development dimension of this Round. Development round must capture this diversity in development needs by making available the flexibility provisions to the appropriate and adequate extent."

3.3 However, the latest draft modalities text is a big disappointment on this particular front. In fact what is proposed in Chair's modalities is a step backward in comparison to the previous July 2007 text, which provided for allowing developing countries to subject 10% of tariff lines to reductions half as steep as those ordinarily required (so long as this does not cover more than a tenth of manufacturing import value). Alternatively, they would be allowed to exclude 5% of tariff lines from reduction altogether (albeit limited to 5% of total import value). These figures were in square brackets signifying the absence of consensus, but had at least stayed constant since the July 2004 Agreement.[5]

3.4 The removal of '10' and '5' numbers by the Chair from the new texts and leaving the brackets empty surprised many countries. The draft modalities only listed various proposals for additional flexibilities from many developing countries. The removal of numbers dilutes the July 2004 Framework Agreement, which has been the main basis of NAMA negotiations since then. Instead, the Chair has suggested a "Sliding Scale" approach, which makes provision of trade-off between coefficient and additional flexibility under Paragraph 8 of the July 2004 Framework Agreement. It means lower coefficient in formula with higher additional flexibility and vice versa. According to the Chair, it might provide a basis upon which to agree different outcomes for different developing countries – a persistent demand of some developing countries.

[5] Bridges Weekly Trade News Digest – Vol.12, Number 5, 13th February 2008

4. Preference Erosion

4.1 While most countries (developed as well as developing) recognise the benefits of dismantling the remaining barriers to trade in industrial products, some (notably the least developed countries and some small island economies in Africa, the Caribbean, and the Pacific) are apprehensive. To ensure that their concerns are reflected in the final text of the Doha Round, the LDCs and ACP countries have joined forces to form the Group of Ninety (G-90).

4.2 Many of these countries have been enjoying duty-free access for their exports in key markets such as the European Union (EU) and the United States. The preference schemes are aimed at encouraging export growth and economic development in poor countries. This means that they would have little to gain from additional market access that may arise from multilateral trade liberalisation in industrial products. More importantly, multilateral removal of trade barriers would erode the price advantage that trade preferences confer and would expose countries whose exports rely on this advantage to fierce competition from more cost-efficient big exporters.

4.3 The G-90 demanded that due to the critical importance of preferences for its Members, solutions to the question of preference erosion must be obtained within the WTO negotiations. The text of the WTO's July 2004 Framework Agreement made explicit reference to preference erosion, recognizing it as an issue that ought to be addressed in the Doha Round. Later on in December 2005, the Hong Kong Ministerial Declaration too reiterated the urgency of addressing the issue of preference erosion.

4.4 The previous draft of July 2007 proposed that in order to provide these Members with additional time for adjustment, the reduction of MFN (Most-Favoured-Nation) tariffs on those tariff lines shall be implemented in 7 equal rate reductions instead of 5 equal rate reductions by the preference-granting developed-country Members concerned. The first reduction shall be implemented on 1st January of the year following the entry into force of the Doha Agreement results and each successive reduction shall be made effective on 1st January of each of the following years.

4.5 The latest draft modalities carry the same proposal as mentioned in the previous paragraph. Besides, the text calls for preference granting Members to increase their assistance to these 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.

4.6 The text also tries to do a balancing act between preference receiving countries and other developing countries, which do not enjoy the same depth of market access in preference granting countries. It is worth mentioning that some developing countries from the South Asian region expressed their reservation at Hong Kong when the duty-free, quota-free market access to LDCs was discussed. Keeping in view the concerns of these countries, the text proposes that reduction agreed in the relevant tariff lines shall be implemented in [5] equal rate reductions in the relevant preference granting markets. The first reduction shall be implemented on 1st January of the year following the entry into force of the Doha Agreement results and each successive reduction shall be made effective on 1st January of each of the following years.

5. Other Issues

5.1 Among other issues, the two important subjects are non-tariff barriers (NTBs) and sectorals. As regards NTBs, there are no definitive words from the Chair. This clearly indicates that no significant progress has been made on this – a complex but very important issue for meaningful market access.

5.2 On sectoral tariff reduction, the text proposes for participation on a non-mandatory basis as demanded by India and other developing countries. The main objective of such initiatives is to reduce, harmonize or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, over and above that which would be achieved by the modality of applying a formula, in particular on products of export interest to developing Members. Preference receiving countries like LDCs and ACP too are opposed to sectoral initiatives.