

State of Play: Critical WTO negotiations go underground

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Even as the talks for the Doha Round negotiations escalate to their most critical point, and there is a flurry of activity in Geneva with more frequent “negotiating weeks” in agriculture, NAMA and services, many have the distinct feel that the real negotiations are taking place outside Geneva amongst six to eight members..

AGRICULTURE

The agriculture negotiations typify this characterization. According to delegates, during the agriculture week of mid-February, the formal and informal plenary sessions in the WTO were very brief. As one delegate put it,

“The process is moving out of Geneva. This week, it is London [referring to the upcoming Ministerial meeting between the G6 - i.e. US, EU, Brazil, India, Australia and Japan to be convened on 10-11 March.] Last week, it was in Paris [G6 senior officials meeting on agriculture which ran from Feb 27 - March 1]. A lot of these meetings are going on. The “bottom-up” approach is no longer being followed. The Chair [of agriculture] waits for these meetings, and feeds them back to the plenary supposedly for our input, but the sense we get is that he is simply reporting back. There are now so many variations of the small groups. There is the G10 [ten countries involved in the NAMA and agriculture tariff reduction simulations - US, EU, Australia, Canada, Japan, Norway, Brazil, India, Egypt and Malaysia], the G6, the FIPS [five interested parties] and the FIPS plus.”

Even the Geneva process of negotiations has become more exclusive. During the agriculture week, three “Room F” meetings were held, amongst only about 24 delegations. These were on market access (treatment on sensitive products, and the basis for the expansion of tariff rate quotas); domestic support (discussion on the green box, product specific AMS, blue box and the base period for product specific AMS); and export competition.

In the plenary session, Sri Lanka made the point that the process last year under Tim Groser had been more inclusive: The plenary session would be followed by “Room D” discussions where all delegations could be present, and only after Room D discussions would more focused discussions take place in Room F amongst a smaller number. The negotiations now have moved directly from the plenary to only a selected number in Room F.

PROCESS FROM NOW UNTIL APRIL

The Chair, New Zealand's Ambassador, Falconer will be preparing some reference papers this week. These reference papers will be the building blocks for the agriculture modalities. The reference papers due before the next agriculture week (starting 20 March) will include i) green box ii) special safeguard mechanism (SSM), iii) sensitive products and iv) food aid. The one on sensitive products will provide options since there is as yet no agreement- the G10 is asking for 15% of products to be categorized as sensitive, the EU wants 8% and the US is prepared to concede only 1%.

Outstanding issues - key issues for developing countries

Apart from the main issue of the tariff cuts, which will be the focus of discussions at the mini ministerials, there are still many outstanding areas and, unfortunately, these are all the issues of most importance to developing countries: Special products; commodities; tropical products; preferences and the entire special and differential treatment component of all three pillars. [The "three pillars" are market access, domestic supports and export subsidies.] The green box [so-called non-market distorting subsidies] is also unsettled. The US and EU have been quite explicit that the green box must remain intact, and the Canadians and the G20 are pushing for tighter green box disciplines since this is where the bulk of US and EU subsidies are being classified.

However, the real negotiations will be in the mini-ministerials. The simulations on tariff reductions by the G10 should now already be completed and will be the topic of discussion amongst the G6 ministers in London.

NAMA

The current Chair of the NAMA negotiations, Canadian Ambassador Donald Stephenson, has indicated that he will be focusing on the following issues in the hope that these will be resolved by end April:

- Coefficients for the Swiss tariff cutting formula, as well as the number of coefficients. (1)
- The flexibilities for paragraph 8 countries (of the July framework) (2) - there is still no agreement here, with developing countries or NAMA 11 stating that these flexibilities are separate from the formula, and developed countries stating that they are linked to the formula.
- The treatment of unbound tariffs for paragraph 8 countries (3): paragraph 17 of the Hong Kong Declaration states that there will be a "non-linear mark up" of the applied tariff rates before the formula is then used to bring down these rates. The number for this mark up from the applied level has to be negotiated. Whilst this seemed like a victory attained in Hong Kong, the reality is that the "mark up" really makes little difference to the final bound rate since the marked up tariff will still be subjected to tariff cuts through the a formula. (Some NAMA 11 countries are fighting for a more lenient formula for these unbound tariffs than the simple Swiss). The formula and coefficient applied will be the greater determining factor of the final bound rate as the coefficient in a simple Swiss formula gives the upper ceiling to the final bound tariff rate.

This list will leave unresolved other issues which are critical to Africa / Caribbean countries:

- The Treatment of tariffs for "paragraph 6" countries: paragraph 6 countries are those that have less than 35% of their tariff lines currently bound in the WTO. Para 6 of the July framework states that these countries should bind their tariffs, but will not have to apply the Swiss formula. However, the paragraph stipulates the level at which they should bind these tariffs - at the current overall

average of bound tariffs for developing countries i.e. 27.5%. The Africa Group has submitted a proposal suggesting that they should be able to bind at a level of their choosing, but to date, this issue has not been given priority in the negotiations.

- Treatment for Small and Vulnerable Economies (SVEs): It was agreed in Hong Kong that they would be given special flexibilities. One of the proposals of the SVEs was to have linear cuts of 10-15% per tariff line rather than the more aggressive Swiss formula.
- The preference erosion issue (4) - the Africans have said repeatedly that they want preference erosion to be dealt with as part of the solution to the formula (e.g. through a correction coefficient for the developed countries providing the preferences). This must therefore be dealt with at the same time as the negotiations on the coefficients. Many G90 countries are angered that instead of dealing directly with the preferences issue, a workshop has been planned in May (after the April modalities) on preferences. Most suspect that in this workshop, aid and technical assistance will be offered to African countries for capacity building to appease them in place of actual modalities on preferences.
- Sectoral negotiations: whilst the bulk of G90 members are not involved in these negotiations, the outcome - bringing tariffs down to zero or near zero - will have a major impact on many countries' exports, and may impede their ability to export in the future.
- Non-tariff barriers: an issue that was raised in the first place by the G90 countries to be resolved in these negotiations since many face obstacles in terms of standards when they export. Unfortunately, due to capacity constraints, it has been a difficult exercise for these countries to identify the exact NTBs implemented by their trading partners.

The sectoral negotiations which are voluntary seem to have multiplied in number since Hong Kong, although the groups are at very different stages of talks - many still at a nascent stage. For most of these sectoral negotiations, the ambition of the demandeurs (exporters) is to bring down tariff rates to levels lower than the results of the formula cuts. Given that these talks are voluntary, many of the groups have not yet attained the "critical mass" of trade in that sector (usually defined as countries that make up 85 -90% of trade in that sector). Those that do not reach this critical mass in the months ahead are likely to eventually disband. It makes no sense, for example, for the US to "multilateralise" their liberalisation in, for example, chemicals, if their target markets refuse to be part of the sectoral negotiations and are not doing likewise.

The current sectoral discussions include:

- Auto / Auto-parts (coordinated by Japan)
- Bicycle and related parts (coordinated by Chinese Taipei)
- Chemicals (coordinated by US). To date, 25 Members (15 developing countries) have participated.
- Electronics / electrical parts (coordinated by Japan)
- Fish and fish products (coordinated by Norway)
- Forest products (coordinated by Canada) Demandeurs also want the inclusion of pulp and paper products.
- Gems and jewelry products (coordinated by Thailand)
- Raw materials (coordinated by United Arab Emirates)
- Sports equipment (coordinated by Chinese Taipei)
- Pharmaceuticals and medical devices (coordinated by the US). This has been the latest initiative launched on 27 February by US, Singapore and Switzerland on the elimination of import tariffs and non tariff barriers for medicines and medical technology products.
- Textiles: a preliminary meeting was convened by the EU to hear the views of some section of the EU and US textile industry. Media reports have indicated that, unlike the sectoral discussions, parts

of the US and EU industry would like less than formula cuts in this sector. So far, the US trade representative, Robert Portman, has said that they have yet to finalise a position on this. Until now, no one has proposed a sectoral negotiation to attain less than formula cuts.

The discussions in the sectoral negotiations have mostly focused on i) product coverage; ii) critical mass; iii) tariff reductions; and iv) non tariff barriers (NTBs) in that sector.

The NTB negotiations have been categorized into:

- bilateral negotiations between parties, and the results are then offered to all on a most favoured nation (MFN) basis (that is, a country will extend to another country the lowest tariffs it applies to any other country).
- vertical NTBs referring to NTBs which pertain to that particular sector eg. labeling standards for garments.
- horizontal NTBs - rules pertaining to all products across all sectors. In its latest proposal, Japan has identified export restrictive measures as an NTB and is proposing enhanced disciplines. (Their proposal was rejected by China, Argentina, India, Thailand, Brazil, Korea, Malaysia on the grounds that export restrictions are a legitimate tool for industrial development).

The coming NAMA week (20 - 24 March) will be centered on the formula, treatment of unbound tariffs and flexibilities. However, like the agriculture negotiations, the critical NAMA negotiations are likely to take place in the up-coming exclusive mini-ministerial meetings of the G6 et al. Although the formula simulation exercise is supposed to have been completed by the G10, none of the results, as yet, have been leaked.

SERVICES

Plurilateral negotiations

The plurilateral requests by demandeurs have been sent out to the target countries in the past two weeks. Whilst there are no clean North South lines, the requests have largely been driven by developed countries and directed towards developing countries. For the most part, the demandeurs are US, EU, Canada, Australia, Japan, Korea, Norway and Switzerland, with the inclusion of a few developing countries such as Mexico, Chile, Hong Kong China, and in some cases, Singapore, Taipei, Peru and India.

The target countries have been about 20 -25 countries. These are mostly the major developing country economies including India, Brazil, Indonesia, China, Argentina, Nigeria, Egypt, Malaysia.

So far, the following requests have been received: energy (coordinated by EU); environmental services (coordinated by EU); construction (coordinated by Japan); computer related services (coordinated by Chile);telecommunications (coordinated by Singapore); architectural and engineering services (coordinated by Canada); financial services (Canada); maritime transport (Japan); legal services (Australia); logistics (Hong Kong China); audiovisual (Taipei); postal (US).

The target group is expecting more requests to come in the coming weeks including in the areas of education (New Zealand); online recreation (US); mode 3 (commercial presence) (Switzerland/EU); air transport; and distribution.

India is in the midst of preparing requests on mode 4 (from developing to developed countries), as well as a request in modes 1 and 2. Argentina is preparing a plurilateral request on services related to agriculture, also from developing to developed countries.

Most of the plurilateral requests from the demandeurs so far have focused on modal schedules - modes 1-3 and especially in mode 3. Many of these requests seem to ask for the adoption of reference papers (5) such as in the telecommunications and financial negotiations in 1997. The reference papers are really about harmonizing countries' legislation so that the sector is opened up to foreign corporations.

Controversy

Organising the plurilaterals, however, has landed even the demandeurs in some controversy. Whilst the exporting countries have high ambitions in terms of market access, they are not willing to open up their own economies to the same degree. This has created quite some uncertainty in Geneva as to how the plurilateral negotiations are to be conducted.

The EU has told developing countries that if they are making requests, they should also consider their own request as an offer. However, subsequently, it became clear that the EU itself is not willing to undertake liberalisation to the extent they are asking in their own plurilateral requests.

Compared to the bilateral request-offer process, the pressure is now on, although the inability of demandeurs to make very ambitious offers themselves in certain sectors has taken a slight edge off from this pressure.

Whilst the EU is still fully committed to the plurilateral process, the US continues to indicate the high importance they give to the bilateral request-offer, possibly because the US is unable to move at all in response to the mode 4 plurilateral request India et al are now preparing.

The targeted countries have also, in Geneva, taken objection to the fact that the demandeurs have kept their target group a secret. Whilst a plurilateral request reflects the names of the requesters, those targeted are not named. Several delegations in Geneva have complained to the Chair about such a lack of transparency. It has been an unnecessary hurdle for those countries targeted to organize themselves collectively to respond to the requests.

Sensitive areas for demandeurs

There are certain sensitive sectors where the developed countries have very different interests and, due to splits amongst them, the sectoral negotiations are likely to hit deadlock. These include audiovisual; maritime; education; air transport; and postal services.

However, the areas where there is common ambition amongst the demandeurs to open up developing country markets, and where pressure will be strongest include: telecommunications; financial services; energy; environmental services; logistics; distribution; construction and computer related services.

In the final analysis, how far these plurilateral / sectoral negotiations go depends on whether the negotiations attract a "critical mass" and here the demandeurs are racing against the clock. Organising such negotiations is time intensive. Most of the G90 countries so far have steered clear of this process. Services trade after all, remains a sector which is highly segmented - up to 78% of exports are from the developed countries. Even the large developing countries are wary of embarking in this new game where the power imbalances seem to have increased exponentially. For example, if five developing countries present a plurilateral request to nine developed countries, they would be sitting in meetings where the five requesters are facing about 50 experts from the developed countries in these meetings.

Domestic regulation

On the sidelines of the plurilateral process, the working group on domestic regulation is taking place. The negotiations here - putting in place horizontal rules which cut across all sectors - are possibly even more worrying for the majority of developing countries than the plurilateral negotiations. Brazil in the last services cluster (6) presented a "job" (7) document, supported by the Philippines. The Brazilians are attempting to water down the existing necessity test (8) which is in Article 6:4 of the GATS.

Apart from the necessity test, the domestic regulation negotiations is moving in the direction of instituting sanitary and phytosanitary standards (SPS) and TBT (technical barriers to trade) type standards for services trade. If agreed upon, this will have major implications for developing countries' exports in services in the future, in the same way that exports of developing countries in agriculture and industrial products are now being impeded by non-trade barriers. Whilst developed countries may reflect a very open regime in their services schedules, licensing and other technical standards will effectively keep their markets shut.

Text-based negotiations in domestic regulation are slated to begin in the coming month and must be closely monitored. Any necessity test will obstruct developing countries' policy space and national priorities, as the necessity test will subordinate these objectives to the demands of liberalisation. Whether a country has struck the right balance can then be subject to the decision of a WTO dispute panel, discounting any democratic decision-making process at the national level.

LOSSES FOR AFRICA

If Chairs in this game continue to do what Chairs in the WTO have been doing - producing texts "on their own responsibility" which reflect the interests of the G6 rather than the entire Membership, the results of the current round will be even more imbalanced and disastrous for the G90. In fact, losses for Africa have already been predicted by the World Bank.

Even before the Hong Kong Ministerial, the World Bank downgraded the figure of gains from the Round to a mere \$96 billion. And developed countries are predicted to receive the bulk of this - \$80 billion, with developing countries receiving only \$16 billion, or less than a penny (one cent) a day per person. (9) Even between developing countries, the outcome is highly uneven. Surveying the range of scenarios and simulations, Frank Ackerman of Tufts University concludes that

"the benefits are distributed very unequally, with losses rather than gains resulting from the (Doha) scenario in at least Mexico, Bangladesh, the Middle East, and much of Africa..." (10)

He goes on to state that "Bangladesh and many African countries benefit from existing systems of trade preferences, and might face greater competition in a more liberalized future". (11)

Yet African countries today seem to be held hostage by their aid dependency and by threats that if they reject a bad package, the multilateral system will collapse. Now that India and Brazil have essentially joined the big boys club, the Africa Group and the Caribbean countries will have to struggle to rise above the external threats and internal divisions, and find leadership from within.

NOTES

1. The July Framework had stipulated that tariffs would be reduced through a non-linear formula, and as a result, developing countries formulated a variety of Swiss-type formulas, such as the ABI (Argentina, Brazil and India formula) and the Caribbean formula which gave them multiple coefficients and more favourable treatment than the simple Swiss formula. The Hong Kong declaration took negotiations a step further and endorsed the "Swiss formula" with coefficients,

leaving the window open for the possibility to still negotiate multiple coefficients (i.e. a Swiss-type formula). The simple Swiss formula is a harmonizing formula, bringing high tariffs down by a larger extent and lower tariffs down by a smaller degree. The coefficients that are plugged into the simple Swiss formula establish the ceiling for the final bound rate. Eg a coefficient of 20 applied to an initial tariff of 600 brings the tariff level down to 19.4%. When applied to an initial tariff of 60, the final tariff rate is 15%. If the negotiations result in two coefficients, it means that the formula will be a simple Swiss formula, with one coefficient for developed and another for developing countries. If there are more than two coefficients, it means that there is agreement on one of the Swiss-type formulas.

2. Paragraph 8 countries are those which have more than 35% of their tariff lines bound in the WTO. These countries have to apply the Swiss formula. The July framework stipulates that they are to be given some flexibility to have 10% of their tariff lines subjected to half the formula cuts, if this does not exceed 10% of their imports, or to have 5% of their tariff lines unbound, if this does not exceed 5% of their imports. (These numbers in the July framework are in square brackets). After July 2004, the developed countries have argued that these flexibilities should be linked to the formula - if the formula is stringent, they would have more flexibility, and if the formula is lenient, there would be less flexibility. The group of NAMA 11 countries (Argentina, Venezuela, Brazil, China, Egypt, India, Indonesia, Namibia, Pakistan, Philippines and South Africa) have consistently argued that there should be no such linkage.

3. Prior to Hong Kong, it was not so clear how the currently unbound tariffs of paragraph 8 countries - those which have to apply the Swiss formula - would be dealt with.

4. Trade preference programmes have allowed some WTO developed Members to provide preferential access to certain developing countries, particularly the G90 (African and LDCs). These programmes include the Generalized System of Preferences, the EU's Everything But Arms and the US' African Growth Opportunity Act. Rather than have their exports treated with the Most Favoured Nation (MFN) tariff rate, preference receivers are allowed access to developed country markets under a lower tariff rate. This margin of preference is being eroded when MFN tariffs are liberalised.

5. For exporters, the crowning glory of the telecommunications negotiations in 1997 was its "Reference Paper" which signatories to the agreement accepted in whole or part (most of them in whole). The reference paper represents the regulatory component of the basic telecoms agreement. It contains a set of guidelines for a regulatory framework that countries should follow to support the transition of their telecoms sector to one which allows foreign companies guaranteed access to their market. This reference paper is now used as a "best practice" guide to negotiations in other sectors eg. The insurance industry is pushing for a similar reference paper in their sector.

6. The term used to denote the week or fortnight in the WTO devoted to all meetings related to the GATS negotiations.

7. Job documents are informal documents not usually circulated publicly. Brazil's document is a job document probably because it is still in the process of consultation with others.

8. The necessity test in Article VI:4 stipulates that regulatory disciplines such as those pertaining to qualification requirements and procedures, technical standards and licensing requirements "do not constitute unnecessary barriers to trade in services...Such disciplines shall aim to ensure that the requirements are... not more burdensome than necessary to ensure the quality of the service". The WTO Secretariat has characterised the Article VI:4 necessity test as "the means by which an effort is made to balance between two potentially conflicting priorities: promoting trade expansion versus

protecting the regulatory rights of governments” (WTO Job No. 5929).

9. Ackerman, F 2005 “The Shrinking Gains from Trade: A Critical Assessment of Doha Round Projections”, Tufts University, October.

10. Ackerman, *ibid.*

11. Ackerman, *ibid.*

P.S.

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