

WTO NAMA NEGOTIATIONS
DRAFT MODALITIES
CHAIR'S TEXT OF 17 JULY 2007
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BUSINESS RESPONSE

South African business welcomes the presentation of the draft modalities paper by the Chair of the Negotiating Group on Market Access on 17 July 2007 as it provides a focus for the ongoing discussions. On critical issues however the draft modalities paper is problematic in that it does not correctly reflect the positions of major developing countries. The following are some comments on specific aspects of the draft modalities proposed.

The Formula

While it has been widely accepted that a simple Swiss formula with two coefficients should be used, there is still disagreement on the coefficients themselves. As a starting position, South African business is of the opinion that we should concentrate on the level of the coefficient for developing countries rather than the spread between the coefficients. As previously pointed out in the NAMA Task Team consultations, it would not be in our interest to negotiate for a lower coefficient for developed countries as this would increase the extent of preference erosion that we will suffer as we have preferential market access into most developed countries (FTA, GSP and AGOA). A coefficient of 19-23 for developing country Members is not acceptable. We should insist on a coefficient of 30-35 for developing country Members. This would provide a greater level of support for the concept of ensuring that different levels of development are recognised in the negotiations and in our view would be more in line with the level of ambition in the agriculture negotiations that is currently reflected by the developed country Members.

Elements Regarding the Formula

South African business can support the general concepts set out in this part of the modalities, including the proposed implementation period of 9 years for developing countries in general. This is subject to a proposed exception for members of the Southern African Customs Union (SACU) set out below.

Flexibilities for Developing Members

Paragraph 7 (page 11) in the Chair's text is extremely important for developing countries for a number of reasons. First, it provides the necessary policy space to protect sensitive and labour intensive industries. Second, it would enable the governments of developing countries to ensure that the NAMA commitments taken in the WTO do not have such a negative impact on

key industrial sectors that have been identified as engines for industrial development and economic growth. Third, it provides a level of balance with the agricultural negotiations where some developed countries are seeking to protect sensitive products in the market access negotiations.

However, South African business would like to see both components of paragraph 7(a) able to be used by developing countries instead of either (i) or (ii). A higher level of flexibility should also be granted in both (i) and (ii) in order to allow for a total number of sensitive products to be designated that is between 20 and 25%. This would be more in line with the proposal in agriculture where developed countries will have the right to designate between 4-8% of dutiable tariff lines as sensitive and developing countries up to one-third as sensitive.

Flexibilities for Developing Members with Low Binding Coverage

It is worth noting that this exception applies to a number of the other more advanced African countries, including Ghana, Kenya, Mauritius, Nigeria and Zimbabwe. As a result, SACU will be one of the only regions in Africa that is required to fully apply the formula and rely on the paragraph 7 flexibilities.

Sectoral Negotiations

South African business welcomes the recognition by the Chair that the "sectoral negotiations will remain Member-driven, a supplementary (and subsequent) modality to the formula and non-mandatory in respect of participation" (paragraph 31 of the Introduction, page 6).

Small, Vulnerable Economies

The definition of a small, vulnerable economy (SVE) has been agreed as an economy that has a share of less than 0.1% of world NAMA trade for the reference period of 1999 to 2001 (refer TN/MA/S/18). The non LDC countries in Africa that are defined as SVEs include Botswana, Cameroon, Gabon, Ghana, Kenya, Mauritius, Namibia, Swaziland and Zimbabwe. Three of these countries belong to the Southern African Customs Union (SACU) and will therefore be unable to take advantage of the special flexibilities put in place for SVEs if South Africa is required to apply the formula.

Recently Acceded Members (RAMs)

South African business supports the concept set out in paragraph 40 of the Chair's Introduction (page 7) that there be a differentiated response to the RAMs on the basis of their circumstances. As noted, this could take into account the depth of their market access commitments, the length of time since their accession and the implementation of their accession commitments, the strength of their economies and the extent to which they have benefited from NAMA trade. Of some concern to business is the fact that China and

Chinese Taipei (Taiwan) qualify for the 2-year grace period afforded RAMs. These two countries are highly industrialised and it would seem unfair if they receive this concession, but the legitimate request of SACU for some reprieve (see discussion later in document) in terms of the coefficient is turned down.

Non-reciprocal Preferences

It is not clear what the basis is for the inclusion of fish tariff lines of Chapters 3 and 16 in the EU list. In view of the problems with the EU EPA fish offer to South Africa, this would not be in our interest to support.

Special Flexibility for SACU

It is proposed that at the heart of the South African response to the Chair's draft modalities should be the argument in favour of special flexibilities for SACU. The Chair first leaves open this possibility in paragraph 11 of the Introduction (pages 2-3). Here he says: "For some individual Members, however, there may remain a compelling case for further adapting the modalities based on a disproportionate impact under the general rule. I would strongly recommend to Ministers that they listen carefully to specific arguments and address them through appropriate and specific measures, rather than by adjusting the general rules in the direction of the lowest common denominator". In paragraph 24 (page 5), the Chair specifically notes the proposal by South Africa but does not draw a conclusion. He argues that "an exception based on regional tariff arrangements would establish a very difficult precedent in multilateral trade negotiations" and that any exception for South Africa should be given on the basis of "disproportionate impact of the modalities".

In the view of South African business there are a number of arguments in favour of a special adaptation of the modalities for SACU:

- 1 In the Uruguay Round of negotiations South Africa was treated as a developed country and therefore took on much greater commitments than many other developing countries.
- 2 The majority of the members of SACU are entitled to special flexibilities under the NAMA modalities either as SVE in the case of Botswana, Namibia and Swaziland or as a LDC in the case of Lesotho. If South Africa is required to apply the formula then it will not be possible for the different levels of development of the other members of SACU to be taken into account due to the application of a common external tariff.
- 3 With regards to the argument that this would set an unhelpful precedent, paragraph 4 of the proposed modalities clearly guards against such a possibility by stating that they do not create a precedent for future negotiations.
- 4 The draft modalities already make a special exception for Fiji.

- 5 SACU is the only customs union in the world where there is unique membership of an advanced developing country plus an LDC plus three SVEs. The East African Community (EAC) may be argued to be similar with Kenya the dominant member and the others all LDCs. However in the context of the NAMA negotiations Kenya is entitled to additional flexibilities under both the provisions for SVEs and those for developing Members with low binding coverage.
- 6 If South Africa is required to apply the formula with the limited flexibilities set out in paragraph 7 then there will be an undue burden placed on the other members of SACU. This would go directly against the spirit of the Doha Development Agenda.

It is suggested that the time may be right for SACU to make a specific proposal on flexibilities for the region to the negotiating group. As a starting point, SACU could seek to have a higher level of flexibility under paragraph 7. This could also be accompanied by a longer implementation period under paragraph 6(f). South African business would welcome the opportunity to participate in the negotiation of a SACU approach and would also be willing to engage with its private sector counterparts in other SACU countries on this issue.