KENYA AS A NON-LDC WTO MEMBER: WHAT IMPLICATIONS FOR THE EAC IN NAMA NEGOTIATIONS?

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Introduction

Non-agricultural market access (NAMA) products or more commonly known as industrial goods or manufactured goods, cover a wide range of products including fish and forestry products and have accounted for almost 90% of the world merchandise exports . The ongoing negotiations on NAMA in the World Trade Organization (WTO) aim at reducing tariffs rates as well as non-tariff barriers such as technical standards and export subsidies in both the developed and developing countries.

Due to the importance and the weight of industrial goods in the global economy, the NAMA negotiations have attracted considerable attention and as the agreed deadline of July 2015 for outlining a work programme on completing the Doha Round is approaching, the negotiations over formulas and flexibilities to be applied become increasing crucial.

While the July (2004) Framework Agreement stipulated that the least-developed countries (LDCs), who benefit from Special and Differential Treatment, would not be required to undertake any tariff reduction under the NAMA framework, developing countries are expected to achieve great tariff cut and various target binding coverage ranging from 30 percent to 75 percent.

This possible outcome for the NAMA negotiations, which would result in different tariffs between LDCs and developing countries, raised concerns for the East African Countries Customs Union whose members consist of 4 LDCs (Burundi, Rwanda, Tanzania and Uganda) and one non-LDC (Kenya). Since 2010, EAC member states have adopted a common trade policy towards third countries besides liberalizing their intra-trade and have made progress towards the implementation of a Common External Tariff (CET). This joint effort, however, along with the achievement of its industrialization goals are likely to be challenged by the ongoing WTO negotiations on NAMA where EAC member States are engaged under different modalities for schedules of commitment.

Hence, this brief attempts to provide a closer examination of the specific provisions concerning the LDCs and Kenya under the NAMA modalities. In doing so, it compares the current CET of EAC Customs Union in order to provide an analysis of the implication of NAMA negotiations to EAC countries given their current status and to help EAC trade negotiators take positions that are consistent with both regional integration and industrialization objectives.

EAC Customs Union

The EAC Customs Union was established in accordance with Article 5(2) of the Treaty establishing the EAC for the purposes of strengthening and regulating trade among the Partner States. The Customs Union Protocol, signed in March 2004, provides for a progressive establishment of a Customs Union over a five-year transitory period effective from January 2005. A full Customs Union therefore came into effect in the year of 2010. The Customs Union Protocol contains four elements namely: Internal Tariff elimination, Non-Tariff Barriers Elimination; Common External Trade Policy; and Sensitive Products. We will look further into the implementation status of Common External Trade Policy and evaluate the trade effects of the overall implementation.

Common External Trade Policy

According to the latest EAC Customs Union Common External Tariffs published in 2007, different rates applied for raw materials (0%), intermediate products (10%) and finished goods (25%). The latter percentage, also known as bound tariff, is fixed as the maximum. This represents a significance decrease from the previous bound tariff in Kenya (35%), Tanzania (40%) and Uganda (15%). However, this customs union is not yet fully implemented, because there is a significant list of exclusions to the Common External Tariff and tariff-free movement of goods and services.

NAMA Modalities under the Doha Development round

The NAMA negotiations of the World Trade Organization are based on the Doha Declaration of 2001 that calls for a reduction or elimination of tariffs, particularly on export goods of interest to developing countries. Modalities under WTO negotiations constitute a way to proceed by setting broad outlines — such as formulas or approaches for tariff reductions — towards commitments. The debate over modalities remained a central issue for the NAMA.

Tariff reduction approaches

The core of the negotiations over NAMA is the methodology for reducing tariffs. It has been observed that here too the developed and developing countries are divided over the extent to which tariff reductions will be carried out. At the heart of the debate is the reconciliation of the process of tariff reduction and the need to use tariffs as a policy tool, primarily by developing countries interested in protecting emerging industries for developmental purposes.

A tariff binding is a ceiling above which a member country cannot apply a tariff, thus representing the maximum tariff that can be applied by a member. The applied tariff of a country might differ from its tariff binding, leaving the room for maneuver for the country to adjust its trade regulation policies.

The NAMA negotiators have opted in favor of a formula approach to tariff reductions rather than a linear approach. Tariff reductions for industrial products would be made using a “simple Swiss” formula with different coefficients for developed and developing country members. But whereas the coefficient for developed members will be the same applicable to all of them, there will be a menu of options for developing members that will apply according to the scale of the flexibilities they choose to use. The lower the coefficient, the higher the flexibilities and vice-versa. A Swiss formula produces deeper cuts on higher tariffs.

The modified Swiss formula, on the other hand, takes into account the tariff profile of the countries while carrying out tariff reductions. Hence, we will look closely at specific provisions regarding the developing countries and LDCs under the NAMA modalities.

Flexibility provisions for developing countries

The Chair's draft modalities contain these coefficients: 8 for developed members and 20, 22 and 25 for developing. Therefore not all developing countries applying the formula would apply the same coefficient. They are free to choice among different coefficients that correspond to various binding coverage

The majority of tariff lines for developing country members applying the formula would be less than 12-14 percent, depending on the coefficient and the flexibilities used. In the developing countries applying the formula, bound tariffs would be at an average of between 11 to 12 per cent, and only a limited number of tariff lines would have levels above 15 per cent. The difference between bound rates and those actually applied would be substantially reduced.

The tariff reductions will be implemented gradually over a period of five years for developed members and ten years for developing members, starting 1 January of the year following the entry into force of the Doha results.

Paragraph 6 Countries: Binding Coverage

The flexibility for a group of developing countries referred to as paragraph 6 countries with an existing low binding coverage(less than 35 percent of tariff lines) was initiated in the Girard text where those countries were requested to bind 100 percent of their tariffs at 28.5 percent . After making several concessions on their parts, those members with less than 15 percent of bindings would increase their coverage to 75 percent while those with bindings between 15-35 percent would bind 80 percent of their tariff lines, both groups of countries to bind at a target average of 30 percent and in return, they would not be applying the Swiss-formula.

Kenya, despite not being an LDC, belongs to the paragraph 6 countries under NAMA negotiation framework. Thus it benefits from the special and differentiated treatment and may not apply the Swiss-formula.

Special and Differential Treatment for LDCs

The least-developed country participants are not required to apply the formula or participate in the sectorial approach, their contribution being to substantially increase their binding coverage at levels in accordance with their needs and development. Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, the General Council called upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries .

Implications of the NAMA on EAC member states

The different provisions discussed above underline the obligations imposed on LDCs and developing countries under NAMA negotiations. In this case, Kenya and 4 others EAC Customs Union members are subject to different tariff cuts commitments while they should adopt the common external tariff conforming to the EAC Customs Union Protocol. Nevertheless, we will argue that the implications of the NAMA on EAC customs unions is very limited and that negotiations procedures and adjustments could be taken in advance by EAC in order to avoid potential negative impacts.

First of all, EAC Customs Union has significantly reduced its current common external tariff (25%

for finished goods) to the extent that no major tariff cut should be taken by the Kenya in order to conform to the NAMA modalities for paragraph 6 countries. Moreover, a great deal of non-agricultural products' rates has reduced to 10% that are substantially below the commitments expected from the developing countries.

Furthermore, EAC should achieve convergence in the External Trade Policy and ensure consistency in the binding commitments made by the five EAC Partner States to maintain credibility of the EAC Customs Union. For the EAC LDC member States, there is no mandatory requirement to undertake any binding commitments in the current NAMA negotiations.

Moreover, as the Post-Bali work program is yet to be agreed, efforts by EAC in the NAMA negotiations should be concentrated on the following aspects, for the region to maximize benefits:

-Stronger special and differential treatment must be possible in the final modalities agreed upon.

-The final formula to be applied should be able to discriminate between developed and developing countries without any ambiguity.

-The negotiations should ensure the provision of policy space for developing countries to pursue industrial development and diversification of their economies.

EAC Partner States should work towards sustaining the trade gains attained under the current CET structure by limiting the frequent request for CET exemptions, which limit the scope of deepening the integration and further discourage new investments in the region.

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