



**WTO TRADE NEGOTIATIONS
ON NON-AGRICULTURAL MARKET ACCESS
AND THE ACP COUNTRIES**

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I. INTRODUCTION

The trade of non-agricultural products has been liberalized considerably by successive rounds of trade negotiations. However, considerable barriers to trade remain and trade in industrial products continues to be subject to significant protection that restricts trade, especially on exports of developing countries among which the African, Caribbean and Pacific countries (ACPs) associated to the European Union.

The ACPs benefit from non-reciprocal trade preferences in the market of the European Union through the ACP-EU Cotonou Partnership Agreement and the Everything but Arms initiative (EBA). They benefit also from tariff preferences in the market of other developed countries through the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA) of the United States. However, tariff peaks and tariff escalation in the markets of certain developed countries constitute major impediments to the development and industrialization of ACP countries.

In a new effort to further liberalize international trade, the 4th Ministerial Conference of the WTO (Doha, Qatar, November 2001) adopted the Doha Development Agenda (DDA) and mandated a series of new negotiations including negotiations on Non-Agricultural Market Access (NAMA).

This paper focuses on the mandate given to negotiators in the area of tariffs and trade in non-agricultural products. It does not elaborate on the issues of non-tariff barriers and environmental goods given the preliminary nature of the discussion on these subjects. Its main objective is to give a general picture of the ongoing multilateral trade negotiations on NAMA according to paragraph 16 of the Doha Development Agenda mandate and from the African, Caribbean and Pacific countries (ACPs) perspective. The paper addresses to the group of ACP countries as a whole with particular reference to ACP/Least Developed Countries¹.

Section II, refers to the position of ACP countries in the GATT/WTO system. It gives a brief description of the Doha ministerial mandate on

¹ The group of ACP countries is composed of 36 developing countries and 41 out of 49 least developed countries. The quasi totality of the least developed and 14 of the 36 developing countries are in Africa. For practical reasons, the group of ACPs could be considered in two subgroups, the ACP/developing countries and the ACP/LDCs. The first subgroup is associated to the other developing countries, while the ACP/LDCs are considered representing the group of LDCs in its totality.

NAMA, followed by a short description of the post-Uruguay Round situation on tariff protection of non-agricultural products that restricts export opportunities for ACP countries.

Section III, contains a review of the Draft Cancun Ministerial Text (DCMT) in connection with the modalities for negotiations on NAMA.

Section IV, proceeds to the analysis of the relevance of the DCMT for the ACP-WTO relationship and for future negotiations, and describes the problems raised by the modalities for negotiations on NAMA. Finally, Section V describes the current state of play and the positions of some developed and developing countries including ACP countries.

The analysis made in Section IV and Section V will serve to formulate, in Section V, some policy options and recommendations to be considered by the ACP Group.

II. THE ACP COUNTRIES AND THE GATT/WTO SYSTEM

A.- The Doha ministerial mandate

At the Doha Ministerial Conference, the ministers decided to start immediate negotiations to further liberalize trade in non-agricultural goods without a priori exclusions, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994. The mandate, contained in Paragraph 16 of the Doha Ministerial Declaration (DMD), mentions that the negotiations 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;
- 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;
- include studies and capacity-building measures that would help least-developed countries participate effectively in the negotiations.

In addition to paragraph 16 of the Doha Ministerial Declaration, there are also explicit references to market access issues for least-developed countries (LDCs). Of particular importance in this regard is the commitment to the “objective of duty-free, quota-free market access for

LDCs". Actually, in paragraph 42 of the Doha Ministerial Declaration, WTO Members committed themselves "to the objective of duty-free, quota-free market access for products originating from LDCs" and "to consider additional measures for progressive improvements in market access for LDCs" that would contribute to their economic growth and poverty alleviation.

B.- Current situation on NAMA

For a diagnosis of the current situation on NAMA, it is necessary to examine the main impediments to the market access of non-agricultural products on the basis of the mandate provided by paragraph 16 of the DDA.

a) Tariff Bindings

As far as tariff bindings are concerned, while developed countries, most transition economies and most Latin American countries have bound all, or almost all, of their non-agricultural tariff lines, most African and Asian countries have bound only a limited number of tariff lines.

Table 1 below shows the distribution of binding coverage across countries for Africa, Asia and Latin America respectively. In Africa, 14 out of a total of 41 African countries have bound less than 10% of their industrial tariff lines. Of those, 11 have even bound less than 5% of their lines. At the same time, 11 countries have bound between 90 and 100%.

TABLE 1: Distribution of binding coverage in Africa, Asia and Latin America

Binding coverage	African countries (41)		Asia countries (21)		Latin America (32)	
	Number	%	Number	%	Number	%
≤ 5%	11	26.8	1	4.8	0	0.0
5% binding coverage ≤ 10%	3	7.3	1	4.8	0	0.0
10% binding coverage ≤ 20%	1	2.4	2	9.5	1	3.1
20% binding coverage ≤ 30%	4	9.8	1	4.8	2	6.3
30% binding coverage ≤ 40%	3	7.3	1	4.8	0	0.0
40% binding coverage ≤ 50%	0	0.0	1	4.8	0	0.0
50% binding coverage ≤ 90%	2	4.9	5	23.8	1	3.1
90% binding coverage < 100%	11	26.8	8	38.1	8	25.0
=100%	6	14.6	1	4.8	20	62.5
Total	41	100.0	21	100.0	32	100.0

Source: WTO (2003), Discussion Papers N° 1: Industrial Tariffs and the DDA.

In Asia, one third of the 21 countries have bound less than half their lines and only nine countries have bound more than 90% of their lines.

In Latin America, the situation is quite different with only four out of 32 countries with a binding coverage of less than 90%.

A large proportion of industrial product tariff lines in the developing countries remains unbound or is bound well above the level of applied tariffs through ceiling bindings.²

The levels of bound rates vary also considerably for different categories of industrial products. For both developed and developing countries, bound average rates are highest in the category of:

- Textiles and clothing: Quad countries³ (9%); all developed countries (12%); developing and transition economies (29%).
- Leather, rubber, footwear and leather products: 9% for the Quad, 10% for developed countries, 27% for developing countries.
- Fish and fish products, and transport equipment: close to the above average bound rates.⁴

b) Tariff Protection

The Uruguay Round commitments have resulted in relatively low simple average bound rates for industrial products, with wide disparities among countries. The level of tariff protection, on an MFN basis, is as follows:

- Developed countries: 7% average bound rate and 5% applied tariff rates;
- Quad countries: under 5%;
- Developing countries and transition economies: around 26%.⁵

c) Tariff peaks and Tariff escalation

Peak tariffs are rates above 15% and tariff escalation protect upstream industries in relation to raw materials and primary products. Developed countries use tariff peaks in specific categories of products such as agricultural and food products, textiles and clothing, footwear, travel goods, transport equipment and electrical machinery. These are products usually excluded from their GSP preferential regime. The sector with the largest proportion of lines with tariffs above 15% is textiles and clothing. In most of the developed countries, including the European Union, the largest share of peaks is found in the fish and fish products category. For

² WTO (2001), Market Access: Unfinished Business, Special Study 6.

³ Canada, European Union, Japan, and United States.

⁴ WTO (2001).

⁵ Without taking into account the effects of commitments in information technology and additional pharmaceutical products.

Japan, the largest share of peaks is in the leather, rubber, footwear, and travel goods category⁶.

High tariffs, peak tariffs and tariff escalation are serious obstacles to the exports of many ACP developing and least-developed countries. They have a double negative impact for the ACP countries: first, they are a direct impediment to their exports and second, they jeopardize their efforts for downstream activities by processing domestic primary products (raw materials and commodities) as well as semi-finished goods.⁷

d) Duty-free market access and *ad valorem* tariffs

It is mentioned above that bound tariffs can vary quite significantly from that of applied unbound tariffs for a given Member. Therefore, in the context of NAMA, duty-free market access could be duty-free lines with applied unbound rates at zero as well as lines that are bound at zero. According to certain estimates, approximately only 6% of the total number of non-agricultural items are bound duty-free.⁸

Another interesting feature of transparency and “comparability” is the percentage of non-*ad valorem* tariff lines (specific or mixed duties). They are rather frequent in the agriculture sector and not absent in the industrial sector.⁹

C.- The special case of ACP/Least-developed countries

The importance of market access for ACP/LDC products can be seen from the data of Table 2 below on exports of LDCs to the QUAD countries and the market protection applied by them. The European Union and the United States are the most important markets for ACP/LDC products. The most open market to LDCs (including ACP/LDCs exports), in 1999, was the EU where 97% of imports originating from LDCs entered duty free. The EU imports the largest diversity of products from ACP/LDCs. Since March 2001, all goods exported by the ACP/LDCs to the UE benefit duty-free and quota-free market access in the framework of the Everything but Arms (EBA) initiative.

⁶ UNCTAD, TD/B/COM.1/14/Rev.1; B. Hoekman, F. Ng, M. Olarreaga (2000), *Tariff Peaks in the Quad and Developing Countries' Exports*, World Bank.

⁷ WTO (2003), Discussion Papers N° 1: Industrial Tariffs and the DDA.

⁸ *idem*

⁹ *idem*

TABLE 2: Structure and Protection in Quad Countries facing LDC Exports, 1999

	<u>Japan</u>	<u>USA</u>	<u>Canada</u>	<u>EU</u>
Total LDC imports (1)	1019120	6962416	227677	9874807
Total imports in identical product lines (2)	126378101	528279235	83670842	637766105
Total imports (3)	305438116	1015143866	211085424	783684206
LDC share of competitive imports ((1) / (2))	0.81%	1.32%	0.27%	1.55%
LDC share of total imports ((1) / (3))	0.33%	0.69%	0.11%	1.26%
Total tariff lines	545	946	758	2222
in lines with protection	74	335	201	55
of which above 5%	36	282	181	51
LDC Exports entering duty free	498534	3596270	103260	9566647
LDC Exports dutiable	520586	3366146	124417	308160
LDC Exports dutiable above 5 %	226274	3272917	123827	308134
Share of LDC exports facing protection	51.10%	48.30%	54.60%	3.12%
Share of LDC exports facing tariff > 5%	22.20%	47.00%	54.40%	3.12%
Share of lines with tariff	12.10%	17.10%	18.50%	4.20%
Share of lines with tariff > 5%	7.60%	14.10%	12.80%	3.80%

Source: UNCTAD (2001), Duty and Quota Free Market Access for LDCs: An Analysis of Quad Initiatives.

Under the African Growth and Opportunity Act (AGOA), the United States have also broadened its GSP scheme and enhanced market access opportunities to allow imports on duty-free basis for 23 LDCs in Sub-Saharan Africa. In addition, several other developed and transition economies¹⁰ have adopted a policy of duty-free and quota-free market access for all or essentially all LDC exports.

III. REVIEW OF THE DRAFT CANCUN MINISTERIAL TEXT IN CONNECTION WITH THE MODALITIES FOR NEGOTIATIONS ON NAMA

In conformity with the DDA, a Negotiating Group on Market Access was created at the first meeting of the Trade Negotiations Committee, in early 2002. The Negotiating Group had to reach an agreement on the modalities of the negotiations that are to end by 1 January 2005. In the meantime, the 5th Ministerial Conference in Cancún, September 2003, had to take stock of progress.

The written submissions and discussions on NAMA negotiations, in the framework of the WTO Negotiating Group on Market Access, resulted to

¹⁰ Canada, Czech Republic, Hungary, New Zealand, Norway, Slovak Republic and Switzerland

the presentation by the Chairman of the Negotiating Group of a “Draft Elements of Modalities” (TN/MA/W/35.Rev.1) that did not meet the necessary consensus within the Group. This draft took finally the form of Annex B: “Framework for Establishing Modalities in Market Access for Non-Agricultural Products”, to the Draft Cancun Ministerial Text (DCMT) of the Chairman of the WTO General Council. As the Cancun Ministerial Conference failed to take any decision, the DCMT remained ineffective. However, it is a fair basis for further negotiations on NAMA.

A.- The DCMT

The Draft Text reaffirms the determination to conclude the negotiations launched at Doha by the agreed date of 1 January 2005.

With regard to NAMA, paragraph 5 of the DCMT:

- reaffirms the commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration;
- takes note of the progress made by the Negotiating Group on Market Access in this regard and agrees to intensify work to translate the Doha objectives into modalities for these negotiations;
- adopts the framework for modalities for negotiations on non-agricultural products as set out in Annex B;
- invites the Negotiating Group to conclude its work on establishing modalities by [...] and to take the necessary further steps to ensure the conclusion of negotiations by the agreed date.

B.- Modalities for Negotiations on NAMA (Annex B of DCMT)

The Annex B of the DCMT mentions that the Negotiating Group will continue its work as mandated by paragraph 16 of the Doha Ministerial Declaration and in conformity with the provisions of Article XXVIII bis of GATT 1994 and the provisions cited in paragraph 50 of the Doha Ministerial Declaration, on the basis set out below.

1. It is recognized that a non-linear formula approach applied on a line-by-line basis is key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation. This formula approach 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.

2. The formula approach shall be applied under the following conditions:

- the product coverage shall be comprehensive without *a priori* exclusions;
- the tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
- the base year for MFN applied tariff rates shall be 2001
- credit shall be given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
- all non-ad valorem duties shall be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms¹¹;
- negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature;
- the reference period for import data shall be 1999-2001.

3. It is also recognized that newly acceded Members shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession.

4. Pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request and offer, should be kept open.

5. In addition, developed-country participants and other participants who so decide are asked to consider the elimination of low duties.

6. Furthermore, as an exception, participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula. Instead, it is expected that they bind [100] percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions.

¹¹ TN/MA/W/35/Rev.1

7. A sectorial tariff component is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. The Negotiating Group is invited to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country Members.

8. A Special and Differential Treatment foresees that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they would be given the flexibility of keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports. This flexibility could not be used to exclude entire HS Chapters.

9. Least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach; however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.

10. Furthermore, developed-country participants and other participants who so decide are invited to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].

11. On this purpose, appropriate studies and capacity building measures shall be an integral part of the modalities to be agreed.

12. Non-Tariff Barriers (NTBs) are an integral and equally important part of these negotiations. The modalities for addressing NTBs could include request/offer, horizontal or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.

13. A last paragraph refers to two issues of importance for further consideration: the erosion of non-reciprocal preferences and the high tariff revenue dependency.

IV. ANALYSIS OF THE RELEVANCE OF THE DCMT FOR THE ACP-WTO RELATIONSHIP AND FUTURE NEGOTIATIONS

The DCMT is an improved version of the draft elements of modalities proposed by the Chairman of the Negotiating Group on Market Access in which were taken into account the positions of developed and developing

countries. It may constitute the basis for further discussion on the establishment of modalities for negotiations in NAMA. The new framework proposes two categories of issues: basic issues and other issues that have an impact on ACP countries.

A.- Impact of DCMT on ACPs: basic issues

- A non-linear formula approach applied on a line-by-line basis. The mathematical expression of the formula to be applied is included in the proposal of the Chairman of the Negotiating Group. The objective will be to reduce tariffs, to reduce or eliminate tariff peaks, high tariffs, and tariff escalation taken fully into account the needs and interests of developing and least-developed countries including through less than full reciprocity in reduction commitments. In other words, all WTO Members including ACP/developing countries will have to make tariff reductions except ACP/least-developed countries which shall not be required to apply the formula. It remains to define the less than full reciprocity and the coefficient to be applied by developed and by developing countries.

- Bound tariff rates shall be the basis for tariff reductions or elimination. This corresponds to the request of developing countries applying ceiling bindings. For unbound tariff lines, the basis shall be [two] times the MFN applied rate in the base year. For instance, if the MFN applied unbound tariff of an ACP/developing country is 10%, the reduction shall be calculated on 20%. It should be clarified that the application of this method on unbound tariffs does not imply the binding of reduced tariff lines for future negotiations.

- The base year for MFN applied tariff rates shall be 2001.

- Credit for autonomous liberalization by developing countries shall be given for tariff lines bound on an MFN basis since the conclusion of the UR.

- Non-ad valorem duties (specific and mixed duties) shall be converted into ad valorem equivalents. It remains to determine the methodology to be applied and if any flexibility shall be used for developing and least-developed countries. The most usual method for conversion is based on the import values and quantities if available¹².

- An exception in favor of developing countries: Developing countries with less than [35%] binding coverage of non-agricultural tariff lines would be exempt from making tariff reductions through the formula, if they accept to bind [100%] of non-agricultural tariff lines at an average

¹² TN/MA/W/35/Rev.1, p.6

level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions, estimated to be 27.5%. As the ACP/LDCs are not required to apply the formula, it can be assumed that they are not concerned by this proposal. However, this proposal is of particular concern to ACP/developing countries which have bound less than 35% tariff lines. According to the data mentioned in Section I, Table 1, a great number of ACP/African countries and a few Asian countries have bound less than 35% tariff lines of non-agricultural products. In any case and before accepting to bind [100%] of their tariff lines, these countries should examine their tariff structure and the national average level in comparison to the overall average of bound tariffs for all developing countries.

- The sectorial tariff component with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries, could be important for ACP countries if the selected sectors to be liberalized contained products effectively exported by them to developed and other developing countries and if the reduced rates were bound¹³. This sectorial tariff component in favor of developing country exports is different to the issues on zero-for-zero sector elimination and sectorial harmonization included in the supplementary modalities (see below).

- The proposed special and differential treatment foresees:
 - o for developing countries, longer implementation periods for tariff reductions and exceptional flexibility of keeping 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, and do not exclude entire HS Chapters. This proposal could be of interest to an ACP/developing country for which only up to 5% of its tariff lines are unbound and not exceeding 5% of the total value of its imports. In this case, it may keep unbound up to 5% of its tariff lines, or not apply formula cuts. This can be considered as an exception to the principle of binding 100% of tariff lines.

¹³ The draft submitted by the Chairman of the Negotiating Group contained a proposal for completely eliminating tariffs in the following seven sectors: electronics and electrical goods; fish and fish products; footwear; leather goods; motor vehicle parts and components; stones, gems and precious metals; and textiles and clothing. These sectors are considered of particular interest to exports of developing and least-developed countries.

- o for least-developed countries, there is no obligation to apply the formula or to participate in the sectorial approach. However, they are expected to substantially increase their level of bindings. It is the case of ACP/LDCs particularly African countries.

B.- Impact of DCMT on ACPs: other issues

Issues such as zero-for-zero sector elimination, sectorial harmonization, request and offer approach and elimination of low duties as well as non-reciprocal preference erosion and high revenue dependency remain open for consideration. They should be considered after the core modality concerning the formula has been finalized.

All these issues are of particular interest to ACP countries because they may affect the market access advantages they benefit through preferential schemes and through regional or partnership agreements such as the Cotonou Partnership Agreement and the GSP.

V. SUMMARY OF THE CURRENT STATE OF PLAY AND POSITIONS OF DIFFERENT ACTORS

A.- Proposals submitted by WTO Members

In the pre-negotiation phase on NAMA, WTO Members have submitted proposals dealing with the modalities for the negotiations and covering tariff reductions, non-tariff barriers, special and differential treatment for developing countries, the impact of tariff reductions on the development policies of some countries and on their fiscal revenues, etc.¹⁴ Some views expressed either by developed or by developing countries on these issues were taken into consideration in the DCMT, although the whole DCMT is still subject to negotiations.

The proposals on tariff reductions made by WTO Members in the first phase of discussions in the Negotiating Group on Market Access for defining the modalities for negotiations on NAMA can be classified in three main categories: proposals made by developed countries (joint communication from Canada, the European Union and the United States)¹⁵, by developing countries (African and ACP countries)¹⁶ and by

¹⁴ Submissions were made, among others, by EU, US, Japan, Korea and India, and collectively by Mercosur, four newly acceded Members (Albania, Croatia, Georgia, and Moldova), an African group (Ghana, Kenya, Tanzania, Uganda, Zambia and Zimbabwe), another Afro-Asian group (Egypt, India, Indonesia, Kenya, Malaysia, Mauritius, Nigeria, Tanzania, Uganda and Zimbabwe) and the group of LDCs.

¹⁵ TN/MA/W/44

¹⁶ TN/MA/W/27: Communication from Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe;

the group of least developed countries¹⁷. In addition, there are two proposals: one made by the Chairman of the Negotiating Group and another included in the DCMT.

B.- Core modalities: formula approach and connected issues

The content of all the above mentioned proposals can be summarized as follows:

1. Product coverage: It is generally accepted that the negotiations shall cover all non-agricultural products without a priori exclusions; certain flexibility is requested in respect of unbound tariff lines for some domestically sensitive products of developing countries.

2. Reduction and/or elimination of tariffs: A few developed countries (US, Canada and New Zealand) are in favor of the elimination of all remaining duties, while developing countries have some difficulties to accept it as contradictory to the principle of less than full reciprocity. However, before dealing with this issue, participants had to reach agreement on the modalities to conduct the tariff-cutting exercise.

3. Formula approach: Different types of formulae have been proposed: a general formula like the “Swiss formula” used in the Tokyo Round, a line-by-line formula, an average reduction formula, or other types of formula. There is, however, a convergence of positions on a harmonizing formula that would apply on a line-by-line basis for all participants except for least-developed Members. For this, the “Swiss formula” seems generally acceptable. However, there is no consensus on the different parameters of the Swiss formula either in its initial version or in the new version proposed by the Chairman of the Negotiating Group.¹⁸

a) Initial Swiss formula:

$$T_1 = \frac{A \times T_0}{A + T_0}$$

where:

T_0 : Base tariff

T_1 : New tariff

A : Coefficient

WT/MIN(03)/4: ACPs' Declaration on the 5th Ministerial Conference of the WTO;

WT/MA/W/40: Joint statement by Ghana, Kenya, Madagascar, Mauritius, Nigeria, Rwanda, Tanzania, Tunisia, Uganda, Zambia, and Zimbabwe (11 ACPs).

¹⁷ TN/MA/W/22

¹⁸ TN/MA/W/35/Rev.1

The United States have proposed the elimination by 2010 of tariffs below 5%, the application of the Swiss formula with a coefficient of “8” for the reduction of tariffs above 5% between 2005 and 2010, and the elimination of the remaining duties through linear cuts from 2010 to 2015.¹⁹ The developing and ACP countries are in favor of the Swiss formula but modulated with differentiated coefficients.

The use of a single coefficient, for instance the coefficient “8” proposed by the United States, is advantageous to developed countries with low protection and detrimental to ACP/developing countries with high tariffs. For example, applying the Swiss formula with coefficient “8” in the case of the United States with a simple average tariff of 3.2%, the tariff reduction would be 28.0% and the final tariff 2.3%. In the case of Jamaica with a simple average tariff of 42.5%, the tariff reduction would be 84.3% and the final tariff 6.7%. And, in the case of Kenya with a simple average of 54.8% the tariff reduction would be 87.2% and the final tariff 7.0%. Thus, the application of a unique coefficient to both developed and ACP/developing countries would imply greater reductions and disproportionate greater cuts for ACP countries due to the large differences in the basic levels of protection. The initial average tariff of 3.2% for the United States, 42.5% for Jamaica and 54.8% for Kenya would become 2.3%, 6.7% and 7.0% respectively. In other words, one unit for the United States corresponds to 35.8 units for Jamaica and 47.8 units for Kenya. In order to correct this asymmetry, the ACP/developing countries need to apply a higher coefficient than the one for developed countries.

A simple harmonizing formula applied on a line-by-line basis (e.g. Swiss Formula), with a single coefficient is also proposed in the joint submission made by Canada, the European Union and the United States.²⁰ WTO Members are invited to devise appropriate mechanisms to deliver flexibility for developing countries by incorporating special and differential treatment, for example, through a “system of credits” given for bindings over 95% and for narrowing the margins between bound and applied tariff levels.

Basically, the joint communication from Canada, the EU and US addresses, as far as developing countries are concerned, a number of issues for NAMA negotiations which reflect the elements included in the draft proposal of the Chairman of the Negotiating Group. Its authors consider that the Chair’s draft “provides an acceptable broad framework for the negotiations”.

¹⁹ TN/MA/W/18

²⁰ TN/MA/W/44

b) New Swiss formula:

$$t_1 = \frac{B \times t_a \times t_0}{B \times t_a + t_0}$$

where:

t_1 is the final rate, to be bound in *ad valorem* terms

t_0 is the base rate

t_a is the average of the base rates

B is a coefficient with a unique value to be determined by the participants

The basic differences between the initial and new Swiss formula consist of the coefficient “B” with a unique value and the introduction of the dynamic coefficient “ t_a ” with a variable value representing the different tariff profiles. The “ t_a ” is the simple arithmetic average for each Member of the base bound *ad valorem* rates or *ad valorem* equivalents (AVEs) or twice the MFN applied unbound rates. The new Swiss formula raises two problems: its mathematical application and its conditionality.

a) Application of the formula:

The application of the new Swiss formula, with different coefficients “B” and different base rates “ t_0 ”, to the above examples of the US, Jamaica and Kenya having 3.2%, 42.5% and 54.8% simple average base rates “ t_a ” would give respectively the following results:

(i) Base tariff “ t_0 ” = 10

	B=5	B=8	B=15	B=5	B=8	B=15
	t_1 (%)			Reduction (%)		
US	6.2	7.2	8.3	38	28	17
Jamaica	9.6	9.7	9.8	4.5	3.0	1.5
Kenya	9.6	9.8	9.9	3.5	2.3	1.3

(ii) Base tariff “ t_0 ” = 40

	B=5	B=8	B=15	B=5	B=8	B=15
	Final Tariff: t_1 (%)			Reduction (%)		
US	11.4	15.6	21.8	71.5	61.0	45.5
Jamaica	33.7	36.0	37.6	16	10.5	6.0
Kenya	35.0	36.7	38.0	12.7	8.4	5.0

(iii) Base tariff “ t_o ” = 70

	B=5	B=8	B=15	B=5	B=8	B=15
	t_1 (%)			Reduction (%)		
US	13.0	18.7	28.5	81.0	73.0	59.0
Jamaica	53.0	58.0	63.0	24.7	17.0	10.0
Kenya	55.8	60.4	64.5	20.0	14.0	7.9

As shown from the data in the above tables, the tariff reductions resulting from the application of the formula depend more on the relationship between the average of the base rates “ t_a ” and the base rate by tariff line “ t_o ”, than on the coefficient “ B ”. The higher the “ t_a ” is in comparison to “ t_o ”, the lower is the tariff reduction for the same coefficient “ B ” or vice-versa. For a higher “ B ”, the reductions are lower in both cases, and for a lower “ B ” the reductions are higher. The impact of the coefficient “ B ” depends on the relationship between “ t_a ” and “ t_o ” and for this reason it is different from the impact of the coefficient “ A ” in the initial Swiss formula.

Although the formula does not contain any special and differential component for ACP/developing countries, its application offers a high degree of flexibility depending on the tariff profile of each country. Countries with higher simple average base rates and higher tariff line protection, but lower than the simple average, will realize marginal reductions by tariff line. The formula becomes more complicated for ACPs because of its conditionality.

b) Conditionality:

For the application of the formula, specific duties should be converted into AVEs; unbound applied MFN rates are also taken into consideration; and “ t_1 ” is the final rate to be bound in *ad valorem* terms. These conditions and notably the binding of final rates are more important than the marginal reductions through the new Swiss formula.

4. Tariff peaks, tariff escalation and high tariffs: First, they have to be defined and clarified, and then reduced for products of export interest to developing countries; tariff peaks, tariff escalation and high tariffs impede the exports of ACP products that do not benefit from a preferential non-reciprocal regime. ACPs should ask for a reduction or the elimination of this type of obstacles selectively by country and by

product and for their binding through the formula and/or the request and offer approach. Tariff escalation in which higher import duties are applied on semi-processed and finished products than on raw materials is another obstacle to ACP exports. This practice protects processing industries of developed countries and discourages the development of processing activity in ACP countries where the raw materials originate.

5. Special and differential treatment: In addition to longer implementation periods for tariff reductions, the DCMT gives a flexibility to developing countries to apply less than formula cuts to up to 10% of the tariff lines (TRLs) provided that the cuts are no less than half the formula cuts and that these TRLs do not exceed 10% of the total value of a Member's imports. Or, alternatively, to keep a percentage of TRLs unbound, as mentioned below.

6. Bindings/Binding coverage: The bindings and the binding coverage is another unresolved issue of concern for ACP countries. The proposals of the developed countries and those of the Chairman of the Negotiating Group are reflected in the DCMT that request developing and least-developed countries to undertake the binding of the quasi-totality of their tariff lines. As an exception, developing countries could keep 5% TRLs unbound, or not apply formula cuts for up to 5% of TRLs, provided they do not exceed 5% of the total value of a Member's imports. This proposal targets the ACPs and notably the African countries with low level of bound TRLs and considers as a prerequisite an agreement on the core modality of the formula approach.

6. Implementation period and staging of reductions: the developed countries propose a five year period with equal annual cuts. The developing countries including ACPs request for a longer period e.g. ten years.²¹

7. Least-developed countries: It is generally admitted that the least-developed countries should be exempted from tariff reduction obligations. However, they would be expected to substantially increase their level of binding commitments. The LDCs as a part of their contribution to the NAMA negotiations have communicated their willingness to bind their tariffs at levels which are higher than their applied rates of tariffs (ceiling bindings)²².

²¹ Egypt, India, Indonesia, Kenya, Malaysia, Mauritius, Nigeria, Tanzania, Uganda and Zimbabwe (TN/MA/6/Rev.1).

²² TN/MA/W/22

8. Erosion of preferences and high tariff revenue dependency: This is a highly debated issue in the Negotiation Group on Market Access without any conclusion so far. The advantages for the ACP group in its totality, deriving from the preferential regimes they benefit in developed countries' markets risk to be impaired or nullified by the formula and/or the sectorial approach. For this reason, it is necessary to have compensatory solutions. It is the same for the tariff revenue dependency of ACP/developing countries which will participate to the liberalization process. To this regard, the developed countries propose to "encourage Bretton Woods Institutions to establish or enhance programmes to address adjustment needs of Members whose exports are significantly affected by erosion of preferences".²³ The DCMT recognizes the challenge that may be faced by non-reciprocal preference beneficiary Members and those Members that are highly dependent on tariff revenue as a result of the NAMA negotiations and instructs the Negotiating Group to take into consideration the particular needs that may arise for the Members concerned. The group of LDCs, in its communication to the Negotiating Group²⁴, underscores the seriousness of the problem raised by the erosion of preferences and requests in such cases the postponement of tariff reductions by the preference giving countries over a period to be agreed.

9. Base rates, non-ad valorem duties, nomenclature, autonomous liberalization and newly acceded Members are issues without serious differences of opinion among Members.

C.- Supplementary modalities

- **Sectorial approach:** There are two issues on sectorial approach: the sectorial tariff component, mentioned in the previous section, with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries which is linked to the formula approach; and the zero-for-zero sectorial approach that could be an optional plurilateral agreement such as the Information Technology Agreement.
- **Request/offer approach:** This approach, depends on the scope of the formula approach and can be used in the case of some sensitive products;
- **Low/nuisance duties:** The level (2% or 5%) of these duties should be defined and could be eliminated in connection with the formula approach; they are usually applied by developed countries and it is obvious that their elimination would nullify the preferential margins that ACPs benefit under the GSP or any other preferential discriminatory treatment for products on which they coincide.

²³ TN/MA/W/44

²⁴ TN/MA/W/22

VI. CONCLUSIONS: Options and Recommendations

In the area of market access for non-agricultural products, the Doha mandate provides an opportunity to improve the ACP countries' effective participation in international trade. However, any trade negotiation is a give and take exercise with advantages and disadvantages. There are risks to the trade of ACP countries and gains to be made from further negotiations in NAMA. Much depends on the framework for establishing modalities for negotiations.

As far as targets for NAMA negotiations are concerned, these can generally be derived from the analysis of existing barriers (Section II:b), from the liberalization approaches included in the DCMT, and other submissions (Section IV and V). ACP countries should take into consideration the following points in the formulation of their negotiating positions.

1. A **special formula approach** should be an instrument applied by developed countries for the reduction or elimination of tariff peaks and tariff escalation faced by ACP countries' exports and impeding their diversification efforts. If this is the case, the reduction and the harmonization of peak tariffs as well as the attenuation of the impact of the effective protection due to tariff escalation could be important incentives for the promotion of exports of processed goods originating from ACP countries.

2. Alternatively, a **general formula approach**, such as the initial Swiss formula, should be applied with differentiated coefficients and/or a linear across-the-board approach with differentiated tariff reductions, allowing for lesser tariff cuts for ACPs in comparison to developed and some dynamic developing countries, particularly on tariff peaks and tariff escalation. In the first case, the coefficient for ACPs should be higher, and in the second case their tariff cuts should be lower. This differential treatment, in conformity with the ACP rights of less than full reciprocity under Article XXVIII *bis*, is considered more adequate to take account of their special needs and interests. On this basis, ACPs can also prevail on their right to exempt highly sensitive products from tariff reduction although the Doha mandate states that there are to be no *a priori* exclusions from the negotiations.

The new Swiss formula, even with a unique low coefficient, could be considered more adequate for ACP/developing countries if it was disconnected from binding commitments. Actually, the ACP/developing countries are among countries with high average base rates and in their case the tariff reductions would be marginal.

3. The formula approach can be complemented by:

- **A sectorial approach** that should aim at liberalizing sectors identified on a voluntary basis by ACPs according to the interest they present for their exports; and
- **A request and offer approach** especially for ACP exports most protected in developed-country markets and left out in previous rounds of negotiations.

These two approaches allow ACPs to request Initial Negotiating Rights (INRs) for specific products of export interest to them.

4. **Tariff cuts** should be based on bound and not on applied MFN rates, as this is the only legal basis for negotiations.

5. **Tariff bindings** are concessions which increase security in trade, thus contributing to the negotiations, even without reduction in the applied rate. ACP countries having low percentages of tariff bindings on non-agricultural products may accept to bind them at ceiling levels if:

- they are free to determine the scope of coverage of bound products and
- are exempted from tariff cuts through the formula and/or sectorial approach.

6. Longer **transition periods** should be provided for ACP countries.

7. The conversion of **non ad valorem duties** into *ad valorem* equivalents (AVE) would enhance security and transparency in tariff regimes. It can also identify in some cases very high AVE that could be subject to negotiations.

8. The negative effects on ACP/developing countries, especially in Africa, from the **erosion of tariff preferences**, should be compensated by additional measures for adjustment support. Similarly, the elimination of nuisance duties leading to the nullification of the corresponding preferential margins that benefit ACP countries in the markets of developed countries should also be compensated.

9. **Non-tariff barriers** should not impede the exports of ACPs nor nullify the benefits they get through normal tariff reductions and preferential schemes. As mentioned in the introduction, this report does not examine the issue of NTBs. However, it is worth noting that the modalities for NAMA negotiations should include elements dealing with the identification of NTBs that affect ACPs' exports, and offer a greater flexibility in the application of anti-dumping and other forms of contingent protection as well as the simplification and harmonization of preferential rules of origin and import licenses.

10. ACP/LDCs should be exempted from tariff reduction obligations through any formula or sectorial approach. Developed countries should implement consolidated tariff and quota-free access for all products from ACP/LDCs; and the most dynamic developing countries should contribute in the same way. ACP/LDCs should also reserve the right to determine the coverage of their bindings which should be at levels higher than their applied rates. Finally, ACP/LDCs should preserve the “*acquis*” of Cotonou and the benefits from other preferential treatments; otherwise they should be compensated for the erosion of preferential margins and tariff income dependency through appropriate mechanisms.
