NAMA Negotiations under the WTO: The Real Concerns *

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1 Introduction

The NAMA (Non-Agricultural Market Access) negotiations under GATT and WTO are largely guided by the original mandate provided under Article XXVIII (bis) of GATT 1947. It directed such efforts to the substantial reduction of the general level of tariffs and other charges on imports and exports, with due regard to the objectives of the Agreement and the varying needs of individual members. The original mandate provided for sufficient *"flexibilities"* based on fiscal, developmental, strategic and other needs of the contracting parties and the special needs of the least developed countries (LDCs). During the period 1948 to the early 1980s, tariff reduction commitments leading to better market access was largely limited to industrial countries.[1] Thus, during the pre-Uruguay Round, NAMA negotiations concentrated on tariffs reductions alone and lead to a reduction in the average ad-valorem tariff levels of developed countries.[2]

The developing countries mandated an effectively all-inclusive approach towards the issue in the eight round of GATT (Uruguay Round - 1986 to 1994), through an expansion of its coverage by providing for binding commitments on tariffs and the disciplining of non-tariff measures (NTMs). The sectoral coverage was expanded by including previously excluded sectors through the Agreement on Textiles and Clothing (ATC). The expanded mandate was further strengthened under the WTO through the General Council, which was assigned to review the progress of the market access discussions under non-agricultural products[3] at regular intervals. Later on, recognizing that concerns regarding the ballooning of implementation issues require a speedy solution in the context of NAMA, the Doha Mandate assigned specific guidelines and

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1 Driven largely by the growing significance of the large volume of intra-industry trade between the transatlantic trading partners at first, tariff reduction later on spread among the Asian countries because of the closer economic and political ties between Japan and the US, and later on between Japan and other Asian countries.

2 See WTO, *"Tariff Negotiations and Renegotiation under the GATT and the WTO: Procedures and Practices"*, www.wto.org

3 The term "non-agricultural products" includes fishery and forest products, in addition to the industrial goods belonging to HS Chapters 25 to 99. See Annex Table 1 for details.

responsibility towards addressing the implementation issues to the Negotiation Group on Market Access (NGMA) in 2001.[4]

The outcomes of the NGMA negotiations would therefore be significant in the context of the opening up of the non-agricultural sector. The present NGMA negotiations would also have significant long-term implications, if they fail to address market access issues towards a *"balanced"* outcome in terms of intra-NAMA issues. Quite clearly, the outcomes under the NGMA would be very important for many developing country Members, as they have a significantly high proportion of manufacturing sector in their trade and gross domestic product (GDP). Under the prevailing development paradigm, export-led growth with the gradual withdrawal of state support will determine their development prospects. Even though the potential for labour absorption and other long-term sustainability issues of developing countries are still to be re-evaluated under this framework, the NGMA outcome assumes crucial significance for developing countries' sustained growth.

While on the one hand, some of their concerns are being addressed through existing *"flexibilities"* (like technical assistance and capacity building programmes and Special & Differential (S&D) treatment and exemptions) [5], many other market access issues need serious and rigorous discussions. Many industrial countries have devised their own means to overcome the WTO rules/disciplines and are continuing with considerable level of protective measures within their own borders through various trade policy measures other than tariffs. The achievement of market access therefore needs to look beyond tariffs as the only trade policy instrument; it involves a number of other trade policy measures that are most often non-transparent like tariff-rate quotas (TRQs), rules of origin (RoO) criteria,[6] technical regulation and standards (TBT & SPS), etc. Individually, each of these trade policy instruments has a different market access implication for developing countries depending on the extent of its prevalence. Under a "*single undertaking framework*"[7], a balanced outcome on market access would also be

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[4] How fast these solutions would be found is considered key to the image of WTO as a multilateral system. However, let us look at the history of GATT/WTO. With half the complexities in terms of Agreements and Member countries, the Uruguay Round had taken eight years to come to a conclusion at Marrakesh. The Doha Round which began in 2001, with more than double the complexities, is expected to find solutions for every Agreement in less than five years.

[5] Through S&DT, high-income countries promise to provide preferential access to LDCs and developing countries to their own markets, and give latter the right to limit reciprocity in trade liberalisation to levels "consistent with development needs," and greater freedom to use otherwise restricted trade policies. However, the current approach to S&DT in the WTO places primary focus on detailed negotiation of opt-out rules, and exemptions from specific agreements, which is difficult to achieve for weak developing countries when everything else is driven by mercantilism. See, Hoekman Bernard, 2005, "*Making the WTO More Supportive of Development*", *Finance & Development*, World Bank, pp.14 – 18, March.

[6] For example, under the Agreement on Textiles and Clothing.

[7] This stipulates that nothing is agreed upon unless all the Agreements are agreed to.

influenced by a number of other issues such as effective disciplining of domestic subsidies, contingent trade protection, etc.

A holistic understanding on the true nature of the emerging NAMA regimes can be better captured by the analysis of all the above-mentioned issues.[8] However, this article would limit itself to the proposals under the NGMA and its implications for market access conditions, in the context of intra-NAMA issues. The article attempts to provide a window into the various Post-Hong Kong Ministerial Declaration proposals submitted by Members and their implications.

2 'Original' Doha Mandate and the Progress in NAMA

To begin with, the NGMA initiated discussions on a formula approach to address the tariff reduction commitments. The issue of binding commitments on tariff lines was also addressed - as many developing countries were way behind their commitments scheduled during the UR. With the average of applied MFN ad valorem tariffs for majority of developed countries being historically low, other tariff related issues[9] and NTMs should have been the dominating peg of the discussions. However, the mandate provided for the special needs and interests of developing and LDC members and recognized that these countries need not match or reciprocate in full, the tariff-reduction commitments undertaken by developed country members.[10]

The negotiations on the Doha mandate began in early 2002 and centered on the proposal for comprehensive harmonization of tariffs and increasing the binding commitments. At a parallel level, work on two other issues: disciplining of NTMs; and, sectoral approach on liberalization of market access for environmental goods, was also taken up. However, owing to historical reasons the issues of tariff harmonization were finding more negotiating space than the other critical market access issues like non-ad-valorem tariffs and NTMs.

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[8] The implications of some of these measures on market access condition have been well documented in a number of studies. The role of Rules of Origin (CTH & VA criterion) under NAFTA in the context of its market access restrictive impact for textile and clothing goods in North America; use of domestic payments/subsidies (CAP in the EU & Farm Bill in the US) in depressing international prices and denying market access for agricultural goods; and, the impact of Standards (SPS & TBT) on market access, are some well documented cases.

[9] For instance, "tariff peaks" are relatively high tariffs usually on "sensitive" products amidst the generally low tariff levels. For industrialized countries, tariffs of 15 % and above are generally recognized as "tariff peaks".

[10] The scope for S&DT needs to be reviewed carefully as the number of regional trade agreements (RTAs) with free trade element is on the rise. As the RTAs trap developing countries into 'more than MFN' commitments, if *'progressive liberalisation'* is applied across agreements, this would clearly squeeze the S&DT provisions and the level of flexibilities for developing countries.

3 Modified Swiss Formula to Swiss Formula with Coefficients: Analysis of the Various Proposals

There are a number of approaches to achieve tariff reduction and harmonization, many of which have been suggested by participants during the course of negotiations under the GATT/WTO. Broadly, these proposals can be divided into two types of formulae. The first type of formula reduces the applicable tariff rates by the same percentage regardless of the initial tariff rate and is known as the '*tariff independent*' formulae. The second type of formula is called '*tariff dependent'*, since the percentage reduction in tariff rates depends on the initial tariff rate subject to negotiations, which have the effect of reducing the dispersion of the applicable tariff rates.[11] The current negotiations under the Doha Round involving 149 Members are mandated towards a "*Swiss formula with coefficients"*, which is a tariff-dependent approach with some exemptions for developing countries and LDCs. The final modalities are still to emerge.

Under the NGMA, a number of proposals have been tabled by countries with specified parameters and coefficients.[12] The proposals from a group of countries made up of China, South Korea, India, Canada, the US, and the EU had clearly laid out positions on the parameters. These together with other formal and informal discussions contributed towards a common proposal on NAMA modalities (2003) known as the "Girard proposal".

Among the members who supported a tariff-dependent harmonizing formula, the proposals by the European Communities and South Korea used a 'tariff band' approach, which proposes different *linear cuts* for different ranges or intervals of the tariff profile. On the contrary, India proposed a *simple linear cut* on the individual bound tariff line of each member, with a higher percentage cut for developed countries. In addition to the linear cut, any tariff in excess of three times the national average tariff shall be reduced to no more than three times the national average, after applying the initial linear cut. Following a near similar approach, Japan proposed that each Member set a target level of a *trade-weighted* tariff average according to a formulae and that each Member reduce its trade-weighted tariff average to that target level. Accordingly, each member will retain flexibility on ways to realize the target tariff level. While the United States proposed non-linear reduction formulae, a variant of the Swiss formula[13] was proposed by China. However, the later proposal had a member specific coefficient.[14]

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[11] See WTO document TN/MA/S/3.

[12] See WTO documents TN/MA/6/Rev.1 & TN/MA/18.

[13] This formula was initially proposed by Switzerland in the Tokyo Round and later used by some of the developed countries to reduce tariffs.

[14] Also see Annex Table 2 for detail on the various formulae.

The single most important issue for the NGMA was to find consensus for a single approach (formula) that provided equity, flexibility and simplicity, together with effectiveness. So, as a prelude to the final modalities, the then Chairman (Pierre Louis Girard) submitted a draft titled "Elements of Modalities for Negotiations on Non-Agricultural Products", under his own responsibility.[15] The "Girard Proposal" included four sub-sections on tariff reduction, all of which are an integral part of the draft modalities. These include a *modified swiss formula*[16] for tariff negotiations on the reduction of bound tariffs[17]; a sectoral tariff elimination approach on products of particular export interest to developing countries and LDCs; additional provision for developing countries and LDCs; and, flexibility for the use of higher coefficient '***B***' in the formula in the case of newly acceded members. The formula that is proposed to be applied in the case of tariff reduction or elimination *(line-by-line)* is clearly a modified version of the above-discussed formula.[18]

Currently, as mandated under the Hong Kong Ministerial Declaration, a Swiss formula with coefficients is under the consideration of NGMA. Since it has yet to arrive at some consensus, any analysis of the outcomes would be pre-mature at this stage.

3.1 From July 2004 Package to the Hong Kong Ministerial Declaration

Although the document on the NGMA talks of two proposals on the table, one being the proposal just discussed above and the other being the Argentina-Brazil-India (ABI) proposal, the Ministerial Declaration is very categorical about its mandate.[19] During the pre-Cancun days and up to the July Framework Agreement[20] (JFA or "NAMA Framework") in August 2004, the

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15 The decision was based on the formal and informal discussions under the Negotiating Group on Market Access, May 16, 2003.

16 On the whole, there were a number of different proposals; the Indian and Chinese proposals would have led to comparatively moderate reduction commitments compared to the modified Swiss formula. But, the reduction commitments as per the modified Swiss formula are less stringent, when compared to the upper ceiling of 8 percent tariff proposed by the United States proposal. This seems to be a middle path that the Chairman had taken. This formula was proposed by Brazil, India and Argentina and therefore it is also known as the ABI formula.

17 When a Member undertakes to bind a tariff concession, it obliges itself not to raise the tariff beyond a certain level (the so called bound level). This can render stability and security for international trade and thereby help plan export-import operations. It is believed that bindings may not offer much security if there is a sizeable gap between the applied and the bound rates of tariffs, leaving a considerable possibility for governments to increase applied tariffs.

18 Some critics have argued that a "line-by-line" basis would allow very little flexibilities for developing countries and LDCs.

19 See TN/MA/18/Rev.1, p.5, 28 April 2006.

20 See WTO document no WT/L/579, August 2, 2004.

phenomenon of "*square brackets*"[21] continued. Even in the NAMA Framework, the key element remained the elimination of tariff peaks, high tariffs, and tariff escalation.[22] The Negotiating Group was directed to continue its work on Swiss formula with coefficients to be applied on a *"national tariff line-by-line"*[23] basis, taking full account of the special need of developing and LDCs participants. It also included less than full reciprocity (LTFR) in reduction commitments. From the NAMA Framework to the recent Hong Kong Declaration, concerns on market access have been almost similar and they include the following:

- Product coverage shall be comprehensive without a priori exclusions;
- tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions;
- however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
- the base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November); credit shall be given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
- all non-ad valorem duties[24] shall be converted to ad valorem equivalents (AVEs) on the basis of a methodology to be determined and bound in ad valorem terms;
- negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature[25];
- the reference period for import data shall be 1999-2001.

The sectoral tariff elimination is to be achieved in three equal phases of equal duration with the following sectors proposed to be covered. The sectors identified are: Electronics & Electrical goods; Bicycles and Sporting Goods; Chemicals: Fish & Fish products; Footwear; Leather goods; Pharmaceutical and Medical Devices; Forest Products; Stones, Gems, & Precious Metals, and Raw materials.[26] Members will need to determine the product coverage applicable to these

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[21] Under the WTO parlance, "square brackets" refer to certain specific criteria on which consensus have not been achieved through the process of negotiations in the working committees under the General Council or in the Ministerial Conference.

[22] Under "tariff escalation", with each increase in value addition the duty rate increases from raw materials upwards to finished products.

[23] This was the addition in Hong Kong Declaration. This inclusion of "national" per se will have mixed effects for both developed and developing countries, but may have more adverse impact in the long-run for developing economies.

[24] For addressing the non-ad-valorem (NAVs) tariffs in non-agriculture sector, NAVs shall be converted to ad valorem equivalents on the basis of a methodology to be determined and bound. See paragraph 5 of Doha Work Programme, Decision Adopted by the General Council on 01 August 2004, (also known as "July Framework Agreement"), WT/L/579, August 02, 2004.

[25] See Annex Table 1 for details on the HS 2002 nomenclature and its impact on coverage of products under Non-agricultural sector.

[26] See WTO document, Hong Kong Ministerial Declaration WT/MIN(05)/DEC, Para 21, B-4.

sectors. Failures at the Cancun Ministerial, primarily stemming from implementation issues and the resultant differences have, however, further complicated the negotiations.

Historically, the negotiations have been most intense on the formulae to be applied, and thus there have been a number of proposals. Members have submitted six proposals. These are from: Chile, Colombia and Mexico (CCM); Norway; United States (US); European Communities (EC); Argentina, Brazil and India (ABI); Antigua and Barbuda, Barbados, Jamaica and Trinidad and Tobago (Caribbean); and Pakistan.

The CCM proposal is with a single coefficient for the developed countries and limited number of coefficients for developing countries. It also suggested that "levels" should be part of negotiations process. The US supported a Swiss formula with two coefficients, with higher coefficients for developing countries provided they do not use 'paragraph 8 flexibilities'[27], forcing developing countries to opt between the two choices. The EC proposal gave options for developing countries to use 'paragraph 8 flexibilities'. The lesser the use of paragraph 8, the higher would be the coefficient, and lesser the formula cut. However, it proposed only one coefficient for all members. The ABI proposed coefficient for each member based on the average level of current bound levels and multiplied by a 'B' coefficient (reflecting levels of ambition). The Norwegian proposal is for having two coefficients for developed and developing countries. A system of credit was initiated that would have very "limited" application for the developed countries and for developing countries. This was also to be based on the usage of paragraph 8 flexibilities. The Caribbean proposal had coefficient for each member based on the average of current bound rates for each member 'Ta' multiplied by a factor of (B+C). In this approach, 'B' is the value to be negotiated by participants and 'C' is the credit to be accorded to developing countries. Credits are given for following trade related aspects like substantial tariff binding coverage, autonomous liberalization, revenue dependence, adjustment costs due to preference erosion, etc. The Pakistani proposal had two values for the coefficients, 6 and 30.

On the other hand, the proposal by the NAMA-11[28] group of developing countries reflected the groups' desire to achieve fair, balanced and development-friendly modalities while framing NAMA modalities. A salient feature of the NAMA-11 proposal is the comparably high level of

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[27] "We agree that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility: a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports. We furthermore agree that this flexibility could not be used to exclude entire HS Chapters."

[28] The group consists of developing countries like Argentina, Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa and Tunisia. See document, TN/MA/W/68, 30 March 2006.

ambition in both NAMA and agriculture. In this March 2006 proposal, developed countries had required developing countries to reduce their NAMA tariff by a significantly higher percentage than in the current offer by both developed and developing countries. It contradicts Paragraph 24 (duty-free access for LDC non-agricultural products) in three ways: It does not enhance market access for developing countries in any way; it does not balance the level of ambition in NAMA and Agriculture; and it is not proportionate and consistent with the principles of S&DT.

We would suggest an approach in the formula given below. The coefficient 'A'[29] stands for the highest average bound rate a country can have and can take any value between 2 to 40. Realistically, the best bet for developing countries would be a mandate with two or three different values for 'A', with substantial differences between the chosen values. If a developed country is assigned a value of [2], then developing countries should get six times the value assigned for developed Members. There should be similar differences between the levels mandated for developing countries and LDCs for binding tariffs. Only then can we say that some level of parity exists. This should be agreed upon as a mandate provided there are "flexibilities" to address these concerns in a phased manner with the NTM issues included.

It is evident that over the last couple of years, NGMA negotiations have progressed substantially on tariff issues, at least in terms of Ministerial Declarations. However, the subtle changes that have been made to the broad contours of negotiations between the NAMA Framework in 2004 and the present Ministerial Declaration may prove detrimental to especially those developing countries, which have relied solely on tariff as the most prominent trade policy instrument.

Further, there is a large imbalance in NAMA negotiations as it currently takes place without addressing the concerns on two fronts: the question of Ad Valorem Equivalents (AVEs) for the purpose of binding tariffs; and the question of NTMs[30] that were being neglected in the process of achieving faster results on tariff reduction schedules. The direct conflict between tariffs and non-tariff measures in the context of overall market access conditions has been unavoidable given the short deadlines in the present Round, unlike the UR that took eight years to come an Agreement. Further, "better results" have been achieved with regard to tariff reduction commitments under sectoral market access approaches like the Information Technology Agreement (ITA). Some progress on NTMs[31] was also achieved in the ITA. Such successes with the sectoral approach may drive the whole process of non-agricultural negotiations to go the sectoral way, with sectoral approach preferred over a complete failure of multilateral talks.

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[29] See Annex Table 2, p. 11.

[30] While the choice of the sectors is open for discussion, in all probability it would be influenced by the list under the "Girard Proposal".

[31] NTB and NTM are used interchangeably in this document.

4 Sectoral Approaches in NTMs[32]: The Way Forward

Recent developments in the "NTM Working Program" do seem to suggest a turning point in the future course of NAMA negotiations towards a sectoral approach. These developments can prove helpful in overcoming delays, as sectoral negotiations would be dealing with a smaller list of countries and goods (tariff lines) in comparison to the complete list of non- agricultural goods. As mentioned above, such an approach finds encouragement from past successes seen in cases like the plurilateral agreements on information technology.[33, 34]

Many participants have criticized the NAMA negotiations for being one-sided and have highlighted the need for adopting a balanced approach – *i.e.*, by simultaneously addressing tariffs and NTMs. The demand for such an approach has been increasing lately, as autonomous tariff liberalization driven by way of bilateral and regional agreements have led to substantial reduction in tariffs, while the barriers erected by NTMs like Technical Barriers to Trade (TBT) have continued to grow.[35] With mixed progress of the work on NTMs and way behind schedules achieved on tariff issues, the demand for addressing these two concerns under a vertical approach has increased over the last two years. A number of proposals have been tabled in this regard under the NGMA[36] adhering to these suggestions, and a pilot study has been conducted.

The WTO has some Agreements which address TBT & SPS measures specially, but have limited success in addressing other NAMA concerns, as the listing of NTMs only addresses the partial

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[32] There is some confusion on the definition of NTMs/[Bs] itself, we need to arrive at mutually acceptable definition for all Members. Here we are not using the OECD definition of NTBs, which constitute only: Import Prohibition and Quotas; Non-automatic Import Licensing; Customs Fees and Charges in Imports; Export Duties; Export Restrictions, as identified by the OECD Publication *"Looking Beyond Tariffs: The Role of Non-Tariff Barriers in World Trade"* 2005. Our definition is a broad one which includes Sanitary and Phytosanitary Measures (SPS), Technical Barriers to Trade (TBT), Rules of Origin, (RoO) and all other trade policy measures other than tariffs.

[33] In general, the agreement covers main categories of products: computers, telecommunications, semiconductors, semiconductor manufacturing equipment, software, and scientific instruments. With the Information Technology Agreement entering its final phase in 2005 (developed countries 2000 and developing countries 2005) zero-to-zero tariff regime would exist in 67 partner countries, which would account for nearly 97 percent of the $500 billion annual world trade. For some new entrants the final phase has been extended to 2008 instead of 2005.

[34] Many of the vertical approaches adopted during the long period of Kennedy Round (1964) to Uruguay Round (1994) were only effective in addressing tariff-related market access barriers and in most cases the issues related to non-tariff measures remained unresolved or under discussion.

[35] See Biswajit Dhar and Murali Kallummal, 2004, "WTO and Technical Barriers to Trade: Creating Barriers against Furthering Market Access", *Focus WTO*, IIFT, New Delhi, August.

[36] See WTO Documents, TN/MA/W/6/Add.4, TN/MA/W/18/Add.6, TN/MA/W/18/Add.7, TN/MA/W/18/Add.10+Corr.1, TN/MA/W/18/Add.12, TN/MA/W/37/Add.2, TN/MA/W/24+Corr.1, TN/MA/W/48, TN/MA/W/70, TN/MA/W/58, TN/MA/W/59/Add.1, TN/MA/W/61/Add.1, TN/MA/W/63, TN/MA/W/64, TN/MA/W/11/Add.5, TN/MA/W/69, and TN/MA/W/18/Add.13.

issue of transparency and harmonization.[37] It is in this context that the evidence from the pilot study with respect to the NTM 'electromagnetic compatibility/electromagnetic interference' (EMC/EMI) in the case of Information technology goods trade provide some directions on the modus operandi to be adapted with regard to the negotiations on NTMs. This approach provides some evidence on the need to treat NTMs and tariffs on equal footing to address market access issues.

The NTM Work Program began at the end of 2000 and had three phases.[38] In November 2000, the committee launched an "NTM Work Programme" to identify NTMs and assess their impact on IT trade. Phase one was the identification of NTM barriers to IT products[39] as identified in the submissions by the participants. Phase two consisted of an analysis of the NTMs, including the economic impact of the specific NTMs identified. Phase three was when the committee would draw conclusions and perhaps make decisions on what to do on the outcome of the NTM Work Program. By the year 2003, the committee has reached a stage of finalizing the comments on what type of conformity assessment procedure is to be adopted.

It took the WTO nearly three years to complete just one such NTM study. The program has received at least twenty five submissions identifying different types of NTMs.[40] Many of the issues raised concern standards/conformity assessment issues (6 in number), but there are others concerning customs procedures, transparency, and government procurement, etc. The Committee had wanted to see how a Pilot Project could work with respect to one NTM and then see how it could be applied to others as the work proceeded. The whole exercise has clearly laid out a template for similar work in other sectors.

Quite clearly, the evidence on the exiting work on NTMs suggests a "vertical approach", whereby under each sector a set of NTMs would be identified based on country submissions. The first category is those NTMs that would be addressed in the NGMA and the appropriate modalities would need to be determined.[41] Secondly, there are NTMs relating to existing negotiating bodies, e.g. Rules. It is proposed that these NTMs, e.g. NTMs relating to anti-dumping, would be referred to the Negotiating Group on Rules. Finally, there are NTMs that currently do not have a specific negotiating mandate but relate to existing WTO Agreements. In

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37 By harmonizing NTMs we are assuming the levels of technology as equal across countries; but clearly they are not.

38 See WTO document G/IT/19, 10 October 2005.

39 In comparison to the elimination of tariffs achieved under the ITA, tariffs elimination process has already reached the final stages (2005) and accordingly the developing country members have completely eliminated tariffs on nearly 220 tariff lines.

40 See WTO documents G/IT/SPEC/Q2/11/Rev.1, 14 April 2003.

41 Although for the time being, all types of modalities remain possible: request/offer; vertical; or horizontal approaches.

these cases, if the group decides there is a need to send them to another WTO body, they would be reported to the TNC in order to be forwarded to the appropriate WTO body for action and reply.

As of now, sectoral (vertical) approach on NTMs is way behind in terms of providing a balanced framework; however this approach is the way forward. However, the disciplining of NTMs has not seen any substantial progress beyond the negotiating table. Meanwhile, the European Community (EC) is proposing the establishment of "horizontal NTB mechanisms" in the WTO for the timely and cost effective resolution of non-tariff barriers in the NAMA negotiations.[42] This seeks to deal with NTMs at an aggregate level across all the sectors, which may not be a purposeful way of dealing with them. NAMA-11 is the other group to have come up with a similar proposal. The group needed a new standing, flexible and expedient mechanism cutting the red tape, which is solution-based rather than rights-based, which would further trade, rather than adversarial outcomes which hinder trade. [43] Only when it came to the Textiles & Clothing and Footwear sector, EC wanted a sectoral approach for small and medium sector (SMEs) to tackle their problem of NTBs.[44]

5 The Way Ahead

We have seen that NGMA negotiations have progressed substantially on tariff issues over the last couple of years, at least in terms of Ministerial Declarations. However, the negotiation process from Doha Declaration to HKMD has witnessed a gradual dilution of "flexibilities" in favor of developed countries.

Further, the flipside to these negotiations is that they do not address market access concerns holistically and that very little progress has been made in a number of NTBs like tariff rate quota

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[42] See WTO Document TN/MA/W/11/Add.8, 1 May 2006.

[43] NAMA-11, called for a radically new approach, in line with dispute settlement understanding (DSU) a body with very similar mechanism to address the NTMs issues. It is different from the existing DSU and will have shorter deadlines. An outcome should be sought no longer than 60 working days of the appointment of the facilitator. It dispossess all existing logic, will a "new mechanism" be capable enough to handle all the existing international standards, would this mechanism mandatory or is it some way of pushing it off the negotiating table and then taking it to a completely new paradigm and different set of conditionalties. International Standards developed by ISO 214 technical committees (TC) and subcommittees (SC) by a six step process: Stage 1: Proposal stage; Stage 2: Preparatory stage; Stage 3: Committee stage; Stage 4: Enquiry stage; Stage 5: Approval stage; Stage 6: Publication stage. ISO standards those categorised as "Under Development Stage" are 4,078 and another 15,230 standards which are at the Published stage. To add to this is standards published form other international bodies like, CODEX, OIE, WHO, FAO and IPPC. All these organisations follow similar process from Proposal to final Publication stage. Doing a simple reality check, this is too simplistic an approach which NAMA-11 can suggest at this critical juncture. See document TN/MA/W/68/Add.1, 8 May 2006.

[44] See WTO document TN/MA/W/11/Add.7, 27 April 2006.

(TRQs), quantitative restrictions (QRs), non-Ad Valorem tariffs, etc[45]. The discussions under the work programme on NTMs do address some of the concerns expressed by the participants on the issue of a balanced treatment of tariffs and NTMs with regard to market access conditions. But, if there is a "critical mass" of countries who agree on the modalities, the sectoral approach towards tariff reduction will get finalised in the form of plurilateral agreements like the ITA. However, the evidence available from the sectoral treatment of market access under the ITA supports the understanding that without addressing NTMs, market access negotiations cannot move forward in any meaningful manner. This is evident given that even as the IT sector has already achieved zero tariffs, market access remains a significant issue with a proliferation of NTMs within the sector. Meanwhile, tariffs seem to be the only trade policy instruments which are protecting a large section of developing countries. Thus, if the IT model of "zero to zero" tariff reduction approach is taken for other sectors also without addressing NTM concerns, developing countries would be providing market access without gaining the same.

Thus, even after a decade under the WTO, the modalities for enhancing market access (liberalization) remain the core agenda in non-agriculture goods (NAMA) negotiations, just as in agriculture (AoA). But, it is clear that if sectoral approaches are adopted for tariffs alone, the question of addressing market barriers created by NTMs may continue to be the biggest stumbling block, unless a balanced approach is adopted in the NAMA.

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[45] Although the issue is not a major obstacle in the non-agricultural sector with the share of affected tariff lines being less than 5 % of national lines.

Annex Table 1: Definition of Non-Agricultural Products as per HS 1992 and 2002 Nomenclatures

HS 1992	HS 2002
Chapter: 03, **Headings :** 05.09, 15.04, 16.03-16.05, **Subheading** : 2301.20, and **Chapters:** 25 to 97, **<u>except the following HS headings or subheadings</u>**: 2905.43 2905.44 33.01 35.01 to 35.05 3809.10 3823.60 41.01 to 41.03 43.01 50.01 to 50.03 51.01 to 51.03 52.01 to 52.03 53.01 53.02	**Chapter:** 03, **Headings** : 05.09, 15.04, 16.03-16.05, **Subheading:** 2301.20, **Chapters:** 25 to 97, **<u>except the following HS headings or subheadings</u>**: 2905.43 2905.44 2905.45 33.01 35.01 to 35.05 3809.10 38.23 3824.60 41.01 to 41.03 43.01 50.01 to 50.03 51.01 to 51.03 52.01 to 52.03 53.01 53.02

Note: The HS 2002 definition of non-agricultural goods is similar to that of HS 1996. As a result of the HS 1996 changes, the subheading 3302.10 in the HS 1996 nomenclature contains both agriculture and non-agricultural products. Likewise, as a result of the HS 2002 changes, the subheadings 2939.11, 3822.00 and headings 41.01 to 41.03 in the HS 2002 nomenclature also contain both agricultural and non-agricultural products. As a working definition and for the sake of simplicity only, in this document, the subheadings 2939.11, 3302.10 and 3822.00 have been treated as non-agricultural products; on the other hand, headings 41.01 to 41.03 continue to be treated as agricultural products in the HS 2002 nomenclature.

Source: WTO document number TN/MA/S/14, January 25, 2005.

Annex Table 2: Description of Formulae to be used in the Negotiations

Formula	Explanation
Swiss Formula	A harmonizing formula that is effective at reducing tariff peaks and tariff escalations $\mathbf{T_1 = ([A] \times T_0)/([A] + T_0)}$ Where: 'A' is a maximum coefficient and no final tariff can be higher than this coefficient
Chairman's Formula, also known as **modified Swiss formula** (Girard Formula)	A harmonization formula with a coefficient, B, that can be varied to reflect different initial tariff levels. $\mathbf{T_1 = ([B] \times t_a \times T_0)/([B] \times t_a + T_0)}$ Where: **B** are coefficients, '$\mathbf{t_a}$' is a national average of the base rates, '$\mathbf{T_0}$'is the initial tariff rate and '$\mathbf{T_1}$' the final rate
Capping Formula	$\mathbf{T_1 = (A \times T_0)}$ An across the board uniform reduction in average bound tariff levels with a capping mechanism of three times the average national applied rate. Where (1-a) is the per cent tariff reduction.

Note: Author has made changes to adapt to the present set of arguments.

Source: Fernandez de Cardoba, Santiago and David Vanzetti, 2005, ***"Coping with Trade Reform: Implications of the WTO Industrial Tariff Negotiations for Developing Countries"*** Draft, January 14, p.15.