TRAINING MODULE
ON TARIFF LIBERALISATION

TMSA
TradeMark Southern Africa

NOTE

This training module is published under the auspices of TradeMark Southern Africa and addresses tariff negotiations in the context of the negotiating process leading to the establishment of the Tripartite Free Trade Area (TFTA).

The module is designed for educational and divulgation purposes only. As such, no claim can be made to the Publisher in relation to its legal contents, which in no instance replace or substitute the official texts being reviewed.

The training material is intended to contribute to the negotiating capacity of the TFTA role players, including government officials as well as private sector and civil society representatives.

PREFACE

This Module concerns the tariff negotiation techniques that could be used in negotiating the Tripartite Free Trade Area (TFTA), taking into account the modalities contained in the Common Market for Eastern and Southern Africa (COMESA), Eastern African Community (EAC), Southern African Development Community (SADC) legal provisions, as well as in the current Draft TFTA Text.

In this scenario, while examining the different disciplines of COMESA, EAC, SADC and the Draft TFTA Text, the Module presents the way in which tariff negotiations are conducted by the World Trade Organization (WTO) and in Free Trade Areas (FTAs) taking into account the TFTA configuration and the overlapping membership of the TFTA Member States.

Throughout the Module, selected contents drawn from WTO negotiations and the negotiations of other FTAS, are provided where relevant. Other examples are presented on how to formulate a tariff offer, taking into account a number of tools that could be instrumental in better understanding the operational aspects of the trade remedies under review.

Unlike the other Modules of this training series, this Module has been designed to make use of internet and/or Excel files that are delivered as separate files during the training course. Where possible, hyperlinked text has been provided to make it easy to reference large files like tariff schedules.

This Module has been drafted by Craig Van Grasstek of Harvard University under the supervision of Mr Stefano Inama, Trade Lawyer, United Nations Conference on Trade and Development (UNCTAD). Special thanks to Mwansa Musonda of the COMESA Secretariat, Geoffrey Osoro of the EAC Secretariat and Paul Kalenga of the SADC Secretariat for providing the relevant legal texts and advice during the drafting.

What you will learn

As a result of this training exercise, you will be knowledgeable on the following:

> The international discipline of tariffs and tariff negotiations used by the WTO and as contained in the legal provisions of COMESA, EAC, SADC as well as in the current formulation of the Draft TFTA Text;

> The preparations that negotiating teams have to undergo in the formulation of a tariff offer, taking into account the overlapping membership of the TFTA Member States and the negotiating guidelines;

> Measuring and assessing the parameters of a tariff offer, tariffs and trade data utilisation issues;

> The initiation of consultation at the national level and national procedures;

> Options for TFTA Member States considering the formulation of tariff offers;

> Measuring the potential impact of a tariff offer or a concession; and

> Statistical tools and reference websites that can assist in deepening knowledge and undertaking analysis to administer and negotiate tariff offers.

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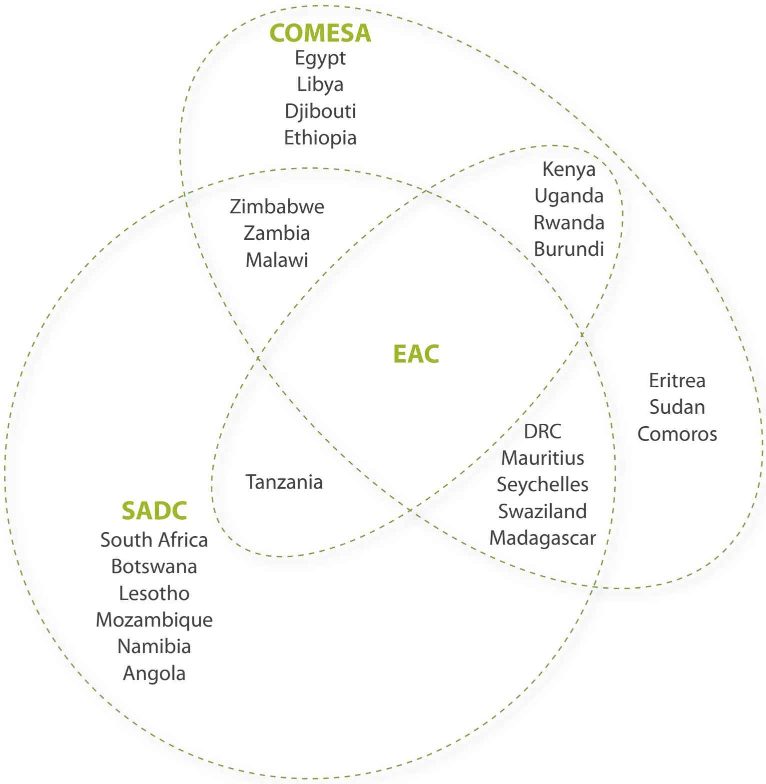
1. Experience of Tariff Liberalisation in COMESA, SADC and EAC[1]

1.1 Introduction

The Tripartite Summit of COMESA, EAC and SADC, held in Kampala, Uganda, on 22 October 2008, agreed to establish a Free Trade Area (FTA), encompassing their respective Member/Partner States.

As shown in Table 1 below, one the most challenging issues in establishing the TFTA is the overlapping membership of the Tripartite Member States in different regional integration initiatives. The problem is particularly acute when tariff negotiations are involved and Tripartite Member States are part of existing free trade areas such as the COMESA FTA, the SADC Protocol of Trade and the EAC Customs Union and Southern African Customs Union (SACU). As further discussed below, it is then necessary to delineate a *sui generis* architecture of tariff liberalisation to achieve the TFTA.

Table 1: Tripartite RECs and their membership



In the following sections a brief overview of the tariff liberalisation experience gained in COMESA, EAC and SADC is provided as a background for a better understanding of the tariff liberalisation process in the TFTA.

1.1.1 Common Market for Eastern and Southern Africa (COMESA)

Trade liberalisation in COMESA started with the establishment of the Preferential Trade Area (PTA) for Eastern and Southern Africa in 1982. The trade liberalisation programme, which commenced in July 1984, was intended to reduce and eventually eliminate tariffs and non-tariff barriers on intra-PTA trade, leading to the establishment of a Free Trade Area (FTA) by 1992. Tariff elimination was initially confined to 232 products

[1] This section draws from a presentation of Paul Kalenga of the SADC secretariat and the working documents of the Third Tripartite Trade Negotiating Forum (TTNF) held in Arusha, September 2012.

contained in a Common List that was to be revised every year to expand the number of commodities in it so that, at the end, all commodities would be included. In 1992, the PTA decided to adopt a new trade liberalisation programme that would lead to it becoming an FTA by October 2000.

The treaty establishing COMESA came into effect in 1994 and the new liberalisation programme began in 1996. The COMESA FTA comprises 14 countries: Burundi, Comoros, Djibouti, Egypt, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Zambia and Zimbabwe. These countries are currently trading duty free, subject to compliance with COMESA rules of origin and there are no Sensitive or Exception Lists.

The tariff phase-out modality used by COMESA in achieving the FTA was a linear approach.

The following are not yet in the COMESA FTA but are trading on preferential terms, since they apply reduced tariffs to COMESA originating products: Eritrea (20% of most favoured nation (MFN) rates); Ethiopia (90% of MFN rates); and Uganda (20% of MFN rates). These countries will also be expected to undertake tariff negotiations with the non-COMESA countries belonging to SADC, and possibly the COMESA FTA Members. Depending on the level of ambition of the TFTA, these countries may simply consolidate their preferential treatment to the COMESA FTA within the context of the TFTA.

The Democratic Republic of Congo (DRC) is not participating in the COMESA FTA. Swaziland has been receiving derogations since the inception of COMESA since it is a member of the Southern African Customs Union (SACU) but its exports enter the COMESA FTA duty-free.

1.1.2 East African Community (EAC)

The EAC was re-launched in 1996, but its intra-regional trade has already been substantially liberalised due to COMESA trade liberalisation. The customs union came into force in January 2005 involving Kenya, Uganda and Tanzania, with a common external tariff and an intra-union tariff programme over a five year phase-down. The EAC now has five members: Kenya, Uganda, Rwanda, Burundi and Tanzania.

The elimination of internal tariffs started in 2005 and was completed at the end of 2009 when a full Customs Union had been achieved. The phase-down has progressed smoothly and tariffs have declined from 10% in Uganda in 2005 to 2% in 2009; and from a maximum of 25% to 5% in Tanzania.

EAC countries started trading on duty-free and quota-free terms from January 2005. For five years up to December 2009, trade was asymmetrical in a rather token manner as a few exports from Kenya to Uganda were charged duty on the basis that this would be reduced annually. This situation also applied to a few exports from Kenya to Tanzania. These dispensations were not extended to Burundi and Rwanda when they joined the EAC in July 2008 and started implementing the Customs Union Protocol in July 2009. A fully fledged Customs Union came into effect as from January 2010 following which internal tariffs fell away on intra-EAC trade. Intra-EAC trade also does not attract *a priori* exclusions or quantitative restrictions.

Tanzania is part of the SADC FTA. Its participation in the tripartite tariff liberalisation process is currently carried out as part of the EAC Customs Union.

1.1.3 Southern African Development Community (SADC)

The SADC FTA Trade Protocol came into force in 2001. The Protocol introduced a trade liberalisation programme in which 85% of all intra-SADC trade would be duty free by 2008; leaving the remaining 15% of imports that were classified as sensitive products to be fully liberalised by 2012.

A peculiar feature of the SADC Trade Protocol tariff liberalisation process was that each non-SACU SADC Member of the Protocol submitted two tariff offers: one applicable to all SADC Members except South Africa; and the other applicable to South Africa. SACU Members on the other hand submitted a single offer applicable to non-SACU Members.

Table 2: SADC tariff phase-down offers: SADC without South Africa (percent of tariff lines at zero)

Country offering preference	#Tariff lines	2001 %	2005 %	2006 %	2007 %	2008 %	2012 %
Malawi	5,443	33.4	33.4	48.7	85.3	85.3	99.7
Mauritius	5,479	69.7	90.5	90.5	90.5	90.5	100.0
Mozambique	5,246	30.1	30.1	30.1	30.1	94.0	99.6
SACU	7,802	63.9	94.6	99.3	99.3	99.3	99.3
Tanzania	6,215	17.5	24.4	42.8	43.1	86.3	99.3
Zambia	6,066	54.2	54.2	95.9	95.9	95.9	100.0
Zimbabwe	7,167	30.7	30.7	72.2	72.2	89.8	98.7

Source: WT/REG176/4, 7 February 2007

Table 3: SADC tariff phase-down offers: South Africa (percent of tariff lines at zero)

Country offering preference	#Tariff lines	2001 %	2005 %	2006 %	2007 %	2008 %	2012 %
Malawi	5,443	33.4	33.4	34.8	34.8	84.9	99.7
Mauritius	5,479	69.4	69.7	69.7	90.5	90.5	100.0
Mozambique	5,246	28.1	28.1	28.1	28.1	92.6	92.6
Tanzania	6,215	15.7	15.7	15.7	15.9	84.6	99.3
Zambia	6,066	32.1	32.1	40.0	40.0	95.9	100.0
Zimbabwe	5,957	32.1	44.0	48.4	55.4	71.6	82.1

Source: WT/REG176/4, 7 February 2007

The SADC FTA comprises 12 countries: South Africa, Botswana, Lesotho, Namibia, Swaziland, Mozambique, Tanzania, Mauritius, Madagascar, Malawi, Zambia and Zimbabwe. The tariff phase-down is being implemented on the basis of the 'principle of asymmetry'. This takes into account the level of economic development of Member States. Member States are expected to gazette the annual tariff phase-downs at the beginning of each year. The gazetting of the tariff offers has been a necessary measure, aimed at facilitating reciprocal concessions among the other Member States.

For the purpose of the tariff phase-down process, products were grouped into four categories: products whose tariff rates were to be reduced to zero upon the Protocol coming into force (category A); products that constituted an important source of revenue and whose tariffs were to be removed within one to eight years (category B); sensitive products to be removed over a period between eight and 12 years (2008–2012), except for Mozambique whose sensitive products were to be reduced over 15 years (2008–2015); and goods that were not eligible for preferential treatment for health, security and environmental reasons. Trade in sugar is governed by the separate Protocol on Trade in Sugar.

As of January 2009, the five SACU countries (South Africa, Botswana, Lesotho, Namibia and Swaziland) have effectively granted other FTA partners duty-free market access (around 99.9% of intra-SADC trade). The rest, with the exception of Malawi, are implementing the last category of tariff reductions on sensitive products, which will be completed by 2012. Malawi has made the least progress. Malawi has liberalised 70% of its trade with SADC and is left with 15% to go in order to attain the minimum FTA threshold of 85%.

Since 1 January 2008, SADC Member States have reduced tariffs on imports from the region by the threshold figure of 85%. What is left is the phase-down of goods on the SADC Sensitive List, which was expected to achieve total elimination in time for the FTA in 2012. By 2012, however, Mozambique will still have a few non-liberalised items with respect to South Africa. Angola, DRC and Seychelles are not yet participating in the SADC FTA.

2. Tariff Profiles

The first step towards negotiating a tariff agreement is to understand one's own tariff profile. The profiles for Zambia and Zimbabwe are summarised on the pages that follow. Among the observations that one may derive from these profiles are the following:

- The simple average applied tariff rate in Zimbabwe is relatively high at 19.5%, but somewhat lower at 13.4% in Zambia;
- In both countries tariffs on agricultural products are higher than tariffs on other products; and
- Less than one quarter of each country's tariffs is bound in the WTO.

It is equally important to review the tariff profiles of any country with which one is about to negotiate. With online access, one may see the profiles for the following partners:

- China (http://washingtontradereport.com/Tariffs/Readings/Chinatariffprofile.htm);
- European Union (http://washingtontradereport.com/Tariffs/Readings/EUtariffprofile.htm);
- South Africa (http://washingtontradereport.com/Tariffs/Readings/SouthAfricatariffprofile.htm); and
- United States (http://washingtontradereport.com/Tariffs/Readings/UStariffprofile.htm).

These tariff profiles give a sense of the relative level of a country's tariffs by comparison with those of other countries, as well as an indication of the sectors in which tariffs are relatively high or low. The level of detail that one finds in these profiles, however, might be compared to flying over a country at a height of 10,000 m: It gives one a good sense of the overall landscape, but not the individual details. Those details are found at the level of individual products, especially by focusing on the goods that feature most prominently in a country's imports and exports. In order to conduct successful negotiations, it is necessary to appreciate both the broad picture at that 'high altitude' and the more precise details at the 'ground level'.

2.1 Tariffs in the WTO

The data in the tariff profiles are further broken down according to the bound and applied rates. This is the most fundamental distinction to understand in tariff negotiations. These rates, which we will call A (for applied) and B (for bound), can be combined with C (commitment) and D (discriminatory rates), and give us the full A-B-C-D of tariffs. See Figure 1 for more detailed definitions and illustrations.

As described at greater length below, the applied rate is the one that a country actually imposes on imports at the border (except in the case of imports that benefit from a discriminatory rate). The applied rate may be equal to or lower than the bound rate, but never higher. The bound rate is the one that countries agree on as the upper limit, and is, at least in WTO negotiations, the one that is the subject of negotiations. There is an important distinction between WTO negotiations and negotiations for regional trade arrangements (RTAs): Negotiations in the WTO focus solely on the bound rate, and take that rate as the base from which any cuts are made. In an RTA negotiation, however, the countries often choose to use the applied rates that are then in effect as the basis for the negotiations. This is one of the first and most fundamental matters of 'modalities' (i.e., the basic structure of the deal) that needs to be determined at the start of a market-access negotiation in an RTA.

Table 4: Profile of Zambia's tariffs

Part A.1 **Tariffs and imports: Summary and duty ranges**

Summary		Total	Ag	Non-Ag	WTO Member since		1995
Simple average final bound		106.5	123.4	42.7	Binding coverage:	Total	16.8
Simple average MFN applied	2010	13.4	19.0	12.5		Non-Ag	4.1
Trade weighted average	2009	8.7	15.8	8.2	Ag: Tariff quotas (in %)		0
Imports in billion US$	2009	3.8	0.3	3.6	Ag: Special safeguards (in %)		0

Frequency distribution		Duty-free	0 <= 5	5 <= 10	10 <= 15	15 <= 25	25 <= 50	50 <= 100	> 100	NAV in %
		Tariff lines and import values (in %)								
Agricultural products										
Final bound		0	0	0	0	0	2.0	0.1	97.7	0
MFN applied	2010	2.5	16.2	0	21.0	60.3	0	0	0	0
Imports	2009	19.7	15.0	0	17.8	47.5	0	0	0	0
Non-agricultural products										
Final bound		0	0	0	0	0	3.5	0.5	0.0	0
MFN applied	2010	25.5	15.3	0	30.4	28.8	0	0	0	0
Imports	2009	41.7	20.9	0	23.1	14.2	0	0	0	0

Part A.2 **Tariffs and imports by product groups**

Product groups	Final bound duties				MFN applied duties			Imports	
	AVG	Duty-free in %	Max	Binding in %	AVG	Duty-free in %	Max	Share in %	Duty-free in %
Animal products	125.0	0	125	100	20.5	0	25	0.1	0
Dairy products	125.0	0	125	100	22.5	6.7	25	0.4	38.3
Fruit, vegetables, plants	125.0	0	125	100	21.2	2.7	25	0.5	0.6
Coffee, tea	94.2	0	125	100	22.9	0	25	0.2	0
Cereals & preparations	119.9	0	125	100	18.0	0	25	1.8	0
Oilseeds, fats & oils	125.0	0	125	98.7	14.2	5.5	25	2.3	42.4
Sugars & confectionery	125.0	0	125	100	21.8	6.3	25	0.1	50.9
Beverages & tobacco	125.0	0	125	100	23.7	0	25	0.8	0
Cotton	125.0	0	125	100	15.0	0	15	0.0	0
Other agricultural products	125.0	0	125	100	15.0	4.3	25	0.4	24.9
Fish & fish products	-	-	-	0	23.4	0.8	25	0.2	24.6
Minerals & metals	36.1	0	40	3.4	10.9	22.2	25	28.0	62.9
Petroleum	-	-	-	0	17.7	2.5	25	13.1	1.5
Chemicals	45.0	0	125	1.0	6.2	61.8	25	13.7	66.6
Wood, paper, etc.	40.0	0	40	4.7	16.8	5.4	25	3.5	46.4
Textiles	40.0	0	40	0.2	16.0	6.6	25	2.0	17.8
Clothing	-	-	-	0	25.0	0	25	0.5	0
Leather, footwear, etc.	43.7	0	45	11.5	17.7	18.6	25	2.2	6.3
Non-electrical machinery	44.8	0	60	19.9	7.3	38.0	25	15.5	53.3
Electrical machinery	-	-	-	0	14.7	2.4	25	5.3	1.4
Transport equipment	40.0	0	40	4.9	9.9	25.8	25	7.7	16.0
Manufactures, not elsewhere specified (NES)	-	-	-	0	15.8	18.6	25	1.8	18.0

Part B **Exports to major trading partners and duties faced**

Major markets	Bilateral imports in million US$		Diversification 95% trade in no. of		MFN AVG of traded TL		Pref. margin	Duty-free imports	
			HS 2-digit	HS 6-digit	Simple	Weighted	Weighted	TL in %	Value in %
Agricultural products									
1. European Union	2009	114	5	10	27.4	37.5	37.5	100.0	100.0
2. Zimbabwe	2009	47	7	14	31.3	18.6	18.6	100.0	100.0
3. Malawi	2009	47	6	6	14.9	23.4	0.0	25.5	5.2
4. China	2009	43	2	2	9.5	9.3	0.8	33.3	0.0
5. South Africa	2009	29	10	14	12.0	16.2	16.2	100.0	100.0
Non-agricultural products									
1. China	2009	1,197	3	4	2.3	0.1	0.1	86.7	99.9
2. Korea, Republic of	2009	359	1	2	3.8	2.8	2.8	60.0	100.0
3. Saudi Arabia, Kingdom of	2009	288	1	1	5.0	5.0	0.0	0.0	0.0
4. Egypt	2009	196	1	1	10.3	2.1	2.1	100.0	100.0
5. South Africa	2009	166	9	21	7.3	2.5	2.5	100.0	100.0

Table 5: Profile of Zimbabwe's tariffs

Part A.1 **Tariffs and imports: Summary and duty ranges**

Summary		Total	Ag	Non-Ag	WTO Member since		1995
Simple average final bound		89.2	140.1	11.0	Binding coverage:	Total	21.9
Simple average MFN applied	2010	19.5	24.4	18.8		Non-Ag	10.0
Trade weighted average	2009	17.1	25.3	14.7	Ag: Tariff quotas (in %)		0
Imports in billion US$	2009	3.5	0.8	2.7	Ag: Special safeguards (in %)		0

Frequency distribution		Duty-free	0 <= 5	5 <= 10	10 <= 15	15 <= 25	25 <= 50	50 <= 100	> 100	NAV in %
		Tariff lines and import values (in %)								
Agricultural products										
Final bound		1.2	2.9	0.1	0	2.8	0	0	92.8	2.4
MFN applied	2010	4.8	20.6	22.1	1.7	7.5	40.6	2.1	0.6	2.0
Imports	2009	18.1	5.2	17.3	2.4	12.5	38.8	4.1	1.5	0.6
Non-agricultural products										
Final bound		1.9	3.4	1.2	0.7	2.0	0.7	0	0.0	0.3
MFN applied	2010	9.9	40.9	15.3	9.4	7.3	10.0	3.3	3.8	6.7
Imports	2009	20.4	23.4	9.8	6.5	17.8	15.9	5.6	0.6	11.8

Part A.2 **Tariffs and imports by product groups**

Product groups	Final bound duties				MFN applied duties			Imports	
	AVG	Duty-free in %	Max	Binding in %	AVG	Duty-free in %	Max	Share in %	Duty-free in %
Animal products	150.0	0	150	100	31.8	4.4	40	1.2	0.4
Dairy products	150.0	0	150	100	27.0	15.0	40	0.6	28.4
Fruit, vegetables, plants	139.3	3.7	150	100	27.0	4.1	40	1.4	0.4
Coffee, tea	139.6	0	150	100	32.7	0	40	0.1	0
Cereals & preparations	148.4	0	150	100	23.5	6.0	40	12.3	31.6
Oilseeds, fats & oils	146.5	0	150	98.7	11.3	3.4	40	3.7	0.2
Sugars & confectionery	150.0	0	150	100	13.1	6.3	40	0.9	3.5
Beverages & tobacco	150.0	0	150	100	64.2	0	> 1000	2.1	0
Cotton	105.0	30.0	150	100	4.0	20.0	5	0.0	31.6
Other agricultural products	122.3	0	150	100	9.2	6.5	40	0.4	6.5
Fish & fish products	1.7	77.4	8	72.6	10.6	62.3	40	0.2	38.3
Minerals & metals	11.6	5.7	25	4.7	13.1	0.9	65	14.9	12.5
Petroleum	-	-	-	0	24.3	7.1	45	9.6	2.2
Chemicals	15.9	0	150	3.2	7.4	6.1	40	10.6	13.7
Wood, paper, etc.	11.8	0	25	20.1	17.2	3.0	62	2.2	10.7
Textiles	27.4	0	35	5.6	23.5	0	856	1.9	0
Clothing	-	-	-	0	112.2	0	351	0.2	0
Leather, footwear, etc.	5.0	0	5	20.6	33.8	0.9	318	1.6	3.8
Non-electrical machinery	9.5	0	25	15.7	6.0	44.3	65	8.7	44.0
Electrical machinery	2.8	77.8	25	10.6	14.1	6.7	61	7.2	40.2
Transport equipment	13.6	0	33	22.0	12.8	10.7	60	15.6	12.3
Manufactures, NES	22.5	0	30	9.3	16.5	7.3	60	4.5	71.2

Part B **Exports to major trading partners and duties faced**

Major markets	Bilateral imports in million US$		Diversification 95% trade in no. of		MFN AVG of traded TL		Pref. margin	Duty-free imports	
			HS 2-digit	HS 6-digit	Simple	Weighted	Weighted	TL in %	Value in %
Agricultural products									
1. European Union	2009	208	9	13	19.3	32.9	20.1	99.4	62.3
2. China	2009	99	2	2	13.6	9.9	0.2	0.0	0.0
3. South Africa	2009	78	9	18	10.8	46.5	46.5	100.0	100.0
4. Hong Kong, China	2009	31	1	1	0.0	0.0	0.0	100.0	100.0
5. Russian Federation	2009	22	3	4	10.9	5.5	1.3	3.9	0.0
Non-agricultural products									
1. European Union	2009	117	8	17	4.7	2.0	2.0	99.8	100.0
2. South Africa	2009	109	26	85	12.4	6.8	6.8	99.7	100.0
3. Zambia	2009	50	31	114	15.5	13.0	13.0	100.0	100.0
4. China	2009	42	4	4	9.2	1.0	0.0	29.6	26.6
5. Japan	2009	41	3	3	4.3	0.8	0.3	68.4	60.8

Figure 1: The A-B-C-Ds of tariff negotiations

A = Applied rate (A1 = before a negotiation, A2 = after)

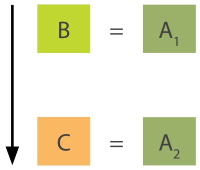
B = Bound rate (prior to a new negotiation)

C = Commitment (the new bound rate agreed to in a negotiation)

D = Discriminatory (a reduced or zero rate under a programme or agreement)

Case 1(a)

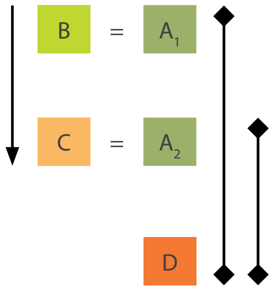
Idealised commitment of a typical industrialised country: MFN liberalisation



The country applies its tariffs at the bound rate prior to the negotiation, then makes a commitment to reduce its bound rate. Once that commitment takes effect, the country applies at the new bound rate.

Case 1(b)

Idealised commitment of a typical industrialised country: MFN liberalisation leading to reduced margins of preference



The margin of preference is the difference between the applied MFN rate and the preferential rate available under an agreement or programme. Any reduction in the applied rate (e.g., in a multilateral trade agreement) will reduce the margin of preference. (Note that the margin might be preserved if the preferential rate was higher than zero prior to the negotiation, and is reduced at the same time as the MFN reduction takes effect.)

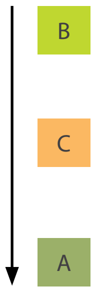
Case 2(a)

Idealised commitment of a developing country: MFN commitments leading to real liberalisation

The country's applied tariff prior to the negotiation was below its bound rate (i.e., there was 'water in the tariff'). Because it reached a commitment in the negotiation that is lower than the applied rate, it must now reduce the applied rate to a level that is equal to or less than the new bound rate.

Case 2(b)

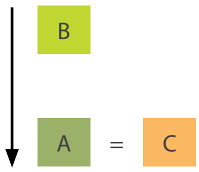
Idealised commitment of a developing country: MFN commitments leading to a lower binding



The country's applied tariff prior to the negotiation was below its bound rate. Because it reached a commitment in the negotiation that is still higher than the applied rate, it need not make any change. The only practical consequence is that if the country later raises its applied rate, it cannot raise it as high as it could have before the negotiation.

Case 2(c)

Idealised commitment of a developing country: MFN commitments leading to binding of the applied rate



The country's applied tariff prior to the negotiation was below its bound rate. Because it reached a commitment in the negotiation that is equal to the applied rate, it need not make any change. The country can no longer raise its applied rate.

Note that for all of the cases illustrated here it is possible that the country had no bound rate at all prior to the negotiation. The result is similar, only the 'B' value is infinitely high.

2.2 Applied Rates

The applied rate is the tariff rate that a country actually applies to imports. This rate can be at or below the bound rate, but cannot legally exceed that rate (if a country indeed has a binding on the product in question). Moreover, the applied rate must be equal for imports from all countries that receive most favoured nation (MFN) treatment, unless those countries also benefit from an RTA or some other WTO-legal form of discrimination (e.g., the Generalised System of Preferences or some other preferential programme for which a waiver has been obtained).

When negotiating with a country it is of course important to have the most up-to-date information on that country's applied rates, and to be familiar with the small but sometimes important differences in how tariff schedules are structured and the information that they convey. Those differences can be appreciated by comparing the figures on the next two pages regarding the tariff schedules of South Africa and Zambia. In addition to these schedules, one may also view online a pair of readings on How to Read the EU Tariff Schedule (http://washingtontradereport.com/Tariffs/Readings/Resources/TariffPageEU.pdf) and How to Read the US Tariff Schedule (http://washingtontradereport.com/Tariffs/Readings/Resources/TariffPage.pdf).

Many countries put the entirety of their current tariff schedules up on the Internet. Zambia does so, for example, and its applied tariff rates can be seen on the following websites:

- Chapters 1–20 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH1-20.pdf);
- Chapters 21–29 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH21-29.pdf);
- Chapters 30–33 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH30-33.pdf);
- Chapters 34–51 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH34-51.pdf);
- Chapters 52–70 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH52-70.pdf);
- Chapters 70–84 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH70-84.pdf);
- Chapters 84–95 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH84-95.pdf); and
- Chapters 96–99 (http://washingtontradereport.com/Tariffs/Readings/ZambiaCH96-99.pdf).

Those who have not yet had much experience in working with tariff schedules are encouraged to browse through the schedule to get a 'feel' for the overall structure, bearing in mind that – because all countries adhere to the same Harmonised System of nomenclature – the overall structure of this one tariff schedule will be replicated in all others. It is only the tariff rates themselves that differ greatly from one country to another.

How to read the South African Tariff Schedule

The 'General' rate is the MFN rate.

Preferential rates under trade agreements are listed in these columns.

The 4-digit items are only descriptive.

For some products the 6-digit item matters for collecting tariffs, while for others it is the 8-digit item.

Heading/ sub-heading	CD	Article description	Statistical unit	Rate of duty			
				General	EU	EFTA	SADC
15.10		**Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils of fractions with oils or fractions of heading 15.09:**					
1510.00	0	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils of fractions with oils or fractions of heading 15.09	kg	10%	free	10%	free
15.11		**Palm oil and its fractions, whether or not refined, but chemically modified:**					
1511.10	9	- Crude oil	kg	10%	free	10%	free
1511.90	5	- Other	kg	10%	free	10%	free
15.12		**Sunflower-seed, safflower or cotton-seed and fractions thereof, whether or not refined, but not chemically modified:**					
1512.1		**- Sunflower-seed or safflower oil and fractions thereof:**					
1512.11	9	- Crude oil	kg	10%	free	10%	free
1512.19		**- Other:**					
1512.19.10	7	- Marketed and supplied for use in the process of cooking food	kg	10%	free	10%	free
1512.19.90	5	- Other	kg	10%	free	10%	free
1512.2		**- Cotton-seed oil and its fractions:**					
1512.21	3	- Crude oil, whether or not gossypol has been removed					
1512.29		**- Other:**					
1512.29.10	1	- Marketed and supplied for use in the process of cooking food	kg	10%	free	10%	free
1512.29.90	6	- Other	kg	10%	free	10%	free
15.13		**Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified:**					
1513.1		**- Coconut (copra) oil and its fractions:**					
1513.11	2	- Crude oil	kg	free	free	free	free
1513.19	3	- Other	kg	free	free	free	free
1513.2		**- Palm kernel or babassu oil and fractions thereof:**					
1513.21	7	- Crude oil	kg	free	free	free	free
1513.29	8	- Other	kg	free	free	free	free

Notes:

- *All of the tariffs shown here are* ad valorem, *but South Africa also has some tariff rates that can be specific. For example, the rate on 1601.00.90 is 40% or 240c/kg.*
- *Unlike many other schedules that list only the MFN applied tariffs, the South African Tariff Schedule lists at least some of the preferential tariffs. For the bound tariffs, however, it is necessary to go to other sources.*
- *This is part of Chapter 15, "Animal or Vegetable Fats and Oils".*

How to read the Zambian tariff schedule

The 'Customs duty rate' is the MFN rate.

S = Standard rated supplies, attract VAT at the prescribed standard rate.
E = Exempt supplies, do not attract any VAT at all.

The 4-digit items are only descriptive.

The 8-digit item is the one that actually matters for collecting tariffs.

HS code	Description of goods	Stat unit of qty	Cust duty rate	Exise duty rate	VAT rate	Remarks
15.04	**Fats and oils and their fractions of fish or marine mammals, whether or not refined, but not chemically modified:**					
1504.10.00	- Fish-liver oils and their fractions	litre	5%	-	S	
1504.20.00	- Fats and oils and their fractions, of fish, other than liver oils	litre	5%	-	S	
1504.30.00	- Fats and oils and their fractions, of marine mammals	litre	5%	-	S	
15.05						
1505.00.00	Wool grease and fatty substances derived therefrom (including lanolin)	kg	5%	-	S	Heading 1505.10.00 and 1505.90.00 deleted

Notes:

- *All of the tariffs shown here are* ad valorem, *but Zambia also has some tariff rates that can be specific. For example, the rate on 1506.00.00 is 25% or K850 per kg, whichever is the greater.*
- *The Zambian Tariff Schedule lists only the applied tariffs. For the bound tariffs, as well as the preferential tariffs under trade agreements, it is necessary to go to other sources.*
- *This is part of Chapter 15, "Animal or Vegetable Fats and Oils".*

2.3 Bound Rates

The bound rate is the tariff rate that a country has bound itself to in a trade negotiation or agreement. It is also sometimes known as a binding or a bound tariff. The applied rate may be at or below the bound rate, but cannot legally exceed the bound rate. Not all countries bind all of their tariffs; a country is legally free to impose any tariff on an unbound product. For example, the applied US tariff on crude oil (one of the most important of all items in international trade) is relatively low, being just 5.25 or 10.5 cents per barrel (depending on the grade), but the tariff is also unbound in the WTO. This means that the United States would be free in some future contingency to impose a high surcharge on oil imports (or at least on oil imported from countries with which it does not have free trade agreements).

In some countries, especially in developing countries, there are wide disparities between the applied and the bound rates for many or all products. This is sometimes described as a case in which there is 'a lot of water in the bound rate', meaning that the country can make a concession that reduces its bound rate without necessarily affecting its applied rate. For example, imagine that a country has a bound rate of 10% on Product X, but its applied rate on that same product is just 1%. The country could cut its tariff by as much as 90% and still be taking out the 'water' in the binding; only a reduction of more than 90% would actually oblige the country to reduce the applied rate. Some analysts argue that commitments that merely take out the water are insignificant, while others take the view that such a commitment amounts to liberalisation insofar as it reduces uncertainty regarding a country's potential tariff rates in the future. In industrialised countries these rates are usually identical to the bound rate.

Tariff negotiations in the WTO are generally based on the bound rate. Note that tariff negotiations may require that a mark-up be used in cases where countries do not have bound rates for certain products. Depending on the amount of 'water' in a country's bindings, this can sometimes mean that commitments that appear to be substantial have little or no impact on the applied rate.

2.4 Approaches and Techniques to Tariff Reduction

There are several different ways that tariff negotiations might be structured. The main questions are whether they aim to reduce or eliminate tariffs; whether they will make some products or sectors subject to deeper or shallower cuts; and whether developing and developed countries will be obliged to make the same degree of cuts. No matter how each of these subsidiary questions is answered, the single most important structural question is whether the principal modality will be through the conducting of negotiations based on requests and offers or through the application of formulas (the results of which might then be adjusted through some process of negotiation).

In addition to deciding how far tariffs will be cut, countries also have to decide how quickly the cuts will be made. It is unusual for all cuts to be made upon entry into force of the agreement; phase-ins are commonly employed. Even Adam Smith recognised their necessity, noting that in lifting protection for specific products "[h]umanity may … require that the freedom of trade should be restored only by slow gradations" lest "cheaper foreign goods of the same kind might be poured so fast into the home market as to deprive all at once many thousands of our people of their ordinary employment and means of subsistence"[2]. Phase-ins are typically set at a ten-year period, but might be shorter or longer for some products, and will often provide for equal annual cuts during that period. A schedule might also specify that some products are subject to the full cut upon the agreement's entry into force, while others might not be cut until much later or even until the very last stage (what is known as a 'back-end loaded' approach).

2.4.1 Request-offer and Sectoral Negotiations

Request-offer is the oldest approach to the conducting of tariff negotiations. It entails the exchange of commitments on a product-by-product basis between two countries, which are then multi-lateralised through the operation of the MFN principle. For example, Japan might offer to reduce its tariffs on orange juice if Brazil reduces its tariffs on televisions. The actual list of products on each country's request list to the other might number in the dozens, and working their way from those lists to a final agreement might involve the exchange of numerous requests and offers. If these two countries ultimately struck a bargain they would extend the concessions made to one another to all other General Agreement on Tariffs and Trade (GATT) contracting parties on a non-discriminatory basis, as required by the MFN principle of GATT Article I. A round of negotiations consists of many such bilateral deals, all of which would be bundled together in a package of national schedules that identify not just the products and the new rates, but also which countries have negotiated for the reduction or otherwise received initial negotiating rights (an important consideration in the event that the country making this concession was later to invoke the safeguard clause or seeks to renegotiate its commitment).

The request-offer approach to negotiations is often portrayed as being too slow and time-consuming for modern trade negotiations, considering the much larger number of countries that are now in the WTO and the growing array of products that countries trade. There are nonetheless three ways in which this approach has carried over from the early GATT period. One is as a back-up or supplement to the formula approach to negotiations that is discussed below. That was the case in the Uruguay Round, for example, where countries aimed to conduct negotiations on the basis of formula cuts, but in some cases ultimately fell back on the old-fashioned, 'hand-made' agreements. The agreed procedure was to target a 30% average reduction on industrial products, but the distribution among tariff lines was then negotiated bilaterally on a request-offer basis.

Secondly, the request-offer approach remains the principal means by which negotiations are conducted over trade in services; GATT negotiations are described later in this chapter. And finally, the request-offer approach lives on, albeit in modified form, in the negotiation of sectoral deals.

Sectoral tariff negotiations, sometimes called zero-for-zero negotiations, aim to reduce or eliminate tariffs in a specific product or sector. The focus here is not on the bilateral exchange of concessions across a heterogeneous range of products, but instead on the negotiation by a group of countries for the elimination of tariffs in a narrower range of goods. This approach developed in the late GATT period, with the Tokyo Round producing the Agreement on Trade in Civil Aircraft, for example, just as the Uruguay Round produced the Pharmaceutical Agreement.

In addition to deals that take formal expression in explicit agreements, zero-for-zero agreements can also be reflected simply in the results of countries' tariff schedules. That was the case for Uruguay Round negotiations

[2] Smith, A. An Inquiry into the Nature and Causes of the Wealth of Nations (1776), Book IV, Chapter 2.

conducted on agricultural equipment, beer, chemicals, construction equipment, distilled spirits, medical equipment, paper, steel and toys. These agreements are primarily reached between advanced, industrialised countries such as Canada, the European Union, Japan, Norway, Switzerland, and the United States. Some developing countries, however, also signed them, such as Chinese Taipei, Egypt, and Georgia which signed the Aircraft Agreement and Macao (China) which signed the Pharmaceutical Agreement.

The coverage of the Information Technology Agreement (ITA) is much greater, both in terms of products and countries. This agreement, first reached in 1996 and later expanded, provides for the phase-out of tariffs on a wide range of high-technology products such as computers, peripherals and the like. The ITA began with 29 countries, including developed as well as developing countries, and a further 46 countries have signed on since 1996.

The negotiations over these sectoral packages are conducted on the basis of a 'critical mass', with the participating countries aiming to obtain commitments from countries that account for some degree, or minimum percentage of global trade in the products in question. In the case of the ITA, for example, the goal was 90%. The benefits of these deals are then extended, on an MFN basis, to all WTO Members, with other countries urged to join as well.

The Doha Round also saw numerous sectoral initiatives. Among the sectors on which some Members placed especially high priority were chemicals, industrial machinery, electronics and electrical products, forest products, raw materials, and gems and jewellery. Like the rest of the Round, however, those negotiations stalled over disagreements regarding both the principles and the details.

2.4.2 Linear and Non-linear Formulas

The request-offer method was relatively easy to conduct, as long as the number of countries and products remained small, but as the system grew and diversified along both of these dimensions, the negotiations became increasingly difficult to conduct. This approach was a time-consuming and relatively haphazard way of producing commitments, and heavily relied on the initiative of individual countries. It also left relatively little role for countries that were small and/or developing, insofar as only the principal supplier of any given product was supposed to make requests. The utility of such an approach declines as the number of countries and products increases, and is especially unattractive to smaller countries that might not be the principal supplier of anything.

The formula approach to tariff-cutting is more efficient than the request-offer approach, assuming that agreement over the terms of the formula is relatively easy to obtain. First used in the Kennedy Round (1962–1967) of GATT negotiations, formulas facilitate matters by starting from the assumption that all countries should cut all of their tariffs by some amount. Once such a principle is adopted, the only questions are (1) how the formula should be devised, (2) what means might be established for either accelerating or (more often) decelerating or exempting specific products from the basic formula, and (3) whether some countries or groups of countries (e.g., developing countries or least developed countries [LDCs]) might be treated differently than others. The basic Kennedy Round formula was a 50% cut for industrial products that allowed for negotiated exceptions, aiming for an overall average reduction of 30%.

The disadvantage of the percentage cut, also known as the linear cut, is that it does not do well in reducing 'peak' tariffs. There is no universally agreed definition as to what constitutes a peak, but they are often quite apparent when one sees them: In some countries' schedules there may be a great many items that are duty-free on an MFN-basis, and average tariffs on dutiable products may be somewhere in the 3–6% range, but there are other products on which tariffs might be 25%, 50%, 75%, or even higher. If one starts with a tariff that is, for example, 50% and applies a seemingly ambitious linear cut of 50% the resulting tariff will still be 25%. That means going from one level peak tariff to another that is, by any reasonable definition, still a peak tariff.

The principal method adopted for the Tokyo Round (1974–1979) was the Swiss formula, the principal virtue of which is that it attacks the peak tariffs aggressively. This approach to formula cuts is expressed as:

$$T_1 = \frac{a \times T_0}{a + T_0}$$

where 'T_1' is the new tariff, 'T_0' is the existing tariff (the base rate), and 'a' is the coefficient of reduction. The Swiss formula tends to reduce peak tariffs more sharply than other tariffs. In the Tokyo Round, the Swiss formula was generally used for industrial products, using a coefficient of 16.

The Swiss formula may also have more than one coefficient. For example, the following formula is expected to be used in the Doha Round Non-Agricultural Market Access (NAMA) negotiations:

$$t_1 = \frac{(\text{a or b}) \times t_0}{(\text{a or b}) + t_0}$$

In this case, the 'a' coefficient is a relatively low number to be used for developed countries, and the 'b' coefficient is a higher number to be used for developing countries.

How does the Swiss formula actually work?

For those who are not mathematically inclined, there are two very simple rules of thumb for the Swiss formula. The first is that this is a formula in which ambitions rise as the coefficient falls: The lower the 'a' value, the deeper the cuts will be from the base rates. An 'a' coefficient of 5, for example, is more ambitious than one at 10. In this way, the Swiss formula is the opposite of a linear cut, where ambitions move in the same direction as the coefficients.

The second rule concerns the maximum rate that will remain in place after a cut is made: The value of the 'a' coefficient is the highest value that will ever be yielded by the formula, no matter how high the base rate. When 'a' is 10, for example, even a base rate of 1,000% will lead to a new tariff rate of 9.9%; if the base rate is 10,000% the new tariff rate will be 9.99% (which rounds up to that maximum rate of 10.0%).

The differences between a linear (straight percentage) and non-linear Swiss cut can be appreciated from the examples given in Table 6. The illustrative cuts show how the Swiss formula makes a very modest reduction to a low tariff rate such as 2.5%, even when the 'a' coefficient is very ambitious (e.g., 5), and has almost no impact on a very low tariff rate such as 1%. At those low levels even a relatively modest linear cut makes a bigger difference. The higher the base rate is, however, the larger the difference. The cuts that the Swiss formula makes in peak tariffs at 50% and 100% are especially impressive, even when a coefficient is modest (e.g., 20). However, even a seemingly ambitious linear cut of 50% still leaves peak tariffs in place when one starts at that high a base rate.

To understand the actual effect of a formula cut, whether of the linear or the Swiss variety, in a negotiation that is based on bound rates, it is necessary to consider both the applied and the bound tariff and the distance between them (i.e., the 'water'). If one employs a formula that is not very ambitious, it is possible that the negotiations will result in no actual change in the level of applied tariffs, but will limit the ability of a country to raise its tariffs in the future by reducing the amount of water in the tariff. This point is illustrated in Table 6, and more precise examples are given in Table 7.

Table 6: Tariff cuts under linear and Swiss formulas

Tariff rates resulting from selected formulas and coefficients; values are rounded

		Linear cuts		Swiss formula		
	Base rate	**25%**	**50%**	**a = 20**	**a = 10**	**a = 5**
	1.0%	0.8%	0.5%	1.0%	0.9%	0.8%
	2.5%	1.9%	1.3%	2.2%	2.0%	1.7%
	5.0%	3.8%	2.5%	4.0%	3.3%	2.5%
	10.0%	7.5%	5.0%	6.7%	5.0%	3.3%
	25.0%	18.8%	12.5%	11.1%	7.1%	4.2%
	50.0%	37.5%	25.0%	14.3%	8.3%	4.6%
	100.0%	75.0%	50.0%	16.7%	9.1%	4.8%
Unweighted average	27.6%	20.8%	13.8%	8.0%	5.1%	3.1%
Average percent cut	–	25.0%	50.0%	71.0%	81.5%	88.7%

The examples given in Table 7 are based on proposals that were made in the Doha Round. One option on the Table would subject the bound tariffs of developing countries to a Swiss formula with an 'a' coefficient of 20, and the bound rates of developed countries to an 'a' coefficient of 8. (In both cases there would be further flexibilities to exempt or otherwise treat on a special basis some types of products.)

Table 7 also shows what these formulas and coefficients would do to the bound rates of developing countries at various levels, and what the result would be in cases where the tariff in question has a lot of water (the country has a 'ceiling bind' of 100%), a moderate amount of water (between 5 and 25 points in this example), or no water (the applied and bound rates are equal). If we start from the assumption that countries will reduce their applied rates only if obliged to do so as the result of a new binding that is below the level of the current applied rate, we can see that in several scenarios the developing countries would not be required to reduce their applied rates. The question of whether and by how much they need to reduce those tariffs depends on the level of ambition in the formula and the level of water in the tariff. In the case of the developed countries, the fact that they usually have little or no water in their tariffs means that the deal on the table would lead to actual reductions in most or all of their applied rates.

Table 7: Illustration of the Swiss formula's effects on bound and applied tariffs

New bound and applied tariffs under selected scenarios

	Bound (A)	Applied (B)	Water (A–B)	New bound (C)	New applied (D)	Applied change (B–D)
High water, a = 20						
Example A-1	100.0	25.0	75.0	16.7	16.7	8.3
Example A-2	100.0	15.0	85.0	16.7	15.0	–
Example A-3	100.0	10.0	90.0	16.7	10.0	–
Example A-3	100.0	5.0	95.0	16.7	5.0	–
	Unweighted average: 13.8		*New unweighted average: 11.7*			
Moderate water, a = 20						
Example B-1	30.0	25.0	5.0	12.0	12.0	13.0
Example B-2	30.0	15.0	15.0	12.0	12.0	3.0
Example B-3	30.0	10.0	20.0	12.0	10.0	–
Example B-4	30.0	5.0	25.0	12.0	5.0	–
	Unweighted average: 13.8		*New unweighted average: 9.8*			
No water, a = 20						
Example C-1	25.0	25.0	0.0	11.1	11.1	13.9
Example C-2	15.0	15.0	0.0	8.6	8.6	6.4
Example C-3	10.0	10.0	0.0	6.7	6.7	3.3
Example C-4	5.0	5.0	0.0	4.0	4.0	1.0
	Unweighted average: 13.8		*New unweighted average: 7.6*			
No water, a = 8						
Example D-1	25.0	25.0	0.0	6.1	6.1	18.9
Example D-2	15.0	15.0	0.0	5.2	5.2	9.8
Example D-3	10.0	10.0	0.0	4.4	4.4	5.6
Example D-4	5.0	5.0	0.0	3.1	3.1	1.9
	Unweighted average: 13.8		*New unweighted average: 4.7*			

Note: Examples assume that in cases where the new bound rate remains above the current applied rate, the country makes no changes in that applied rate.

3. Tariff and Trade Data

3.1 Linking Tariff and Trade Data

When prioritising one's objectives in tariff negotiations it is vitally necessary to relate the tariff rates to actual trade data. In order to do so properly, the trade data must be assembled on the basis of the Harmonised System (HS) rather than the more aggregated, sectoral data that is organised in other systems such as Standard Industrial Classification (SIC), Standard International Trade Classification (SITC), or North American Industry Classification System (NAIC). Moreover, the trade data should ideally be at the level of specificity at which tariffs are actually assessed. Depending on the country, that may variously be at the six-, eight-, or ten-digit level.

With the trade data in hand, and at the proper level of specificity, it is a simple matter to prioritise products. For example, it should be easy to determine, both on a global basis and with respect to individual partners, what are the 10, 25, 50, or 100 most important products in both imports and exports. It is not unusual for trade to be highly concentrated in a relatively small number of products, which allows the analyst to determine which, among the thousands of items in the tariff schedule, should be given the closest attention when preparing for and engaging in tariff negotiations.

Relating the tariff and trade data can also allow the analyst to determine the level of government revenue that is at stake, and thus allow the trade ministry to liaise with the finance ministry when determining whether there is any danger of crossing a 'red line' that affects the budget.

Countries differ widely in the degree to which they have trade available data that are accurate, in the proper form, and which are timeously available to analysts. In an ideal system, it is possible for users to access an online searchable database that allows for sorting data by time, product, partner, import programme, etc., at different levels of aggregation. That is an ideal that is achieved only in a few of the more advanced countries, and even in those countries access to the data will sometimes be limited. As a general rule, the countries with the greatest problems in this respect are the poorer and smaller developing countries. The following types of problems are often encountered:

- Trade data may be available only in higher levels of aggregation, such as total imports from all sources, total imports from a single partner, or total imports in certain sectors, but not – as is most useful for trade analysts – at the level of individual products based on precise HS nomenclature;
- When the data are available in HS format, difficulties can arise from the fact that a pair of countries might use different versions of the HS (e.g., one uses the very latest and another uses one that is now several years old), which can result in different classifications for the same product, or may be at different levels of aggregation within the HS (e.g., one set of data may be at the four-digit level, another at the eight-digit level, etc.);
- The data may be available only at the most disaggregated level, namely the individual transaction, such that the analysts can see one shipment for a certain amount of cars and another for radios, but cannot know what is the total value of cars, radios, or anything else imported over the course of a year because these numbers have never been aggregated;
- Trade data may arrive late, with the analyst having to work with figures that are two, three, or even more years old; and
- The communications between the customs service (where the data originate) and the ministry responsible for trade negotiations may not be good, and the customs officials are unwilling to share data in a timely and user-friendly way.

While these are common problems, there are also several possible solutions. The best and most lasting solution is for the country to make trade data a priority, using technical assistance and promoting greater co-operation between ministries in order to put in place a more efficient and accurate system that will regularly make available timely and accurate data in a user-friendly format. That is more easily said than done, however, and can take months or years to achieve. As an interim solution, an analyst can rely on either or both of two alternatives. One is to use 'mirror data' from trade with specific partners, such that the data that a partner reports on its exports to one's own country are then usable as import data, and that partner's reported imports can be seen as data on one's own exports. For example, if reliable data on exports to South Africa are not available one can instead substitute South African import data. Another approach, which might be used in conjunction with the first, is to rely on the data available from United Nations agencies or other international institutions.

The fact that neither of those solutions is perfect should not prevent analysts from using them as fully as possible. The alternative is to operate without trade data at all, which is tantamount to trying to navigate in the dark without a map.

3.2 Preferences and Utilisation Rates

The discussion so far has assumed that the negotiations are between countries that have no preferences in place. The dynamics of negotiations, and the task of the analyst, become more difficult when preferences already exist that may be either unilateral (from one partner only) or reciprocal (both partners extend preferences to one another). When any pair or group of countries already has preferences in place, and seeks to negotiate either an improvement to those preferences or some new arrangement, it is important to conduct a careful assessment of the value and shortcomings of those preferences.

There are four questions that need to be answered for every product that is actually or potentially traded between any pair of countries that has preferences in place:

- Is the product eligible for preferential treatment, or has it been excluded altogether from the programme?
- Are the preferences total or partial? That is, does a qualifying product receive fully duty-free treatment, or only a reduction from the MFN tariff? In either case one should calculate the margin of preference, which in the case of fully duty-free treatment is identical to the MFN tariff and for any product might be either small (e.g. 25% below the MFN rate) or large (e.g, 75% below the MFN rate).
- What are the rules of origin that the product must meet in order to qualify for preferential treatment? Do these appear, at face value, to be simple and easily met, or complex and potentially difficult or costly to meet?
- What is the actual utilisation rate for the preferences? Do none of the products actually enter on a preferential basis, all of them, or something in-between?

That last question helps to put the others in context, but also requires careful analysis in itself. What might we conclude if we find that there is a very low rate of utilisation of preferences for, let us say, radios? If there are US$1,000,000 worth of radios exported to a partner country, but only US$10,000 worth of those radios are benefiting from preferences, the utilisation rate is just 1%. The most likely explanation for this low rate of utilisation is that the rules of origin for this product may be too rigid, imposing costly requirements that domestic producers cannot meet. That may indeed be the cause for a low rate of utilisation, which would indicate that the country would do well to negotiate for reforms in these rules. If the current programme extends preferences to radios only when they include a certain component that is imported from the preference-giving country, for example, and that product is more cheaply available elsewhere, it will obviously be in the country's best interests to convince the preference-giving country to relax or eliminate this requirement.

It should also be acknowledged, however, that there may be alternative or supplementary explanations for a low utilisation rate, each of which could imply the need for additional policy responses. It may be the case that the margins of preference are so low that exporters have little incentive to spend the extra time needed to file the necessary paperwork, or that they would be willing to do so but were not even aware that the product is eligible for preferences. Knowing which answer, or set of answers, offers the best explanation for a low rate of utilisation may require further inquiry, including questions posed to either the trade associations or the individual firms. If it is found that there is a low rate of utilisation because of producers' lack of awareness, this would suggest that an outreach campaign could be in order. It is also possible that the procedures and paperwork required for the preferential programme need to be simplified.

Usually, the value of trade preferences has been measured by referring to a ratio between the product coverage of the preferential schemes and the current exports of the TFTA countries. The larger the ratio in relation to the exports from beneficiaries, the bigger the value of the trade preferences granted to the beneficiary countries. Such an approach, however, may not be an accurate measurement. Firstly, it does not take into adequate consideration that the MFN zero rates should first be deducted from the coverage of preferential schemes. Thus, unless trade coverage is calculated over the exports which are 'dutiable' there might be the risk of calculating 'empty preferences'. Secondly, there is a need to assess the value of the preferential margin in relation to the requirement of compliance with rules of origin, for example low preferential margin associated with restrictive rules of origin reduce the value of trade preferences. Thirdly, and most importantly, the matching of dutiable exports with the coverage of the preferential schemes provides an indication of the potential effects of the trade preferences granted. In order to obtain more realistic and balanced results in assessing the value of trade preferences, a fourth step should be undertaken by calculating the amount of trade that actually received trade preferences as a percentage of the potential coverage, e.g., the utilisation rate.

These indicators are common to all trade preferences and have been used for a number of years in the UNCTAD context. These benchmarks can be defined as follows:

- **Product coverage** – the ratio between imports that are covered by a preferential trade arrangement and total dutiable imports from the partner countries. The higher the percentage, the more generous the preferences may appear, depending on the structure of dutiable imports of the beneficiary countries. Coverage does not automatically mean that preferences are granted at the time of customs clearance; and
- **Utilisation rate** – the ratio between imports actually receiving preference and those covered by a preferential trade arrangement. This rate is mostly based on the customs declaration made by the importer at the time of importation. Higher or lower utilisation rates are mainly the result of the stringency and/or complexity of rules of origin and ancillary requirements. In some cases, exporters may not have submitted the necessary documentation (such as a certificate of origin or through bill).

Some examples in reading utilisation rates:

Utilisation in the EU market for ESA exporters

When aggregate imports into the European Communities (EC) are analysed, there appears to be scope for preferences for only 19% of total imports from Eastern and Southern Africa (ESA) countries. Hence one major contribution of this study was to analyse specific tariff lines that constitute some of the more important exports for the selected ESA countries. In Table 8 below, we highlight key EC imports from ESA by tariff line and discuss specific tariff lines used in this study to identify survey sectors/industries.

Fresh cut flowers (HS060310) have a high preference utilisation rate of 98% in the EU market. Preference margins for this product under EC preferences are 8.5%.

Tuna exports into the EC market from ESA are another major sector included in the preference erosion survey. These have a preference utilisation of 95% and a preference margin of 24% in the EC market. Fresh beans and fresh peas have preference utilisation rates of 80% and 94% respectively, and enjoy preference margins of 13.6% and 8% respectively. Imports of oranges into the EC from ESA countries have an utilisation rate of 91% and a preference margin of 16% for LDC and 12.8% for imports originating from the African, Caribbean and Pacific (ACP) Group of States.

Textile products tend to be quite differentiated. Textile products have preferential margins of 12% for EC preferences. T-shirts (HS610910) are the largest textile import in value terms into the EC from the ESA. The utilisation rate for this product is 94%. Jerseys and pullovers (HS611020) have a utilisation rate of 93%. Men's or boy's cotton shirts (HS620520) have an utilisation rate of 90% while men's or boy's trousers (HS610342) have an utilisation rate of 78%. Women's briefs (HS610821) and men's briefs (HS610711) have utilisation rates of 88% and 96% respectively. The utilisation rate of cotton bed linen (HS630231) is 94% while women's trousers is 71%.

Table 8 highlights a range of preference margins and preference utilisation rates for EU imports from ESA. It is important to note that the table is an extract from the original (full) table that was used in the analysis. Thus for instance, the totals (all products row) in columns (7), (8) and (9) are greater than the sum of values in the specific product lines[3].

[3] This applies to Table 2.2 on AGOA exports from ESA.

Table 8: Preference margins and preference utilisation rates for EC imports from ESA (2005)

Product		2006 rates of tariff duties				2005 value of imports from COMESA ($ 000)				Preference utilisation	Coverage	Utility rate	No. of ESA sup.
HS Code	Description	MFN applied (%)	GSP (%)	LDC (%)	ACP (%)	Total	MFN dutiable	Covered by pref. scheme	Receiving pref. treatment				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
	ALL PRODUCTS					39,146,628	7,597,752	6,756,137	5,554,553	82%	89%	73%	
060310	Fresh cut flowers and buds	8.50	5.00	0.00	0.00	428,291	427,817	427,817	419,781	98%	100%	98%	11
610910	T-shirts, singlets and other vests, of cotton, knitted or crocheted	12.00	9.60	0.00	0.00	386,326	386,326	386,326	361,724	94%	100%	94%	16
160414	Prepared or preserved tuna, skipjack and Atlantic bonito	24.08	20.58	0.00	0.00	362,262	362,262	362,262	344,961	95%	100%	95%	4
240120	Tobacco, partly or wholly stemmed/ stripped		0.08	0.00	0.00	234,702	216,240	216,240	208,293	96%	100%	96%	7
030613	Frozen shrimps and prawns	13.00	5.92	0.00	0.00	141,203	141,203	141,203	141,023	100%	100%	100%	6
070820	Beans, fresh or chilled	13.60	6.90	0.00	0.00	168,189	164,851	164,851	132,331	80%	100%	80%	9
030410	Fresh or chilled fish fillets	12.75	9.02	0.00	0.00	137,785	137,340	137,340	82,861	60%	100%	60%	8
611020	Jerseys, pullovers, etc., of cotton, knitted or crocheted	12.00	9.60	0.00	0.00	67,246	67,246	67,246	62,348	93%	100%	93%	12
070810	Peas, fresh or chilled	8.00	4.50	0.00	0.00	64,073	64,073	64,073	60,229	94%	100%	94%	8
620520	Men's or boys' shirts of cotton	12.00	9.60	0.00	0.00	66,253	63,431	63,431	57,146	90%	100%	90%	6
620342	Men's or boys' trousers, breeches, etc., of cotton	12.00	9.60	0.00	0.00	65,163	65,163	65,163	50,774	78%	100%	78%	9
060210	Unrooted cuttings and slips	2.00	0.00	0.00	0.00	50,324	50,317	50,317	48,015	95%	100%	95%	9
080510	Oranges, fresh or dried	16.00		0.00	3.20	84,676	51,388	51,388	46,642	91%	100%	91%	3
200820	Pineapples, prepared or preserved (excl. those of 20.06 and 20.07)	22.83	11.10	0.00	0.00	54,593	54,581	54,581	44,482	81%	100%	81%	3
610510	Men's or boys' shirts of cotton, knitted or crocheted	12.00	9.60	0.00	0.00	45,973	45,973	45,973	42,526	93%	100%	93%	8
610821	Women's or girls' briefs and panties of cotton, knitted or crocheted	12.00	9.60	0.00	0.00	41,561	41,561	41,561	36,617	88%	100%	88%	5
070990	Other vegetables, fresh or chilled, NES	7.84	6.39	0.00	2.22	37,142	36,965	36,935	34,056	92%	100%	92%	13
030342	Frozen yellow fin tunas	3.14	18.50	0.00	0.00	41,294	30,446	30,446	30,063	99%	100%	99%	3

Product		2006 rates of tariff duties				2005 value of imports from COMESA ($ 000)				Preference utilisation	Coverage	Utility rate	No. of ESA sup.
HS Code	Description	MFN applied (%)	GSP (%)	LDC (%)	ACP (%)	Total	MFN dutiable	Covered by pref. scheme	Receiving pref. treatment				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
630231	Bed linen of cotton (excl. printed, knitted or crocheted)	12.00	9.60	0.00	0.00	31,157	31,114	31,114	29,339	94%	100%	94%	8
610711	Men's or boys' underpants and briefs of cotton, knitted or crocheted	12.00	9.60	0.00	0.00	30,421	30,421	30,421	29,303	96%	100%	96%	4
620462	Women's or girls' trousers, breeches, etc., of cotton	12.00	9.60	0.00	0.00	39,824	39,824	39,824	28,268	71%	100%	71%	8
090500	Vanilla	6.00	2.10	0.00	0.00	24,245	24,245	24,245	21,131	87%	100%	87%	4
620343	Men's or boys' trousers, breeches of synthetic fibres	12.00	9.60	0.00	0.00	21,014	21,014	21,014	19,687	94%	100%	94%	8
711319	Articles of jewellery and pts thereof of/o prec mtl w/n plated/clad w prec mtl	2.50	0.00	0.00	0.00	45,179	45,170	45,170	18,750	42%	100%	42%	8
610990	T-shirts, singlets, etc., of other textiles, NES, knitted or crocheted	12.00	9.60	0.00	0.00	19,125	19,125	19,125	17,042	89%	100%	89%	6
071220	Dried onions	12.80	9.30	0.00	0.00	21,155	21,138	21,138	16,644	79%	100%	79%	3
570330	Tufted floor coverings of man-made textile materials, NES	8.00	6.40	0.00	0.00	16,999	16,999	16,999	16,599	98%	100%	98%	2
570320	Tufted floor coverings of nylon or other polyamides	8.00	6.40	0.00	0.00	17,355	17,355	17,355	16,505	95%	100%	95%	2
081010	Strawberries, fresh	11.20	7.70	0.00	.	18,791	18,775	18,775	16,458	88%	100%	88%	2
611030	Jerseys, pullovers, etc., of man-made fibres, knitted or crocheted	12.00	9.60	0.00	0.00	17,897	17,897	17,897	16,107	90%	100%	90%	8
760110	Aluminium unwrought, not alloyed	6.00	.	0.00	0.00	21,632	21,338	21,338	16,083	75%	100%	75%	2
030420	Frozen fish fillets	10.55	6.90	0.00	0.00	19,692	19,692	19,692	15,991	81%	100%	81%	6
520548		4.00	3.20	0.00	0.00	20,901	20,901	20,901	15,989	76%	100%	76%	2
570242	Pile floor coverings of man-made textiles, woven, made up	8.00	6.40	0.00	0.00	16,194	16,194	16,194	15,119	93%	100%	93%	1
720221	Ferro-silicon, containing by weight more than 55% of silicon	5.70	2.20	0.00	0.00	19,111	19,111	19,111	15,017	79%	100%	79%	1
252329	Portland cement (excl. white)	1.70	0.00	0.00	0.00	14,995	14,995	14,995	14,993	100%	100%	100%	3

Product		2006 rates of tariff duties				2005 value of imports from COMESA ($ 000)				Preference utilisation	Coverage	Utility rate	No. of ESA sup.
HS Code	Description	MFN applied (%)	GSP (%)	LDC (%)	ACP (%)	Total	MFN dutiable	Covered by pref. scheme	Receiving pref. treatment				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
621210	Brassieres	6.50	5.20	0.00	0.00	15,707	15,707	15,707	14,978	95%	100%	95%	3
610610	Women's or girls' blouses, etc., of cotton, knitted or crocheted	12.00	9.60	0.00	0.00	15,392	15,392	15,392	14,811	96%	100%	96%	5
611120	Babies' garments, etc., of cotton, knitted or crocheted	10.45	8.35	0.00	0.00	14,902	14,902	14,902	14,761	99%	100%	99%	5
240110	Tobacco, not stemmed/ stripped	.	0.14	0.00	0.00	17,175	17,175	17,175	14,512	84%	100%	84%	7
621410	Shawls, scarves, mufflers, mantillas, veils, etc., of silk or silk waste	8.00	6.40	0.00	0.00	14,370	14,370	14,370	14,366	100%	100%	100%	4
610822	Women's or girls' briefs, etc., of man-made fibres, knitted or crocheted	12.00	9.60	0.00	0.00	14,044	14,044	14,044	13,922	99%	100%	99%	4
030269	Fresh or chilled fish, NES	12.35	7.80	0.00	0.00	21,398	21,398	20,142	12,952	64%	94%	61%	9
620331	Men's or boys' jackets and blazers of wool or fine animal hair	12.00	9.60	0.00	0.00	12,173	12,173	12,173	12,140	100%	100%	100%	2
630251	Table linen of cotton (excl. knitted or crocheted)	12.00	9.60	0.00	0.00	13,169	13,157	13,157	11,903	90%	100%	90%	6
520942	Denim, with >=85% cotton, >=200g/m^2	8.00	6.40	0.00	0.00	11,823	11,823	11,823	10,870	92%	100%	92%	2
200830	Citrus fruit, prepared or preserved (excl. those of 20.06 and 20.07)	27.62	15.49	0.00	0.00	10,070	10,070	10,070	10,058	100%	100%	100%	6
071080	Vegetables, frozen, NES	13.80	10.30	0.00	0.00	10,005	9,874	9,874	8,509	86%	100%	86%	7

The data show that utilisation rates vary considerably. There are some products, such as flowers and cement, for which utilisation rates exceed 95%, but others such as jewellery and fresh or chilled fish, where utilisation approaches or even falls below 50%. The examples of Vietnam (Table 9) and Zimbabwe (Table 10) offer further instances of specific countries where utilisation rates may vary across products.

Table 9: EU imports from Vietnam under the GSP in 2009 as an example of preference utilisation

Product	Product description	Total value of imports ($ 000)	Imports dutiable ($ 000)	Imports covered ($ 000)	Imports received ($ 000)	Potential cover rate (%)	Utilisation rate (%)	Utility rate (%)
		A	B	C	D	C÷B	D÷C	D÷B
030429	Fish* – Other	1,178,890	1,178,890	1,171,564	1,122,442	99.4	95.8	95.2
030613	Frozen shrimps and prawns	179,732	179,732	179,311	176,932	99.8	98.7	98.4
420292	Cases and containers, NES, with outer surface of plastic or textiles	212,049	212,049	208,673	168,644	98.4	80.8	79.5
392321	Sacks and bags (incl. cones) of polymers of ethylene	101,453	101,453	101,431	96,633	100.0	95.3	95.2
460219	* – Other	81,748	81,748	81,576	76,488	99.8	93.8	93.6
160520	Shrimps and prawns, prepared or preserved	66,234	66,234	66,215	65,804	100.0	99.4	99.4
392690	Other articles of plastics, NES	69,322	69,322	68,525	60,125	98.9	87.7	86.7
691390	Statuettes and other ornamental articles of ceramics NES	53,090	53,090	51,813	48,426	97.6	93.5	91.2
950300	Tricycles, scooters, pedal cars and similar wheeled toys, etc.	143,626	79,412	79,050	46,668	99.5	59.0	58.8
030749	Cuttlefish and squid (excl. live, fresh or chilled)	45,673	45,673	45,673	44,415	100.0	97.2	97.2
711319	Art. of jewellery and pts thereof of/o prec mtl w/n plated/clad	48,462	48,462	48,462	42,107	100.0	86.9	86.9
030499	* – Other	90,508	90,508	58,924	41,508	65.1	70.4	45.9
420212	Trunks, suitcases, etc., with outer surface of plastic or textiles	46,555	46,555	46,426	41,414	99.7	89.2	89.0
691490	Articles of ceramics NES	44,789	44,789	44,723	41,214	99.9	92.2	92.0
392620	Articles of apparel and clothing accessories of plastics	36,472	36,472	36,472	34,533	100.0	94.7	94.7
030799	Aquatic invertebrates, NES (excl. live, fresh or chilled)	34,381	34,381	32,890	32,883	95.7	100.0	95.6
611030	Jerseys, pullovers, etc., of man-made fibres, knitted or crocheted	76,778	76,778	75,103	30,022	97.8	40.0	39.1
821520	Tableware sets not containing articles plated with precious metal	29,080	29,080	28,561	27,588	98.2	96.6	94.9
611020	Jerseys, pullovers, etc., of cotton, knitted or crocheted	55,382	55,382	54,661	24,558	98.7	44.9	44.3
550320	Synthetic staple fibres, of polyesters, not carded, etc.	25,922	25,922	25,898	23,992	99.9	92.6	92.6
732393	Table, kitchen or other household articles and parts, of stainless steel	25,490	25,490	25,461	23,938	99.9	94.0	93.9
	Subtotal	2,645,636	2,581,422	2,531,412	2,270,334	98.1	89.7	87.9
	All other	8,146,331	5,082,311	2,352,251	361,834	46.3	15.4	7.1
	Total	**10,791,967**	**7,663,733**	**4,883,663**	**2,632,168**	**63.7**	**53.9**	**34.3**

Table 10: EU imports from Zimbabwe under the GSP in 2009 as an example of preference utilisation

Product	Product description	Total value of imports ($ 000)	Imports dutiable ($ 000)	Imports covered ($ 000)	Imports received ($ 000)	Potential cover rate (%)	Utilisation rate (%)	Utility rate (%)
		A	B	C	D	C÷B	D÷C	D÷B
170111	Raw cane sugar, in solid form	78,283	78,283	78,283	78,283	100.0	100.0	100.0
720241	Ferro-chromium containing by weight more than 4% of carbon	47,375	47,375	47,375	47,370	100.0	100.0	100.0
240120	Tobacco, partly or wholly stemmed/stripped	45,777	45,777	40,438	40,438	88.3	100.0	88.3
060311	* – Roses	30,854	30,854	30,730	27,200	99.6	88.5	88.2
060319	* – Other	11,052	11,052	10,874	10,804	98.4	99.4	97.8
080510	Oranges, fresh or dried	10,090	10,090	9,581	7,585	95.0	79.2	75.2
070810	Peas, fresh or chilled	4,681	4,681	4,681	3,979	100.0	85.0	85.0
240130	Tobacco refuse	3,983	3,983	3,848	3,848	96.6	100.0	96.6
080540	Grapefruit, fresh or dried	1,990	1,990	1,990	1,595	100.0	80.2	80.2
220710	Undenatured ethyl alcohol, of alcoholic strength >=80%	6,856	6,856	6,856	1,388	100.0	20.2	20.2
030419	* – Other	1,298	1,298	1,298	1,298	100.0	100.0	100.0
240110	Tobacco, not stemmed/stripped	1,480	1,480	1,295	1,292	87.5	99.8	87.3
620342	Men's or boys' trousers, breeches, etc., of cotton	1,236	1,236	1,236	1,235	100.0	99.9	99.9
070960	Fruits of genus Capsicum or Pimento, fresh or chilled	537	537	537	536	100.0	99.8	99.8
060210	Unrooted cuttings and slips	492	492	492	490	100.0	99.6	99.6
711411	Art. of gold or silversmiths & parts of silver w/n plated/clad	343	343	343	343	100.0	100.0	100.0
070820	Beans, fresh or chilled	318	318	317	317	99.7	100.0	99.7
060491	Fresh parts of plants, without flowers or buds, for ornamental purposes	311	311	311	311	100.0	100.0	100.0
620462	Women's or girls' trousers, breeches, etc., of cotton	202	202	202	202	100.0	100.0	100.0
080440	Avocados, fresh or dried	267	267	267	166	100.0	62.2	62.2
620920	Babies' garments and clothing accessories of cotton	166	166	166	166	100.0	100.0	100.0
	Subtotal	247,591	247,591	241,120	228,846	97.4	94.9	92.4
	All other	99,637	3,597	3,597	920	100.0	25.6	25.6
	Total	**347,228**	**251,188**	**244,717**	**229,766**	**97.4**	**93.9**	**91.5**

4. Configuration of the Tariff Requests and Offers

The issues discussed in the preceding sections, including the structure of tariffs, the modalities of negotiations, and the interpretation of data, come together in the configuration of a country's tariff offer. A country needs to be prepared to do three things at this stage:

- Know what the objectives of its exporters may be in the removal or reduction of other countries' barriers. These are known as the offensive interests;
- Know what its own sensitivities are on the import side, especially the identification of any products and sectors for which higher levels of caution need to be exercised when preparing offers for the reduction of one's own tariffs. These are known as the defensive interests; and
- Have in mind a negotiation strategy that is designed to address both the offensive and the defensive interests, taking into account the possibility of having to face trade-offs between them (e.g., a country may find that in order to convince another to achieve a more ambitious result on some product for which it has an offensive interest, it may need to be prepared to bend a bit more on its own defensive interests).

Negotiating on these matters can be as much an art as a science, and outcomes can be greatly affected by many intangible factors such as negotiating skills, capacity to devise and execute a well-reasoned strategy, ability to 'bluff', capacity to 'read' when one's negotiating partner may be bluffing, and the roles of personality and trust. Those intangible factors extend far beyond the confines of what may be covered in a module such as the present exercise, which is necessarily limited to the more technical aspects of preparation for negotiations. These preparations are an indispensable step towards the conclusion of a successful agreement, but will always need to be followed by that combination of statesmanship, gamesmanship, and showmanship that is commercial diplomacy.

4.1 Techniques to Identify Offensive Interests

Offensive interests are those negotiating objectives of a country that relate to the promotion of exports to foreign markets. Offensive interests tend to make countries more ambitious in tariff negotiations, as local producers may ask that when seeking commitments from a trading partner the products of interest to the industry be subject to the sharpest tariff reductions.

In order to identify a country's offensive interests, it is necessary to collect three kinds of information:

- Data on the production and exports of goods in one's own country, including information on whether production is rising or falling and the extent to which exportable surpluses are now or will be available in the future;
- Data on the imports of these products in the partner country, including data on the market shares held by different supplying countries (including one's own country); and
- The applied and bound tariffs of the partner country, as well as any preferences that might currently be extended to other countries for the product in question.

In addition to this statistical data, it is also useful to gather any available economic intelligence on the level of competitiveness of one's own industry, the partner country's industry, and those of third parties, and to gather any available political intelligence on the influence of the industry in question in the partner country (e.g., do the producers of the product have much influence over the government?).

There is only one factor that will always be decisive: The partner country must impose at least some level of tariff on the product in question, or at least maintain a binding rate that is above zero (thus retaining the possibility of imposing a tariff). In the absence of such a tariff there is nothing to negotiate. Apart from that, there is no one factor in this mix of economic and political data that is universally more important than all others, and the factors need to be considered in conjunction with one another. In general, however, one could say that the ideal product on which to make a request would include all of the following characteristics: The country is a competitive producer of the item and has (or will soon have) the capacity to produce an exportable surplus, the partner country currently has a relatively high tariff in place on the product, and the industry in the partner country has either disappeared or has relatively little political influence.

4.2 Techniques to Identify Defensive Interests

Defensive interests are those negotiating objectives of a country that relate to the protection of local producers. Defensive interests tend to make countries less ambitious in tariff negotiations, as local producers may ask that the products of interest to them be exempted from commitments for tariff reductions, or subject to minimal cuts, or that the phase-in periods be long, or that commitments be otherwise restricted in ways that preserve as much of the existing levels of protection as possible for as long as possible.

Figuring out one's defensive interests involves collecting the very same type of data as was the case for determining offensive interests, only this time in reverse:

- Data on the production and exports of goods in the partner country, including information on whether production is rising or falling and the extent to which exportable surpluses are now or will be available in the future.
- Data on the imports of these products into one's own country, including data on the market shares held by different supplying countries (including the partner country).
- The applied and bound tariffs of one's own country, as well as any preferences that might currently be extended to other countries for the product in question.

In addition to this statistical data, it is especially vital to determine how vulnerable local industries consider themselves to be vis a vis imports from the partner country.

The most likely candidates for the identification of defensive interests are those products that are currently subject to relatively high tariffs, the domestic industry considers itself to be less competitive by comparison with the partner country, and the partner country is known either to have or to be building export capacity in the sector.

4.3 Examination of the Country-specific Excel Spreadsheets

These spreadsheets were prepared at country level in order to identify tariff lines for offensive and defensive interests, and will be distributed to the individual countries before training takes place.

5. Configuration of Tariff Offer in the TFTA

Having determined which products are the best candidates for treatment as offensive and defensive interests, a country should then proceed to develop its tariff requests and offers. This is best done by assembling all of the data that negotiators should have on hand when dealing with them on an item-by-item basis, preferably in a standard format.

Participants with online access should visit http://www.washingtontradereport.com/Tariffs/Readings/Zambiasample.xlsx to see an illustrative example of how such data can be arranged, together with the proposed terms of a deal. In this instance, the example is for a Zambian offer, with the illustration using Chapter 1 (live animals) and 2 (fish) of the Harmonised System (HS). For each item, the Excel spreadsheet shows the HS number and description, the tariffs that are currently applied to imports from African partners, the actual level of imports from those partners, and the proposed phase-down of the tariffs in the TFTA Agreement.

5.1 Parameters for Determining a Tariff Offer as Agreed by the Third TTNF in Arusha (September 2012)

In formulating a tariff offer, the TFTA countries should follow the negotiating principles and adhere to the guidelines agreed by the Tripartite Trade Negotiation Forum (TTNF). Obviously this statement should be understood as applying under the overall context that nothing is agreed until everything is agreed.

The Second Tripartite Summit, held in Johannesburg, South Africa, in June 2011, adopted principles to guide the negotiations of the TFTA. These principles are:

i) Negotiations shall be Regional Economic Community (REC) and/or Member/Partner State driven;

ii) Variable geometry;

iii) Flexibility and special and differential treatment;

iv) Transparency, including the disclosure of information with respect to the application of the tariff arrangements in each REC;

v) Building on the *acquis* of the existing REC FTAs in terms of consolidating tariff liberalisation in each REC FTA;

vi) A single undertaking covering Phase I on trade in goods;

vii) Substantial liberalisation;

viii) MFN treatment;

ix) National treatment;

x) Reciprocity; and

xi) Decisions shall be taken by consensus.

More importantly, at its Second and Third Meetings held in Lusaka, Zambia from 12–14 March 2012 and in Mauritius from 1–3 June 2012 respectively, the TTNF reached a common understanding on the interpretation and application of these principles.

With specific reference to negotiations for tariff liberalisation, the principle of building on the *acquis* of the existing REC FTAs in terms of consolidating tariff liberalisation in each REC FTA is critical.

The understanding reached by the TTNF on this principle is that negotiations on tariff liberalisation should start from the point reached by the COMESA, EAC and SADC trade regimes. Furthermore tariff negotiations and the exchange of tariff concessions would be among Member/Partner States of the TFTA that currently have no preferential arrangements in place among them. This will both preserve the *acquis* and build on it.

In this regard, three groups of countries were identified for the negotiations on tariff liberalisation, namely:

i) Member/Partner States already participating in a REC FTA with each other;

ii) Member/Partner States participating in a REC FTA, but which have to negotiate tariff liberalisation with other Tripartite Member/Partner States of the other REC FTAs; and

iii) Member/Partner States that are not participating in a REC FTA.

Table 11 below provides the full permutation of tariff negotiations, which categorises the countries in the three groups and also indicates that not all 26 countries will need to negotiate with each other.

The TFTA Agreement is to be completed within three years in line with the ambition of the Tripartite Heads of State and Government that directed that the FTA be established expeditiously. (Member/Partner States that are ready to implement 100% tariff liberalisation upon entry into force of the agreement may do so.)

i) **Reciprocity:** TFTA Member/Partner States or RECs will grant to each other mutually agreed trade concessions.

ii) **Flexibility and S&D treatment:** Flexibility and special and differential (S&D) treatment will be extended to deserving Member/Partner States as an outcome of the negotiations.

iii) **Negotiating parties:** While individually the combined membership of the three RECs is 26, ten countries are expected to negotiate as two blocs of five countries each. These are Partner States of the East African Community (EAC) and Member States of the Southern African Customs Union (SACU).This implies that the countries belonging to these Customs Unions will make common offers and receive common requests during negotiations. The remaining 16 countries are separate and individual customs territories and may negotiate individually, but nothing stops any two or more of them from collaborating, formulating and taking common negotiating positions as 'like-minded' countries.

iv) **Format for offers and requests:** Member/Partner States will exchange offers based on the template for tariff liberalisation.

v) **Submission of offers:** Member/Partner States should submit their offers within three months following the agreement on the modalities for negotiation of tariff liberalisation.

Table 11: Full permutation of tariff negotiations

No.	Country	No negotiations – already trading on FTA terms with these countries	Negotiations
1	EAC (Burundi, Kenya, Uganda, Rwanda and Tanzania)	**11 countries:** Comoros, Djibouti, Egypt, Libya, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe	**10 countries:** SACU, Angola, Eritrea, Ethiopia, Mozambique and DRC
2	SACU (Botswana, Lesotho, Namibia, South Africa and Swaziland)	**5 countries:** Madagascar, Malawi, Mauritius, Zambia and Zimbabwe	**16 countries:** EAC, Angola, Djibouti, DRC, Comoros, Egypt, Ethiopia, Eritrea, Libya, Mozambique, Seychelles and Sudan
3	Angola	**None**	**25 countries:** EAC, SACU, Comoros, DRC, Djibouti, Egypt, Eritrea, Ethiopia, Libya, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, Sudan, Zambia and Zimbabwe
4	Comoros	**15 countries:** EAC, Djibouti, Egypt, Libya, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe	**10 countries:** SACU, Angola, DRC, Ethiopia, Eritrea and Mozambique
5	Democratic Republic of Congo (DRC)	**None**	**25 countries:** Angola, Botswana, Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe

No.	Country	No negotiations – already trading on FTA terms with these countries	Negotiations
6	Djibouti	**15 countries:** EAC, Comoros, Egypt, Libya, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe	**10 countries:** SACU, Angola, DRC, Mozambique, Eritrea and Ethiopia
7	Egypt	**15 countries:** EAC, Comoros, Djibouti, Libya, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe	**10 countries:** SACU, Angola, DRC, Eritrea, Ethiopia, and Mozambique
8	Eritrea	**None**	**25 countries:** EAC, SACU, Angola, Comoros, DRC, Djibouti, Egypt, Ethiopia, Libya, Madagascar, Mozambique, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe
9	Ethiopia	**None**	**25 countries:** EAC, SACU, Angola, Comoros, DRC, Djibouti, Egypt, Ethiopia, Libya, Madagascar, Mozambique, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe
10	Libya	**15 countries:** EAC, Comoros, Djibouti, Egypt, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe	**10 countries:** SACU, Angola, DRC, Eritrea, Ethiopia and Mozambique
11	Madagascar	**21 countries:** EAC, SACU, Comoros, Djibouti, Egypt, Libya, Malawi, Mauritius, Mozambique, Seychelles, Sudan, Zambia and Zimbabwe	**4 countries:** Angola, DRC, Eritrea and Ethiopia
12	Malawi	**21 countries:** EAC, SACU, Comoros, Djibouti, Egypt, Libya, Madagascar, Mauritius, Mozambique, Seychelles, Sudan, Zambia and Zimbabwe	**4 countries:** Angola, DRC, Eritrea and Ethiopia
13	Mauritius	**21 countries:** EAC, SACU, Comoros, Djibouti, Egypt, Libya, Madagascar, Malawi, Mozambique, Seychelles, Sudan, Zambia and Zimbabwe	**4 countries:** Angola, DRC, Eritrea and Ethiopia
14	Mozambique	**10 countries:** SACU, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe	**15 countries:** EAC, Angola, Comoros, DRC, Djibouti, Egypt, Eritrea, Ethiopia, Libya, Seychelles and Sudan
15	Seychelles	**15 countries:** EAC, Comoros, Djibouti, Egypt, Libya, Malawi, Madagascar, Mauritius, Sudan, Zambia and Zimbabwe	**10 countries:** SACU, Angola, DRC, Eritrea, Ethiopia and Mozambique
16	Sudan	**15 countries:** EAC, Comoros, Djibouti, Egypt, Libya, Malawi, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe	**10 countries:** SACU, Angola, DRC, Eritrea, Ethiopia and Mozambique
17	Zambia	**21 countries:** EAC, SACU, Comoros, Djibouti, Egypt, Libya, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, Sudan and Zimbabwe	**4 countries:** Angola, DRC, Eritrea and Ethiopia
18	Zimbabwe	**21 countries:** EAC, SACU, Comoros, Djibouti, Egypt, Libya, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, Sudan and Zambia	**4 countries:** Angola, DRC, Eritrea and Ethiopia

5.2 Proposals for Negotiations on Tariff Liberalisation According to the Third TTNF (Arusha 2012)

The outcome of the Third TTNF, held in Arusha, outlining the understanding reached among Tripartite Member States on the formulation of tariff offers, is presented below. These modalities will be discussed during the training and completed using Excel spreadsheets.

i) **Starting point for negotiations on tariff liberalisation:**

- Member/Partner States already participating in FTAs should consider extending the highest level of tariff liberalisation achieved in their RECs to all other Tripartite Member/Partner States, subject to the principles guiding the negotiations; and
- Member/Partner States not participating in any FTA should make tariff offers with proposed liberalisation timeframes.

ii) **Substantial liberalisation:**

The TFTA Agreement should cover substantially all trade among its Members. Currently, COMESA and the EAC have 100% product coverage on tariff liberalisation, while SADC has, on average, 97% product coverage.

(It is, therefore, proposed that the ultimate threshold for substantial liberalisation under the TFTA should be 100%.[4])

iii) **Approach to tariff liberalisation:**

In line with the practice in all three RECs, it is proposed that tariff liberalisation be undertaken using a linear approach with 60% tariff liberalisation in year one, 30% in year two and 10% in year three. This means that implementation of the tariff elimination or phase-down should be undertaken immediately upon entry into force of the TFTA Agreement, or be completed within three (3) years in line with the objectives of the Tripartite Heads of State and Government mentioned previously, that directed that the FTA be established expeditiously. (Member/Partner States that are ready to implement 100% tariff liberalisation upon entry into force of the agreement may do so.)

iv) **Reciprocity:**

Member/Partner States or RECs in the TFTA will grant to each other mutually agreed trade concessions.

v) **Flexibility and S&D treatment:**

Flexibility and S&D treatment will be extended to deserving Member/Partner States as an outcome of the negotiations.

vi) **Negotiating parties:**

While individually the combined membership of the three (3) RECs is twenty-six (26), ten (10) countries are expected to negotiate as two (2) blocs of five (5) countries each. These are Partner States of the EAC and Member States of SACU. This implies that the countries belonging to these Customs Unions will make common offers and receive common requests during negotiations.

The remaining 16 countries are separate and individual customs territories and may negotiate individually, but nothing stops any two or more of them from collaborating, formulating and taking common negotiating positions as 'like-minded' countries.

vii) **Format for offers and requests:**

Member/Partner States will exchange offers based on the template for tariff liberalisation.

viii) **Submission of offers:**

Member/Partner States should submit their offers within three months following the agreement on the modalities for negotiation of tariff liberalisation.

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4 This sentence is bracketed as there was no agreement on this subject during the Third TTNF held in Arusha (2012).

LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific
COMESA	Common Market for Eastern and Southern Africa
DRC	Democratic Republic of Congo
EAC	Eastern African Community
EC	European Communities
ESA	Eastern and Southern Africa
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
HS	Harmonised system
ITA	Information Technology Agreement
LDC	Least Developed Countries
MFN	Most favoured nation
NAIC	North American Industry Classification System
NAMA	Non-Agricultural Market Access
NES	Not Elsewhere Specified
PTA	Preferential Trade Area
RTA	Regional Trade Arrangements
REC	Regional Economic Community
S&D	Special & Differential
SACU	Southern African Customs Union
SADC	Southern African Development Community
SIC	Standard Industrial Classification
SITC	Standard International Trade Classification
TFTA	Tripartite Free Trade Area
TTNF	Tripartite Trade Negotiation Forum
UNCTAD	United Nations Conference on Trade and Development
US	United States
WTO	World Trade Organization

TradeMark Southern Africa

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