

COMMENTS ON THE WTO NAMA CHAIR'S APRIL 2011 REPORT (TN/MA/W/103/REV.3/ADD.1)

SYNOPSIS

This Note is a commentary on the textual report by the Chairman on the state of play of the NAMA negotiations (TN/MA/W/103/Rev.3/Add.1). Since the Negotiating Group on Market Access (NGMA) has been primarily discussing Non-Tariff Barrier (NTB) proposals, the paper focuses on those issues with a draft text or which have been subject to intensive discussions in the last few months, in particular: (1) Horizontal Mechanism, (2) Transparency and (3) International Standards. For each issue, we provide some suggestions for the way forward.

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I. EXECUTIVE SUMMARY

1. This Note is a commentary on the textual report by the Chairman on the state of play of the NAMA negotiations.
2. **Market Access.** The Chairman had very little to report on market access. He made remarks concerning country or customs union specific flexibilities and sectorals. In both cases, no definitive decisions have been made. In this area, results have been very disappointing and imbalanced from a development perspective.
3. **Horizontal Mechanism.** One concern with this mechanism is that it does not recognize development objectives of certain NTBs. For instance, some countries provide benefits to businesses that use local products instead of imported products so as to increase domestic demand for agricultural products. This increase in domestic demand can stimulate the supply of agricultural products which helps to reduce dependence on imports. Such measures might be inconsistent with the TRIMs Agreement and subject to the HM. Furthermore, if contested on such NTBs, developing countries might have a need for technical assistance and capacity building to implement reforms that provide a sustainable alternative to the NTB that was questioned by a trade partner.
4. Developing countries could still increase the development content of the Mechanism by proposing specific language for improvements in the current draft. To this effect, it would be important to clarify issues on (1) scope, (2) Special and Differential Treatment, (3) technical assistance and (4) the sunset or review clause. This note provides some suggestions for the way forward.
5. **Transparency.** The Chair has included a text on transparency, prepared by a small group. The proposed text does not respond to developing country constraints, concerns and needs. It would imply significant changes in national legislation procedures of many developing countries, and would imply additional costs and financial resources which could be used for better purposes. Developing countries have or have had considerable problems with the implementation of the TBT Agreement. Most are net-importers of non-agricultural products or export raw materials, and many developing countries have limited capacity to benefit from increased transparency.
6. In general, the TBT-plus obligations in these proposals describe in many cases the existing practice in developed countries, or are a "light" version of this practice. If

developed countries “bind” themselves through these obligations, they do not make any real changes to their current practices. In contrast, developing countries have to implement real reforms that come with additional costs. This has been the case for example with the TRIPS Agreement resulting from the Uruguay Round. Less-than-full-reciprocity in TBT-plus commitments is called for.

7. **International Standards.** Negotiations in this area are still on-going. For developing countries, it would be important to emphasize that developing countries, most of whom are standard-takers, have to participate more meaningfully and effectively in standard setting. This would make international standards more relevant to their contexts and also more legitimate. Also, the cost of compliance with technical regulations (based on international standards) is usually higher for exporters from developing countries because of size and the high costs of access to technology. A lesson learnt from the designation of bodies in the SPS Agreement and implementation of the SPS Agreement is that technical assistance in this area should be more than just financial assistance to fund participation in international standardization processes.

Section I - Market access

8. The Chairman had very little to report on market access. With respect to two areas he made some remarks: (1) country/customs union specific flexibilities, and (2) sectorals. In both cases, the results have been disappointing.

I.a - Country / customs union specific flexibilities

9. A burning issue for many developing countries is the impact of the NAMA modalities on their prospect for industrialization and the need for country-specific flexibilities. In this regard, no concrete decisions have been taken for countries such as Venezuela, Argentina or Maldives who recently graduated from LDC status.
10. A country with low bound rates within a customs union could bring down the common applied tariff (CET) for its other customs union members. This applies for example to Gabon in CEMAC, and South Africa in SACU.
11. In its textual report, the Chairman reports the flexibility for SACU members. Depending on the coefficient of the Swiss formula, SACU countries may apply half the formula cut for 6 (Swiss formula 22) or 8 (Swiss formula 20) additional percentage points. Three of these percentage points shall be used for clothing [and footwear] and shall have 3 extra years for implementation i.e. 13 years instead of 10. In addition, South Africa commits to negotiate the terms of 2 sectoral initiatives. This flexibility will be woefully inadequate, especially for Lesotho which as an LDC, is not required to undertake reduction commitments, but will anyhow be bound by South Africa's commitments. If no better solution could be found, Lesotho may have to partially break up the customs union for key sectors such as textiles/clothing if it were to use tariff protection.

I.b - NAMA Sectorals

12. On NAMA sectorals, the Chairman did not have any specific details and referred to a status update submitted on 10 March 2011 by sponsors of one or more sectorals (JOB/MA/85). This Document was formerly circulated among Members as a Room Document, dated 17 February 2011.

13. JOB/MA/85 supersedes the list of Sectoral Proposals of the December 2008 modalities (Annex 6). The list of sectorals is almost the same in the two lists although one sectoral is not on the table in JOB/MA/85 anymore: the EU proposal to liberalize tariffs in the textiles, clothing and footwear sector (HS Chapter 50-64). In addition, the EU has removed itself as a sponsor on the proposal suggesting the removal of all NTBs as well as export restrictions on raw materials for products included in the updated list. Annex 1.a of this document lists all the 13 active sectorals.
14. The sectorals that have the highest level of participation (in terms of trade mass), measured as a percentage of world trade, are gems & jewellery (63.7%), industrial machinery (59.1%), chemicals (58.7%) and electronics & electricals (45.8%), see Annex 1.b.
15. JOB/MA/85 contains a general discussion on the Product Basket Approach (PBA) which is “a tool to construct sectorals with broad product coverage that reflect Members' interests while providing pragmatic ways to address Members' sensitivities.” The objectives of the PBA are (1) To provide a framework to enter detailed negotiations on individual NAMA sectorals, (2) To allow exploration of different forms of tariff treatment within a specific sector to accommodate areas where some Members may have difficulty with tariff elimination; and (3) To address appropriate S&D treatment for developing country Members as part of the overall solution. This could include staging, end-rate solutions or other options to balance both interests and sensitivities.
16. Despite intense discussions on the PBA, only one of the 13 sectorals (fish and fish products) actually has concrete modalities for a Product Basket Approach. Co-sponsors of this proposal – Canada, Hong Kong, Iceland, New Zealand, Norway, Singapore, Thailand and Uruguay – were looking at the possibility of baskets as follows:¹

Basket A	Basket B	Basket C	Basket D
Tariff elimination	Zero for X	Zero for Y	Preference erosion

¹ Oman was listed as a co-sponsor of the fish sectoral in the Room Document of 17 February 2011, but is not mentioned as a sponsor in JOB/MA/75.

<ul style="list-style-type: none"> • Developed countries: 100% of national fish tariff lines • Developing countries: all national fish tariff lines that are not included in baskets B or C 	<ul style="list-style-type: none"> • Developed countries: zero • Developing countries: [15]% of national tariff lines of a member's choice to be bound at [5]% 	<ul style="list-style-type: none"> • Developed countries: zero • Developing countries: one 6-digit subheading of a member's choice to be bound at [10]% 	<p>Grace period of 10 years for the products and market listed in Annex 2 of the NAMA text</p>
<p>Implementation periods for baskets A-C:</p> <ul style="list-style-type: none"> • Developed countries: [1] year • Developing countries: [5] years 			

17. The ACP Group has warned that sectorals should not lead to (further) preference erosion. Sectorals would lead to MFN liberalization, eroding ACP's non-reciprocal preferences for tariff lines which are of vital export importance for them. The ACP is of the view that no sectoral initiative whatsoever be agreed upon in such sectors as textiles and clothing or fish and fisheries products.²

Section II. Non Tariff Barriers

II.A - NTB negotiations: overview of proposals

18. Paragraph 16 of the Doha Ministerial Declaration on NAMA is the basis for negotiations on NTBs where Members agreed to "negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate (..) non-tariff barriers, in particular on products of export interest to developing countries. The December 2008 NAMA text recognized that NTB reduction or elimination is an integral and equally important part of the objective of paragraph 16. Furthermore NTB negotiations should take fully into account the principle of special and differential treatment for developing and least-developed Members (para. 26).

19. Between December 2008 and April 2011, the focus of the negotiations has been on NTBs. The December 2008 text made a distinction between "vertical" proposals covering a sector such as chemicals, electronics, automotive products, textiles and

² WTO document JOB/MA/87, 6 April 2011

“horizontal” proposals covering in principle all (or most) goods – the Horizontal Mechanism and Remanufactured Goods.

20. After December 2008, two other horizontal proposals were made, by Brazil “Horizontal questions concerning systemic issues related to the TBT Agreement in Non-tariff barriers (NTBs) proposals listed in paragraph 24 of document TN/MA/W/103/Rev.3 “ and by EU/India, “Framework for Industry-specific NTB Proposals”. Brazil became a co-sponsor of a modified EU/India proposal, what is now called the “Horizontal Framework”.³

21. In the context of the March 2010 stocktaking exercise, the Chairman of the Negotiation Group on Market Access (NGMA) classified the NTB proposals in two categories: “wagon 1” and “wagon 2”. Wagon 2 proposals remain on the table, but have been shelved for a while.

“Wagon 1” horizontal proposals

NTB proposal (short name)	Full Name	Sponsors
Horizontal Mechanism	<ul style="list-style-type: none"> Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers 	EU, African Group, Canada, LDC Group, NAMA-11, Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland
Horizontal Framework	<ul style="list-style-type: none"> Framework for Industry-specific NTB Proposals 	EU, India, Brazil
Reman	<ul style="list-style-type: none"> Ministerial Decision on Trade in Remanufactured Goods 	Japan, Switzerland, US

“Wagon 1” vertical proposals

NTB proposal (short name)	Full Name	Sponsors
Chemicals	<ul style="list-style-type: none"> Negotiating Proposal on Non-Tariff Barriers in the Chemicals Products and Substances Sector Understanding on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity 	Argentina and Brazil EU

³ WTO document TN/MA/W/136

	Assessment Procedures for Chemicals	
Electronics	<ul style="list-style-type: none"> Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Electronics Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods 	<p>EU and Switzerland</p> <p>US</p>
Labelling of Textiles	<ul style="list-style-type: none"> Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labelling of Textiles, Clothing, Footwear, and Travel Goods 	<p>EU, Mauritius, Sri Lanka, Ukraine, US</p>
Automotives	<ul style="list-style-type: none"> Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products 	<p>Two separate proposals by EU and US</p>

22. In Annex D of his textual report, the Chairman gives an overview of the current NTB proposals. He represents the Horizontal Framework as a central jigsaw piece holding all the other proposals together. In fact, the Horizontal Framework has been broken down into subproposals and discussions are now taking place on three separate issues: “international standards”, conformity assessment” and “transparency”. The Chairman noted that “Members will have to decide whether the rules agreed under these issues would apply to (1) all sectors, (2) only for sectors that have been introduced in the NTB negotiations or (3) sector-by-sector discussions.

23. The remainder of this Chapter will provide comments on the Chairman’s specific remarks on the following NTB proposals and areas:

- Horizontal Mechanism (II.B)
- Remanufactured Goods (II.C)
- Transparency (II.D)
- International standards (II.E)

II.B - The Horizontal Mechanism

24. The draft Ministerial Decision on Procedures for the Facilitation of Solutions on Non-Tariff Barriers, aka the “Horizontal Mechanism” (HM), is the first NTB proposal annexed to the Chairman’s textual report. The Chairman notes that the HM receives large support from the Membership. Indeed, developing country co-sponsors include the NAMA-11 countries, ACP Group and the LDC Group.

25. The procedure of the HM is relatively simple. The table below outlines the main steps in the proposed procedure. The first stage is similar to a bilateral consultation but then formalized as a written procedure with all WTO Members becoming aware of the trade issues between two trade partners. The second stage is the main innovation. Parties may choose to appoint a facilitator who shall be the (Vice) Chairperson of the relevant WTO Committee or Council for Trade in Goods, a Friend of the Chairperson, or alternatively, any other qualified and trusted individual. He or she is tasked to seek a “jointly agreed solution”.

Table x: the Horizontal Mechanism in a nutshell

Stage I		
Step	Description	Role of relevant WTO committee
1	Request for information regarding a non-tariff measure by “Requesting Member”	Notify request or summary thereof
2	Response within [20] days by “Responding Member”	Notify response or summary thereof
3	(Vice) Chairperson convenes meeting to explore possible next steps	
4	Decision to proceed to Stage II	Notify decision
Stage II		
Step	Description	Role relevant WTO committee
5	Appointment of a Facilitator	
6	Third parties may participate if parties agree	
7	Facilitator seeks a jointly agreed outcome within [60] days (best endeavor)	Facilitator provides written report describing any jointly agreed outcome or absence thereof
During all stages of the Procedure		
1-7	If Member requests, the Chairperson shall provide an opportunity for an exchange of views during a meeting of the Committee on any of the notifications above	

26. The HM could yield potential benefits for developing countries. It may be a faster and less costly alternative to the dispute settlement mechanism which is being used less by developing countries than developed countries because of financial constraints, legal capacity constraints (insufficient expertise, lack of private sector support, language barriers) and power constraints (lack of retaliatory power). Furthermore, the operation of the DSM appears biased against developing countries and the WTO remedy system has enhanced this imbalance. The same issues with the current Dispute Settlement Mechanism are also central in the ongoing DSU negotiations.
27. Multilateralism of trade problems with larger trade partners could also solve some of the power constraints faced by developing countries, especially the smaller ones.
28. The submitted notifications are, on request of the Member, discussed at the relevant WTO Committee meetings. In other words, the HM is also an agenda-setting mechanism. The countries that are going to use this mechanism will have more influence on the future agenda of the WTO Committees.
29. Issues of concern, especially for the United States, are the link between the HM and DSU and confidentiality, since a lot of potentially sensitive information could become publicly available which could be used in subsequent dispute settlement. While language for Article 19 in the draft text of the Horizontal Mechanism (DSU Link) has not been provided for, language to this effect is already reflected in other provisions when comparing with older drafts: a notification of a summary of requests or responses is sufficient and not the request or response itself, the Facilitator shall seek a jointly agreed solution instead of Mutually Agreed Solution (a legal term in the DSU) and the Facilitator's report shall be limited to the notifications made by parties.
30. One concern for developing countries is the value addition of this Mechanism: how effective would it be to induce the reduction or elimination of NTBs of their trade partners? For instance, in 2009, Canada introduced an amendment to the Tobacco Act (Bill C-32) which resulted in a ban on various flavours and other additives contained in certain tobacco products. Throughout 2009 and 2010, EU, US and Japan with a great number of developing countries have raised Specific Trade Concerns at TBT Committee meetings. However, Canada decided to

continue implementing their law. If a large alliance between developed and developing countries cannot compel a developed country to amend their law, it would be unlikely that the same objective could be reached through the Horizontal Mechanism.⁵

31. Also, developing countries might have certain NTBs to attain certain development objectives. Some countries might provide benefits to businesses that use local products instead of imported products so as to increase domestic demand for agricultural products for processing, and to support agricultural and industrial development policies. This increase in domestic demand can stimulate the supply of agricultural products which helps to reduce dependence on imports. Such measures might be inconsistent with the TRIMs Agreement and subject to the HM.
32. Furthermore, if contested on such NTBs, developing countries might have a need for technical assistance and capacity building to implement reforms that provide a sustainable alternative to the NTB that was questioned by a trade partner.
33. There are still several important issues open for discussion. The Chairman noted “questions of scope, role of committees and the relationship between DSU and this procedure”. When looking at the draft text, Special and Differential Treatment, technical assistance and capacity building and the review or sunset clause should be added as well. Here we provide some suggestions for (1) scope, (2) Special and Differential Treatment, (3) technical assistance and capacity building (TACB) and (4) review or sunset clause
34. *Scope*. It would be important for developing country co-sponsors to include the SPS Agreement, if the rationale is to use the mechanism to resolve NTBs. In 2003, in the beginning of the Doha Round, the WTO Secretariat conducted a one-off survey of NTBs faced by WTO members.⁶ Many developing countries reported NTBs related to the application of the SPS Agreement. For example, India noted that that some importing countries are fixing standards without carrying out comprehensive risk assessment work and despite repeated requests, details of the basis for the standard are not made available, which contravenes Article 5 of the

⁵ Developing country WTO Members who raised a Specific Trade Concern on this issue were Argentina, Brazil, Burundi, Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Honduras, Indonesia, Jordan, Kenya, Malawi, Mexico, Mozambique, Philippines, Zimbabwe, Turkey, Uganda, Egypt, Tanzania, Zambia.

⁶ WTO document TN/MA/W/25, 28 March 2003, TN/MA/W/25/Add.1, 13 May 2003, TN/MA/W/25/Add.2, 27 June 2003

SPS Agreement. Senegal noted that fisheries products face very strict control in terms of both sanitary regulations and of quality standards.

35. Related to the discussion of scope, is the use of the term “non-tariff barrier” (NTB) as opposed to “non-tariff measure” (NTM). There is no general consensus or a generally accepted definition of both terms, nevertheless the term “NTM” is seen as a broader concept than “NTB”. NTBs cover measures that impact directly on trade, or are applied at the border whereas the concept of NTM also encompass measures indirectly related to trade, such as subsidies, services or intellectual property rights. Services and intellectual property rights should be excluded from the scope of HM.

36. The HM could be used to catch “small bait” or to push forward a negotiation agenda at the WTO by using an NTB of a small country (e.g. export taxes). An NTB of a small developing country has less effect on trade of a developed country than vice versa. One way of avoiding that small countries are bogged down into this mechanism, is to make clear from the outset that, as a principle, this mechanism should address NTBs, which significantly affect trade. There may be a need to further define “significantly”.⁷

37. *Special and Differential Treatment*. At the moment, no language is reflected in the draft text. More work among developing countries needs to be done on this point. Suggestions include:

Measures which would respond to capacity constraints of developing countries

- For LDCs and SVEs, the deadline within which countries should respond to requests should be more than [20] days, for example 80 days. A due restraint obligation (similar to Article 24 DSU).
- Technical assistance and capacity building

Measures that would take into account developing country interests, in line with the negotiation mandate of paragraph 16 DMD and para 28. of the December 2008 modalities

⁷ A parallel could be drawn with the scope of the notification obligations of the TBT Agreement: measures that **significantly** impact trade (see also section on Transparency).

- Members shall ensure that NTBs do not create unnecessary obstacles to exports from developing country Members. It is recognized that developing country Members, and in particular least-developed countries, have special development and trade needs and their stage of economic and technological development pose difficulties to comply with potential NTBs or may, in order to attain development objectives, give rise to potential NTBs.
38. *Technical assistance and capacity building.* TACB in the context of the HM could mean
- assistance with using the mechanism
 - assistance with implementing the jointly agreed solution.
39. Regarding the first form of TACB, such assistance could include assistance for the formulation of a request and assessment of possible solutions (in case of a requesting Member), appropriate legal assistance for the formulation of responses and exploration of possible solutions (in the case of a responding Member) or appropriate legal advice regarding the terms and conditions applicable to interested third parties. The operational modalities of such technical assistance including the terms of financing would ideally be finalised prior to adoption of the HM.
40. The second type of TACB is also important for developing countries, whether in advancing an offensive or defensive interest. In the case of a defensive interest (e.g. TRIMs-inconsistent measure), a jointly agreed solution could include TACB to provide a sustainable alternative. In a case of an offensive interest, a jointly agreed solution could include TACB to assist the exporting developing country to comply with NTBs of the importing Member.
41. *Review or sunset clause.* The OECD's 2005 Guiding Principles for Regulatory Quality and Performance recommends to "Review regulations (economic, social, and administrative) against the principles of good regulation and from the point of view of those affected rather than of the regulator; update regulations through automatic review procedures such as sun-setting (..)." (page 4).
42. Incorporating a sunset clause would be good regulatory practice. Alternatively, one other possible approach is to implement it on a provisional basis from the date of its adoption. Within x years, Members would review these arrangements and, if necessary, modify them, in the light of the experience gained from its implementation. Such a review would examine the costs and consequences of

implementation, especially for LDCs and SVEs, and assess whether alternatives exist which may better attain the objectives of the Decision, in line with the General Provisions.

43. In conclusion, regarding the HM, it would be important to clarify issues on (1) scope, (2) Special and Differential Treatment, (3) technical assistance and (4) sunset clause or review clause.

II.C - Remanufactured goods

44. The “Reman” proposal primarily mooted by the US is in fact a vertical or sectoral proposal, since remanufacturing is an industry in itself. Many developing countries have raised several concerns regarding this proposal, including opposition to any kind of sectoral agreement in the automotive sector with respect to tariff elimination. They are of the opinion that remanufactured goods may pre-empt domestic industrialisation efforts.

45. The current version of the Reman proposal⁸ obliges Members to take steps to ensure that their trade regime evolves in a manner that enhances market access opportunities for remanufactured goods and to review their non-tariff measures with a view to ensuring that they do not impose prohibitions or restrictions on the importation of remanufactured goods that are proscribed by the GATT. In addition, a work programme has to be established, the drafting of which has not been possible due to large divergences in the working group, according to the Chairman’s report.

II.D - Transparency

46. In the Negotiation Group on Market Access (NGMA), many sectoral NTB proposals have a section on transparency. The Framework Understanding, sponsored by EU, India and Brazil aimed to arrive at a new, TBT-plus, transparency discipline which would apply to all products (agriculture as well as non-agriculture).⁹ Other countries have circulated room documents. Since late 2010, negotiations have been intensified, actively supported by the WTO secretariat.¹⁰

⁸ WTO document TN/MA/W/18/Add.15/Rev.4

⁹ WTO document TN/MA/W/136, 15 March 2010

¹⁰ See JOB/MA/57, 9 November 2010 and JOB/MA/77, 6 January 2011

47. The current four-page text, attached as Annex C of the textual report of the Chairman, is the Working Document of 6 April 2011. This document does not reflect a consensus position, since it is the product of a small group. Furthermore, the text contains bracketed language in several places, revealing diverging views between Brazil, EU, United States and Canada.

48. What is “transparency” in the TBT Agreement? In short, Members should

- Notify proposed technical regulations and conformity assessment procedures to the WTO, that are not based on relevant international standards
- Take into account comments from other WTO Members
- Publish the final measure, in a manner to enable interested parties to become acquainted with it
- Allow time between publication and entry into force (6 months)
- Maintain a TBT Enquiry Point

49. The table below lists the most important TBT-plus elements:

<i>Scope of transparency/notification.</i>	<ul style="list-style-type: none"> • Notify all proposed technical regulations and conformity assessment procedures and identify which part of a measure deviated from international standards (but divergent views exist, see below)
<i>Comment procedure.</i>	<ul style="list-style-type: none"> • Take into account comments from other WTO Members and interested parties (i.e. companies) and show that something has been done with it. • Show to other Members that the costs of compliance and alternatives to the proposed measure have been considered
<i>Final measure.</i>	<ul style="list-style-type: none"> • Identify the penalty in the final measure if the measure is violated • Submit the final measure to a repository of technical regulations and conformity assessment procedures

50. In the TBT Agreement, a Member has to notify a draft technical regulation or conformity assessment procedure: (a) when an international standard does not exist or a measure is not in accordance with an international standard and (b) the measure has a significant effect on trade. The EU, India, Brazil originally

proposed to keep it this way¹¹, arguing that they “do not intend to reduce the incentives that the TBT Agreement provides for Members to use international standards as a basis for their regulations. Under the TBT Agreement, international standards have the rebuttable presumption of not creating unnecessary obstacles to trade. Therefore, in the Agreement there is an incentive that Members adopting these relevant international standards have an exemption to comply with some transparency provisions. The proponents believe that the status quo should be maintained so as to encourage Members to base their technical regulations and conformity assessment procedures on these international standards.”¹²

51. Annex C, however, reveals that in the course of the negotiations, ambition on transparency has been increasing. The Annex C text supports notification of ALL technical regulation and conformity assessment procedures, and making an exception only for the subsequent comment procedure (section 4). Between the EU and Brazil, there are diverging views on which obligations in the comment procedure (allowing written comments, publishing comments, publishing responses to comments) should apply when. Brazil wants to have lower TBT-plus transparency obligations and believes that the obligation to publish comments and to publish responses to comments should only apply to technical regulations and conformity assessment procedures not based on international standards.

52. The proposed TBT-plus transparency obligations would imply significant changes in national legislation procedures of many developing countries, and would imply additional costs which could be used for better purposes. They do not respond to developing country constraints, concerns and needs taking into account the actual implementation of the TBT Agreement:

- Developing countries have or have had considerable problems with the implementation of the TBT Agreement. As an illustration, fifteen developing countries have recently notified the WTO that they comply with the obligations of the TBT Agreement, while thirty developing countries, more than 15 years after the conclusion of the Uruguay Round, still have to notify the WTO that the TBT Agreement is under implementation (see Annex I).
- Most developing countries are net importers of non-agricultural products or export raw materials. Labelling requirements do fall under the TBT Agreement, but they are

¹¹ Article 7 of TN/MA/W/136

¹² JOB/MA/61, 15 November 2010

minor group in the whole universe of TBT-related standards. The priority for developing countries with an exporting interest is not a “better” or “deeper” comment process but a better understanding of the standards infrastructure of major importing Members and their final regulations.¹³

- Many developing countries have limited capacity to benefit from increased transparency. Smaller developing countries have limited capacity to comment on proposed technical regulations and conformity assessment procedures of other WTO Members. They do not always have the resources to attend all TBT Committee meetings and rarely raise Specific Trade Concerns.
- TBT-plus transparency obligations describe in many cases the existing practice in developed countries, or are a “light” version of this practice. If developed countries “bind” themselves at current practice, they do not make additional commitments. In contrast, developing countries have to implement real reforms that come with additional costs. This has been the case for example with the TRIPS Agreement. Less-than-full-reciprocity in transparency commitments is called for.

II.E - International Standards

53. Under the topic of “International Standards” the main discussions are a modification of Articles 2.4 and 5.6 of the TBT Agreement and the role of the TBT Committee Decision on international standards development. Articles 2.4 and 5.6 of the TBT Agreement prescribe that WTO Members should base their technical regulations and conformity assessment procedures on international standards.

54. EU, India and Brazil have proposed that the International Organization for Standardization (ISO), International Telecommunications Union (ITU), International Electrotechnical Commission (IEC) and Codex Alimentarius are relevant international standard setting bodies for purposes of Articles 2.4 and 5.6 of the TBT Agreement. This approach is similar to the designation of the “three sisters” in the SPS Agreement. Furthermore, the EU is proposing different international organizations in its sectoral proposals, for instance the OECD and the United Nations Subcommittee of Experts on GHS (UNSCE GHS) in the chemicals sector or the World Forum for the Harmonisation of Vehicle Regulations under the auspices of the UNECE in the automotives sector.

¹³ See for example India’s submission to WTO document TN/MA/W/25, page 34

55. Discussions on this particular point have been stalled due to differing standards philosophies of primarily the United States and the European Union.
56. According to some Members a limited number of designated standard setting bodies - proposed to be ISO, ITU, IEC and the Codex Alimentarius - would lead to more focused and effective technical assistance. However, ISO is 1 organization but has 218 active Technical Committees. Also, in reality, the universe of standard setting bodies under the TBT Agreement is more than the "four brothers".
57. Most developing countries are standard-takers. They have to participate more meaningfully and effectively in standard-setting to make international standards more relevant to their contexts and also more legitimate.
58. The cost of compliance with technical regulations (based on international standards) is usually higher for exporters from developing countries because of firm size, production capacities and the high costs of attaining access to technology protected by intellectual property rights.
59. A lesson learnt from the designation of bodies in the SPS Agreement and implementation of the SPS Agreement is that technical assistance in this area should be more than just financial assistance to fund participation in international standardization processes.

Annex 1.a - active sectorals (JOB/MA/85)

Sectoral	Product coverage
Gems & jewellery	Articles under HS Chapter 71; Includes pearls, diamonds, precious stones, synthetic stones, silver, gold, platinum, jewellery, and other articles of the products aforementioned, imitation jewellery and coins.
Industrial machinery	Various Lines in Chapters 82 & 84 (excluding automotive parts & goods for household use)
Chemicals	HS Chapters 28-39.
Electronics & Electricals	Selected tariff lines considered as electronics and electrical products from HS chapters 38, 70, 84, 85, 90, 91, 94, 95 and 96.
Forest products	HS Chapters 44, 47-49, selected lines in 94 (furniture, prefabricated buildings).
Open access to enhanced healthcare	Selected tariff lines considered as healthcare products (which includes pharmaceuticals and medical devices) from chapters 28, 29, 30, 38, 39, 40, 63, 76, 84, 85, 87, 90 and 94.
Sports equipment	Sports Equipment including equipment for general physical exercise, golf equipment, fishing equipment, and skis, etc.
Bicycles and related parts	19 tariff lines: bicycles and related parts, including bicycles and parts such as frames, breaks, tyres, etc. (JOB(08)/73)
Fish and fish products	HS Chapter 03: Unprocessed or minimally processed fish (96 tariff lines). Sponges and fish products unfit for human consumption in HS Chapter 05 (2 tariff lines). Fish oils in HS Chapter 15 (2 tariff lines). Processed fish in HS Chapter 16 (15 tariff lines). Fish meal in HS Chapter 23 (1 tariff line).
Toys	Traditional toys, games and festive articles in HS Chapters 9501 - 9505 (HS 2002).
Automotives	Selected tariff lines considered as automotives and related parts from HS chapters 40, 68, 70, 73, 83, 84, 85, 87, 90, 91 and 94.

Sectoral	Product coverage
Hand tools	Hand Tools in HS chapter 82 such as hammers, drillers and saws, etc.
Raw materials	Parts of Chapter 25-28, 72, 74-76, 78-81 (12 Chapters). TN/MA/W/37/Add.7 has 159 HS6-digit lines. A revised scope is being considered that would cover 78 HS4-digit lines and 221 HS6-digit lines.

Annex I.b - trade shares in percentage of world trade (JOB/MA/85)

Sectoral	Developed countries																				World trade sponsors (%)	
	AU	NZ	CA	European countries					UA	US	JP	CN	BR	IN	HK	KR	SG	TW	UAE	TH		UR
Gems & jewellery	3.1		2.9		3.8		0.1	23.3		15.4	3.4	2.5	0.3	8.1	7.5	0.9	1.4	0.8	6.7	2		63.7
Industrial machinery	1.6		3.8		2.7		1.1	24.7		15.8	6.6	12	1.6	2.1	1.2	3.9	2.9	1.5	1.6	1.4		59.1
Chemicals	1.4	0.2	3.8	0.2	4.1		0.8	22.2	0.7	16.9	5.7	9.8	2	2.4	1.3	3.4	2.1	2.9	0.6	1.5		58.7
Electronics & Electricals	0.8	0.1	2.2	0.1	1.1		0.4	14.8	0.1	15.7	8.1	18	0.7	0.7	8.8	5.1	6.2	4.5		1.9		45.8

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South Centre Analytical Note

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