

AGRICULTURE NEGOTIATIONS AT WTO MC12: ANALYSING MARKET ACCESS

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BACKGROUND

The Draft Ministerial Decision on Market Access (“the Text”), included in the Draft Chair Text on Agriculture¹, for the forthcoming 12th Ministerial Conference of the WTO contains two specific components for an outcome on market access – first, a decision on “some specific transparency-inspired elements”; and second, a work programme on market access negotiations post-MC12. This policy brief seeks to analyse the Text and highlights its likely implications for WTO Members.

In order to understand some of the implications of the Text, it is relevant to note that while there is a considerable gap between bound rates and applied tariffs in many developing country Members, the gap is narrow, or even non-existent, for some developed country Members. Consequently, the Text would have contrasting impacts on these two sets of WTO Members. In this context, the data from WTO Tariff Profiles, as provided in Table 1 below, is relevant. While the reduction in bound rates in accordance with the Text would need to be undertaken in respect of each tariff line separately, nevertheless, the overall impact of the reductions can be assessed based on average tariffs.

Table 1: Average bound rates and MFN applied tariffs for agriculture products

WTO Member	Average Bound Rate (%)	Average MFN applied tariffs (%)
Developing Country Members		
Egypt	91.2	65.1
India	113.0	34.0
Indonesia	47.1	8.7
Kenya	100.0	20.3
Namibia	39.1	8.9
Nigeria	150.0	15.8
Sri Lanka	50.1	27.4
Turkey	61.8	42.3
Developed Country Members		
Australia	3.5	1.2
Canada	15.3	15.1
EU	11.6	11.2
Japan	17.8	15.8
US	4.8	5.1

Source: WTO Tariff Profiles

I. GUIDELINES TO ENHANCE TRANSPARENCY IN APPLIED TARIFF CHANGES

According to the Chair, the issue of “applied tariff transparency and the treatment of shipments en route has dominated the transparency discussions in the Market Access pillar”. Therefore,

Enhancing transparency and predictability in the application of MFN applied tariff rates appears to be the ostensible objective of the Guidelines to enhance transparency in applied tariff rate changes (“the Guidelines”). Further, the Text is based on the understanding that “unexpected increases in MFN applied tariff rates by Members can create uncertainty for traders, as well as additional costs, and can be a significant disincentive to trade”. Going by the Chair’s admission, the Guidelines are based on a joint proposal by Australia, Brazil, Canada and Ukraine in JOB/AG/212ⁱⁱ. The main elements of the Guidelines and their likely implications are discussed below.

A. Main elements of the Guidelines

Scope of the Guidelines: The Draft Ministerial Decision will apply to changes in MFN applied tariffs in respect of all goods – agricultural and non-agricultural.

Agreeing to best practices in the application of changes to MFN applied tariff rates: With the objective of promoting predictability in the application of changes to MFN applied tariff rates, the Guidelines include the following four options that would be agreed by the Members to represent best practices when Members raise MFN applied tariffs (listed in Annex 1 of the Text):

- a. Shipments en route to be eligible to benefit from the tariff treatment in effect at the time such shipments or consignments begin their final journey from the country of exportation;
- b. Provide in advance clear guidance on how a tariff will change in response to defined factors, such as changes in market prices or indexation against inflation;
- c. To pre-pay customs duties on shipments so that the importer pays the tariff in effect at the time the goods begin their final journey from the country of exportation; and
- d. Provide a public notice prior to coming into force of a change in an applied tariff rate

Applying at least one of the best practices: Members would be required to implement at least one of the best practices agreed by them in the application of changes to MFN applied tariff rates. However, the Text leaves it open as to whether this will be implemented on a best endeavour basis or applied on a mandatory basis.

Developing additional best practices: The Guidelines envisage that Members would develop best practices, in addition to the four that they would have agreed to earlier.

Notifying best practices that a Member chooses to implement: Members would be required to notify at least one of four best practices which they are implementing in respect of changes to MFN applied tariff rates. This notification would need to be made in a pre-defined template, which would require Members to describe their current practice when an applied MFN tariff rate changes.

B. Implications of implementing the Guidelines

- **Allowing en route shipments to benefit from the tariff that existed when the shipment began its journey from the country of exportation would create uncertainty and increase the administrative burden for customs authorities:** Many developing country Members follow a system wherein the importer pays the customs duties that were applicable on the date of arrival of the consignment at the customs border of the importing country. As there is likely to be no uncertainty regarding this date, there will be a certainty for customs authorities regarding the applicable customs duty. On the other hand, if the relevant date for determining the customs duty is the date when the consignment begins its final journey from the country of exportation, then customs authorities would need to spend resources in verifying the correctness of the relevant date. Further, what could constitute a “final journey from the country of exportation” may itself become contentious. This would cause further delays in the payment of customs duties. Overall, allowing shipments en route to benefit from the duty applicable on the date the shipment begins its final journey from the country of exportation is

fraught with uncertainty and would increase the administrative costs for customs authorities. In contrast, the system of determining customs duty based on the date of arrival in the country of import creates more certainty and predictability for customs authorities.

- **Providing advance guidance on how a tariff will change in response to identified factors will be extremely onerous and would considerably inhibit the ability of many developing country Members to increase applied tariff rates:** Countries make changes to applied tariffs after considering many factors, including the demand-supply gap, changes in market prices, need to accord protection to domestic producers etc. No single defining factor would, in itself, be determinative of changes in applied tariffs. It may, thus, not be appropriate to identify in advance how a tariff will change in response to changes in defined factors. Further, many developing countries may lack a scientific mechanism for determining changes in applied tariffs. It would be extremely burdensome for these countries to establish such a mechanism. Overall, if any developing country Member opts for this best practice, then it may find it extremely difficult to raise applied tariff rates.
- **Providing the ability to pre-pay customs duties applicable at the time the shipment begins its journey from the country of exportation can impose a considerable administrative burden on customs authorities:** This proposed best practice has two problematic elements. First, there would be problems regarding determining the applicable customs duties on the basis of the date when the consignment begins its final journey from the country of exportation, an issue already discussed in the first bullet above. The second problem relates to the valuation of the goods for the purpose of levying customs duties. While allowing pre-payment of customs duties, the customs authorities would have to rely on the self-declaration regarding the value of the goods. However, the customs authorities would need to institute a mechanism to collect additional duty if the self-declaration eventually proves to be lower than the final value assessed by the customs authorities on the arrival of the goods. This is likely to enhance the administrative costs for customs authorities further.
- **Providing a public notice prior to coming into force of a change in an applied tariff rate could undermine tariff increases:** In many developing country Members, changes in applied tariffs have to be announced for the first time in the legislature of the country, and implemented almost immediately thereafter. Providing a public notice prior to implementation of a change in applied tariffs would undermine some of the legal requirements and legislative practices prevalent in some developing country Members. Further, it is apprehended that this best practice may result in distortions whereby there may be a surge in import consignments during the period between the public notice and coming into force of a change in applied MFN tariffs.
- **Implementing any of the four best practices listed in Annex 1 would curtail the policy space of many developing country Members and be onerous:** It is understood that many the developing country Members are not implementing any of the four best practices listed in Annex 1 of the Text. Thus, selecting even one of the options will curtail their policy space in implementing tariff changes. Further, the proposed obligation to implement one of the best practices opens the window for demands being made on developing country Members to implement more than one best practice. This would be extremely onerous for developing country Members.
- **Implementing some of the best practices would require developing country Members to make changes in their existing laws and regulations, thereby raising the cost of implementation:** Implementing best practices related to en route shipment, pre-paying customs duties when the goods begin their journey from the country of exportation or providing a public notice prior to implementing a tariff change, may not be in conformity with

the existing laws and regulations in some developing country Members. Thus, implementing any of these options would require these Members to make changes in their existing laws and regulations. This can be time-consuming and could be extremely resource-intensive as well.

- Many developing country Members would find it extremely burdensome to raise MFN applied tariffs:** As many developing country Members may not be in a position to implement any of the four best practices listed in Annex 1, they would find it extremely difficult to raise MFN tariffs. It would compel developing country Members to maintain their applied tariffs at low levels, despite having the flexibility to raise the tariffs up to the level of bound rates. This would have an adverse impact on the ability of many developing country Members to strategically deploy tariff protection for nurturing their domestic manufacturing, countering unfair trade practices and protecting poor farmers from cheap and subsidised imports.
- Many developing country Members would be prevented from exercising their rights negotiated at the GATT/WTO to raise applied tariffs within the bound rates:** In order to raise applied tariffs within the level of bound rates, the Text would require Members to implement at least one of the best practices listed in Annex 1. As many developing country Members may not be in a position to do so, they would be prevented from exercising their rights negotiated at the GATT/WTO. Thus, the proposed obligation would undermine the treaty negotiated rights of many developing country Members.
- The information required to be provided in the template for notification of current practice in the application of MFN applied tariff changes could create further hurdles for developing country Members to increase applied tariffs:** The Guidelines require WTO Members to include in their notifications a description of their current practice when an applied MFN tariff rate changes. It is apprehended that the information that would be provided in compliance with this notification obligation could be used by the developed country Members to raise questions and prevent the notifying developing country Member from raising applied tariffs in future.
- The outcome of implementation of the Guidelines would be asymmetric and against the interest of many developing country Members:** In many developing country Members, there is a considerable gap between the bound rates and applied tariffs. On the other hand, in the developed country Members, in respect of a large number of products, the applied tariffs are already at the level of bound rates (Table 1). Thus, compared to the developed country Members, it is the developing country Members who are more likely to seek to raise applied tariffsⁱⁱⁱ. However, as pointed out in previous bullets, many developing country Members would be unable to implement any of the four best practices. Therefore, these are the Members who are most likely to be adversely impacted by the Guidelines. On the other hand, developed country Members are unlikely to seek to raise applied tariffs in respect of a large number of products. They are unlikely to be adversely impacted by the proposed Guidelines. Thus, the outcome of implementing the Guidelines would be asymmetric and against the interest of many developing country Members.
- The Guidelines may create a window for negotiations to progress towards more onerous obligations for developing country Members:** Although the Guidelines require Members to implement at least one of the best practices listed in Annex 1, it also provides for developing additional best practices. This is a clear pointer towards negotiations progressing towards deepening of disciplines for preventing developing country Members, particularly, from raising applied tariffs.

II. ELEMENTS FOR THE CONTINUATION OF WORK POST-MC12

The second limb of the Market Access pillar is the core of market access negotiations – negotiations after MC-12 aimed at enhancing market access by reducing bound tariffs. Some of the elements mentioned in the Text include the following: reinvigorating negotiations on market access; guiding principles for the negotiations; informed discussions on non-ad valorem tariffs; and enhanced transparency. According to the Chair, the market access work programme incorporates some elements from the joint proposal by Argentina, Brazil, Ecuador, Paraguay, Ukraine and Uruguay in JOB/AG/198^{iv}. The main elements of the Work Post-MC12 and their likely implications are discussed below.

A. Main elements of Work Post-MC12

To reinvigorate agricultural market access negotiations: The Text provides for reinvigorating agriculture market access negotiations, with the objective of reducing the level of protection and creating meaningful market access opportunities. Further, the Text envisages achieving enhanced market access outcomes through incremental steps. It should be noted that the mandate for agriculture market access in the Doha Declaration sought “substantial improvements in market access”.

Guiding principles for market access negotiations: The Text specifies the following guiding principles for agriculture market access negotiations:

- a. Tariff reductions will be made from bound rates with deeper cuts in higher tariffs to achieve substantial progressive reductions in tariff levels. Each Member will make a contribution based on the negotiating modalities and parameters to be agreed upon. LDCs will be exempt from making any contribution.
- b. Negotiating modalities shall take into account the different elements of the Market Access pillar and across other pillars, particularly the Domestic Support pillar.
- c. The treatment of non-tariff barriers shall be explored.
- d. Account shall be taken of special and differential treatment for developing country Members and non-trade concerns of Members.

Members to notify ad valorem equivalents of non-ad valorem tariffs: With the objective of paving the way for “informed discussions on tariff reduction modalities, Members would need to notify ad valorem equivalents of non-ad valorem tariffs, along with the underlying data and calculations.

Enhancing transparency: Members would commit to enhancing transparency and monitoring, including streamlining the existing notification requirements.

B. Implications of the elements of a post-MC12 work programme

- **Agriculture market access negotiations will require many developing countries to substantially reduce their bound rates on agriculture products below the existing applied MFN tariffs:** The mandate for reducing the level of protection and creating meaningful market access opportunities is a pointer to the high level of ambition for market access. Although the guiding principles for market access negotiations specify that reductions will be made from bound rates, the two elements of the mandate imply that developing country Members will need to reduce bound rates below the existing applied MFN tariffs. This is the only way to comply with the requirement to reduce the level of protection.
- **Many developing country Members will lose substantial policy flexibility to protect their farmers through tariffs:** Many developing country Members maintain applied tariffs at a

level that is substantially lower than the corresponding bound rates. If a need arises, the applied tariffs can be raised within the limit of bound rates, in order to protect the farmers from low-priced imports^v. However, if the market access negotiations require developing country Members to reduce the bound rates below the level of existing applied tariffs, then in future, they will lose the flexibility to use tariffs for protecting their farmers.

- Asymmetric outcomes as applied rates in developed country Members are almost at the level of bound rates:** As would be evident from Table 1, many developing country Members would be required to substantially reduce their bound rates, in order to bring them below the level of applied MFN tariffs. In respect of developing country Members in Table 1, the average reduction would be as high as 135 percentage points for Nigeria and 79 percentage points for India. Other developing country Members would experience at least a 19 percentage point reduction. On the other hand, the developed country Members will need to make meagre reductions in their bound rates. On an average basis, the reduction may be less than 1 percentage point for Canada, EU and the US, while the reduction for Australia and Japan would be around 2 percentage points. Thus, the principles for tariff reduction, as contained in the Text, would have highly asymmetric outcomes. The developing country Members would need to make extremely high contributions in terms of reduction in bound tariffs, while the contribution of the developed country Members would be extremely modest. This goes against the principle of “less than full reciprocity” as embodied in Article XXXVI:8 of GATT 1994.
- The mandate to address non-ad valorem tariffs, mainly used by the developed country Members, is extremely weak:** Developed country Members impose non-ad valorem tariffs on a large number of products. To illustrate, Canada (30%), EU (45%), Japan (18%), Norway (68%), Switzerland (89%) and US (42%)^{vi} are the main users of non-ad valorem tariffs. This reduces transparency in the application of tariffs, as well as creates unpredictability for the exporters. Conversion of these tariffs and binding them in ad valorem terms (commonly referred to as “tariff simplification”) has been an important demand of developing country Members. Considerable progress on this issue was made during the Doha Round. However, the Text includes no commitment to simplify tariffs. The mandate is confined to countries notifying ad valorem equivalents, along with an explanation of the methodology. This is likely to be of little utility, as countries could choose different methodologies for this purpose. In this regard, the Text could have specified that the countries could update the methodology agreed during the Doha Round in April 2006 (commonly referred to as the “Paris methodology”) for notifying non-ad valorem equivalents. Reopening the debate on the methodology for conversion into non-ad valorem equivalents, will create hurdles for any meaningful progress on this issue. Further, the Text should have included a specific mandate for countries to bind tariffs on non-ad valorem basis.
- The commitment on S&DT is extremely weak:** Developed country Members have been very explicit in seeking dilution of special and differential provisions (S&DT) for developing countries. The Text includes an extremely weak commitment on S&DT, and appears to take forward this agenda of the developed countries. According to the Text “Account shall be taken of special and differential treatment for developing country Members”. In the context of agriculture, it is relevant to note the following text on S&DT in paragraph 13 of the Doha Declaration: “We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedule of concessions and commitments and as appropriate in the rules and disciplines to be negotiated”. The specific mention of S&DT being embodied in the Schedule of concessions provided a definitive assurance to the developing country Members. However, the Text provides no such assurance. It merely requires an account to be taken of S&DT treatment, which, at best, is a weak commitment to S&DT.

- **The Text treats S&DT and addressing non-trade concerns at par:** In the context of market access, non-trade concerns have been raised mainly by the developed country Members. The Text specifies that “account shall be taken of ... non-trade concerns of Members”. It is relevant to recall that in the Doha Declaration, Members took note of non-trade concerns and confirmed that these “will be taken into account in the negotiations”. On the other hand, S&DT was mandatorily required to be “embodied in the Schedule of concessions and commitments”. Thus, the Doha Declaration drew a clear distinction between S&DT and non-trade concerns and provided a stronger commitment in respect of S&DT.^{vii} However, the Text puts S&DT and non-trade concerns at the same footing. This is yet another attempt at diluting S&DT for developing countries.
- **The mandate on non-tariff barriers is extremely weak:** The Text provides for exploring treatment of non-tariff barriers, an issue of considerable importance for developing country Members. However, it is a weak mandate, as there is no commitment to any definitive outcome.

III. OVERALL CONCLUSIONS

The Text has relied substantially on a few submissions made mainly by some of the Cairns Group Members, while the interests of many developing country Members with millions of subsistence farmers have largely been ignored. The Text would also promote the objective of the developed country Members to dilute S&DT provisions. Many developing country Members need to carefully reflect on whether using the Text as the basis for further negotiations on the draft Ministerial Declaration will protect their interests.

ENDNOTES

ⁱ Committee on Agriculture in Special Session, Draft Chair Text on Agriculture, WTO Doc No. JOB/AG/215 (29 July 2021).

ⁱⁱ Committee on Agriculture Special Session, Transparency in Applied Tariff Rate Changes, Proposal for 12th WTO Ministerial Conference from Australia, Brazil, Canada, and Ukraine, WTO Doc No. JOB/AG/212 (16 July 2021).

ⁱⁱⁱ Das, A. and Sharma, S.K. (2011), “Evolution of WTO Agriculture Modalities: Survival of the Financially Fattest”, CWS Occasional Paper No. 1.

^{iv} Committee on Agriculture Special Session, Framework for Negotiations on Market Access, Communication from Argentina, Brazil, Ecuador, Paraguay, Ukraine, and Uruguay, WTO Doc No. JOB/AG/198 (20 May 2021).

^v Das, A., Sharma, S. K., Akhter, R. Lahiri, T., (2020). “Special Safeguard Mechanism for Agriculture: Implications for Developing Members at the WTO”. Working Paper No. CWS/WP/200/59. Centre For WTO Studies, Delhi.

^{vi} Calculation of Ad Valorem Equivalents (AVEs): Data Requirements and Availability, Note by the Secretariat, WTO Doc No.TN/AG/S/11 (15 November 2004).

^{vii} Das, Bhagirath L. (2003), “WTO: The Doha Agenda: The New Negotiations on World Trade”, Page 14.

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