

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS
TREATMENT OF NON-RECIPROCAL PREFERENCES FOR AFRICA**

The following communication, dated 17 February 2005, is being circulated at the request of the Delegation of Rwanda on behalf of the African Group.

I. INTRODUCTION

1. Trade preferences play a crucial role in Africa's development. Paragraph 16 of Annex B recognizes that challenges may be faced by non-reciprocal preference receiving Member countries as a result of NAMA negotiations. This paper points to the rationale for these preferences and proposes some preliminary ideas for the treatment of non-reciprocal preferences in these negotiations, taking into account the developmental needs of some African economies.
2. The paper also addresses those NTBs that are linked to preferences. NTBs are an integral part of the NAMA negotiations as indicated in paragraph 14 of Annex B.

II. BACKGROUND

3. Non-reciprocal preferences under the GATT have been cemented by the principle of special and differential treatment, (S&D) for developing countries and LDCs, which has evolved over time, and remains an important part of the WTO legal framework. S&D in preferential tariff margins, has been realised by the principle of less than full reciprocity in Part IV of GATT, the Enabling Clause, exceptional circumstances which warrant a waiver of the MFN Principle of GATT Article 1.1, and other relevant circumstances in tariff negotiations, including fiscal, developmental and strategic.
4. Most African countries depend on non-reciprocal preferences for a large share of their exports. Any further liberalisation must take into account this commercial reality to avoid further marginalization of some African countries which need to progressively adapt their weak industrial base.
5. In the NAMA modalities, reductions in MFN rates will reduce the preferential margin with negative effects on trade flows in some African countries. These countries rely on non-reciprocal preferences as a development tool and they will be faced with increased competition in their traditional export markets. Consequently, resulting adjustment costs will disrupt the sequencing necessary for the growth and industrialisation process. Due to the loss of preferential tariff margins, African economies will need the support of the multi-lateral trading system to meet their trade and development needs, as encompassed in the Doha Development

Agenda. The crux of our expectations has been previously articulated by a group of African countries in the submission TN/MA/W/27.

III. DOHA DEVELOPMENT AGENDA

6. Development concerns form an integral part of the Doha Work Programme and the Doha Ministerial Declaration. In paragraph 2 of the Doha Declaration, Ministers placed the needs of developing countries and LDCs at the heart of the Doha work programme and agreed to make positive efforts to ensure that these countries ‘...secure a share in the growth of world trade commensurate with the needs of their economic development’.
7. In paragraph 16 of the Doha Declaration, Ministers agreed that NAMA negotiations shall take fully into account the special needs and interests of developing countries and LDCs, including through less than full reciprocity in reduction commitments. Furthermore, paragraph 16 of the Doha Declaration incorporates paragraph 50 of the same Declaration whereby, Ministers further linked NAMA negotiations to Part IV of the GATT 1994 and the Enabling Clause.
8. In the Doha Work Programme paragraph 1 (d), under “Other Development Issues” and paragraphs 1 and 16 of Annex B, Members agreed to consider the issue of preferences in the NAMA negotiations, recognizing the challenges faced by non-reciprocal preference beneficiary Members. Additionally, in paragraph 3 of Annex B, Members further incorporated paragraph 16 of the Doha Declaration into the NAMA framework for establishing modalities.
9. Negotiations on NTBs are an integral part of the NAMA negotiations as indicated in paragraph 14 of Annex B. In Paragraph 2(b) of the Enabling Clause, Members agreed to permit differential and more favourable treatment with respect to the provisions of the General Agreement pertaining to non-tariff measures. African countries expect that in the NTB negotiations, the principle of S&D treatment for developing countries and LDCs will fulfil the objective of paragraph 16 of the Doha Declaration.

IV. RATIONALE FOR THIS PROPOSAL

(i) DEVELOPMENT NEEDS

10. In Article XXXVI:8 of GATT 1994, it was agreed that Members from developed countries “do not expect reciprocity” in trade negotiations from less-developed contracting parties. The interpretative note on article XXXVI:8 clarifies that “less-developed Members should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their *individual* development, financial and trade needs, taking into account past trade developments”.
11. On industrialization, Members recognized the need for increased and favourable market access for processed and manufactured goods of particular export interest to developing countries and LDCs, as indicated in article XXXVI:5 of GATT.
12. On tariff reduction, GATT article XXVIII *bis* affirms that tariff negotiations shall accord adequate opportunity to take into account the concerns of individual countries and sectors and “...all other relevant circumstances, including fiscal, developmental, strategic and other needs of the contracting parties concerned”.¹

¹ The interpretive note on article XXXVI:8 of GATT states that non- reciprocity will apply in the event of action in article XXVIII *bis*, among others.

13. The Appellate Body has interpreted the Enabling Clause to allow for differential and more favourable treatment to some developing countries, without according such treatment to others.² Additionally, the principle of non-reciprocity is also reiterated in the Enabling Clause.

(ii) EXCEPTIONAL CIRCUMSTANCES

14. In exceptional circumstances, a waiver from paragraph 1 of article 1 of the General Agreement on Tariffs and Trade has been sought to permit some developing countries and LDCs to obtain preferential access to markets of developed countries. The ACP-EU Agreement is one such example.

V. BENEFITS OF PREFERENCES

15. Preferential trade overcomes the inherent disadvantages of some African countries, and in particular weak and vulnerable economies that have not been effectively involved in previous rounds of negotiations. The inequality of economic factors and levels of development means that these countries cannot participate in reciprocal trade without devastating their economic structures. Many of these countries are reliant on specific industries and have economies that are sensitive to tariff fluctuations.
16. Non-reciprocal preferences have generally been beneficial to preference-receiving developing countries and LDCs. Preferential market access increases export earnings, promotes industrialization and accelerates rates of economic growth. Preferences are credible instruments of development that help beneficiaries strengthen their industries, to face competition in the long term.
17. Even though preferences are covered by a narrow range of tariff lines, they have made a positive impact on the countries that have exploited them. Under the right conditions and flexibilities, preferences have contributed significant economic gains for weak and vulnerable economies. For instance AGOA provides a number of products with duty free access to the US market for about 37 Sub-Saharan African countries. AGOA has boosted clothing and textile exports from Africa, by attracting investment, creating employment and promoting diversification opportunities through the establishment of clothing and textile industries. This preferential initiative has also triggered upstream processing activities with enormous impact on poverty alleviation efforts. Additionally, to the EU market, African countries have benefited from preferential exports of fish and fish products, chemicals, paper and leather products among other products.
18. The phasing out of import quotas in the clothing and textile sector is a concern for preference receiving countries. These countries will be seriously challenged by the intensified competition resulting from the post ATC environment. Non-reciprocal preferences will enable weak and vulnerable countries to offset these competitive disadvantages in the medium term.
19. Due to the devastating decline in the terms of trade for agricultural commodities, preferential treatment of a range of manufactured goods originating from developing countries and LDCs has been valuable. These preference receiving goods have contributed to economic gains and industrial diversification. The rapid expansion of the economies of some African countries will therefore be facilitated by the continued use of preferences and the reduced dependence on the export of primary products.

² See Appellate Body Report WT/DS246/AB/R.

20. African economies need to develop strong industrial sectors. To accomplish this, they need more industrial output, employment and markets for their exports. Preferences can and must continue to spur development in Africa. In fact, based on the analysis of *Iancovicina et.al. (2002)*, it is estimated that “(i) if 37 sub-Saharan African countries were to receive unrestricted preferential access to the markets of the Quad countries (EU, US, Japan, Canada), their welfare would increase by about \$1.7 billion; and (ii) a 25 percent MFN tariff liberalization by the Quad countries will erode the preference margin received by these countries and reduce their welfare by about \$0.5 billion or about 30 percent”.³

VI. PROPOSED TREATMENT OF PREFERENCES IN THE NEGOTIATIONS

21. The treatment of non-reciprocal preferences in the non-agricultural tariff reductions should create opportunities to promote the trade and economic development needs of some African countries and not further deepen the crisis of de-industrialisation or accentuate the unemployment and poverty. Due to the critical importance of preferences for these weak and vulnerable economies, suitable treatment of products from African countries, currently enjoying non-reciprocal preferential access should be considered in the NAMA negotiations. The African group proposes the application of a correction co-efficient to an approach that will be agreed by Members, to improve the preference margins for these products. Longer staging periods would be required for this option. For products which are not zero rated, preference-giving countries would use the same rates of reduction points to ensure the non-reciprocal margin of preference is maintained.⁴
22. In view of Africa's low levels of industrialisation, sectoral initiatives will hinder development of industrial sectors in Africa.
23. NTBS in developed country markets have impacted on the effectiveness and usefulness of preferences for developing countries and LDCs. Some of the NTBs which have reduced the utilisation rate of preferences include rules of origin, SPS and TBT measures. In accordance with article 2(b) of the Enabling Clause, the preference giving Members should improve the conditions attached to the preferential schemes, including non-trade concerns and non-tariff barriers.

VII. CONCLUSION

24. Non-reciprocal preference receiving African countries need more time to adjust themselves and rectify their structural imbalances. These preferences can provide the policy space needed to undertake gradual national industrial objectives and commitments which are consistent with development goals of some African countries. Therefore, liberalization of products enjoying preferential market access should be given special treatment in the current negotiations. African countries are additionally concerned about NTBs imposed by the preference-giving countries and hope that in alignment with Paragraph 16 of Doha Ministerial Declaration, these NTBs will be reduced or eliminated, in order to meet the development objectives of these negotiations.

³ Iancovicina, Elena, Aaditya Mattoo and Marcelo Olarreaga 2002, “Unrestricted Market Access for Sub-Saharan Africa: How much is it worth and who pays?” *Journal of African Economies*, vol. 10, no. 4, 410-432

⁴ See definition in supplementary notes to Article 1 paragraph 4 of GATT 1994.

25. This paper has addressed non-reciprocal preferences. In accordance with paragraph 1 of Annex B, the African Group reserves the right to make further submissions on the specifics of preferences.
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