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The revised draft modalities of the Negotiating Group on Market Access (NAMA)\(^1\) was issued by its Chairman, Ambassador Don Stephenson (Canada), on 8 February 2008 almost simultaneously with the revised modalities tabled by the Chairman of the agriculture negotiations. Surprisingly, the structure of the two documents is radically different. Whereas the latter is in the form of a legal text, the NAMA draft modalities are presented in tabular form with two columns throughout the text: the left one reproduces the Draft Modalities issued on 17 July 2007\(^2\) with some key changes (e.g. the removal of the numbers in the flexibilities for developing countries) and, placed in the right-hand column, are the Chairman’s Comments which are relatively self-explanatory. The text has five annexes. Although the NAMA Chairman described the February 2008 revised draft modalities as an accurate portrait of the state of play in the negotiations, many see it as a backward step from the July 2007 text.

In September 2007, AITIC released a Background Note with commentary on the July 2007 NAMA text\(^3\). The following paragraphs seek to elucidate further the changes and to briefly explain the implications for developing countries.

I. Introduction

A. NAMA – the Chairman’s retreat reveals deep divisions

1. A first glance at the Chairman’s new draft modalities for non-agricultural market access negotiations strongly suggests a substantial retreat from the confidence inherent in the July 2007 version. A second glance only confirms the impression, as does a deeper reading. There is a sense that, in view of the negative reactions to the July 2007 text which was criticised for being too rigid and offering no options, Ambassador Stephenson’s efforts this time went into correcting this impression, although not very successfully. In the February 2008 revised modalities, the Chairman sought to leave the controversial parts more open by putting the ranges of tariff cuts in square brackets and by removing the numbers in the flexibilities for developing countries. By making this change in the modalities, he moved back to the pre-2004 days, inviting criticism from both developed and developing country members. The only conclusion must be that members remain a very long way from the consensus on NAMA that would make a conclusion of the Doha Work Programme negotiations (DWP) this year a credible possibility.

2. The contrast with the agriculture negotiations becomes steadily more significant. While Ambassador Falconer (New Zealand), Chairman of the agriculture negotiations, is also a distance from tying up modalities in that sector, his draft modalities are relatively advanced, the architecture more certain and the political choices to be made fairly evident. There is no deal but, in the right circumstances, a settlement could be envisaged. Not so in NAMA.

3. Clearly the style has been different. The agricultural negotiations chair has moved artfully to chip away at the edges of the modalities, painstakingly putting in

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1 TN/MA/W/103, Draft Modalities for Non-Agricultural Market Access, 8 February 2008
2 JOB(07)/126
3 “NAMA takes Centre Stage – the Draft Modalities“
place parts of the puzzle without pressing the big issues too forcefully. It has taken too long, but the house is still standing. The NAMA approach in July 2007 was an audacious text which exuded confidence. Ambassador Stephenson staked all on a judgment about coefficients in the Swiss formula and a rather lean set of flexibilities for developing countries. It was heavily criticised by the developing country members of the WTO as having succumbed to the pressures of developed members. Ultimately, both developing and developed members may find that his judgment was close to the mark; but it was premature, pleased few and the Chairman has been forced back several steps.

4. Even in retreat, the Chairman is drawing criticism. Many new square brackets have been introduced into the revised text; arbitrations he made last year have been withdrawn and replaced with alternatives. This is especially the case for the Paragraph 7 developing country flexibilities (see below). At the same time he has retained the July 2007 main coefficient ranges.

5. In his public statements, Ambassador Stephenson has stressed the linkage between the coefficients and the flexibilities and defended his “sliding-scale” approach: the higher the coefficients (and therefore the lower the resultant tariff cuts), the more restrained the flexibilities and vice versa. However, some developing members have been frustrated by the impression that the Chairman has opened up more space for adjusting flexibilities than for moving the coefficients. The Chairman states that the priority is to get the flexibilities right before moving on to the coefficients (a reversal of his view some months ago).

6. At the same time, the Chairman considers that much of the modalities’ architecture is settled; what is left is largely the ambition, i.e. the figures. Indeed, most of the architecture is as it was in July 2007; a few elements are added including the treatment of preference erosion and the accompanying partial escape plan for textiles and apparel producers faced with Chinese competition. Indeed, China remains at the centre of the NAMA debate even if it is seldom referred to in the consultations.

7. One important addition is the inclusion of a number of proposals on non-tariff barriers (NTBs), Annex 5, as an integral part of the modalities document. While none of them commands consensus support, and they appear a rather strange and limited assortment given the multitude of NTB issues facing traders today; they may at least serve to make this aspect of the negotiations look more serious.

II. Surfing the Modalities Columns

A. Preamble – Product coverage

8. Paragraph 2 refers to product coverage as defined in Annex 1. The Chairman notes that the issue remains unresolved since five members need either to add certain (food) products to the NAMA list (Japan) or remove certain (largely food-related) products from it and consider them as agricultural products (EU, Mexico, Turkey and Switzerland). These exceptions are noted in Footnote 6 under Annex 1. The Chairman suggests these “long-standing deviations” be accepted
“without affecting the rights of members”. They may, therefore, be challenged in the future.

B. Swiss formula

i. Coefficients (Paragraph 5)

9. While the Chairman retains his original coefficient ranges – [8-9] for developed and [19-23] for developing members – he notes that there is no consensus. He outlines the three main positions held by different groups; namely, those (developed) countries that seek more ambitious developing country tariff cuts; those (developing) members who prefer a slightly more ambitious coefficient for developed economies; and those (NAMA 11) taking a tougher line on the need for a wider differential (of at least 25 points) between the coefficients for developing and developed members and for a developing country coefficient of 30 to 35.

10. The commentary states that those in the first two groups are prepared to accept the ranges in the July 2007 draft as a basis for negotiation. For the third group, some among them might do so conditional on the adequacy of the developing country flexibilities (Paragraph 7).

ii. Unbound tariff lines (Paragraph 6(b))

11. The July proposal provided a single “mark-up” of 20 percentage points on the MFN applied rate for an unbound tariff line in the base year (2001) to establish the starting point for the Doha tariff reductions. The new text adds an option for a 30 percentage point mark-up. This is based on a proposal from the Philippines that links a lower mark-up to higher initial unbound rates.

iii. Implementation periods (Paragraph 6(f))

12. Although unchanged, the implementation periods – 5 and 9 equal annual steps for developed and developing members respectively – are now in square brackets. The Chair man explains that while there are calls for longer implementation arrangements (6 and 11 steps respectively) most members are content to make a decision once the coefficients are clear.

iv. Developing country flexibilities – (Paragraph 7)

13. This is the most contentious area of the draft and, for the moment, concerns two flexibilities. The July 2007 version had proposed the application of not less than half the formula cuts for 10 per cent of tariff lines (so long as the affected import values do not exceed 10 per cent of the member’s total non-agricultural imports). Secondly, and as an alternative to the first option, developing members could leave unbound or not apply any formula cuts to 5 per cent of their tariff lines.

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4 Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, Tunisia and Venezuela.
5 JOB(07)/169: “All unbound tariffs of developing Members, which are at least half in absolute terms of the Swiss formula coefficient (b), shall have a mark-up of 30 percentage points before being subjected to the Swiss Formula.”
(so long as the affected import values do not exceed 5 per cent of the member’s total non-agricultural imports). Footnote 1 provides for a combination of the two possibilities under this alternative.

14. The July 2007 percentages have now been removed, in part because many developing countries have sought higher percentages for the number of tariffs lines to be affected; the removal or relaxation of the trade value limitations; and the possibility to combine the two principal flexibilities (Paragraph 7(a) (i) and (ii)).

15. As noted above, the Chairman now underlines that a settlement of the coefficient issue is preconditioned, in the eyes of many participants, on a resolution of these flexibilities. However, he also sets out a series of complicated additional proposals, none of which, he believes, commands a consensus. These are:

- The SACU\(^6\) proposal that would provide South Africa with additional flexibilities in order to maintain benefits in that market currently enjoyed by SACU’s small vulnerable economies (SVE) and least-developed country (LDC) members.
- The Mercosur\(^7\) proposal to provide additional flexibilities to offset disadvantages that would otherwise be felt by members of customs unions.
- A broadly applicable proposal by the Philippines to extend the Paragraph 7 flexibilities substantially.
- The proposal from Venezuela that it be granted SVE-type treatment.

16. The Chairman concludes that while there may be support for providing South Africa with some specific additional flexibility there was little sympathy for special “systemic” treatment for customs unions generally.

17. The condition that the flexibilities are not be used to exclude entire HS chapters remains as it was. However, the Chairman notes a lack of convergence on a proposal from the US and EU to tighten that condition at the 4 and 6-digit levels.

18. The provision in Paragraph 7(b) is also now in square brackets. In the July 2007 version, this would have given developing members that do not make use of the Paragraph 7(a) flexibilities the right to an extra three points in the applicable formula coefficient. The new text includes reference to both an additional 3 and 5 coefficient points. While the Chairman clearly believes the proposal commands significant support he also recognises that any final decision is highly dependent on a broader settlement of the principal coefficients and the Paragraph 7(a) flexibilities.

C. Members with low binding coverage – (Paragraph 8)

19. The principal change in this section – which exempts from formula tariff reductions those 12 developing members\(^8\) with less than 35 per cent binding

\(^6\) Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, Swaziland)
\(^7\) Argentina, Brazil, Paraguay, Uruguay
coverage – concerns the level to which that binding coverage should be increased. In the July 2007 draft the target to be achieved was 90 per cent of non-agricultural tariff lines; to that has now been added a lesser 70 per cent option. The implementation period during which the new bindings should be brought down to a maximum rate of 28.5 per cent is now in square brackets but remains at nine equal annual rate reductions, starting January 1 of the second year of the implementation of the Doha results.

D. Sectoral negotiations – (Paragraphs 9-12)

20. The draft continues to record progress in this area, though there is little outside evidence of it. The sole change concerns the negotiating timetable where Paragraph 12(b) now allows two months (not one month) after the establishment of modalities (EOM) for members to indicate their intention to participate in specific sectoral negotiations. Since Paragraph 12(c) remains as it was, this leaves just one month for finalisation and incorporation into draft schedules.

E. Small Vulnerable Economies (SVEs) – (Paragraph 13)

21. Although, as the Chairman points out, there is broad agreement on the architecture of these SVE flexibilities the specifics are still very unclear. SVE proponents had proposed caps on the average percentage cuts that would be generated by the modalities in Paragraph 13 (a)(i) and (ii). This did not receive wide support. As an alternative, SVEs have proposed higher target averages and these, along with the July 2007 proposal figures, are now included in the new text as ranges within square brackets. A minimum line-by-line cut is also included, but only in relation to Paragraph 13(a)(iii) which concerns the treatment for SVEs with bound tariff averages below 30 per cent.

22. With respect to implementation, the nine equal rate reductions (starting January 1 of the second year of implementation of the Doha results) is retained, but is in square brackets (Paragraph 13(d)).

23. Paragraph 13(e) is a new provision for recently-acceded members (RAMs) (excluding developed members) that fall within the SVE definition. Such countries will receive a grace period for commencing tariff cuts under the SVE modalities – their implementation period will start three years after the date of full implementation of an accession commitment on any tariff line concerned.

24. The Chairman notes, without an assessment of support, the proposal for additional flexibility from Bolivia.

F. Market access for LDCs – (Paragraphs 15-17)

25. These provisions have been clarified and made more operational since July 2007. In particular, Paragraph 15(b) calls for preferential rules of origin for LDC imports to be “transparent, simple and (to) contribute to facilitating market access”.

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8 Cameroon; Congo, Côte d’Ivoire; Cuba; Ghana; Kenya; Macao, China; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe

9 WTO members having a share of less than 0.1 percent of world NAMA trade for the reference period of 1999 to 2001.
26. Paragraph 16(a) requires members implementing the Hong Kong Decision on LDCs to notify the products to be covered at the tariff line level by 2008, or no later than the start of the implementation period. Paragraph 16(b) requires members to notify the steps and “possible” time frames within which they will achieve full compliance with the Decision (i.e. 100 per cent duty-free, quota-free access for LDCs).

G. Recently-Acceded Members (RAMs)\(^{10}\) – (Paragraphs 18-20)

27. Paragraph 18 notes the RAMs flexibilities already contained in Paragraphs 5, 6, 7 and 13 (that shall be granted to SVEs) to those RAMs that fall under the definition of SVEs, i.e. Albania, Ecuador, Georgia, Mongolia and Panama. Paragraph 20 exempts eight RAMs\(^{11}\) (including very recent accessions) from undertaking any tariff reductions beyond their accession commitments. That leaves the following: China, Chinese Taipei, Croatia and Oman, which would apply the formula. However, Paragraph 19 contains the two additional flexibilities for these members.

28. First, they are offered a line-by-line grace period of either two or three years after the date of full implementation of an accession commitment on a tariff line, before which the Doha commitments need be implemented. Second, an extended implementation period of two to five annual rate reductions above that provided for in Paragraph 6(f) (five or nine for developed and developing members respectively). Thus a developing RAM (e.g. China) to which the formula applies may end up with a total implementation period for the Doha commitments of between 13 and 17 years, counting from the point at which accession commitments are fully implemented.

29. The Chairman notes that other flexibilities have been requested by RAMs – including a coefficient 1.5 times higher than that for developing countries – but that he does not see them securing a consensus. In any event, some participants have taken the view that final decisions should only be taken once the coefficients and Paragraph 7 flexibilities are determined.

H. Non-reciprocal preferences – Paragraphs 27-29

30. Paragraph 27 is largely unchanged from Paragraph 28 in the July 2007 draft except that the provision for seven equal rate annual reductions (rather than the normal five) on the products concerned is in square brackets. Further, the first reduction would now take place on January 1 of the second year following the entry into force of the Doha results. This provides an extra 3 years of adjustment both for the preference beneficiaries and the textiles and clothing sectors in the US and EU which would prefer to delay further exposure to China and other highly competitive suppliers. Annexes 2 and 3 list the preferential products covered in

\(^{10}\) Albania, Armenia, China, Chinese Taipei, Croatia, Ecuador, Former Yugoslav Republic of Macedonia, Georgia, Jordan; Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Saudi Arabia, Tonga and Viet Nam. The list excludes LDC RAMs and those who became members of the EC since their accession.

\(^{11}\) Albania, Armenia, Former Yugoslav Republic of Macedonia, Kyrgyz Republic, Moldova, Saudi Arabia, Tonga and Viet Nam.
these two markets – solely garments for the US; fish products, textiles, garments and aluminium products for the EU. It remains to be seen whether the textiles and clothing sectors and their political supporters in Europe, the US and in some large suppliers, like Turkey, will be satisfied with this device.

31. A new provision in Paragraph 29 provides for some other developing-country suppliers of the preferential products listed in the two annexes that do not receive preferences to benefit from tariff reductions in the two importing markets on the normal schedule – i.e. five annual equal rate reductions starting from the end of the first year of implementation of the Doha results. The text indicates that certain garments exported to the US and EU by Pakistan and Sri Lanka would currently be beneficiaries of this provision (Annex 4).

32. Paragraph 28 calls for increased Integrated Framework and Aid for Trade assistance to preference beneficiaries and for the simplification of rules of origin in preference-granting members.

I. Non-tariff barriers - Paragraphs 23-25

33. The Chairman has moved the faltering process on NTBs one small step forward. He has appended 10 proposals on which legal texts have been tabled and he provides some commentary on his perceptions of the levels of support commanded by each. He explains that a decision on which of these, or other, proposals will proceed to a final text-based negotiation would be made only when the NAMA modalities are agreed. He suggests that a positive decision on any such proposal would establish the presumption of an outcome.

34. Only one among the present collection of proposals is seen as enjoying “very wide support”. That is the “Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers”, submitted by a wide range of developed and developing countries. None of the others command more than “some support”.

III. Conclusion

35. Most members of the WTO expressed disappointment with the new version of the draft modalities. The text drew criticism from all sides: one developed member interpreted the changes as a diminution of ambition. Other members were unhappy about the uncertainty introduced by the removal of the “reference point”, i.e. the number of tariff lines developing countries would exempt from the formula cuts. Most agreed this introduced a lack of clarity which would make decision making difficult.

36. Developing countries remarked on the lack of balance: whilst the Chairman had eliminated the numbers on the flexibilities for them, he had kept the same coefficients of his July 2007 version. In addition they disagreed with the Chairman’s perception that the members who had to apply the formula had indicated that they could accept this range as a basis for negotiation and that those members who had rejected the numbers had indicated that they could move
towards them if the flexibilities were increased. The conclusion was that the issue which was more open now was the flexibilities.

37. Developing country members were particularly troubled by the Chairman’s elimination of the numbers in “Paragraph 8” flexibilities for developing countries. These had been included in the July 2004 Framework for Establishing Modalities in Market Access for Non-Agricultural Products\(^\text{12}\), as part of the negotiating mandate and, according to developing countries the unequivocal minimum they could accept. Their concerns centred on the fact that taking out these numbers and not heeding their proposals for lowering the coefficient for developed members, went against the principle of less-than full reciprocity.

38. The Chairman defended his decision to remove the numbers in the flexibilities by stating that this reflected the actual state of the negotiations, where nothing had moved since he had issued the July 2007 text. In addition, members were reluctant to negotiate without more certainty of what will be the outcome in the agriculture negotiations. What is certain is that, as most members agree, time is running out. If there is to be a ministerial meeting sometime in April 2008, and the process of “horizontal negotiations” is to start, tough decisions will have to be made soon.

### Acronyms

- **DWP**: Doha Work Programme negotiations
- **EOM**: establishment of modalities
- **LDC**: least-developed country
- **NAMA**: Non-Agricultural Market Access
- **NTBs**: non-tariff barriers
- **RAMs**: Recently-Acceded Members
- **SVE**: small vulnerable economies

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\(^\text{12}\) Annex B, Decision Adopted by the General Council on 1 August 2004 (WT/L/579. 2 August 2004)