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COMMENTS TO THE CHAIRMAN'S REVISED DRAFT MODALITIES FOR WTO NAMA NEGOTIATIONS

SYNOPSIS

This note reviews the revised Draft modalities for WTO NAMA negotiations prepared by the Chairman of the Negotiating Group on Market Access (TN/MA/W/103). After undertaking an overall assessment of the revised NAMA draft modalities text, this note comments on various specific sections thereof, particularly with respect to developing countries' concerns and interests in these negotiations. A useful table summarises the treatment of WTO Members with respect to tariff reduction modalities.

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I. INTRODUCTION

1. On 8 February 2008, the Chairmen of the WTO Negotiating Groups on NAMA and Agriculture respectively issued revised texts regarding the negotiating modalities for liberalisation of agricultural[1] and industrial[2] products. Both texts were eagerly awaited by WTO Members as they should largely determine the contents and pace of conclusion of the WTO Doha Round. The concomitant presentation of the two texts echoes the process followed in 2007 and confirms the intrinsic relation between these two negotiating areas of the WTO Doha Round.

2. It is not clear, nevertheless, how to move both negotiations forward from these two texts. As was communicated by the WTO Director General, Pascal Lamy, at the February 2008 General Council[3], both draft modalities texts will be discussed by the respective Negotiating Groups. However, at the first Open Ended session after the issuance of the NAMA revised modalities, Members were invited to comment on the negotiating process, not on the elements of the text. Moreover, neither the Chairman of NAMA nor that of Agriculture has confirmed that they will issue a revised version of these texts and the possible timelines for a revision.

3. In addition, discussions of the text became more complex as the Chairman of the Negotiating Group on Market Access seemed to adopt a more "hands-off" approach over the negotiating process. Not only does the modalities text contain more open questions and greater ranges of options, but the Chairman was also reported to have indicated to delegations that they should negotiate among them, and not with the Chairman. As much as there can be truth in such a statement, a more diffuse process does complicate the work of smaller countries' delegations.

4. Moreover, while there is a general understanding that both texts will need to be assessed by senior officials within the larger context of other negotiating areas of the WTO Doha Round (what was called the *horizontal process*), it is not clear how to take (or not) the texts to that process. Arguably, there will be an attempt to reduce the number of open questions in the NAMA modalities, with a view to presenting a more final paper to ambassadors or ministers. How much the modalities text has to be cleaned is not clear, nevertheless. Neither is it clear how much more time will be needed for discussions at the technical level. Similarly, the contents of the horizontal process remain uncertain, and it is not clear whether linkages between NAMA and agriculture should be drawn even before the additional negotiating areas are discussed under the horizontal process.

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[1] WTO Document TN/AG/W/4/Rev.1
[2] WTO Document TN/MA/W/103
[3] Report by the Chairman of the Trade Negotiations Committee to the General Council (5 February 2008). Available at: http://www.wto.org/english/news_e/news08_e/tnc_chair_report_feb08_e.htm

5. After undertaking an overall assessment of the revised NAMA draft modalities text (II), this note comments on various specific sections (III-V) thereof, particularly with respect to developing countries' concerns and interests in these negotiations. A useful table summarises the treatment of WTO Members with respect to tariff reduction modalities (Annex). Since the content of the modalities differ very little from those contained in the July 2007 draft modalities, greater details on some element of NAMA modalities can be found in the previous Comments prepared by the South Centre[4].

II. GENERAL COMMENTS ON THE TEXT

6. . Notwithstanding the fact that the contents of the proposed modalities remains mostly identical, the 2008 revised NAMA draft modalities text marks a noticeable departure from its 2007 draft version. While the bulk of the proposals made by the Chairman remains identical to those circulated in the 2007 draft, the format of the document as well as the Chairman's comments therein signal a change in the Chairman's attitude towards the negotiations.

7. First, regarding its structure, unlike the 2007 draft modalities text, the 2008 revised document does not include an overall introduction or overall comments. The modalities are contained in a single table of two columns. The first (left) column contains the *Draft Modalities*. The second (right) column contains the *Chairman's Comments* about specific aspects of the modalities. As a consequence, while the text does include an assessment of specific elements, it does not provide an overall assessment of NAMA negotiations (as the 2007 version had) and it does not guide Members on how to take the negotiating process forward.

8. Moreover, while the contents of the 2007 draft modalities had been strongly criticised by several developing countries for containing final modalities language and therefore precluding negotiating options, the 2008 revision surprises by the number of elements that have been presented in brackets or in blank. The modalities have also been revised to better reflect the positions of several developing country groupings and, hence, often contain the elements proposed by both proponents and opponents of specific issues. In this sense, the 2008 Chairman's text largely refrains from arbitrating positions and advancing final outcomes as the 2007 version had. It is akin to a "work in progress" or negotiating text, which clearly provides greater comfort to delegations.

9. Nonetheless, it is also worth noting that in so far as the text reflects a greater number of options for many negotiating areas, it is also a text that offers less predictability regarding the final outcome of negotiations. Many delegations were able to reject the terms of the 2007 modalities because they did not identify to the final outcome the text would have led to. Deriving a global assessment of the NAMA outcome from the 2008 draft modalities is more complex, as the presence of options could lead to either acceptable or unacceptable outcomes for

[4] Comments to the Chairman's Draft NAMA Modalities – *Revised,* South Centre (July 2007). Available at: http://www.southcentre.org/TDP/newpublistnama.htm

individual delegations (see, for instance, the ranges proposed for the Small and Vulnerable Economies (SVEs) or the absence of figures regarding the flexibilities for developing countries applying the formula).

10. Moreover, some delegations have considered that the Chairman's comments in the second column were confusing as their legal value is not clear. While the comments generally contain a description regarding Members' positions on specific elements of the modalities, some areas may indeed be confusing or even misleading. For instance, while three options with respect to tariff reduction modalities for larger developing countries are commented upon, only one option was included in the modalities column (Paragraph 5 of the modalities). Similarly, while acknowledging that there is "limited support" with respect to the elimination of export taxes, the proposed WTO Agreement on the elimination of export taxes was included among the annexes of the modalities paper.

11. Consequently, it does not surprise that most delegations have commented the text positively, albeit with caution. Many thought that the present text is closer to what the Chairman should have presented in July of 2007 and that is offers a better basis on which to engage in negotiations with other delegations.

12. Nevertheless, while it is true that the precise outcome in many areas remains uncertain, it should be underscored that the revisions made to the modalities do not alter substantially the <u>level of ambition</u> of NAMA negotiations. This is particularly true of tariff reduction modalities for larger developing countries, which contain the same ranges of figure for the coefficients. These coefficients would result in developing countries making greater average tariff reductions than those undertaken by developed countries. This is inconsistent with the Doha mandate of less than full reciprocity in developing and developed countries' reduction commitments.

13. It is implicit in the text that the solution to prevent that outcome would come, not from the formula and its coefficients, but rather from the flexibilities (from where the figures have been removed). The argument that less than full reciprocity could not be assessed only through the coefficient has been an argument advanced largely by the developed countries, which prefer a combination of overall strong tariff reductions (i.e. a low figure for the coefficient) with limited flexibilities.

14. With these considerations in mind, and as was the case in 2007, delegations must assess the revised draft NAMA modalities not only in light of the numbers proposed therein, but also in light of its structure and architecture. Can it be sufficiently improved (working on the proposed figures) in order to afford comfort in tariff reductions and binding? That would imply that, with respect to tariff reductions, the choice of the higher ranges of the figures proposed would be acceptable for the delegations concerned. Above all, it would entail sufficiently long implementation periods and the possibility to protect an adequate volumen of sensitive tariff lines. If this cannot be achieved, there would be merit in discussing alternative, possibly simpler, architectures that offer greater

assurances of a more flexible outcome.

15. Finally, an additional element that will determine developing countries' overall assessment of the appropriateness of the revised draft modalities is the pervasive and, since the Hong Kong Ministerial Conference, mandated[5] link between NAMA and agriculture. In this respect, the ranges of figures proposed in NAMA for developing countries subject to the formula and for developed countries remain extremely narrow and would, indeed, result in outcomes only marginally different. By contrast, the ranges proposed in Agriculture, for instance to cap domestic subsidies, are wide and could indeed lead to very different outcomes. Moreover, while it is already possible to foresee the NAMA outcome, many technical elements in Agriculture remain open (e.g. the Special Safeguard Mechanism, details of sensitive products, preference erosion, tropical products, etc.). As a consequence, it continues to be difficult to establish a direct comparison between the ambition in NAMA and that of Agriculture, particularly for smaller delegations.

III. TARIFF REDUCTION MODALITIES

16. Modalities with respect to the reduction of industrial tariffs have been structured around subsets of modalities for several smaller groups of WTO Members since the 2004 NAMA Framework text.[6] That structure has not been put into question in the Chairman's 2007 draft modalities and was confirmed in the 2008 revised text.

17. That fragmentation of modalities had divided the membership and led to a weakening of the solidarity among different developing country groups. This strategy was tactically supported, and often orchestrated, by developed countries in order to isolate large emerging developing countries whose markets presented greatest commercial interest. Nevertheless, the strong opposition of most developing countries to the Chairman's 2007 text has contributed to restoring a certain degree of collaboration and mutual supportiveness among developing countries. This is important, as it is now well established in the modalities that there should be a *hierarchy* of contributions, whereby tariff concessions are distributed according to WTO members' perceived capacity to implement and absorb tariff reforms.

18. The concept of hierarchy of contributions, as understood by developing countries requires developed countries to undertake greater average tariff reductions than developing countries. In addition, different groups of developing countries should also undertake different levels of commitments, ranging from the LDCs, which make no tariff reductions, to the larger developing countries, which apply the formula but benefit from flexibilities. By obliging some developing countries and certain SVEs to undertake larger cuts than those of

[5] Paragraph 24 of the Hong Kong Ministerial Declaration establishes a direct relationship between the level ambition of NAMA negotiations and that of Agriculture.
[6] General Council decision of 2 August 2004, WT/L/579.

developed countries, the 2007 Chairman's modalities text had seriously inverted this hierarchy (see chart below).

Chart 1: Developing countries' interpretation of the hierarchy of contributions,

WTO Members:	NAMA 11	SVEs	Quad	Paragraph 6	LDCs
Average NAMA Reductions July 2007 Draft NAMA modalities	-62%	-53%	-31%	-	-

19. Developed countries, on the contrary, understand that the position of different WTO Members within this hierarchy is determined by the final bound rates (after implementation of Doha Round of commitments), irrespective of the average tariff reductions made as a result of NAMA (chart below).

Chart 2: Developed countries' interpretation of the hierarchy of contribution, July 2007 Draft NAMA modalities

WTO Members:	Quad	NAMA11	RAMs	SVEs	Paragraph 6	LDCs
Final Average Bound Tariff rates after NAMA (July 2007 Draft NAMA modalities)	2.5%	11.5%	14% or formula	18%-22%	28.5%	-

20. Since there continues to be a strong opposition of views with respect to this hierarchy, it is certain that convergence, particularly on the figures for the coefficients for the formula to be applied by developing countries, will remain extremely difficult.

A. Developed countries

21. The 2008 revised NAMA draft modalities confirmed the range for the Swiss Formula coefficient to be applied by the developed countries which had been proposed in 2007: 8 or 9. It had been noted that the actual result of the application of either figures is negligible, as can be seen from the table below.

Table 1: Average tariff reductions in Developed countries, revised modalities

	Current Bound average	*New Bound average After Swiss (8)*	*Average Reduction*	*New Bound Average After Swiss (9)*	*Average Reduction*
US					
Peak	48%	6.86%	85.71%	7.58%	84.21%
Simple Average	3.2%	2.29%	28.57%	2.36%	26.23%
EU					
Peak	26%	6.12%	76.47%	6.69%	74.29%
Simple	3.9%	2.62%	32.77%	2.72%	30.23%

Average					
Japan					
Peak	26%	6.32%	78.95%	6.92%	76.92%
Simple Average	3.9%	1.79%	22.33%	1.83%	20.35%

22. However, as also seen from these examples, the coefficients are very effective in bringing down tariff peaks, triggering sometimes very deep reductions. As a result, some products of interest to developing countries which are subject to high MFN tariffs in developed country markets (mostly fish products and apparel and clothing) will be subject to steep reductions. As a consequence, however, the extent of erosion on these lines will also be greater.

B. Developing countries subject to the Formula

23. Only 27 developing countries will be subject to the formula. The isolation of these countries in the modalities is not casual, as they cover the largest and most dynamic consumer markets in the developing world:

Argentina	Bahrain	Brazil	Chile
Colombia	Costa Rica	Egypt	Hong Kong, China
India	Indonesia	Israel	Korea
Kuwait	Malaysia	Mexico	Morocco
Pakistan	Peru	Philippines	Qatar
Singapore	South Africa	Thailand	Tunisia
Turkey	United Arab Emirates	Venezuela	

24. In addition, 4 Recently Acceded Members (RAMs) will also be subject to the tariff reduction formula (see section IV on implementation below):

China	Croatia	Oman	Chinese Taipei

25. Likewise for the range of coefficients for developed countries, the 2008 revised NAMA draft modalities confirmed the 2007 figures for the Swiss Formula coefficient to be applied by the developing countries: from 19 to 23. By contrast to the 2007 text, however, the revised modalities do not contain figures for the flexibilities to which developing countries will have access to shield their sensitive tariff lines from the formula reductions.

26. It has been noted that the ranges of coefficients proposed for developing countries yield similar results. Hence, the choice of either figure within the proposed range makes little difference and has very little impact on the overall hierarchy of contributions. For instance, average reductions for Argentina would be of 62.6% with a coefficient of 19 and of 58.03% with a coefficient of 23 (Table 3).

Table 3: Average tariff reductions in selected Developing countries, revised modalities

	Current Bound average	*New average Swiss (19)*	*Reduction*	*New average Swiss (23)*	*Reduction*
Argentina					
Peak	35.0%	12.31%	*64.81%*	13.88%	*60.34%*
Simple Average	31.8%	11.89%	*62.60%*	13.35%	*58.03%*
Egypt					
Peak	160.0%	16.98%	*89.39%*	20.11%	*87.43%*
Simple Average	28.3%	11.37%	*59.83%*	12.69%	*55.17%*
Indonesia					
Peak	60.0%	14.43%	*75.95%*	16.63%	*72.29%*
Simple Average	35.6%	12.39%	*65.20%*	13.97%	*60.75%*
Philippines					
Peak	50.0%	13.77%	*72.46%*	15.75%	68.49%
Simple Average	23.4%	10.49%	*55.19%*	11.60%	50.43%
South Africa					
Peak	60.0%	14.43%	75.95%	16.63%	72.29%
Simple Average	15.8%	8.63%	45.40%	9.37%	40.72%

27. In addition, the ambition that is required by the coefficients would entail developing countries undertaking average tariff reductions far greater than those of developed countries (Table 4). If one isolates NAMA-11 countries and the 3 major developed countries (EC, Japan, USA), the contrast is even more evident: NAMA-11 countries would make cuts of 60% on average whereas the developed countries would reduce their averages by half that amount, 28%.

<u>Table 4</u>: Less than full reciprocity – Comparison of formula effects on the NAMA-11 and major developed countries (%)

NAMA-11 countries	*MFN Average*	*Bound Average*	*Swiss 20*	*Reduction*
Argentina	15.30	31.80	12.28	*61.39*
Brazil	15.00	30.80	12.13	*60.63*
Egypt	21.20	28.30	11.72	*58.59*
India	28.70	34.30	12.63	*63.17*
Indonesia	6.60	35.60	12.81	*64.03*
Philippines	6.30	23.40	10.78	*53.92*
South Africa	5.20	15.80	8.83	*44.13*
Tunisia	24.90	40.60	13.40	*67.00*
Venezuela	12.10	33.10	12.47	*62.34*

AVG NAMA-11	*15.03*	*30.41*	*12.07*	*59.47*

Developed countries	*MFN Average*	*Bound Average*	*Swiss 08*	*Reduction*
EC	4.30	3.90	2.62	*32.77*
Japan	2.70	2.30	1.79	*22.33*
USA	3.90	3.20	2.29	*28.57*
AVG	*3.63*	*3.13*	*2.23*	*27.89*

28. An important element related to tariff reduction modalities is that, in his comments, the Chairman underscores the relationship between the ambition of the formula (as expressed by the coefficient) and the availability of flexibilities. This relationship has long opposed developed countries and developing countries of the "middle ground group" on the one hand and other developing countries, on the other. However, there is a fragile common understanding that formula and flexibilities are inversely proportional. In other words, the deeper the cuts required in the formula, the greater the number of tariff lines that will need to shielded from it. The Chairman commented on that link as a "sliding scale". The difficulty, however, is that a direct or quantitative link between the two could negate the genuine need to protect a sufficient number of products or volume of trade from the liberalisation process.

29. Finally, one noteworthy modification contained in the revised NAMA draft modalities is that the figures for the flexibilities available for developing countries do not contain figures (paragraph 8 flexibilities, now located at paragraph 7 of the revised draft Modalities). The elimination of the previously agreed figures (protection of 5% and 10% of tariff lines) from that paragraph reflects, as commented by the Chairman, that these figures are not consensual.

30. The blanks in the paragraph can be construed both as a sign that the figures have to be increase as well as a sign that they need to be reduced.

31. However, some could argue that the flexibilities themselves are being put into question, and that the blanks refer to the possibility of eliminating these flexibilities. This would amount to questioning a fundamental acquis of NAMA negotiations and would oblige developing countries, at this late stage of negotiations, to undertake cumbersome efforts to justify the need for flexibilities. For this reason, some have suggested that a better form of reflecting the lack of agreement on these figures would be "[10 + or – X percent]" and "[5 + or – X percent]".

32. It is natural that tariff reduction modalities generate anxiety among delegations given the depth of tariff reductions that would be required under the coefficients being considered for the formula (60% on average for the NAMA-11 countries), the compressing effect of the Swiss (the figure of the coefficient will becomes the tariff rate ceiling in the countries applying the formula) and the uncertainty about the availability and extent of flexibilities. Given the rigidity of this architecture, in fact, it should not surprise that Venezuela, South Africa (on

behalf of SACU countries) and Argentina and Brazil (on behalf of Mercosur countries) have sought different, more flexible treatment in the modalities. Beyond the specific legal and socio-economic circumstances that have motivated such requests, they should be read as a clear sign that the current architecture of the modalities can simply not be implemented across the board without compromising genuine developmental policy objectives.

C. Small and Vulnerable Economies

33. The revised modalities confirmed the tariff reduction approach for SVEs proposed in the 2007 draft modalities. Criteria to access such flexibilities seem to be consensual in the Negotiating Group (i.e. developing country WTO members whose share of non-agricultural global trade was below 0.1% in the 1999-2001 period). The tariff reduction modalities for SVEs also seem to have been settled (average reductions according to a banded approach). The specific contribution of SVEs, however, remains subject to further negotiations. The new bound tariff averages preferred by the SVE proponents are substantially higher than the lower ranges proposed by the opponents of the group:

Band	Current Simple Bound Average	Bind all Non-Agricultural tariff lines at a new average of
Band 1	above 50%	22% to 32%
Band 2	between 30% and 49.9%	18% to 28%
Band 3	between 0 and 29.9%	14% to 20% in addition, undertake minimum cuts of [5-10%] on [90-95%] of all tariff lines

34. The difficulty in finalising the treatment of SVEs lines in accommodating the concerns of all the countries falling within this group given their wide diversity of tariff profiles. The average bound tariff rates in the first band alone range from 72.9% (Barbados) to 50% (Dominica, Grenada and Guyana). As a consequence, the lower ranges of a new bound average proposed have a disproportionate effect on the countries with highest averages (70% average reductions in the case of Barbados for a new bound average of 22%).

35. An additional difficulty is that, because of the concept of hierarchy of contributions, the contribution made by the SVEs is contingent on other developing country groups, the treatment of which has not been finalised (developing countries subject to the formula and paragraph 6 countries). Discussions are, hence, tied to a moving target.

36. Finally, the 2008 revised modalities confirm that, given the disproportionate effect that such modalities would have on Fiji, the country with lowest binding coverage among SVEs (45%), modalities should be adapted accordingly. It hence

stipulates that Fiji should be deemed to fall in the first band (and not in the middle band as it would have been otherwise required according to the average of its bound duties).

37. It worth pointing, in that respect, that Bolivia, also a proponent of the SVEs, has also submitted a proposal requesting separate treatment in the modalities to cater for its particular socio-economic circumstances.

D. Members with a low level of binding coverage

38. Members with a low level of binding coverage (up to 35% of lines bound at the WTO) have, for some time already, been recognised separate treatment in the modalities. These countries will need to bind additional tariff lines at an agreed average rate. There has, nevertheless, been strong disagreement on the level of binding coverage that these countries should have as a result of NAMA negotiations.

39. A positive element of the 2008 revised NAMA modalities is that:

a. they reflect that disagreement through brackets on paragraph 6 countries' (now paragraph 8) new binding coverage
b. they now include a range of figures for binding coverage, from the lower figure proposed by the proponents of this paragraph (70%) to the highest figure (90%) whereas the 2007 text only included the latter.

40. In relation to the difficulty in finding consensus on the issue, an emerging concern by paragraph 6 countries has been that the figures for both the binding coverage (70-90%) and the binding average rate (28.5%) are intertwined. As a result, a shift in position from these countries to increase the former will necessitate a recalibration of the latter.

IV. IMPLEMENTATION OF CONCESSIONS AND SCHEDULING

A. Developed countries

41. The revised draft modalities have confirmed the terms of the 2007 text which stipulated that developed countries' commitments regarding tariff reduction are to be implemented over a period of 4 years (in 5 equal instalments and subject to the modalities regarding preference erosion in the case of the EC and the US).

B. Developing countries

42. The revised draft modalities have also confirmed the terms of the 2007 text with respect to the implementation of developing countries' tariff concessions: reductions must be undertaken over a period of 8 years (in 9 equal instalments).

43. Scheduling will be a complex exercise, requiring great administrative support

to developing country capitals. The exercise will be all the more complex in the case of countries that need to bind a substantive share of their tariff lines (such as those of paragraph 6)[7].

C. Newly Acceded Members

44. Newly Acceded Members (RAMs) are divided into three sub-groups for purposes of tariff reduction modalities. While one group undertakes no tariff reductions, beyond those related to the conditions of their accession to the WTO, other two groups should reduce their tariffs by applying the formula or under the third, lower band applicable to the SVEs (see the Annex).

45. A common element of the treatment of those RAMs undertaking tariff reductions is that WTO Members seem to have found comfort in agreeing to a longer implementation of tariff reductions for these members – as opposed to exempting all of them from making commitments under this Round. Some RAMS have, as a matter of fact, argued that, given the extent of the liberalisation negotiated (sometimes very recently) under their terms of accession to the WTO, they should not be required to implement more than their accession commitments. Alternatively, some have argued they should be required to undertake lesser reductions than other non-RAM countries. While there is sympathy for the circumstances of some RAMs, there is also a sense that a best way to accommodate the concerns of more developed RAMs is through extended implementation periods. The revised NAMA modalities propose, therefore, that RAMs benefit from the following flexibilities:

Sub-Group 1 makes no commitments under NAMA[8]:
- Implements only accession commitments as per the terms of individual accession packages.

Sub-Group 2 applies the formula[9]:
- A Grace period before undertaking reductions of [2-3] years on each tariff line (after the implementation of accession concessions); and
- An additional implementation period of [1-4] years beyond the [8] years provided for developing countries

Sub-Group 3 reduces tariffs as per Tier 3 of the SVEs modalities[10]:
- Grace period before undertaking reductions: 3 years on each tariff line (after the implementation of accession concessions)
- Implementation: [8] years

V. OTHER AREAS

[7] For greater details, please refer to section IV of "*Comments to the Chairman's Draft NAMA Modalities*", South Centre (July 2007). Available at: http://www.southcentre.org/TDP/newpublistnama.htm
[8] Albania, Armenia, Macedonia (FYROM), Kyrgyz Republic, Moldova, Saudi Arabia, Tonga, and Viet Nam.
[9] China, Croatia, Oman and Chinese Taipei,
[10] Ecuador, Georgia, Jordan, Mongolia, and Panama

A. Preference erosion

46. Differences regarding non-reciprocal preferences in NAMA are being narrowed through efforts to target discussions at:

a. the scope of preference erosion, that is, agree on a list of non-agricultural products on which preferences are most significant. The lists have concentrated only in the most important markets for preference-dependent countries (i.e. the EC and the USA); and,
b. the treatment for these products, that is, solutions to mitigate the impact of tariff reductions on these products through particularly:

   - a trade solution, consisting of adopting an extended implementation period for tariff reductions on the agreed products; and
   - a non-trade solution, consisting of increasing the financial and non-financial assistance provided by preference-granting countries to preference-dependent developing countries.

47. The main revisions that the 2008 draft modalities have brought to the topic consist in:

a. A significant increase in the number of products enumerated as being sensitive to preference erosion: 25 tariff lines of interest in the USA (as opposed to 16 in the 2007 list) and 40 in the EC (as opposed to 23 before);
b. The inclusion of a list of products (essentially apparel) for which transitional trade preferences shall be accorded by the USA and the EC to "disproportionately affected" developing countries (Pakistan and Sri Lanka). The inclusion of paragraph 29 in the modalities is an effort to avoid delaying the materialisation of benefits from the Doha Round for countries who will be affected by a longer protection of preference products in major markets. The list contains all in all 7 products: 3 common products for Sri Lanka and Pakistan, and 2 in each of these countries' lists.
c. The inclusion of a paragraph urging (only) preference-granting countries to provide assistance to preference-dependent developing countries.

B. LDCs and Capacity Building measures

48. Language regarding the LDCs in NAMA modalities has been noticeably improved under the revised NAMA draft modalities text, although it is probably insufficient to ensure the implementation of market access improvements in favour of the LDCs. The difficulties related to the market access interests of the LDCs in NAMA negotiations, however, are largely political, not technical.

49. Regarding the group's request for duty-free and quota-free access to all developed countries and those developing countries in a position to offer them preferential treatment, the modalities simply recall the decision taken at the

Hong Kong Ministerial Conference to that effect (as had been done in the 2007 draft). Members "*recommit*" to the implementation of that decision, including by communicating the steps and time needed to grant full access with respect to all (100%) of LDC products.

50. The text contains, nonetheless, better language regarding the use of simple and transparent rules of origin in trade preferential schemes (paragraph 15(b)). It particularly recommends the use of a template (TN/MA/W/74), which had been submitted by the LDCs themselves. The modalities also recall that, as had been decided at the Hong Kong Ministerial Conference, the impact of rules of origin and the utilisation of that model will, in addition, be reviewed by the Committee on Trade and Development.

51. In addition, the text also recalls that developing countries willing to extend duty and quota free access to products originating in LDCs will be able to do so progressively, through the liberalisation of some products initially, to be gradually followed by a greater number of products ("*flexibility in coverage*").

52. Finally, it is worth highlighting particularly the inclusion of more detailed and specific language concerning Aid for Trade in general and the Enhanced Integrated Framework in particular.

VI. CONCLUSION

53. Given the pressure to conclude the Round and to avoid weakening the already fragile negotiating process, delegations will face enormous pressure to compromise. In this respect, the architecture of the present NAMA modalities offer little ground for manoeuvring and possible improvements to the text lie on very fine lines, and mostly on the figures proposed.

54. Although the draft NAMA modalities contain in its architecture elements that can increase the level of comfort of several groups of developing countries, the text continues to point towards a level of ambition that is unacceptable for many developing countries, large and small alike. The role of large developing countries over the weeks ahead, particularly as the horizontal process starts, will have a determinant impact generally on the solidarity of developing countries, and, more specifically, on the ability of smaller delegations to protect their interests.

ANNEX: SUMMARY OF TARIFF REDUCTION MODALITIES IN WTO NAMA NEGOTIATIONS

DEVELOPED COUNTRIES (10)	
Criteria: self-designation	**Treatment in the modalities**
1. Australia	▪ Application of the Swiss Formula with coefficients of [8-9] ▪ Implementation: [5] years (subject to the modalities regarding preference erosion in the case of the EC and the USA)
2. Canada	
3. EC	
4. Iceland	
5. Japan	
6. Liechtenstein	
7. New Zealand	
8. Norway	
9. Switzerland	
10. USA	
DEVELOPING COUNTRIES applying the formula (27)	
Criteria: self-designation	**Treatment in the modalities**
1. Argentina	▪ Application of the Swiss Formula with coefficients of [19-23] and utilisation of flexibilities […] or ▪ Application of the Swiss Formula with coefficients of [22/24-26/28] if the flexibilities are not utilised ▪ <u>Implementation</u>: [8] years
2. Bahrain, Kingdom of	
3. Brazil	
4. Chile	
5. Colombia	
6. Costa Rica	
7. Egypt	
8. Hong Kong, China	
9. India	

10. Indonesia	
11. Israel	
12. Korea, Rep. of	
13. Kuwait	
14. Malaysia	
15. Mexico	
16. Morocco	
17. Pakistan	
18. Peru	
19. Philippines	
20. Qatar	
21. Singapore	
22. South Africa	
23. Thailand	
24. Tunisia	
25. Turkey	
26. United Arab Emirates	
27. Venezuela, B. Rep. of	
SMALL AND VULNERABLE ECONOMIES (26[11])	
Criteria: self-designation	**Treatment in the modalities**
(Current Bound average tariff rate)	Differentiated in 3 bands
1. Barbados (72.9%)	**TIER 1** (current bound AVG of 50% or above) ▪ Bind all tariff lines at an average rate of [22-32%] ▪ Implementation: [8] years
2. Saint Kitts and Nevis (70.8%)	
3. Saint Vincent and the Grenadines (54.4%)	
4. Saint Lucia (53.9%)	
5. Belize (51.5%)	

[11] 48 WTO Members have a share of global Non-Agricultural trade below 0.1%. Once developed countries, LDCs, Paragraph 6 countries and RAMs are excluded from that list, there are 26 WTO developing country Members who qualify for treatment as SVE.

6. Antigua and Barbuda (51.4%)	
7. Trinidad and Tobago (50.5%)	
8. Dominica (50.0%)	
9. Grenada (50.0%)	
10. Guyana (50.0%)	
11. Fiji (*special arrangement*) (40.0%)	
12. Jamaica (42.5%)	**TIER 2** (Current bound AVG of 30-49.9%) ▪ Bind all tariff lines at an average rate of [18-28%] ▪ Implementation: [8] years
13. Nicaragua (41.5%)	
14. Guatemala (40.8%)	
15. Bolivia (40.0%)	
16. El Salvador (35.7%)	
17. Dominican Republic (34.2%)	
18. Paraguay (33.6%)	
19. Honduras (32.6%)	
20. Uruguay (31.3%)	
21. Papua New Guinea (30.0%)	
22. Brunei Darussalam (24.5%)	**TIER 3** (current bound AVG of 29.9% or below) ▪ Bind all tariff lines at an average rate of [14-20%] ▪ Apply minimum reductions of [5-10%] to [90-95%] of all tariff lines ▪ Implementation: 9 years
23. Botswana (15.8%)	
24. Namibia (15.8%)	
25. Swaziland (15.8%)	
26. Gabon (15.5%)	
RECENTLY ACCEDED MEMBERS (17)	
Criteria: All Members which have acceded after the establishment of the WTO[12]	**Treatment in the modalities**
(date of accession)	Different for 3 Sub-Groups
1. Albania	**Sub-Group 1:** ▪ Do not undertake reductions beyond their accession commitments
2. Armenia	

[12] Council Decision discussions reported in the Chairman's Introduction to the 2007 Draft NAMA Draft Modalities (Job(07)/126).

3. FYROM, Macedonia	
4. Kyrgyz Republic	
5. Moldova	
6. Saudi Arabia	
7. Tonga	
8. Viet Nam	
9. China, last year of implementation of accession commitments: 2010	**Sub-Group 2**: ▪ Undertake tariff reductions through the Formula for developing countries ▪ <u>Grace period</u> before undertaking reductions: [2-3] years on each tariff line ▪ <u>Implementatio</u>n: [1-4] years in addition to the [9] years provided for developing countries
10. Croatia, last year of implementation: 2005	
11. Oman, last year of implementation: 2009	
12. Chinese Taipei, last year of implementation: 2011	
13. Ecuador, current Bound average tariff rate: 21.1%	**Sub-Group 3:** ▪ Undertake tariff reductions according to Tier 3 of SVEs modalities: Bind all tariff lines at an average rate of [14-20%] and apply minimum reductions of [5-10%] to [90-95%] of all tariff lines ▪ <u>Grace period</u> before undertaking reductions: 3 years on each tariff line ▪ <u>Implementation</u>: [8] years
14. Panama, current Bound average: 22.9%	
15. Georgia, current Bound average: 6.5%	
16. Jordan, current Bound average: 15.2%	
17. Mongolia, current Bound average: 17.3%	
PARAGRAPH 6 COUNTRIES (12)	
Criteria: Members with a binding coverage of less than 35%	**Treatment in the modalities**
1. Cameroon	▪ Bind [70-90%] of all the non-agricultural tariff lines at an average rate of 28.5% ▪ <u>Implementation</u>: [8] years
2. Congo	
3. Côte d'Ivoire	
4. Cuba	
5. Ghana	
6. Kenya	
7. Macao, China	

8. Mauritius	
9. Nigeria	
10. Sri Lanka	
11. Suriname	
12. Zimbabwe	
LEAST DEVELOPED COUNTRIES (32)	
Criteria: UN official definition	**Treatment in the modalities**
1. Angola (binding coverage: 100%)	▪ Increase binding coverage on a voluntary basis
2. Bangladesh (3.1%)	
3. Benin (30.1%)	
4. Burkina Faso (29.9%)	
5. Burundi (9.9%)	
6. Cambodia (100% by 2013)	
7. Central African Rep. (56.8%)	
8. Chad (0.2%)	
9. Congo, DR (100%)	
10. Djibouti (100%)	
11. The Gambia (%)	
12. Guinea (29.5%)	
13. Guinea Bissau (97.3%)	
14. Haiti (87.6%)	
15. Lesotho (100%)	
16. Madagascar (18.9 %)	
17. Malawi (14.9%)	
18. Maldives (96.6%)	
19. Mali (31.6%)	
20. Mauritania (30%)	
21. Mozambique (0.4 %)	

22.	Myanmar (4.7%)	
23.	Nepal (99.4% by 2013)	
24.	Niger %96.2%)	
25.	Rwanda (100%)	
26.	Senegal (100%)	
27.	Sierra Leone (100%)	
28.	Solomon Islands (100%)	
29.	Tanzania (0.1%)	
30.	Togo (0.6%)	
31.	Uganda (2.9%)	
32.	Zambia (4.0%)	

Sources: As mandated by current revised draft modalities, document TN/MA/S/4/Rev.1/Corr.1 for Bound tariffs rates and for Binding coverage and document TN/MA/S/18 for Share of world trade.

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Comments to the Chairman's Revised Draft Modalities for WTO NAMA negotiations

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