



## **ITUC briefing note on the NAMA Anti-Concentration Clause**

### **Background**

The anti-concentration clause came up in the last version of the NAMA text. It was not included before, but then became a proposal from the developed countries to restrict the flexibilities that the developing countries have been seeking to protect their sensitive industries.

The clause is in paragraph 7(d) and sets limits to the use of the flexibilities (lesser tariff cuts or exemption from tariff cuts). The paragraph, which is not in brackets, has language that says that at least [...] per cent of the national tariff lines or [...] per cent of the value of imports of the member in each HS<sup>1</sup> Chapter has to be subject to full formula cuts (i.e. flexibilities cannot be used). Depending on the numbers in the brackets, this could severely restrict the way the developing countries can use flexibilities.

It would basically mean that developing countries could only use the flexibilities (for example exempting 5% of the tariff lines or half the formula cuts on 10% of the tariff lines) to identify and protect their sensitive lines to a limited extent, because the clause would require that the lines that are exempted or that receive less tariff cuts are not all in the same sector or the same product chapter. Despite the fact that many developing countries might need to concentrate their flexibilities in one sector, for example if it is particularly important for employment, this amounts to a means of limiting those flexibilities.

Moreover, the anti-concentration clause, which is pushed for by the EU and it seems in particular by Germany, restricts flexibilities that developing countries understood had already been agreed in the negotiations. Previously, the text did state that whole chapters could not be excluded from cuts, but it allowed for the exclusion of virtually a whole chapter as long as one line in that chapter was cut. Many developing countries have a few specific sectors where they would want to use their flexibilities. Because of this clause, the flexibilities they are able to get could only be used up to a certain level. So by introducing the anti-concentration clause at this stage of the negotiations, developed countries are given an additional negotiating chip.

In terms of impacts the clause therefore reduces the flexibilities of developing countries, and their freedom to identify which sectors and products are sensitive and need protection. So introducing the clause risks leading to more job losses.

On the other hand in Agriculture, developed countries are allowed to identify very many sensitive products. Thereby developed countries get all the flexibility they need but developing countries do not.

The three main ways the anti-concentration clause can adversely affect developing countries are outlined below:

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<sup>1</sup> Harmonised Commodity Description Coding System (HS).

**i) Inability to develop value added industries**

As the current anti-concentration proposal does not allow for the exclusion of an entire sector of an economy, this would have severe implications in industries such as motor vehicles and clothing where developing countries are trying to produce all the inputs in order to improve forward and backward linkages in their economy. Instead, developing countries would have to decide which tariff lines will have to take a full formula cut and cannot be listed as sensitive. But the linkages within a value chain, particularly where there is a national industrial policy initiative such as with autos in South Africa, makes it very difficult to exclude any specific level of tariff lines within a sensitive sector from flexibilities.

Such sectors are often sensitive to imports and are labour intensive, meaning that the anti-concentration clause could result in significant job losses as this proposal could undermine long term industrial policies.

The proposal thereby in effect removes the flexibilities in the modalities and further erodes policy space for developing countries. Instead, exclusions from flexibilities should be left to developing countries; where there are tariff lines in a sector that can take a full cut, this should be done within the policy realm of individual developing countries but not imposed through the negotiations.

**ii) Substitution effects due to the anti-concentration clause may harm even the protected industries**

An additional problem with the clause is that it could have some additional indirect effects, like substitutional effects. Countries will now not be able to exclude all sensitive lines within a product group, so they would have to exclude some products from cuts and not others within a group of products, products that are substitutes for example. One part of the products (for example cotton shirts) could be protected while the other part would be subject to the standard tariff cuts agreed under the NAMA formula (for example polyester shirts). As these polyester shirts would be subject to tariff reduction, their imports would tend to increase so as to substitute for the other protected products; thus ultimately the protected products will be replaced and production will decline even for the production and employment that the developing country thought it could protect.

As NAMA includes fish products, the anti-concentration clause will also prevent countries from excluding entire fisheries HS chapters in order to protect the livelihoods of fisherfolk.

**iii) Decreasing competitiveness due to fixed overhead costs**

Companies that produce a variety of different products but where overhead costs are divided among overall production will find that as some production declines because of the anti-concentration clause, the overhead costs increase for the remaining production and therefore make these products less competitive. This could force them to reduce some or all of their production in general, with perverse effects for employment.

## Conclusion

While the EU is pushing hard for this clause which they are suggesting is a "red line" for them, it is not clear who would really benefit.

Within chapters, developing countries need to choose what to protect – something ranging between low value added and labour intensive products or high value added and high skilled, less labour intensive products. If developing countries tend to protect the higher value products within chapters and reduce tariffs on the lower value products, which are the ones China is competitive in, this would tend to cause some trade diversion from developed to developing countries and so take some pressure off the developed countries' producers. However job losses in developing countries at the lower end would further increase. If the lower end products are protected, however, then the reduction in tariffs on higher value added products will offer opportunities to the developed countries which are more competitive at that end of the market.

As the anti-concentration clause is a threat to local manufacturers in developing countries, peak industry associations such as the Confederation of Indian Industry and Federation of Indian Chambers of Commerce and Industry have opposed it and called for the clause to be deleted.<sup>2</sup>

One conjecture is that the main aim is to open the automobile sector in developing countries with this clause, but the effects of it will go much further and affect all manufacturing sectors. The anti-concentration clause will reduce greatly the flexibilities that were on the table so far. The automobile industry is mainly interested in opening up markets worldwide, and is less concerned with where the production takes place.

Given that developing countries need to receive more flexibilities to protect their sensitive industries, the clause clearly has to be at the centre of advocacy efforts to support developing countries' objectives in line with the commitments entered into when the "Doha Development Round" was launched.

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<sup>2</sup> [http://economictimes.indiatimes.com/News/Economy/India\\_Inc\\_against\\_opening\\_up\\_SME-prone\\_sectors\\_at\\_WTO/articleshow/3271288.cms](http://economictimes.indiatimes.com/News/Economy/India_Inc_against_opening_up_SME-prone_sectors_at_WTO/articleshow/3271288.cms).