

NAMA Negotiations in the WTO: Binding and Reduction of Tariffs

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With WTO talks on liberalizing trade in manufactured goods gathering pace, this paper provides specific suggestions on the negotiating positions developing countries can take to safeguard their prospects for industrial growth.

Introduction

Negotiations on non-agricultural market access (NAMA), centred mainly on the reduction of tariffs on industrial products, are going on at an accelerated pace at the WTO with the objective of finalizing the modalities for tariff reduction. Once the modalities are finalized, the rest of the exercise will be mainly arithmetical in order to ensure that the member countries calculate their commitments strictly in accordance with the agreed modalities. Thus, finalization of the modalities assumes primary importance.

Discussions in the meetings of the NAMA negotiating group in December 2004 and January 2005 indicate the initial positions of countries and their expectations. The major developed countries want the developing countries to undertake obligations for nearly 100% binding coverage and drastic reduction of their industrial tariffs. Strong psychological pressure has been built around the developing countries, projecting tariff reduction as the

general norm and any caution about it as an aberration. It is necessary for the developing countries not to be rushed into commitments without properly assessing their interests as well as their rights and obligations.

There are two basic premises relevant to this exercise. Firstly, the existing levels of bound tariffs and total flexibility in unbound tariffs are part of the current rights of the countries in the GATT/WTO system. Secondly, the present framework for the tariff negotiations provides wide flexibility and options for the developing countries in respect of the stand they choose to take in these negotiations. These points need some elaboration.

Tariffs: A part of current rights

A large number of the developing countries have comparatively high levels of industrial tariffs at present, but they do not have to be apologetic about it. Whatever the current tariff structure of different countries in the GATT/WTO system, it is the re-

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sult of a series of multilateral trade negotiations held so far. The current tariff structure constitutes the present rights and obligations of the countries.

If a country has low tariffs at present, it is presumed that it has reduced its tariffs over a course of time in consideration of some commensurate benefit. On the other hand, if some countries have high tariffs at present, presumably it is due to the fact that they did not have the opportunity of getting benefits attractive enough for them to reduce their tariffs.

The current levels of their tariffs, high or low, are a part of their existing rights under the WTO. There is absolutely no reason for them to have any guilt about it. Of course, as is natural in any international negotiations, they may agree to give up some of their rights and reduce their tariffs in the current negotiations if they get adequate concessions from others in return.

It may be argued that the developing countries did not have to reduce their tariffs in the past negotiations in a significant way in recognition of the special and differential treatment extended to them, and therefore now it is expected that they should reduce their tariffs in return for the past benefits. But this is not a correct argument, as in reality the developed countries, while reducing tariffs on the products of mutual interest among themselves, still retain high tariffs (compared to their average tariff) on the products of interest to the developing countries. Hence the developing countries should not be expected to pay for a non-existent benefit of the past.

Further, tariff negotiations are not about compensation for past gains or losses; they are future-oriented and are based on the perception of future gains and opportunities.

It will be rational for the developing countries to decide on their course in the tariff negotiations on the basis of their perception of future gains, rather than be driven by the artificially generated rush in the current negotiations for drastic tariff reduction.

Flexibility in current framework

The current framework of tariff negotiations, as contained in the Doha Declaration and Annex B to the General Council Decision of 31 July 2004, allows the developing countries enough options in this area. Paragraph 1 of Annex B, and the history of its inclusion in the main body of this annex, has kept the issues of coverage of binding and method of tariff reduction very much open.

Specific stipulations on these subjects in subsequent paragraphs of Annex B cannot be taken to be agreed positions at present, in view of the general stipulation given in paragraph 1 that "additional negotiations are required to reach agreement" in these areas. Thus, the extent of binding coverage (whether 100% or lower) and the method of tariff reduction (for example, whether there should be a formula for line-by-line tariff reduction or whether there should be only a specified reduction of average tariff, or, if a formula is to be adopted, whether it should be linear or non-linear, etc.) are all very much open at this stage. The developing countries should not consider themselves bound at present by any of these methods.

Keeping these two parameters in view, the options in the areas of binding coverage and tariff reduction are discussed below.

Coverage of binding

There is pressure on the developing countries to have 100% coverage of tariff lines by commitment of binding. At present, many developing countries have a number of tariff lines with unbound tariffs. As indicated above, their unbound tariffs constitute a part of their current rights in the WTO.

The framework as contained in paragraph 16 of the Doha Declaration, while stipulating reduction/elimination of tariffs, says that "the product coverage should be comprehensive, without any a priori exclusions." Further, although paragraph 5 of Annex B includes some suggestions for treatment of unbound tariff lines, it is not a final position, as it is subject to paragraph 1 of Annex B which requires "additional negotiations ... to reach agreement on the specifics", as mentioned above.

It would thus appear that the current framework

does not ask for a total and complete binding coverage, because if it were indeed the intention, it would have been clearly spelt out in an agreed form. All the Doha Declaration asks for is "comprehensive" coverage. Hence the insistence of some countries on 100% binding coverage by the developing countries is not warranted by the current framework of negotiations.

The main consideration while deciding on extending the coverage of binding or deciding on the level of binding should be its impact on industrialization. A low level of bound tariff in an industrial sector may discourage growth of domestic production in that sector. Thus commitments on the binding of tariffs should be conditioned by future needs and prospects for the development of domestic production in particular sectors. It is important to keep in mind that commitments of binding, once undertaken in the WTO, cannot normally be made lighter in future. Hence what is involved in the negotiations on coverage of binding is the future domestic industrial growth of a country. As such, it requires serious consideration and product-by-product examination by the individual developing countries.

If the developing countries decide to agree to a certain percentage of binding coverage, the method given below appears preferable.

(i) The agreement should be only on the average of the bound tariff in the tariff lines which will now be covered by binding, leaving the option open for an individual developing country to choose tariff levels in these individual tariff lines so as to reach the stipulated average. To illustrate, if the agreement is for having 75% binding coverage while the current binding coverage of a country is 50%, the agreement should stipulate only the average of the bound tariffs for the 25% of tariff lines now to be covered by the binding. The country should have the option to 'spread' this average over the individual tariff lines in this range of newly bound tariff lines.

(ii) The average of the proposed new bound levels should not be determined as a multiple of the average of currently applied tariffs on these products; it should instead be determined as a multiple of

the average of the currently bound tariff levels. For example, it may be stipulated that the average of the newly bound tariffs will be twice the average of the currently bound tariffs. It is rational to keep the former higher than the latter, as the former is going to be a new commitment and it will be a new exercise in tariffs for the developing countries.

Further, as binding even a limited number of unbound tariff lines amounts to giving up current rights, such commitment should be undertaken by the developing countries only if there are adequate concessions in return made by the prospective beneficiary countries, either on industrial tariffs or in other relevant areas. Just because the developed countries have bound their tariffs earlier and some developing countries have also done so in the past (either due to the pressures of international financial institutions or for some perceived benefits), the developing countries that have still got unbound tariffs need not rush to give up their right of unbound tariffs without getting commensurate benefits in return.

Process of tariff reduction

There is pressure on the developing countries to apply some form of "non-linear" formula for line-by-line tariff reduction which may result in the drastic reduction of tariffs in individual tariff lines. The basic question to be asked is why there should be a non-linear formula or any formula for line-by-line tariff cut at all. Paragraph 5 of Annex B does stipulate it, but as mentioned earlier, it is circumscribed by paragraph 1 which requires "additional negotiations ... to reach agreement" on these matters. Hence Annex B does not settle this issue. The Doha Declaration has simply called for reduction/elimination of tariffs "by modalities to be agreed". Thus, the method of tariff reduction is very much an open issue which has yet to be settled in the ongoing negotiations. It should not be taken for granted that only a non-linear formula, applied line by line, is to be followed both by the developed countries and the developing countries.

At the outset, the Doha Declaration lays a sound foundation for differential treatment of the developed countries and the developing countries. It calls

for reduction/elimination of tariffs, "in particular on products of export interest to developing countries", and stipulates that "the special needs and interests of developing and least-developed country participants" shall be taken fully into account. Effective reduction of tariffs has to take into account the differential tariff structures in the developed countries and the developing countries.

In the developed countries, the average tariff is relatively low, but tariffs on the products of export interest to the developing countries are relatively very high. As the developed countries do not really need the revenue from tariffs, the main objective of these high tariffs appears to be to protect their domestic industry. On the other hand, the tariffs in the developing countries, particularly the bound levels, are comparatively high. This tariff structure serves the triple purpose of raising government revenue, rationing scarce foreign exchange over the range of imports, and encouraging domestic industrialization. Some developing countries have had to reduce their tariffs to low levels to fulfil the conditions for obtaining structural adjustment loans from international financial institutions. But many of the developing countries have high levels of bound tariffs and a number of unbound tariff lines, as mentioned earlier.

With this differential in tariff structure between the developed countries and a large number of the developing countries, it is rational to have different modalities for tariff reduction for them. With the average tariff in the developed countries already low, access to their markets will not be enhanced by much if they reduce their average tariffs by a certain percentage. It is their existing high tariffs, line by line, which are mainly on the products of interest to the developing countries, which have to come down to achieve this objective. On the other hand, there will be significant addition to the market access in the developing countries if their currently high average tariffs are brought down.

On this basis, there is considerable rationale in targeting line-by-line reduction in the developed countries and targeting the reduction of the average tariff in the developing countries.

In any case, in the context of the wide difference

in the tariff structures of the developed countries and developing countries, application of the same or similar formula for both is not appropriate.

For reduction of the high individual tariffs in the developed countries, one of the three alternatives given below may be effective:

(i) There should be a numerical ceiling on the developed countries' tariff levels.

(ii) Their highest tariff should be less than a specified multiple of their current average tariff (for example, double the current average).

(iii) They may follow a non-linear formula, line by line, for example, the simple Swiss formula or its simple variation, with a low coefficient. (It may be noted that the highest resulting tariff through the Swiss formula will always be less than the coefficient chosen; thus, the coefficient acts as the tariff ceiling.)

For the developing countries, there is a need for adequate flexibility over time in their tariff structure to cater to their dynamic development needs. Flexibility will be lost if there is a formula for line-by-line tariff reduction, whether linear or non-linear. The objective of significant enhancement in market access in the developing countries will be achieved even if there is a commitment on reduction of the average tariff, since it is comparatively high at present. This approach will result in two-fold benefits. The exporting countries will get enhanced market access, while the developing importing country will have the flexibility of spreading this average tariff over the range of bound tariff lines in accordance with its development needs.

On the other hand, if the developing countries accept a linear or, worse still, a non-linear formula for line-by-line tariff reduction, they will be losing a lot of flexibility. There is hardly any reason for them to do so.

The developing countries should only agree to a cut in the average tariff. The cut could be achieved by applying a linear formula. This will reduce the average tariff by a certain percentage. The countries with high average tariff will be reducing to a

larger extent as the percentage in their case will be calculated on a higher base. The developing countries will then be free to spread the average over their individual tariff lines. At the most, the developing countries could go for a non-linear formula of the Swiss type with a high coefficient for the reduction of their average bound tariff. An obligation on line-by-line reduction, whether through a linear or a non-linear formula, will be dangerous.

And there is no reason for the developing countries to be pressurized into undertaking such an obligation for line-by-line reduction. As mentioned above, the current framework does not make it compulsory. Moreover, as also mentioned above, their present tariff levels and structure are a part of their current rights in the WTO. It is not rational to expect them to give up this right when such a move will foreclose their flexibility and options for their industrial development.

There may however be a feeling in some quarters that the developed countries will make significant tariff concessions only if the developing countries are ready to undertake a commitment of line-by-line tariff reduction. If some developing countries share this view and are of the opinion that a line-by-line commitment by them in some form is necessary to get significant concessions from the developed countries in the sectors of their own specific interest, they may consider undertaking some additional obligations over and above the general obligation of reducing the average by a certain percentage, as explained below.

These developing countries may adopt a mix of two steps: (i) reduce their average tariff by a specified percentage, as may be done by the developing countries in general; and (ii) choose tariff levels in some tariff lines (to reach this average) on the basis of the tariff reduction of the developed countries in sectors of critical importance to them. The second step may involve some bilateral negotiations between the interested developing countries and developed countries.

This mixed approach can have a double advantage. It will give them the flexibility to choose levels of tariffs in different tariff lines according to their dynamic priorities. At the same time, it can

influence tariff reduction in the developed countries in areas of critical interest to the developing countries. This approach will also be of interest to the developed countries as it will give them the opportunity to negotiate tariff reduction on some products of critical importance to them.

In addition, some developing countries, if they so choose, may make further reduction of tariffs in some sectors in return for special tariff reduction by the developed countries in areas of vital interest to these developing countries. This will also involve some bilateral negotiations between the interested developing countries and developed countries.

Of course, all these reduced tariff levels, both in the developed countries and in the developing countries, will be applicable to all members of the WTO in accordance with the most-favoured-nation (MFN) principle.

Non-tariff barriers

The concessions obtained by the developing countries will remain unutilized if the problem of non-tariff barriers (NTBs) is not resolved. It is already an important subject of negotiation, but it does not seem to get proper attention. It is necessary to have a proper institutional arrangement for efficient negotiations on NTBs.

A mechanism will need to be established to ensure parallelism in tackling NTBs and tariff reduction. The NAMA negotiating group should engage itself in this exercise. The best option is to have negotiations on NTBs conducted in this group. If, however, it is considered more convenient and efficient to handle different types of NTBs in different WTO bodies, the central control and monitoring of progress should still be in the hands of the NAMA group. These WTO bodies should meet in special sessions to handle the negotiations on NTBs, as is the case in many other bodies handling the current negotiations, e.g., special sessions of the Agriculture Committee, Council for Trade in Services, etc. Reports of the results of the negotiations should be made available to the NAMA group in each of its sessions. There should be a standing agenda item for this purpose. A decision

may be taken in the WTO General Council to consider these items in the special sessions of these bodies.

Ensuring balanced benefits

Whatever concessions made by the developing countries in the area of industrial tariffs must be more than matched by the developed countries, keeping in view the principle of "less than full reciprocity".

Considering the current tariff structure in the developed countries, it is unlikely that mere reduction of their tariffs will give adequate benefit to the developing countries commensurate with the concessions which the developing countries are likely to make in the area of tariffs. Hence the developing countries, apart from asking for tariff reduction in the developed countries in sectors of critical importance and for the easing of NTBs, should also be guided in this regard by the benefits they get in other areas of negotiations, e.g., agriculture, SPS, TBT, services, rules, etc. It is important for the developing countries not to close off their options in the area of industrial tariffs before they know with certainty what they are getting in other areas of interest to them.

Keeping this need for balance in view, it will not be prudent to finalize the modalities for industrial tariffs ahead of the finalization of results in other relevant negotiating areas, as it is the modalities which constitute the real and substantial part of the negotiations in the area of industrial tariffs. Once the modalities in this area are finalized, it will be almost impossible to ensure balance with respect to the results in the other areas. And as the WTO agreements are already imbalanced from the perspective of the developing countries, finalizing the modalities on industrial tariffs ahead of the results in other areas may further enhance the imbalance against the interests of the developing countries.

Inter-developing-country interests: GSTP route

Some developing countries have expressed interest and concern during the negotiations regarding

market access in other developing countries. It has been argued that the developing countries should lower their tariffs in order to improve the market access of the goods of other developing countries.

Expansion of market access among the developing countries is indeed important, but the NAMA tariff negotiations in the WTO are not an appropriate forum for this purpose. A more appropriate route to achieve this objective is through mutual tariff concessions among the developing countries in the framework of the Global System of Trade Preferences Among Developing Countries (GSTP) that is serviced by the United Nations Conference on Trade and Development (UNCTAD). The special benefit of the GSTP route is that the tariff concessions made by the developing countries within this framework are only extended to other developing countries and not to the developed countries. This has several advantages for the developing countries compared to the reduction of tariffs in the NAMA exercise.

Firstly, since the benefit is extended only to the developing countries, their exporters get special advantage over those of the developed countries who do not receive this benefit. The exporters of the developing countries will face less competition to that extent. Secondly, the producers in the importing developing countries are less exposed to the risk of competition from imports, as the imports from the developed countries will not get this benefit. Thirdly, the importing developing countries will face less tariff loss for the same reason. Fourthly, there may be an incidental, but important, benefit in as much as it may encourage investment in the developing countries, since the production in these countries will have enhanced market access in other developing countries.

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