

**IDENTIFICATION OF PRIORITIES AND A ROAD MAP IN NAMA FOR THE 6TH WTO
MINISTERIAL CONFERENCE**

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**IDENTIFICATION OF PRIORITIES AND A ROAD MAP IN NAMA FOR THE 6TH WTO
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I. INTRODUCTION

1. In his commentaries of 8 and 27 July 2005¹, the Chairman of the Negotiating Market Access (NGMA) has both reviewed progress in several areas of the NAMA negotiations and identified issues that will require delegations attention in the run-up to the VI WTO Ministerial Conference in Hong Kong. While the overall assessment made by the Chairman is fairly reflective of the actual state of play in the Negotiating Group, the commentary fails to explicitly reflect the various specific developmental concerns voiced earlier by several developing countries.
2. This note builds on the Chairman's commentaries and briefly assesses some points and options related to the issues identified by the Chairman. It attempts to identify certain critical areas that will require developing countries' attention in the coming months, before the Ministerial Conference in December.

II. TARIFF REDUCTIONS

3. Tariff reductions are undoubtedly the aspect of NAMA negotiations that has attracted most attention over the past weeks in the NGMA. Nonetheless, despite the intensification of discussions around a formula for tariff cuts, divergences among members of the NGMA have actually widened.
4. This fact is acknowledged in the Chairman's commentary² as is the fact that divergences are now more tangible because several delegations do not feel comfortable with the original Simple Swiss formula and feel that their developmental concerns are not yet reflected in any of the options on the negotiating table³.
5. The most fundamental aspects of the formula are yet to be decided and will most certainly continue to be placed at the top of the negotiating agenda in NAMA, all the more so since progress in other areas of NAMA is tightly linked to the formula. Important aspects with respect to the formula to be considered are:

¹ *State of play of the NAMA negotiations*, Chairman's Commentary, JOB(05)/147 of 8 July 2005 and *Supplement to the Commentary*, JOB(05)/147/Add.1 of 27 July 2005.

² "I am troubled by the apparent hardening of differences over a number of elements of the proposed modalities that have become more pronounced this week", JOB(05)/147 at the last paragraph of page 7.

³ JOB(05)/147 at last paragraph of page 2.

1. Formula for tariff reductions

6. Elements and negotiations concerning the formula to be used for tariff reductions can be split into three intertwined but distinct elements: (a) the structure of the formula, (b) the actual figures for the coefficient, and (c) other elements.

a. Structure of the formula

7. The term “structure” refers to the type of formula that will be used and the variables that will be incorporated in it. The Chairman identifies two options with respect to the structure of the formula:
- a. the Simple Swiss formula with one, two or more coefficients to be negotiated, and
 - b. the Swiss-type of formula, incorporating countries’ tariff bound averages or other elements.
8. **It must be said from the outset that, despite their differences, both approaches** (contained in 6 negotiating proposals by different countries or groups of countries⁴) **have in common that they build on a Swiss formula** (progressive) **and do not question the basic elements of the formula, such as the fact that it will be applied on a line by line basis**⁵.
9. According to the Chairman’s priorities, agreeing as early as possible on the basic structure for the formula is paramount to agreeing on negotiating modalities for NAMA at the Hong Kong Ministerial Conference.
10. However, notwithstanding their differences, both types of formula can trigger similar effects on developing country tariffs (see below) and therefore, discussions on the structure of the formula are very tightly linked with the actual figures that are used in the formulae. Moreover, several developing and developed countries alike have said that negotiations on the formula should be carried forward in parallel with discussions on the flexibilities. Therefore, an agreement on the formula is also very closely linked to the further elaboration of the flexibilities (see below).

b. Actual figures

11. “The actual figures” regarding the formula refer to the figures to be used as a coefficient. **In fact, both approaches rely heavily on the use of a coefficient** (and credits in the case of the Caribbean formula) **and can therefore have**

⁴ The various options were submitted by (a) Chile, Colombia and Mexico, (b) Norway, (c) US, (d) EC, (e) Argentina, Brazil and India, and (f) Antigua, Barbuda, Barbados, Jamaica and Trinidad & Tobago.

⁵ Paragraph 5 of Annex B.

similar effects on developing countries tariff structures depending on the final coefficients agreed upon.⁶

12. Nevertheless, in the Simple Swiss formula the coefficient is the only element determining the steepness of the reductions and operates as a ceiling, triggering a pronounced harmonisation of tariffs towards the level of the coefficient. In the Swiss-type formula, the use of national bound averages mitigates the effect of the coefficient resulting in a much less pronounced harmonising effect.
13. In his second commentary, the Chairman states that discussions on the structure alone of the formula cannot “continue endlessly”⁷. Hence, he suggests that Members should start to consider the actual numbers for the coefficients (or credits) in order to expedite an agreement.⁸
14. **Elements that need to be decided** are, firstly, whether there will be one, two or more coefficients for all members, including the possibility of either one coefficient for each member (ABI and Caribbean formula) or more than one coefficient for the group of developing countries. Secondly, members will need to decide how the coefficients will be chosen, that is, whether they will be pegged to agreed variables (e.g. national average of bound rates) or whether they will be negotiated freely (e.g. US demand for real ‘commercial benefits’).
15. It is worthwhile recalling that several developed countries and some developing countries have stated that there is a balance between the coefficient of the formula (ambition) and the flexibilities (as in paragraph 8⁹). For higher coefficients, only limited flexibilities would be available for developing countries. In fact, some proposals clearly argue for a trade off between flexibilities and the formula. **For moderate reductions, only moderate flexibilities would be available.**
16. **By contrast, many developing countries consider that the flexibilities of paragraph 8 are non-negotiable and that its flexibilities would be available irrespective of the formula chosen.** In addition, several developing countries have also said that the flexibilities are distinct from and do not exclude the need for flexibilities built in the formula itself.
17. Finally, the discussion of actual figures for a formula in NAMA raises the issue of linkages with other areas of negotiation under the Single Undertaking, and particularly with the market access pillar of the Agricultural negotiations. Some delegations may wish to discuss actual figures in NAMA only when numbers are also being discussed in Agriculture.

⁶ For an initial tariff of 29%, both the US and the ABI formula yield almost identical results using a coefficient of 15 and 1 respectively (assuming a national average of bound tariffs of 29% for the ABI formula).

⁷ JOB(05)/147/Add.1 at the last paragraph of page 1.

⁸ The latest Pakistani submission (“Pakistani compromise”) is in fact an attempt to add precise figures to the formulae.

⁹ According to the paragraph, up to 10% of developing countries’ tariff lines may undergo less than formula cuts as long as these lines do not represent more than 5% of a country’s total imports. The actual figures are yet to be negotiated.

c. Other elements of the formula

18. Other elements of the formula, such as product coverage in NAMA, the conversion of non *ad-valorem* duties into *ad-valorem* equivalents (AVEs), and credit for past autonomous liberalisation are also still to be decided. The more technical issues such as product coverage and AVEs are closer to being decided upon and are likely to constitute the very first priority of the Negotiating Group after the summer break. The other more political issues such as credit for autonomous liberalisation have not yet been thoroughly discussed and will probably be tackled at a later stage of the negotiations.

2. Treatment of unbound duties

19. The treatment of unbound duties is another important element related to tariff reductions. In fact, the Chairman's commentary includes unbound duties under the heading of tariff reductions and, most importantly, **actually states that there is an agreement that unbound tariff lines will not only be bound but also be subject to the formula.**
20. This is quite a recent development and one that is contrary to the traditional positions that developing countries have adopted. While increasing tariff bindings to 100% may be seen as a desirable objective for all members (on grounds of fairness in the negotiations and predictability of trade relations), the reduction of unbound lines is an unprecedented requirement in GATTWTO rounds. Unbound tariff lines are legally beyond the scope of GATT and binding them in the sense of Article II of GATT has usually been treated as a concession as such.
21. If developing countries have in fact agreed that newly bound tariffs should also be subject the formula, this concession will have to be carefully weighted against gains in other areas of NAMA negotiations.
22. Elements that need clarification are the base rate that will be used for the reduction of tariff lines. In his commentary, the Chairman points to a non-linear mark-up as the preferred methodology.¹⁰ If this is in fact agreeable, delegations will have to further elaborate on the methodology so as to accommodate:
- c. Lines with low applied rates, so that, after the application of the formula, they do not result in overly low rates, and
 - d. Lines where rates are relatively high, indicating and reflecting the sensitiveness of the products or sector concerned.
23. Another element that need to be clarified is whether members whose unbound tariffs will be reduce will have access to the flexibilities of paragraph 8, including the possibility to leave up to 5% of their lines unbound.¹¹

¹⁰ JOB(05)/147/Add.1 at page 2.

¹¹ Paragraph 8 (b). The actual figures of this indent are still to be negotiated.

3. Flexibilities for developing countries

24. The flexibilities currently available in Annex B refer to as the possibility to apply less than formula cuts to a limited number of lines or retain some lines unbound (paragraph 8) as well as the right not to apply the formula at all for a limited number of countries (paragraph 6 and 9).
25. Very important, developing countries that will have to apply the formula **(paragraph 8) should assess these flexibilities and evaluate whether or not they are sufficient to accommodate all specific sectoral sensitiveness**, if any. This may in itself be a very difficult exercise for a very large number of developing countries, whose institutional capacity to liaise with the private sector and relevant governmental agencies is only limited. Developing countries facing these difficulties must seek technical assistance to overcome this important hurdle that impinges ultimately on their negotiating capacity.
- 26. If, after undertaking their assessment, developing countries deem that the thresholds identified in paragraph 8 are not sufficient to exempt sensitive sectors from full tariff cuts, they should formulate a new negotiating position before a text for Hong Kong is crafted.**
27. For countries under paragraphs 6 and 9, important questions are whether an increase in binding coverage (including an increase to 100% in the case of paragraph 6) is fair from a negotiating point of view. Particularly paragraph 6 countries should be aware of the fact that **a maximum average rate for new bindings is contained in that paragraph¹². The direct implication of this 'ceiling' is that countries will not be free to determine the rates at which they will undertake new commitments, which may even result in tariff reductions where the current applied level for a specific line is higher than the given ceiling of the paragraph.**
28. Beyond the issue of fairness, such an outcome would nullify the benefits of this paragraph for certain countries concerned. A group of developing countries has in fact recently proposed that the obligation of a maximum rate be abolished altogether.
29. Overall, one important question is whether the flexibilities of paragraphs 6, 8 and 9 are sufficient to accommodate developing countries' interests, both offensive and defensive. Very importantly, **the relationship between these paragraphs and Special and Differential (S&D) treatment in the modalities is unclear. Are these paragraphs already a reflection of S&D or is S&D distinct from these flexibilities?** Implementation periods, technical and financial assistance, capacity building, trade aid, flexibilities within negotiations on NTBs, etc. have not been discussed yet. It must be noted however, that some of these specific concerns are likely to be captured by discussions under the headings of loss of revenue and preference erosion.

¹² The average ceiling to be met was set at 27.5% (developing countries' average bound rate). The actual figure of this paragraph is yet to be agreed upon.

30. Similarly, **it is not clear whether these flexibilities are enough to discharge the mandate of less than full reciprocity in reduction commitments.** Developing countries have an explicit, strong mandate in their hands and have different options to make it operational. Traditionally, developed countries have stated that less than full reciprocity is measured using the results of the negotiations. Hence, since the resulting tariffs of developing countries will be higher than the tariff averages of developed countries, the mandate would have been respected and discharged. By contrast, some developing countries have said that it is the relative effort that matters, in other words, the difference between the initial and final tariff rates.

4. Assessment of the formula

31. An important overarching element concerning the reduction of tariffs is the overall assessment of the formula chosen. Several delegations have made presentations concerning their own **assessment of the options currently available and have proposed different criteria to use in any evaluation.**¹³

32. While the assessment of the formula and the overall NAMA package depends solely on the judgement of individual delegations and depends on a country's offensive and defensive interests in the negotiations, two of the proposed criteria are of concern to developing countries.

33. The first is **harmonisation of tariffs**, an objective pursued particularly by the United States and the European Commission. Harmonisation of tariffs within countries¹⁴ and across countries¹⁵ is neither a requisite of Paragraph 16 of the Doha Ministerial Declaration nor a desirable objective. Developing countries tariff structures are different because developing countries are themselves different and have different needs. Since tariffs are a policy instrument for the promotion of industrial development (and sometimes government revenue) among other instruments, some countries choose to avail themselves of this option and others do not. Moreover, since the industries within a single developing country are typically very heterogeneous, with some more competitive industries and other still incipient, the need to use tariffs may also vary among a single developing country. Therefore, the possibility of maintaining a variety of tariff structures among developing countries has strong implications for developing countries' policy space.

34. The second criteria suggested for the assessment of the formula which may have implications for developing countries is **equity**. This criterion was included in the

¹³ Argentina, Brazil and India, the US, the EC and Japan have made presentations to the NGMA.

¹⁴ By harmonisation of tariffs within countries it is understood that tariff rates are compressed around a given level, which could be the level of the coefficient of the formula.

¹⁵ By harmonisation of tariffs across countries it is understood that, as a result of NAMA negotiations, countries will have similar tariff structures. The EC has further added that similar countries should have similar tariffs.

Chairman's commentary as an important element to be considered.¹⁶ Some members have used the term equity to refer to the fact that the tariffs of all members should undergo similar reductions so that they result in similar final tariffs. This is again misleading. As stated above, the current tariff structures of developing countries is a picture of their past concessions (either unilateral or not) and their own priorities (e.g. if a country wishes to raise revenue through tariffs or not). Consequently, all developing countries initiated NAMA negotiations from different perspectives and it is only normal that these differences are reflected in the modalities, so that greater reduction and negotiating efforts are not required from any one individual member.

35. Ultimately, the set of criteria used to assess a formula and the overall benefits of NAMA negotiations vary necessarily from delegation to delegation. However, paragraph 16 of the Doha Ministerial Delegations is a useful source of reference, including the explicit requirements of less than full reciprocity and Article XXVIII *bis* of GATT 1994¹⁷, special and differential treatment and the emphasis on products of export interest to developing countries.
36. Finally, for some delegations the linkages with other areas of negotiation under the Single Undertaking may be of primordial relevance, too. In such cases, delegations should assess whether or not concessions in NAMA are sufficiently and fairly compensated for by concessions in other negotiating areas.

5. Other than formula tariff reductions

37. It must be said that despite the current flexibilities and even despite the formula, there could be tariff reductions (or more than formula reductions) through other aspects of NAMA negotiations.

a. Paragraph 6 tariff ceiling

38. The first has already been mentioned and concerns the possibility, for paragraph 6 countries, of a tariff ceiling for new bindings that is actually lower than current applied rates in specific lines.

¹⁶ "The question of equity or an equitable outcome has also been raised on a number of occasions and I believe this to be a key aspect in any assessment exercise to be undertaken by Members." JOB(05)/147 at the fourth paragraph of page 1.

¹⁷ Article XXVIII *bis*, paragraph 3 reads: "Negotiations shall be conducted on a basis which affords adequate opportunity to take into account:

- (a) The needs of individual contracting parties and individual industries;
- (b) The needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and
- (c) All other relevant circumstances, including the fiscal, * developmental, strategic and other needs of the contracting parties concerned.

b. Sectoral initiatives

39. The second possibility is sectoral initiatives, which, according to the Chairman's comments are already being negotiated in at least 9 sectors.¹⁸ This is worrisome because the notion of "critical mass" is still unclear and it is still unclear whether countries, whose share in a sector proposed for tariff elimination is high, will have to join an initiative on a mandatory basis or not. Negotiations on sectoral initiatives are very difficult to track and there is a likelihood that the results of negotiations are only brought to the whole group for validation. Positive though, is the Chairman's statement that the results of negotiations will be multilateralised for the benefit of the full membership.

c. Environmental Goods

40. The third possibility is through the negotiations on environmental goods. The purpose of these negotiations is to define a number of products on which tariffs will be lowered, logically, beyond the levels resulting from NAMA modalities. Depending on the final list of environmental goods agreed to, tariffs in products or sectors of concern for developing countries will have to be reduced. Moreover, beyond the existence of any sensitiveness or not in those sectors, negotiations on environmental goods raise the issue of whether developing countries will also benefit from these negotiations. The lists that have been discussed in these negotiations are typically lists of high value-added products, with questionable environmental content, of clear interest to mostly developed countries.

III. OTHER ASPECTS OF NAMA

41. Many other aspects of NAMA will also require the attention of developing country delegates, particularly areas on which they have a primary interest and that will not be tabled by developed members. Since the discussions on the formula have attracted so much attention lately (and also because many elements depend on the formula for further progress), many negotiating areas of NAMA still need much more detailed discussions before they can be included in a NAMA package in Hong Kong.

¹⁸ Electronic and electrical equipment, bicycles and sporting goods, chemicals, fish, footwear, forest products, gems and jewellery, pharmaceuticals and medical devices and raw materials. JOB(05)/147 at page 5.

1. Specific concerns of developing countries (preferences and revenue)

42. The most obvious examples are preference erosion and tariff revenue dependency. Both areas have been discussed only to a limited extent and are very tightly dependent on the discussions around the formula. Therefore, it is difficult to provide greater details on the scope of the difficulties that some developing countries will face until the steepness of tariff cuts is known (and even then it may be very difficult, if not impossible, to quantify the related adjustments costs).
43. In his commentary, the Chairman suggests that the members concerned should provide greater details about the scope of the problem. Developing countries can start collecting data on the characteristics of their fiscal policies (revenue) and exports (preferences) and may submit them to the NGMA. Having these difficulties, and ideally possible mitigating measures, acknowledged early will ensure their recognition by ministers in Hong Kong.

2. Non-tariff barriers (NTBs)

44. Finally, non-tariff barriers (NTBs) continue to be an area of difficulty for developing countries. Finding simple modalities for the negotiation of barriers of concern to developing country exporters will be challenging, even more so since ideally these modalities should be adopted hand in hand with the modalities for tariff reductions.
45. While the possibility of using certain modalities, such as the vertical or horizontal approaches, had been vaguely discussed in the Group, the Chairman's commentary is clear in affirming that negotiations are already ongoing, including on a bilateral basis. **It is even more worrisome that the Chairman acknowledges that only part of the results of these negotiations is likely to be multilateralised.**¹⁹ In order to keep better track of these negotiations, developing countries may wish to take stock of discussions regularly and not wait until the results of these negotiations are close to an end. Interested developing countries may also wish to propose negotiations on specific barriers of their concern.

IV. CONCLUSION

46. There are still a very large number of areas that need decision and further discussions in NAMA. As a matter of fact, virtually all negotiating areas still need a decision, which is not surprising given their complexities, the divergences among members and the fact that Annex B only provided indicative elements and clusters of relevant issues.

¹⁹ "Transparency in the process should be assured through substantive reporting in the multilateral setting. In addition, multilateral effect should be given to the results of NTB negotiations **which lend themselves to such an outcome**, through inter alia incorporation of such results in Part III of the Schedule of concessions". (emphasis added). JOB(05)/147 at page 6.

47. Given the very limited time available for negotiations from September to the Ministerial Conference in Hong Kong, developing countries, and particularly the small delegations may wish to set priorities to concentrate on. The efficient establishment of such priorities and the leverage of developing countries would be greatly amplified if developing countries were able to strategise together and adopt common positions in the NGMA.

V. ANNEX: TABULAR SUMMARY

Tariff Reductions	Formula	Structure	Simple-Swiss (US, EU, Pakistan)	<ul style="list-style-type: none"> – Have in common to use the Swiss Formula (progressive) and use the same basic elements (line by line, base year, etc.) – Early agreement ?
			Swiss-type (ABI, Caribbean)	
			Other ?	<ul style="list-style-type: none"> – Uruguay Round approach, linear reductions, ceilings, other earlier proposals, etc.
		Actual figures	coefficient	<ul style="list-style-type: none"> – Rely on the choice of a coefficient (can be very similar) – ? Number of different coefficients – Discussions on the structure cannot be de-linked from the actual figures and discussions should start as early as possible (Chairman) – Linkage to the flexibilities (trade-off vs. inon-negotiable) – Linkages with other negotiations under the agenda
		Other elements	AVEs, product coverage	<ul style="list-style-type: none"> – Technical – Priority of the group after the summer break
			Application of the formula line by line	<ul style="list-style-type: none"> – Not questioned so far

		Credit for autonomous liberalisation	<ul style="list-style-type: none"> - ? To be discussed - Discussions after agreement on the formula? 	
	Unbound duties	Coverage	<ul style="list-style-type: none"> - Full binding coverage is a desirable outcome (Chairman) 	
		Reduction	<ul style="list-style-type: none"> - Newly bound lines will be reduced using the formula (Chairman) ? - Fairness of concession - Method for mark up: non-linear (Chairman) ? - Sensitive: Low / High applied rates 	
	Flexibilities	Paragraph 8	Less than formula cuts [10%] OR Unbound [5%]	<ul style="list-style-type: none"> - Assessment required: individual for each country, countries may find difficulties in the exercise - After assessment, negotiate flexibilities ? - ? Will they be open for newly bound duties? - ? Is this paragraph enough to discharge the mandate on S&D and less than full reciprocity? - Other needs (implementation, technical assistance)?
		Paragraph 6	Full binding coverage, with maximum average ceiling [27.5%]	<ul style="list-style-type: none"> - May trigger reductions where applied rate is higher than the average ceiling
		Paragraph 9	Increase in binding	<ul style="list-style-type: none"> - Combined with paragraph 10
	Assessment of the formula	Options	Harmonisation	<ul style="list-style-type: none"> - Harmonisation within and across countries - Diversity of needs and practices among developing countries (heterogeneity of industrial development)
			Equity	<ul style="list-style-type: none"> - Evaluation of effort is relative, not absolute
			Paragraph 16 DMD mandate	<ul style="list-style-type: none"> - Less than full reciprocity, need to negotiate products of interest to developing countries, Art. XXVIII <i>bis</i> GATT
	Other	Paragraph 6	Full binding coverage, with	<ul style="list-style-type: none"> - May trigger reductions where applied rate is higher

	reductions	ceiling rate	maximum ceiling [27.5%]	than the ceiling
		Sectoral initiatives	9 sectors	<ul style="list-style-type: none"> – ? Critical Mass – Choice of sectors by developing countries? – Monitoring and participation in the negotiations?
		Environmental goods	Lists of products	– Sensitiveness of certain sectors proposed for further liberalisation?
Other aspects of NAMA	Specific concerns	Preference erosion and loss of tariff revenue		<ul style="list-style-type: none"> – ? Scope of the problem – ? Still not clear how to assist countries concerned – Timing?
		Non-tariff Barriers (NTBs)	Identification	
	Modalities		<ul style="list-style-type: none"> – Choice of modalities – Monitoring and participation in the negotiations? – Multilateralisation of results 	



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