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Non-agricultural Market Access: A South Asian Perspective

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I. INTRODUCTION

Despite the fact that the WTO has helped to reduce the overall level of tariffs with increased transparency, a majority of the developing countries with the capacity to increase exports of labour intensive manufactures continue to face significant barriers in accessing foreign markets. Tariff rates applied by the developed countries for textile and clothing and leather for instance are much higher than those on other manufacturing products such as electronics, computers and telecom equipment, thus indicating a clear discrimination against exports of the developing countries. Moreover, tariff peaks, tariff escalation, tariff rate quotas and other non-tariff measures including antidumping duties, countervailing duties, and safeguard measures to protect against serious injury from import surges, allowed under the WTO, have become major impediments to market access for developing countries exports.

A key element of the Doha Round of trade negotiations is liberalisation of trade in industrial products, commonly known as non-agricultural market access (NAMA). Negotiations under NAMA focus on market access for all products that are not covered by the negotiations on agriculture or services and aim to reduce, if not possible to completely eliminate, tariff and non-tariff barriers that restrict trade in these products. The framework adopted for modalities for negotiations under NAMA, known as the July Package, envisages reduction of industrial tariffs in both developed and developing countries according to a formula that is yet to be agreed. These negotiations are important for developing countries as these will determine the market access opportunities available to developing countries through which they can improve their growth prospects.

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This paper examines the key issues of NAMA from the South Asian perspective. Section II provides a background on NAMA, whereas Section III spells out key issues in market access. Section IV contains perspectives of Bangladesh, India, Nepal, Pakistan and Sri Lanka on various NAMA issues. Section V highlights key elements of the proposed negotiating strategy for developing countries. Finally, Section VI summarises the discussion and spells out some policy implications.

II. NAMA BACKGROUND

The ongoing NAMA negotiations are based on the mandate that was given for the Doha Round at the 4th WTO Ministerial Conference. The aim of the negotiations is to reduce both tariffs and non-tariff barriers to trade that impede the market access for industrial products. The negotiations relate to all the goods not covered under the agreement on agriculture. Even though such negotiations essentially relate to industrial products, it also considers products such as natural resources including fisheries, forests, gems and minerals.

The Doha mandate stresses the need for comprehensive product coverage, without full reciprocity, i.e. developing countries be allowed to decrease tariffs to a lesser extent than industrialised countries and over a longer period of time. It also stresses the need to address tariff peaks, tariff escalation and non-tariff barriers such as import quotas and technical standards.

The first proposal for modalities of NAMA negotiations was made in 2003 by the Swiss chairman of the NAMA negotiating group, Pierre-Louis Girard. The key elements of the proposal were a 'Swiss formula' for tariff reduction (cutting higher tariff by a larger percentage than lower tariffs), a sectoral initiative for the full elimination of tariffs in seven sectors,[1] and Special and Differential Treatment for developing countries.

During the Cancun Ministerial in 2003, a second proposal on NAMA was made, the so-called Derbez text. This proposal included a non-linear formula similar to the Swiss formula along with a sectoral initiative for tariff reductions but without the identification of the sectors. This proposal was strongly opposed by the developing countries, in particular by the G-90 countries, and was not adopted in Cancun. During the July 2004 General Council meeting at the WTO, a number of developing countries opposed the inclusion of the Derbez text on NAMA in the July package. In particular, the developing countries pressed for the inclusion of several further proposals and demanded abolition of the non-linear formula, wanted the sectoral tariff component to be voluntary; and asked for more flexibility in tariff cuts and tariff bindings.

[1]These sectors include fish and fish products, textiles and clothing, leather, footwear, stones, gems and precious metals, electronic goods, and motor vehicle parts and components.

The July text on NAMA, drafted keeping in view the concerns of the developing countries, includes the following elements:

- A formula approach for tariff reduction and for reduction or elimination of tariff peaks, tariff escalation and high tariffs. Key features of this approach are:
  - No a priori exclusion of products;
  - Reductions in tariffs from bound rates, or from twice the applied most favoured nation (MFN) rate in the case of unbound tariffs;
  - Credit for autonomous liberalisation (trade liberalisation on an MFN basis undertaken independently from the WTO negotiations);
  - Conversion of specific duties into ad-valorem duties and their binding;
- Countries that had bound less than 35 percent of their tariffs would be exempt from tariff reductions through the formula, but have to bind 100 percent of their tariff lines; and
- A sectoral approach, aiming at eliminating or harmonising tariffs in a specific sector. Seven sectors had been identified previously (in the Girard proposal) for this sectoral approach.

Presently, the NAMA negotiations are focused on a number of issues including product coverage, the formula for tariff cuts, tariff bindings, conversion of specific duties into ad-valorem duties, the sectoral approach to tariff cuts, flexibilities for developing countries, non-tariff barriers, and preference erosion. The negotiators aim at completing draft modalities in the above areas by July/August, and an agreement on full modalities by the Hong Kong Ministerial in December 2005.

III. ISSUES IN NON-AGRICULTURAL MARKET ACCESS

III.1. Tariff Issues

Reduction and elimination of tariffs and non-tariff barriers have been at the centre of trade negotiations since the inception of the General Agreement on Tariffs and Trade (GATT) and continue to be an important subject in the subsequent multilateral trade negotiations.[2] During the Uruguay Round, tariff negotiations constituted a central issue and these were held on the basis of Most Favoured Nation (MFN) principles.[3] These MFN rates were bound and could be increased only through negotiations under Article XXVIII of GATT and therefore, provide a secure and stable market access. However, considering that

[2]The non-tariff barriers in the form of quota and bans have been removed by most of the countries but the barriers in terms of quality, labour standards, environment etc. have been imposed.

[3]MFN requires that tariff rates negotiated between particular trading partners are available to all members of the WTO.

the bound rates are significantly higher than the applied rates, the market access remains somewhat uncertain. Besides, there are significant tariff peaks[4] on products such as textiles, clothing and leather and leather products. Moreover, there has been tariff escalation resulting in heavy effective protection to value-added activities.[5] Furthermore, contingent protection instruments, particularly anti-dumping measures and countervailing duties, are currently being used more frequently. The number of anti-dumping investigations has increased sharply since the Uruguay Round agreements were signed: they have more than doubled from 156 in 1995 to 340 in 1999[6] [Bacchetta and Bora (2001)]. High tariff bounds, tariff escalation and safeguard measures indicate the heavy odds against exports of developing countries. Therefore, just reduction in the average rates of import duties would not be sufficient for the growth of exports from the developing economies.

The comparison of average applied and bound rates in pre-Uruguay round outlined in Table 1 is quite revealing. Firstly, both the bound and applied rates of the developing economies are higher than the developed economies. Second, whereas on average there was not much difference between the bound and the applied rates in case of developing countries, the bound rates were 40 percent higher than the applied rates in case of the developed world.[7] Third, both the bound and applied rates have been the maximum for agriculture based products, textiles and leather in developed economies thus discriminating against the developing economies.

In the post Uruguay round applied tariff rates of the industrial countries has increased from 2.6 to 4.0 percent whereas the bound rate from 3.7 to 4.7 percent (Tables 1 and 2). That liberalisation attempts instead of reducing the tariff rates have resulted in higher tariff rates is quite disturbing. The increase in tariff rates seems to be the result of tariffication of the non-tariff barriers, i.e. after removal of the non-tariff barriers the tax rates on such products have been enhanced. Whereas in the developing economies the applied rates have declined though there has been an increase in the bound rates.

[4]High tariffs and tariff peaks are generally in the areas that are of export interest to developing countries and it includes textiles and clothing, footwear, and agriculture. The impact of tariffication of agricultural non-tariff barriers (NTBs) in the Uruguay Round in some cases has resulted in even more restrictive trade regimes.

[5]Tariff escalation is quite harmful to the industrialisation process of the developing economies. Reduction in tariffs on raw materials by the developed countries results in higher levels of effective protection on exports of manufactured products to industrial countries and thus makes it even more difficult for developing economies to export the manufactured products to industrial countries.

[6]In recent years, however, the number of anti-dumping investigations have fallen (just over 200 in 2004).

[7]However, the differential in bound and applied rates for different products and across countries may be high.

Table 1

Pre–Uruguay Round Applied and Bound Rates of Industrial and Developing Economies by Major Product Group

(Percent)

	Product Group	Industrial Economies		Developing Economies	
		Applied	Bound	Applied	Bound
1	Agriculture, Excluding Fish	5.2	7.2	18.6	19.9
2	Fish and Fish Products	4.2	4.9	8.6	25.9
3	Petroleum	0.7	0.9	7.9	8.4
4	Wood, Pulp, Paper, and Furniture	0.5	0.9	8.9	10.3
5	Textiles and Clothing	8.4	11.0	21.2	25.5
6	Leather, Rubber, and Footwear	5.5	6.5	14.9	15.4
7	Metals	0.9	1.6	10.8	10.4
8	Chemical and Photographic Supplies	2.2	3.6	12.4	16.8
9	Transport Equipment	4.2	5.6	19.9	13.2
10	Non-electrical Machinery	1.1	1.9	13.5	14.5
11	Electrical Machinery	2.3	3.7	14.6	17.2
12	Mineral Products; Precious Stones and Metals	0.7	1.0	7.8	8.1
13	Manufactures, not Elsewhere Specified	1.4	2.0	12.1	9.2
	All Industrial goods	2.5	3.5	13.3	13.3
	All merchandise trade	2.6	3.7	13.3	13.0

Source: Finger, Ingco, and Reincke (1996).

Table 2

Post–Uruguay Round Import-Weighted Applied and Bound Tariff Rates

(Percent)

Country Group or Region	Applied Tariff Rate	Bound Tariff Rate
Industrial Economies	4.0	4.7
Developing Economies	13.1	20.8
Latin America and the Caribbean	10.1	18.6
East Asia and Pacific	9.8	16.6
South Asia	27.7	56.1
Other Europe and Central Asia	9.6	14.9
Middle East and North Africa	14.4	26.8
Sub-Saharan Africa	16.5	19.8

Source: Hoekman, *et al.* (2002).

The Doha Ministerial Declaration[8] follows almost the same formulation as in the declaration to launch the Uruguay Round in 1986. It envisions reduction or elimination of industrial tariffs as well as an attack on tariff peaks, tariff escalations and non-tariff barriers in particular on products of interest to developing countries. These are expected to help in the growth of trade which provides opportunities to the developing countries to remove poverty through trade liberalisation. While they must reduce the level of tariffs to expose their economic activities to international competition, they need market access; currently their products face many obstacles in entering the markets of rich countries. Rich countries need to do more to reduce trade distorting subsidies and dismantle their existing barriers on competitive exports from developing countries. The important issues in this regard are:

- **Textiles and clothing** is the largest export earner for many developing countries and the rate of tariffs is the maximum for these products. The effective protection rate to the higher stages of production in the textiles sector in the developed world is rather high.
- **Tariff peaks** negotiations have to be high on the agenda. Despite low average non-agricultural tariffs, the products in which developing countries are globally competitive continue to attract relatively high tariffs.
- **Tariff escalation** tilts the incentives against the development of indigenous processing/transformation and movement up the value-added chain. For diversification of economies and trade such escalation must be eliminated.
- **Specific Taxes** when converted into ad-valorem rates, generally have been quite high. While specific taxes need to be converted into ad-valorem rate, the incidence must not rise. With a view to ensuring that, to start with each member state should provide information on the ad-valorem incidence of the specific taxes.
- **Anti-dumping duties, countervailing duties, technical standards and sanitary and phytosanitary (SPS)** requirements restrict trade and the possibility that the contingent protection measures may be justified on the grounds of environmental protection and labour standards is of great concern to developing world. Since developing countries generally have lower labour and environmental standards than developed countries, these would be detrimental to export and development interests of developing economies [Krueger (1999)].

The post-Doha industrial tariff negotiations are prompted by two main considerations: Firstly, the increasing trend towards regionalism results in preferential trade amongst a few countries resulting in discriminatory trade treatment for the countries that are not parties to the regional arrangements. Tariff negotiations

[8]This is referred in paragraph 16 of the Declaration.

on multilateral basis resulting in an MFN-based tariff cuts would reduce chances of such discrimination. Second, industrial tariff negotiations have the potential to boost intra-regional trade among developing countries. The main tariff issues in the post-Doha scenario are examined in the following.

(i) *Tariff Peaks and Escalation*

The problems of high tariffs and tariff escalation remain wide spread for developing countries even after the Uruguay Round. A significant proportion of the tariff of Quad countries (USA, EU, Canada and Japan) continues to exceed the level of 12 percent ad-valorem even after full implementation of the Uruguay Round and GSP rates are taken into account (Table 3). One fifth of the tariff peaks of the United States, about 30 percent of those of Japan and the EU and about one seventh of those of Canada exceed 30 percent. Peak tariffs affect both agricultural and industrial products.[9] The main problems in the industrial sector occur in food industry products; textiles and clothing; footwear, leather and travel goods; automotive products; consumer electronics and watches. In addition to extremely high tariffs and other protection measures, tariff escalation remains an important obstacle for developing countries to enter into the industrial exports. This is particularly pronounced in the sectors which are of direct export interest to developing countries including the South Asian countries.

Table 3

Developed Countries: Frequency of Post-Uruguay Round Tariff Peaks in the Industrial Sector by Product Groups
(Percentage of Tariff Lines within each Group with Duties above 12 percent Ad-valorem)

Product Group	United States	Canada	European Union	Japan
Leather and Leather Products	12	4	0	22
Textiles	21	45	1	1
Clothing	44	93	0	0
Footwear	42	67	0	71
Glass Products	10	5	0	0
Vehicles	4	1	8	0

Source: UNCTAD Trade and Development Report 1999.

[9]Out of the total LDC exports of US$ 22.7 billion in 1999, US$ 17 billion went to the Quad economies. For example, more than 25 percent of their total exports are potentially affected by tariff peaks in Canada and 14 percent in the United States.

The problem of peak tariffs in the industrial sector[10] occurs in four sectors: (a) food industry; (b) textile and clothing; (c) footwear, leather and travel goods; and (d) high technology goods including automotive sector.

(a) *Food Industry:* The food industry is a major area where tariff protection is widespread and high in the major developed countries' markets even after the implementation of the Uruguay Round concessions. Tariff peaks and a range of additional measures extend far beyond the initial processing stages in a large variety of industries. The food industry accounts for about 30 percent of all tariff peaks ranging (with some exceptions) from 12 percent to 100 percent in the EU. There are several cases of additional duties to compensate processing industries for higher prices of agricultural inputs. Examples of products subject to particularly high rates include cereals and sugar based products, fruit preparation and canned fruit juices. Similarly, the food industry accounts for one sixth of all tariff peaks in the United States and these also fall mainly in the 12 percent to 100 percent range. The United States also applies a wide system of combined MFN tariff quota rates in this area particularly with additional safeguard duties.

(b) *Textile and Clothing:* In the major textile importing countries like the US, EU and Canada large proportions of clothing and textile imports are subject to high tariffs. Most tariff peaks are in the 12–32 percent range.

(c) *Footwear, Leather and Travel Goods:* Footwear of various types is still protected by high tariffs in most developed countries. Post Uruguay Round MFN rates are close to 160 percent in Japan, 37.5-58 percent in the US and 18 percent in Canada. MFN duties remain relevant, as General System of Preferences (GSP) benefits are limited in this sector.[11]

(d) *Automotive Sector, Transport Equipment and Electronics:* With the exception of Japan and the Republic of Korea, level of protection for one or the other branch of the transport industry is rather high. In the developed countries MFN tariff protection is more selectively applied in the automotive and transport sector. In addition various developed countries apply high tariffs on TV receivers, TV picture tubes and some other high technology products.

[10]The most hit from the tariff peaks are the major agricultural staple food products and fruit, vegetable, fish etc.

[11]In the US and Canada most footwear and leather products are excluded from coverage of the scheme so that MFN tariffs apply fully to developing countries.

(ii) *Tariff Reduction Formula*[12]

The July Framework includes a formula approach for tariff reduction and for reduction or elimination of tariff peaks, tariff escalation and high tariffs. The following proposals are being advocated by various countries:

- Swiss formula with a single coefficient with conditional flexibilities for developing countries (EU).
- Swiss formula with conditional flexibility of applying two coefficients (Norway and the US) or four coefficients (Chile, Columbia, and Mexico).
- A Swiss-type formula with multiple coefficients based on tariff averages and with flexibilities and a credit system for developing countries (Argentina, Brazil, and India).

Whereas the simple Swiss formula is transparent and easier to implement, it places a disproportionate burden on developing countries who would have to make major cuts in tariffs as compared with the developed countries. The modified Swiss formula allows the use of more than one coefficient for developing countries. However, no criterion is indicated as to how these coefficients would be determined.

The ABI formula (proposed by Argentina, Brazil, and India) aims to address the concerns of developing countries with the Swiss formula for tariff reductions. As opposed to the simple Swiss formula which cuts high tariffs and tariff peaks down to the level of the coefficient regardless of the national tariff structure, the ABI formula takes into account the existing tariff structure of each country. The ABI formula is considered as more equitable as it incorporates the present tariff commitments of the members, and envisages an overall reduction commitment that is proportional amongst developed and developing countries.

Whereas the ABI formula is based on the objective criterion of current tariff profiles of members and provides an effective mechanism to deal with high tariff and tariff peaks, it does not seem acceptable to many developed countries who consider it tilted in favour of countries that have high tariffs.

Pakistan is of the view that since none of the proposals on tariff reduction formula seem to attract consensus, there is a need to bridge the gap between the present proposals while at the same time ensuring that the objectives of the Doha Round are not compromised. More specifically, Pakistan has proposed the adoption of a simple Swiss Formula with two distinct coefficients for developed and developing countries. These coefficients should be based on an objective criterion i.e. taking the overall average of the bound tariff lines for developed and developing

[12]This section draws on (i) “Market Access for Non-agricultural Products”, a communication from Argentina, Brazil and India to the Negotiating Group on Market Access, WTO document No. TN/MA/W/54 dated April 12, 2005; and (ii) “Market Access for Non-Agricultural Products: The Way Forward”, a communication from Pakistan to the Negotiating Group on Market Access, WTO document No. TN/MA/W/60 dated July 21, 2005.

countries as their respective coefficients. Some of the advantages of this proposal are that: it is simple, transparent and easy to comprehend; it results in significant reduction of tariff peaks and tariff escalation; it would cut higher tariffs much more than lower tariffs; it would make every member contribute and every member would gain from increased market access; and it is based on objective criterion.

(iii) ***Negotiations Amongst Developing Countries***

Negotiations in the various Rounds of GATT have been amongst the developed countries or between the developing and the developed countries but hardly any amongst the developing countries.[13] Whereas trade amongst developing countries has increased significantly, it would have been significantly higher if tariffs were cut on the products which they export. Negotiations on industrial tariffs amongst developing countries would go a long way in promotion of trade in goods and services. It would help in increasing significantly the share of trade amongst developing countries as a proportion of their total trade.

The market access negotiations among developing countries will have particular significance in the context of the objective of promoting intra-trade among developing countries. The SAFTA would help in increasing trade amongst South Asian countries and negotiations with other developing countries on industrial tariffs would go a long way towards liberalisation of trade and improvement in the welfare levels. These countries may take a joint stand relating to anti-dumping, countervailing, environments, labour standards and other safeguard measures to protect their export interest.

(iv) ***Scope for Negotiations: Bound and Applied Rates***

An important issue in the industrial tariff negotiations is whether such negotiations should cover bound rate only or both the bound and the applied rate. In case of developed countries major proportion of their tariffs are bound but their bound rates and applied rates differ substantially. Reduction in bound rates, therefore, would not automatically result in reductions in the applied rates and hence the market access. Even though the average bound and applied tariffs for the developing countries as noted earlier were similar, bound tariffs are significantly higher than the applied rates for most of the products and across the developing countries.

Whereas reduction in the bound rates by both the developed and developing economies would improve predictability of market access in the sense that the exporting firms are reassured that the existing applied rates would not be increased beyond the bound rates, reduction in bound rates would not constitute any

[13]By negotiating reduction in tariffs on the products of their export interests, developed countries under GATT have gained significantly.

improvement of market access unless applied rates are reduced simultaneously. Therefore, it may be argued that market access negotiations would have to provide for possibilities of reductions in both the bound as well as applied rates.

(v) *Credit for Autonomous Liberalisation*

While developed countries have generally reduced their tariffs in the context of multilateral trade negotiations, most of the developing countries have been taking measures to liberalise trade unilaterally outside the WTO framework. As the lower rates resulting from such reductions benefit the exports of developed countries, the credit should be given for the unilateral tariff reduction. It may be done by providing greater flexibility in the choice of "base tariffs" that are to be used as the basis for reductions. Countries are generally given choice to use the tariff rates applicable in the preceding 2-3 years as basis for negotiations.

(vi) *Relative Reciprocity in Negotiations between Developed and Developing Countries*

Another significant aspect of tariff negotiations is to ensure that the rules relating to relative "reciprocity" as embodied in part IV of GATT and the "General Enabling Clause" are fully respected in the negotiations between developed and developing countries. In particular, the ground rules adopted for conduct of negotiations need to be such that the extent of liberalising the developing economies should be in accordance with their level of development, trade, economic situation, and national policy objectives. The ground rules should further recognise that the developing countries may have the option to reduce duties on selected tariff headings and, if necessary, exclude certain sectors and sub-sectors from the liberalisation process. It should also be open to them to offer tariff bindings at rates which are higher than the reduced rates.

(vii) *Staging of Tariff Reductions*

The reductions agreed in the multilateral trade negotiations in the past have been implemented over a period of time. For example, tariff cuts agreed in the Uruguay Round were implemented in equal stages from January 1, 1995 to January 1, 2000. For some of the products, which were considered import sensitive longer implementation period of 8-10 years were negotiated. The ground rules for the current tariff negotiations may allow developing countries longer period than provided to developed countries either on overall basis or in respect of particular products.

(viii) ***Sectoral Approach***

The developing countries have strongly resisted the proposal of sectoral elimination of tariffs in NAMA negotiations. While LDCs are exempt from sectoral approach, all other member countries would be expected to eliminate or substantially reduce tariffs on specific products. The developing countries feel that such liberalisation of their import regimes would not only entail far greater tariff cuts from them than from developed countries, but would also expose their industries to strong competition. As a result, the developing countries have consistently maintained that they should participate in any sectoral NAMA negotiations on a voluntary basis only.

(ix) ***Preference Erosion***

Trade preferences are a central issue in the ongoing efforts to negotiate further multilateral trade liberalisation. While most countries recognise the benefits of dismantling the remaining barriers to trade, some, notably the least developed countries, are apprehensive as they are faced with an erosion of their preferential access owing to across the board tariff reductions under NAMA. Preferences erosion is of particular concern to the South Asian region, as four out of seven SAARC countries have traditionally enjoyed trade preferences due to their LDC status.

Preferences granted to least developed countries as well as universal trade preferences for imports from all developing countries, as extended under the GSP, are consistent with the GATT under the Enabling Clause. However, the developed countries are not legally committed to providing such preferences. They can, therefore, decide unilaterally on preference margins or even withdraw preferences without violating WTO commitments. The G-90 members have increasingly drawn attention to their plight in the context of market access negotiations that threaten their margins of preferential access. The G-90 has also called for remedies, including compensatory and other mechanisms, such as measures to promote exports; technical and financial assistance for improving infrastructure, productivity, and diversification, and for development of systems to achieve compliance with technical standards; and a lenient application of those standards to developing countries.

Several options may be considered for trade preferences in the Doha Round. First, rather than working towards an expansion of marginal preferences for all developing countries, it may be useful to aim at substantial preferences for the least developed and other vulnerable countries. Second, the Enabling Clause may be amended by including small and other vulnerable countries in addition to the least developed countries. Third, existing preferences under the GSP should be maintained and legally bound in WTO. Fourth, preferential tariffs should not be defined in absolute terms, but should be set relative to MFN tariffs. Finally, where very specific and deep preferences for individual developing countries and commodities are concerned, a relatively strong case can be made for compensation if preference margins are eroded as a result of multilaterally agreed MFN tariff reduction or of domestic policy changes in the developed countries.

III.2. Non-tariff Measures

The Doha Ministerial Conference rightly called for removal of all the non-tariff barriers on industrial products as they are the least transparent and have major distortionary impact. Whereas the quotas and bans for protective measures are almost non-existent for industrial products except in a very few countries the imports are subject to the following non-tariff barriers:

- technical regulations applicable;
- hygienic Sanitary and Phyto-sanitary measures;
- labour standards and environmental protection;
- quality standards; and
- contingency protection measures such as safeguards and anti-dumping and countervailing measures.

III.3. Dispute Resolution Understanding

With the adoption of various WTO agreements if a country considers that measures taken by another country are inconsistent with the provisions of the relevant agreements, the matter could be challenged. This makes it a little difficult for larger countries to bully smaller countries into giving up their legal complaints. However, most of the clauses in the Dispute Settlement Understanding (DSU) regarding developing countries have proved to be ineffective. For example, Article 21.7 mandates that when a matter is raised by a developing country, the Dispute Settlement Body (DSB) is to consider what further action might be appropriate. However, this provision has not been used by any developing country for various reasons but particularly due to lack of expertise and resources.[14] Besides even though Article 22 calls for financial compensation to the complaining party by the country which has been found to be in violation of the rules, it has rarely been done.

Even if a developing country obtains a clear legal ruling that an industrial country has violated its legal obligations, the developing country has no effective way to enforce the ruling. The only enforcement sanction provided by the WTO dispute settlement procedure is trade retaliation—the imposition of discriminatory trade sanctions by the complaining country against the trade of the defendant country. And trade retaliation by smaller developing countries simply does not inflict

[14]The expertise required is in the fields of checking arguments, issues, and possibilities and comparing experiences and results; exploring new legal as well as economic arguments; and, domestically, building up an efficient and transparent liaison between the state and industry in order to obtain up-to-date information on trade problems in which developing countries have a stake.

any significant harm on larger industrial countries. In this regard, the proposal by Pauwelyn (2000) that "coupled with countermeasures, a broad scheme of compensation— additional market access offered by the losing party to WTO members—would provide genuine leverage to induce compliance, a move beneficial to all WTO members, and not just 'compensation' to the one or few that brought the case" should be seriously considered.

IV. SOUTH ASIAN PERSPECTIVE ON NAMA ISSUES

This section contains views of Bangladesh, Nepal, Pakistan, India, and Sri Lanka on various NAMA issues.

Bangladesh

Bangladesh desires deeper trade preferences enjoyed by the least developed countries, simplified rules of origin, and concessions in the coverage for tariff reductions. The July Framework incorporates a provision that developed and developing countries that are in a position to do so, should provide duty-free and quota-free access to all goods originating from LDCs within specified time framework. This is a weak provision and needs to be strengthened to make it binding. This would realise a commitment made in the Doha Ministerial Declaration to grant improved trade terms to the LDCs. Readymade garment (RMG) industry in Bangladesh, that has so far enjoyed preferential access in developed country markets, is not only important for the poor but has also created a social space for women in Bangladesh, and hence the industry must be sustained.

The proposal for accelerated elimination of tariffs on industrial goods may have a negative impact on Bangladesh exports of textiles and clothing, fish and fish products, and leather and leather goods. As these are labour intensive and female intensive products, they can be treated as "sensitive products" by the developed countries. When LDCs were provided GSP, these "sensitive products" were usually excluded and Bangladesh was allowed duty free and quota free access to export these products. Selective reduction in tariffs in labour intensive products would lead to lower erosion of LDCs' preferences.

India

India has outlined the following objectives for NAMA negotiations:

- Leverage autonomous tariff reduction to enhance market access in developed countries.
- Retaining some policy space for the domestic industry.
- Reduction of tariff peaks and escalation in developed countries.
- Obtain adequate flexibilities for developing countries to address developmental sensitivities.

- Classification, identification and reduction of non-tariff Barriers/eliminate non-tariff barriers.
- Application of the formulas on Sectors on a voluntary basis, after finalisation of formula.

India wants to gain greater market access to developed country markets not so much through reduction of their tariffs, which are already relatively low, but through the dismantling of non-tariff barriers (NTBs) to trade and a generalised system of preference (GSP), provided unilaterally by importing countries to a selected range of beneficiary countries on selected products and sectors. For example, the proposed EU GSP provisions relating to textile and clothing.

India also would like to resist sharp reduction in tariffs forced upon the developing countries by the developed ones. India would reduce tariffs autonomously at a pace it judges suitable for the Indian industries. India is of the view that any tariff reduction formula negotiated under the aegis of the WTO would have to be based only on bound rates and not applied rates. India is determined to counter any attempt to use applied rates as the base for application of a tariff reduction formula. However, India does not wish that autonomous tariff reduction exercise to be used against them.

India desires an equitable tariff reduction formula in the negotiations on non-agriculture market access in the WTO keeping in view the concerns and interest of the developing countries. The Swiss type tariff cut formula put forward by European Union for entailing reduction of high tariffs by very high percentage, is not supported by India. Instead, India endorses the suggestion put forward by US for using two different coefficients for tariff reduction—one for developed and one for the developing countries, but with a lot of fine-tuning. Domestic industry has urged the government to strongly counter the “simple Swiss” formula in the non-agricultural market access (NAMA) pillar of the ongoing World Trade Organisation (WTO) talks at the mini-ministerial meeting at Dalian in China.

India is also against the proposal of a mandatory “zero-for-zero” reduction on 7 specific products by 2015. These are in such sectors as automotives, textiles, gems and jewelry, leather products, electric and electronic products, which constitute bulk of India’s export basket and are also products reserved for the small scale sector. A “zero-for-zero” regime would spell their doom by granting unmitigated access to large foreign firms in the same market.

India has highlighted the need to link adoption of tariff reduction formula with concrete, time-bound progress on eliminating non-tariff barriers. Indian Small and marginal enterprises are looking at other developing countries for market access. They would benefit from the NAMA negotiations, if there were a uniform harmonised tariff all over the world. A modality to reduce the bound duties to a common level could also reduce transaction costs and other uncertainties related to complex tariff regimes.

Nepal

Nepal, as an LDC with low level of industrialisation, has a significant stake in the ongoing NAMA negotiations in the WTO. Though Nepal has bound 99.3 percent of its tariff lines during its accession to the WTO in 2004 and is not required to make any tariff reduction commitment, the outcome of the negotiations will have far reaching impact on Nepalese manufacturing sector in terms of loss of policy flexibility, export competitiveness and preference erosion.

Tariff escalation also hinders value addition and industrialisation in Nepal. The proposed non-linear line-by-line formula for tariff reduction is likely to address the problems of tariff escalation and tariff peaks. But LDCs like Nepal should be careful to ensure that the final formula has appropriate coefficients to ensure this. Even in cases where Nepal's exports have duty free access, non-tariff measures, both legal and illegal under the WTO, hinder the conversion of market access into market entry. Annex B of the July framework is weak on tackling NTBs as it only encouraged all participants to make notifications by 31 October 2004 and to precede with identification, examination, categorisation, and ultimately negotiations on NTBs. In this sense, negotiations on NTBs are yet to start in the WTO. Nepal and most other LDCs also face resource constraints to set up the human and institutional infrastructure to address legal NTBs like those permissible under the WTO Agreement on Sanitary and Phytosanitary Measures (SPS) and Agreement on Technical Barriers to Trade (TBT).

Nepal's objectives in NAMA negotiations are the following:

- Resist sectoral initiative and zero for zero approach.
- Ask developed and developing countries to expand market access for products of export interest to preference depending countries i.e., LDCs. Bilateral assistance could be one way of doing this.
- Ask the developed countries to use a corrections coefficient to improve the preference margins for the products that are enjoying preferential access. (suggested by The African group).
- Advocate for the establishment of a "Competitiveness Fund" with contribution from developed and advanced developing countries to enhance the supply side capabilities of LDCs and weak developing countries. (Suggested by Mauritius).
- Support other LDCs for low tariff bindings for LDCs.
- Ensure that the tariff reduction formula has appropriate coefficients to address the problems of tariff peaks and tariff escalation.
- Ensure that the tariff reduction formula results in improved market access in developing countries, including India.

- Demand effective Technical Assistance from developed and developing members to enhance institutional and human resources necessary to implement WTO agreements such as SPS and TBT.
- Lobby for temporary waiver on SPS and TBT requirements on non-agricultural exports from LDCs.
- Lobby for immediate and effective mechanism to address NTBs being faced by LDC non-agricultural exports.

Pakistan

As far as Pakistan's stance is concerned it believes that tariff peaks be removed, the tariff escalation minimised and the developing economies be provided free market access. In this regard it is useful to quote from statement of Pakistan in the NAMA meeting held on 4 October 2004.[15] Pakistan stated that whereas "there are hardly any tariffs on goods of exports interest of developed countries and tariffs only applied to goods of developing countries. The current ratio is 1:4, i.e. the goods of exports interest to developing country's tariff is 4 times higher than that of the developed countries. This is not only creating market access problems in developed countries markets but also for South-South trade". The statement called further for "reduction or as appropriate elimination of tariffs including tariff peaks, high tariffs and non-tariff barriers. Special consideration has to be given for products of exports interest to developing countries and there should be less than full reciprocity for developing countries".

The July Framework includes a formula approach for tariff reduction and for reduction or elimination of tariff peaks, tariff escalation and high tariffs. Whereas various proposals are being advocated by different countries, Pakistan is of the view that none of these seem to attract consensus. There is, therefore, a need to bridge the gap between the present proposals while at the same time ensuring that the objectives of the Doha Round are not compromised. With this in view, Pakistan has proposed the adoption of a simple Swiss Formula with two distinct coefficients for developed and developing countries. These coefficients should be based on an objective criterion i.e. taking the overall average of the bound tariff lines for developed and developing countries as their respective coefficients.

The treatment of unbound tariffs is an important issue in the market access negotiations. So far, five proposals have been tabled: (i) multiplying the MFN applied rate of 2001 by two; (ii) marking-up unbound lines by a factor to be negotiated, and binding tariff lines at an average level after the application of the formula (the ABI proposal); (iii) capping of new bound tariffs at a ceiling of 40 percent with target average of 25 percent and no tariff reductions in this round for

[15]Statement of Pakistan in the Meeting of NAMA held on October 4, 2004. Available at <http://www.wto-pakistan.org/statements/nama0410,htm.>

new tariff bindings (Malaysia); (iv) the "Rational Formula" approach of a non-linear mark-up derived through a mathematical formula using two coefficients (Mexico); and (v) non-linear mark-up adding 5 percentage points (absolute) to each unbound rate (the CHNN proposal by Canada, Hong Kong, China, New Zealand, and Norway).

Countries that have lower unbound tariffs view proposals (i) and (ii) as unduly favouring countries with higher unbound tariffs. Whereas the Malaysian proposal may suit many developing countries, it is viewed by many countries to be in conflict with the July Framework which requires that tariff reduction has to be comprehensive without 'a priori exclusion'. The Mexican proposal appears to address the concerns of countries with low unbound tariffs, but it is complicated and thus difficult to negotiate. The CHNN proposal for a mark-up of 5 percentage points in absolute terms may not be acceptable to a majority of developing countries as it seems to favour those countries which have low bound tariffs. Against this backdrop, Pakistan has proposed that instead of a non-linear mark-up of 5 percentage points in absolute terms (as in CHNN proposal), a mark-up of 30 percentage points should be added to the base rate (applied rate of 2001) for each unbound line before the application of the formula for tariff reduction.

Sri Lanka

Sri Lanka's negotiation position on NAMA puts emphasis on the fact the developed countries should eliminate barriers to free market conditions and ensure effective, duty free and quota free market access for non agricultural products originating from developing and least developed countries. As in many other developing countries, Sri Lanka also focuses on the same issues highlighted in the framework agreement such as the formula approach for tariff cuts, tariff bindings, sectoral approach and non-tariff barriers.

Sri Lanka's position supports a formula approach for tariff reduction, reduction or elimination of tariff peaks and tariff escalation and asks for more flexibility for developing countries in this regard. However, it has been critical of the proposed Girard formula; depending on the co-efficient adopted, tariff reduction could have adverse implications for the country's industrial sector.

For countries such as Sri Lanka where bound coverage is low but the applied rate is also low, the proposed tariff reduction formula penalises the country in terms of the extent of tariff reduction. In order to avoid such pitfalls, Sri Lanka spearheaded moves to include a paragraph (paragraph 6) in the framework text that allows a small number of developing countries not to undertake tariff reductions through the formula if their bound coverage is less than 35 percent. However, these countries will be required to bind their tariffs at the average of bound tariff rates for all developing countries.

While preference erosion is also an issue of concern to Sri Lanka, the general view is that it should not be addressed in isolation, in particular given that the core work of the WTO is on an MFN basis. Sri Lanka's concern is more on gaining access to markets through tariff reductions on an MFN basis rather than directly addressing issues of preference erosion. Sri Lanka is yet to make a clear stand on carrying forward negotiations on a sectoral basis given the complexities in arriving at common ground.

V. NEGOTIATING STRATEGY FOR MARKET ACCESS

Techniques and modalities that are adopted in industrial tariff negotiations have significant bearing on the outcome of negotiations. A variety of techniques and modalities evolved during the eight rounds of trade negotiations which took place under the auspices of GATT has been enumerated above. The South Asian countries have to adopt an approach that results in securing maximum reductions on products which they export. As regards their commitment to reduce the import duties, they may use product by product approach. Such products that relate to industries in which the country does not have the long run comparative advantage, they may agree on steep cuts while the other industries where long run comparative advantage exists but producers have become lethargic due to heavy protection, they may reduce the duties to ensure exposure to competition without jeopardising the industrial growth. With a view to ensuring the maximum advantage, following elements may be kept in view:

- The South Asian countries must adopt an approach that results in securing maximum reductions on products which they export. Preceding the industrial tariff negotiations it is necessary to agree on the ground rules that would be followed in the conduct of tariff negotiations. Such ground rules would need to ensure that different needs and objectives of the participating countries are adequately taken into account. In other words, ground rules must accommodate the special needs and interests of developing and the least developed countries' participants as ordained in Article XVIII and part IV of GATT;
- Developing countries determine the extent to which they are willing to liberalise their own economies to win tariff reductions and removal of other barriers with a view to having access to the markets of their trading partners;
- The developing countries may agree to reduce the bound rates and where they do not have comparative advantage to steep fall in tariff cuts both in bound and applied rates;
- The developing countries should ask for conversion of all specific tariffs into ad-valorem tariffs;
- The developing countries should strive to seek substantial reductions in peak MFN tariffs which apply to products of export interest to them e.g. textiles,

leather products, footwear, etc. and, if feasible, aim at elimination of all other MFN rates of tariffs and tariff escalations in sectors where they exist;

- The developing countries ought to seek due allowance for the autonomous liberalisation these countries may have undertaken. One way of ensuring credit for the autonomous liberalisation is to have greater flexibility in the choice of "base tariffs" to be used as a basis for tariff cuts as a result of the industrial tariff negotiations;
- The developing countries must seek flexibility in "staging" of tariff reductions. The ground rules for the negotiations should provide the developing countries longer period than that provided to developed countries for staging of tariff reductions; and
- The developing countries may press for international financing for training public officials, screening industrial countries' trade policies, and building a network with other developing countries with the aim of jointly presenting cases could help address some of these problems

VI. CONCLUSIONS

Since the South Asian countries are labour surplus, heavily dependent on the agriculture sector and have limited domestic markets, liberalisation efforts would go a long way towards realisation of their growth potential. However, they must watch out their interests rather carefully in view of the misuse of the safeguard measures, incorporation of environment and labour standards, and non-implementation of special provisions for developing and least developed countries.

While the South Asian countries must reduce the level of tariffs to expose their economic activities to international competition, they need market access; their products face many obstacles in entering the markets of rich countries. In addition to extremely high tariff and other protection measures, tariff escalation remains an important obstacle for developing countries to enter into the industrial exports. Rich countries need to do more to reduce trade distorting subsidies and dismantle their existing barriers on competitive exports from developing countries. Since most of the developing economies including the South Asian countries have been taking measures to liberalise trade unilaterally outside the WTO framework, they need to be given credit for the unilateral tariff reduction. The ground rules for the current tariff negotiations may allow the developing countries longer period than provided to developed countries either on overall basis or in respect of particular products.

In South Asia, only the bigger economies like India and Pakistan will be required to reduce tariffs under the formula approach. The smaller economies like Bangladesh and Nepal are exempted owing to their LDC status. Sri Lanka may also get an exemption in the event that the countries which have less than 35 percent of binding coverage are exempted from undertaking tariff reductions. Both India and

Pakistan should press for an implementation period of 10 years for tariff reductions and for a 4 year implementation period for developed countries. In the sectoral initiative, the South Asian countries should oppose zero for zero approach and ask for 10 year implementation period with back loading. The South Asian countries amongst themselves or with other developing economies may negotiate industrial tariffs on an MFN basis on trade between them. This would go a long way towards liberalisation of trade and improvement in their welfare levels. At the same time, they may take a joint stand relating to anti-dumping, environment, labour standards and other safeguard measures.

The reduction of industrial tariffs under NAMA is likely to have far-reaching effects on market access in products of export interest to South Asian countries. The South Asian countries have a strong interest in further liberalisation and tariff harmonisation approach because their principal concern is market access. Similarly, the tariff peaks, another major issue for exporters in developing countries, and a formula of tariff cuts that facilitates a degree of tariff harmonisation is necessary. It is also imperative for South Asian countries to strengthen their options to use support measures in the future, through the negotiation of greater flexibility for themselves. A level-playing field is necessary not only with respect to reducing the current bias of the trading system, but also one that addresses the structural disadvantages that developing countries face in the international trading environment. The South Asian countries may support proposals for a substantial reduction in applied tariffs using a harmonisation formula that would reduce tariff peaks. In addition any tariff reduction formula should incorporate a mechanism for reducing tariff escalation by linking tariff levels in primary commodities to those affecting their processed form.

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