

Negotiating Group on Market Access

OVERVIEW OF PROPOSALS SUBMITTED

Non-Tariff Barriers

Note by the Secretariat¹

Introduction

1. Paragraph 3 of the "Programme of meetings for the negotiations on market access for non-agricultural products" adopted by the Group on 19 July 2002 foresees "a consolidated overview of proposals to be submitted to participants at the first meeting of the Group in 2003".
2. The overview circulated in TN/MA/6 had not taken into account points made on non-tariff barriers given the preliminary nature of the discussion on this subject. However, in light of the discussion at the meeting of the Negotiating Group held from 19-21 February 2003 and the additional submissions made on this subject it was felt that an overview of points made on NTBs would be useful.
3. Eighteen written submissions² have addressed the subject of NTBs. In twelve cases this was done as part of a general submission on modalities for the market access negotiations. Of these twelve, two submissions were made by groups of participants (Mercosur and (Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe)). In addition six submissions have addressed exclusively the subject of negotiations on NTBs (namely from Canada, Chile, EC, Japan, New Zealand and the US).
4. As a result, the overview has been divided into four parts. Part A –General, presents an overview of the points raised in the submissions that were of a general nature or - although addressing exclusively the issue of NTBs - did not relate to a specific negotiating modality. Part B – Scope, lists the various proposals according to what WTO bodies Members suggested would be appropriate to address the NTBs as well as specific NTBs that should be addressed through the negotiations. Thirdly, Part C – Specific Modalities/Methodologies, gives the various approaches to conducting the negotiations. And finally, Part D – Other Issues provides other relevant information for addressing NTBs that was submitted in the proposals.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² Including addenda.

Part A – General

Fifteen submissions provided general information on how to proceed with the NTB negotiations without necessarily suggesting a specific negotiating modality or scope. These general observations are quite varied. Some of the early submissions on NTBs suggest that a listing³ or inventory be drawn up first before proceeding with an assessment and ultimately how to address them. Others refer to the negotiating mandate, emphasizing the importance of reducing or eliminating NTBs without suggesting how to go about addressing them. A few observations point to the legitimate policy objectives that many measures are meant to fulfill. The remaining submissions are quite varied; see the detailed information in Part A of the table that follows this summary.

Part B – Scope of NTBs

Many proposals included detailed information on what the scope of NTB negotiations should be in this negotiating group or elsewhere. Many proposals note that the type of NTB would often determine the appropriate forum and the way to address them.

Five NTB submissions point to NTBs that relate to existing WTO Agreements (e.g. Customs Valuation, Import Licensing, PSI, SPS, TBT, etc...) and suggest ways to address them. Of these five, four specifically state that the matter should be taken up in the relevant WTO Committee. Furthermore, three submissions note that these NTBs have no specific negotiating mandate and therefore the Agreements should not be re-opened. Two submissions suggest to address the NTBs as a matter of implementation while two submissions note that it is only through the dispute settlement process that these NTBs could be examined as compatible or not with WTO rules.

A second category of NTBs are those relating to other WTO Agreements which are also the subject of a negotiating mandate (e.g. AD, CVD, etc...). Two proposals note the relevant work going on in these other fora to address these barriers.

A third category refers to those NTBs that are already part of the Doha Declaration (e.g. Trade Facilitation, Transparency in Government Procurement, Services, etc...). Five submissions note the importance and relevance of addressing these NTBs in their own respective areas. Four submissions suggest some kind of link or communication in order that the NGMA be kept informed or follow the work in these other areas. The other submission states that this group could support the initiation of negotiations on trade facilitation.

One submission states that NTBs should be identified and negotiated in the NGMA.

A number of submissions point out NTBs that should be addressed in the negotiations but are not categorized in the above-mentioned groups (i.e NTBs not specifically covered in existing WTO Agreements nor in the Doha agenda). The NTBs suggested in the proposals to be examined include: quotas; tariff classification; export duties and export restrictions; buy national campaigns; difficulties arising from requirements by local, regional or independent authorities and bodies; the application of national laws and regulations outside national borders; fiscal incentives; and tax and duty exemptions. Furthermore, one submission states that export duties fall outside the Doha mandate and therefore should not be the subject of these negotiations.

³ An initiative in this sense was taken and a listing of NTB notifications has been compiled in document TN/MA/W/25.

Part C – Specific Modalities/Methodologies

The various proposals on modalities for NTBs generally fall into four categories: 1) dispute settlement; 2) request/offer, bilateral, or plurilateral; 3) vertical or sectorial approaches; and 4) horizontal or multilateral approaches.

Six submissions point to request/offer as a possible modality for negotiating NTBs. However, in two of these submissions Members note that there may be difficulties or limitations using this approach because there were over 140 WTO Members to potentially negotiate with. One submission notes a bilateral request/offer process could lead to a plurilateral NTB agreement.

A second approach suggested in three proposals was a vertical or sectoral approach to address NTBs that are prevalent in certain sectors. In this respect, the following sectors have been put forth as possibilities using this method: forest products, textiles and clothing, motor vehicles, and fisheries.

Thirdly, three submissions referred to horizontal or multilateral approaches to address NTBs whereby the outcome would be equally applicable to all WTO Members. One of these submissions suggests the areas of technical regulations, conformity assessment, and quantitative restrictions as possible areas to focus on.

Finally, there was one submission that suggested leaving certain NTBs for the WTO dispute settlement process, as a possible methodology.

Part D – Other Issues

There were other suggestions contained in the submissions that did not relate to the scope or methodology; these are listed in Part D, as other issues. In particular, they relate to notification of quantitative restrictions, role of intergovernmental bodies, and capturing the results of the negotiations. See Part D of the table for specific details.

PART A - GENERAL

Comment

(1) Canada and New Zealand have made a valuable effort to identify possible courses of action that will enable the NGMA for Non-Agricultural Products to fulfil its mandate. Chile feels that both approaches are not mutually exclusive. The first element common to both documents, and one which Chile endorses, is that NTBs – given their complex and varied nature – cannot be addressed through only one approach, but rather through several complementary approaches.

Non-tariff barriers are an important part of the negotiating mandate of the NGMA for Non-Agricultural Goods. There are two elements which make addressing this part of the mandate especially complex. First, the wide range of NTBs and the technical complexity of many of them. Second, the fact that many measures identified as NTBs are already regulated by a significant number of WTO agreements for which there is no negotiating mandate. Therefore, the problems which have been identified in relation to these measures fall within the ambit of either dispute settlement or implementation, but not within that of negotiations which could result in the creation of new disciplines. (Chile)

(2) In a sense, the amplification of WTO disciplines aimed at curbing non-tariff barriers and regulating the use of non-tariff measures has heightened the significance of tariff peaks and high tariffs, which is the reason why the European Communities call for their elimination. At the same time, WTO Members have still work to do to refine relevant multilateral disciplines and ensure the elimination of remaining barriers.

Industry world-wide continues to face pervasive behind-the-border trade obstacles which can frustrate any additional market access acquired through tariff reductions. Consequently, the European Communities considers it crucial to accompany all DDA efforts to reduce tariffs, tariff escalation, and to eliminate tariff peaks and high tariffs, with equally strong action to address remaining unjustified non-tariff barriers.

Members will need all their determination, as the definition and classification of non-tariff barriers is notoriously challenging, so much so that there is no WTO definition. Although they maybe easily described, *a contrario*, as all barriers that are not tariffs, listing non-tariff barriers is almost impossible as such a definition includes a potentially unlimited number of obstacles. In general, apart from the straightforward category of border restrictions (e.g. import or export quotas), some non-tariff barriers can often best be described as procedures linked to the implementation of rules, as much as rules in themselves. Despite constant change barriers can be identified, even if attempts at systematic classification can be rather fruitless.

It is essential to distinguish between legitimate regulatory measures and the use of measures to establish unjustified barriers to trade. In contrast to legitimate non-tariff measures that are based on legitimate policy objectives such as public safety, health, security, environmental or consumer protection, non-tariff barriers may be dictated by protectionist designs, which are incompatible with GATT and WTO principles and impose unjustified burdens to traders. (EC)

(3) Compilation of comprehensive data with regard to NTBs is an essential requirement for furthering discussion in this area. However, there should be caution against the inclusion of legitimate instruments that developing countries may use under the various WTO agreements for development of their industries. (India)

Comment

(4) Bearing in mind the variety and diversity of NTMs which could be NTBs, it is important, based on the experiences of the UR, not to complicate issues more than necessary, and to consider a proper direction for the modality of negotiations based on the DDA mandate.

It is appropriate to avoid the duplication of discussions between those taking place in this negotiating group and activities in other negotiating groups and existing WTO Committees, by considering the mandates and the expertise in each committee/group. It is important to consider practical improvements for business with regard to measures that actually impede trade.

As NTMs are linked, in many cases, to legitimate public policy objectives, such as health and environmental protection, it is not appropriate to automatically eliminate such measures.

Based on the UR experience whereby so many NTBs were notified, resulting in dispersed discussions, it is important to scrutinise the policy objective, the practical function and the trade-distorting effect of measures, when determining whether or not to take them up during this negotiation .

Regarding the NTBs to be dealt with in this negotiating group, we should scrutinise their scope, with a view to avoiding any duplication of activities with other committees and addressing real benefits of the private sectors, and then we should set out the appropriate methods for reaching a substantial outcome.

Furthermore, the NTBs to be taken up in this group should be limited to such measures as those implemented by each government, and the issue of appropriateness of measures granted under the WTO Agreement or other multilateral agreements should not be addressed in this group. (Japan)

(5) The following key elements should be taken into consideration in defining the scope of negotiations on NTBs: 1) Non-duplication of work with other negotiating bodies; 2) Existence of a critical mass calling for addressing the particular NTBs; 3) Achievability of negotiating objectives within the agreed time-frame for DDA negotiations; 4) respect for each Member's authority in pursuing national policy objectives.(Korea)

(6) It is the view of Mauritius that priority consideration in the negotiations should be given to the elimination of NTBs, especially those that are "invisibles" or "hidden" NTBs such as administrative bottlenecks, complex distribution networks, etc. While the audit of NTBs currently being carried out based on information provided by Member States is a welcome step, it is nonetheless imperative that an independent and comprehensive exercise be undertaken by the Secretariat to draw a checklist of hidden and invisible NTBs which could serve as the basis for the negotiations. (Mauritius)

(7) Mercosur attaches priority to the Ministerial mandate to reduce or eliminate NTBs in the context of the current negotiations. We fully support the initiative to initiate the consideration of this aspect through a process of notifications in order to provide the Negotiating Group a basis with which to begin consideration of the matter with a view to develop modalities for negotiations in order to achieve the effective reduction or elimination of non-tariff barriers. (Mercosur)

Comment

(8) Non-tariff measures must be clearly defined and categorized in order to determine which ones fall within the competence of this Negotiating Group and to decide how they should be treated. (Mexico)

(9) Many NTBs are linked to legitimate public policy objectives, for example health, safety or environmental protection, and may be in place for valid regulatory reasons. It is therefore not feasible simply to reduce or eliminate an arbitrary proportion of such measures. But given the Ministerial mandate, neither can negotiators avoid addressing them. Some of these measures impose unnecessary costs on business and consumers or distortions to trade. This is especially the case where the differences or variation in for example product mandatory standards (i.e. technical regulations) and procedures for assessing compliance with those technical regulations (i.e. conformity assessment) among major global markets itself imposes significant costs on business. In line with the mandate, the Negotiating Group on Market Access does need to seek effective ways to reduce or eliminate the NTBs which cause those costs. (New Zealand)

(10) Developed countries should reduce or eliminate high internal taxes and charges, especially those applicable to products of export interest to developing countries. (Oman)

(11) As beneficiaries of preferential schemes, non-tariff barriers are increasingly becoming one of the main market access concerns. For instance preferences can not be used to the full because of the restrictive nature of the rules of origin. Hence rules of origin may be harmful in restricting the capacity of African countries to take advantage of market access opportunities that are available. There is also a need to look at the use of other measures that in principle conform to the WTO rules such as anti-dumping and countervailing measures, SPS and TBT among other measures. While there may be legitimate reasons for these, sometimes they are used for purely protective purposes. We recognize that it may not be feasible to quantify the degree to which they act as market access impediments. However, it is crucial that they are addressed in the negotiations as whatever gains are made through tariff concessions may be nullified by the incidences of this form of market access barriers. (Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe)

(12) To facilitate discussion on NTBs, we support some Members' suggestion that Members should first identify the potential non-tariff barriers about which they are concerned. On the basis of the results of Members' NTB notifications, Members will be in a better position to discuss the subject and categorize these NTBs according to whether they are 'issue-specific' and 'sector-specific'. NTBs that are issue-specific should be addressed, where possible, in other relevant Committees or Negotiating Groups. The only NTBs that would be addressed in this Negotiating Group would therefore be:

- (1) those issue-specific NTBs that other Committees or Negotiating Groups have no mandate to address; and
- (2) sector-specific NTBs. (Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu)

Comment

(13) Following compilation of information on NTBs from existing inventories developed by regional fora such as OECD and APEC, countries could then consult and categorise these NTBs into those that are more issue-specific (e.g. rules, TBT, SPS, customs procedures etc.) or more sector-specific (e.g. ITA, chemicals, pharmaceuticals). NTBs that are more issue-specific could be taken up in other Committee/Negotiating Groups while sector-specific NTBs could be discussed in this Negotiating Group. (Singapore)

(14) A list of concrete barriers should be drawn up. An assessment of the difficulties reported, and especially of their trade-restrictiveness, should follow the collection of this information. The assessment should take into account that some of the difficulties encountered may be solved through bilateral negotiations between the Members concerned. On the basis of this assessment and of the number of issues which can be resolved bilaterally, the Negotiating Group will have to decide how to proceed. (Switzerland).

(15) It is critical that WTO Members develop appropriate, transparent methods to negotiate the reduction or elimination of non-tariff barriers as we proceed with the overall negotiations on non-agricultural market access. Members can all agree that work on this front is vital if we are to negotiate meaningful improvements in market access and overall liberalization as part of the current negotiations. (United States)

PART B –SCOPE OF NTBS

<p>1. NTBs to be addressed in the Negotiating Group</p>	<p>(1) NTBs should be identified and negotiated within the Negotiating Group on Non-Agricultural Products as it is the most appropriate body to discuss and remedy NTBs problems for the following reasons: (1) This Group has been granted full authority by the TNC to negotiate on the subject of NAMA; (2) It will facilitate developing and least-developed countries, which possess constraints with regards to both human resource and budget, and to help them to better focus on the NAMA topics in one single forum. (3) It will help facilitate developing and least-developed countries to better evaluate the overall picture of the NAMA negotiations. (Thailand)</p>
<p>2. NTBs relating to existing WTO Agreements which are not the subject of any negotiating mandate, for example</p> <ul style="list-style-type: none"> - TBT - SPS - Import Licensing - Rules of origin - Customs valuation -Pre-shipment inspection 	<p>(1) Given the existing Agreements covering these areas, it would appear that problems of implementation may exist. These could perhaps best be examined by the relevant Committees themselves. (Canada)</p> <p>(2) The Chilean export sector has identified a number of NTBs which affect it in various markets. However, the majority of the NTBs reported correspond to measures regulated by several WTO Agreements for which there is no existing negotiating mandate. Again, some of these NTBs may correspond to measures inconsistent with those or other WTO Agreements. Consequently, Chile has not deemed it appropriate to provide notification of these specific measures at this stage.</p> <p>Chile understands that it is inappropriate to negotiate measures, either in the NGMA for Non-Agricultural Products or in any other Group, insofar as this involves the creation of new disciplines. Agreements should not be re-opened if there is no mandate to do so.</p> <p>However, various Members have identified implementation problems in some of the aforementioned agreements. Such problems should be examined by the relevant subsidiary bodies, as this avoids any duplication of work and also allows for more efficient use of the little time for negotiation that is available to the NGMA for Non-Agricultural Products. Furthermore, in this way the different problems are addressed in forums which are technically capable of solving them. (Chile)</p> <p>(3) Some of the non-tariff barriers currently encountered stem from deficiencies in the implementation of GATT and WTO disciplines. In some instances, difficulties may need to be resolved through the procedures for consultation provided for in each of the above-mentioned agreements, or – in the case of infringements – through the relevant GATT/WTO procedures for dispute settlement. In a limited number of cases such as those concerning least developed countries, difficulties might be due to inability of Members to live up to the commitments previously signed: technical assistance and capacity building activities could then help to address the issue, which is the reason why the European Communities has constantly supported initiatives in this field, a recent example being the inclusion of trade related assistance in its ongoing development aid programming. Non-tariff barriers arising in the cases just described are not a matter for negotiation.</p> <p>As developing and least developed countries have often drawn the attention to (perceived) non-tariff barriers resulting from some Members' implementation of the Agreement on Technical Barriers to Trade and the SPS Agreement, the European Communities supports a thorough analysis of the existing disciplines in order to address such concerns. (EC)</p>

	<p>(4) As many notifications relate to activities of existing committees, it would be useful to leave investigations to such committees, with the possibility of applying horizontal disciplines. Taking the TBT Committee, for example, the Third Triennial Review is scheduled for this year, and this opportunity could be used to the full. In this context, Japan recently submitted a paper to the WTO, entitled "A Policy Framework for the Acceptance of Results of Conformity Assessment Procedures", for the purpose of contributing to the discussions at the Triennial Review. Concerning suggestions to consider practical ways of fostering a greater use of international standards, it would be important to encourage experts to discuss the definition of international standards if necessary, although there were discussions on clarification of the definition of the term at Second Triennial Review. (Japan)</p> <p>(5) Many of the non-tariff barriers identified by Members in their NTB notifications to Chairman Girard may fall under the purview of existing WTO Agreements, and in fact may have been under discussion in Committees for some time. Solving these types of problems need not be deferred until the end of the Doha negotiations. NTBs which relate to existing rules may or may not be consistent with WTO obligations. As others have indicated, only the dispute settlement system can determine if the NTBs that are arguably covered by existing agreements are WTO legal. In addition, there is no mandate to reopen existing agreements. Consequently, Members may wish to raise these barriers in the appropriate existing WTO Committee, where it may be possible to address practical problems involving the administration of agreements through dialogue, best practices, and sharing positive experiences, thereby enhancing the interaction between existing agreements and real market access. Committees have made use of a variety of tools to resolve issues and can decide on the appropriate way to address the NTBs raised by Members. To facilitate transparency in the negotiations, Members choosing to highlight NTB issues in existing WTO Committees may wish to inform the NGMA that they have done so. (United States)</p>
<p>3. Measures covered by WTO Agreements which are the subject of a negotiating mandate, for example</p> <ul style="list-style-type: none"> - anti-dumping -subsidies and countervailing duties -safeguards 	<p>(1) Finally, there are certain new measures capable of being considered as NTBs and for which a negotiating mandate was indeed issued at Doha. To take the Table of Contents of the Inventory of Non-Tariff Measures (TN/MA/S/5) as a reference, one example of such measures would be anti-dumping and countervailing duties. These NTBs should be negotiated in the relevant negotiating groups. (Chile)</p> <p>(2) Further to the attention devoted by the Singapore Ministerial Conference to non-tariff barriers, some of the non-tariff trade obstacles are already the subject of discussions in other WTO negotiating fora, in which the EC has submitted proposals and papers. For instance, issues concerning anti-dumping, countervailing measures and subsidies are currently discussed in the negotiating group on rules. Problems caused by excessive recourse to anti-dumping, countervailing duties or safeguard action have become much greater than in the years preceding the conclusion of the UR. The Community supports a substantial review and pro-trade strengthening of these rules. (EC)</p>

<p>4. NTBs which relate to other areas of the Doha Declaration, for example</p> <ul style="list-style-type: none"> -Trade Facilitation -Transparency in Government Procurement -Competition -Services -Special and Differential Treatment 	<p>(1) Border-related measures including customs procedures, fees and administration: problems cited in these areas seem to point to the basket of issues being discussed under the Trade Facilitation umbrella. It might be appropriate for the NAMA NG to support the initiation of negotiations on Trade Facilitation in order to promote more commonality in, and simplification of, practices, standards and criteria. (Canada)</p> <p>(2) A second approach relates to the trade facilitation agenda that is under discussion in the Council for Trade in Goods. A significant proportion of the NTBs identified by the export sectors of various Members, both developed and developing, is found in measures which can be placed under the umbrella of trade facilitation, for example, consular transactions and charges; excessive customs processing procedures; excessive penalties for minor offences; double or triple inspections of imported cargo. Consequently, achieving a consensus on trade facilitation-related negotiating modalities at the forthcoming Ministerial Conference in Cancún would be a significant step towards fulfilling the Doha mandate for NTBs. Moreover, consensus exists between WTO Members on the advantages of more efficient customs administration systems, not only to expedite the flow of goods but also to promote investment and improve public policies. Chile is not proposing that any sort of formal link be established between the NGMA for Non-Agricultural Goods and a future negotiating group on trade facilitation. We are merely emphasizing that, in the light of the available evidence, a significant proportion of the NTBs reported by the Members should – by their very nature – be addressed within the framework of a future negotiation on trade facilitation. (Chile)</p> <p>(3) Discussions on investment, competition and public procurement are bound to tackle barriers that are not tariff-related as well. Discussions on trade facilitation, with their focus on customs and related trade procedures, also provide an avenue to reduce burdensome import, export and transit procedures to the benefit of all Members. Additionally, the work programmes on special and differential treatment and implementation deal with several non-tariff issues of interest to developing countries. It is the EC's view that the negotiating group on non-agricultural market access should avoid duplication and ensure co-ordination with the work conducted in other fora. (EC)</p> <p>(4) A second approach would reflect the fact that some areas are already covered under other parts of the Doha mandate, eg. the work currently being done on trade facilitation in the Council for Trade in Goods (CTG). The Council's existing mandate in the period up to Cancun is to review and as appropriate improve and clarify relevant GATT Articles. Negotiations on trade facilitation are to be launched at Cancun on the basis of a decision, by explicit consensus, on the modalities for those negotiations. The importance of substantive progress in this work on trade facilitation is apparent from the recent notifications of NTBs, by New Zealand, and other participants, which illustrate that customs and entry procedures are among the most frequently cited NTBs. The NGMA therefore needs to follow closely progress in the work on trade facilitation under the CTG. (New Zealand)</p>
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	<p>(5) A significant number of NTBs might most appropriately fall under the purview of other areas already covered by the Doha mandate of the Doha Declaration, including Transparency in Government Procurement and especially Trade Facilitation. The United States also notes that Members' notifications to Chairman Girard included non-tariff barriers that related to the distribution of goods, which relates in large measure to services. The modalities adopted by the Negotiating Group on Market Access should recognize that Members may wish to address such NTBs in the context of negotiations in these other areas. Appropriate mechanisms to ensure that the NGMA is fully informed of the developments in other committees or negotiating groups concerning such NTBs should be considered. In addition, this area may offer another opportunity for new positive commitments. (United States)</p>
<p>5. Export duties and Export Restrictions</p>	<p>(1) Because of GATT's traditional focus on import policies, export taxes remain a policy instrument still not subject to specific disciplines, hence the significance of the effects such policies have. Export taxes, whenever used to protect industries that process primary commodities, tend to be the flip-side to tariff escalation thus causing adverse effects on commodity producers, who tend to receive a price which is below the price prevailing on world markets. The commitments on export taxes made by newly acceded Members have set a valuable example that should be followed by all Members. (EC)</p> <p>(2) Export tariffs or levies are generally used to generate resources to develop an industry by diversification in the product profile and development of value added products for exports. Therefore, the suggestion that 'export duties' be negotiated would be outside the Doha mandate. (India)</p> <p>(3) As already suggested by Japan, export duties and export restrictions, that are implemented by the export side and have trade-distorting effects, should be taken up as NTBs. Furthermore, there exists an imbalance in the rights and obligations between the export side and the import side, thus warranting thorough discussion. (Japan)</p>
<p>6. Quotas</p>	<p>(1) These, in principle, would appear to be a legitimate area for the NAMA negotiations (Canada)</p>
<p>7. Tariff classification</p>	<p>(1) This may be an area where the World Customs Organization could be involved in helping to resolve some outstanding problems. Ongoing WCO work, including periodic revisions of the Harmonised System (HS), may provide opportunities for changes which can facilitate better commonality of interpretation amongst customs administrations. In addition, however, some concerns appear to involve consistency in treatment within single customs administrations. (Canada)</p>

<p>8. Domestic regulatory process</p>	<p>(1) The Negotiating Group could also discuss whether it would be advisable for each Member to put in place or maintain procedures and criteria, in the context of its domestic regulatory process, to examine regulations affecting market access. Such an examination could, if necessary, result in modifications where the circumstances giving rise to the regulations in question no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.</p> <p>For purposes of transparency, it could be envisaged, finally, that Members in the Market Access Committee would retain the right to seek further information on Members' regulatory measures and procedures, and their compatibility with these commitments. (EC)</p>
<p>9. Other NTBs</p>	<p>(1) In this respect, the following issues appear, <i>prima facie</i>, worthy of consideration: export taxes, buy national campaigns, difficulties arising from requirements by local, regional or independent authorities and bodies, and from the application of national laws and regulations outside national borders. (EC)</p> <p>(2) Progressive phasing out of market imperfection e.g. subsidies, fiscal incentives, tax and duty exemptions in all pollution emitting sectors is imperative. Restructuring of the carbon tax to reflect the carbon and pollutant contents of fuels is also important in order to realize the objectives of global environmental protection and sustainable development, particularly for the developing countries. (Qatar)</p>

PART C – SPECIFIC MODALITIES/METHODOLOGIES

Type	Points raised
1. Dispute Settlement	<p>(1) One way would be to leave measures for dispute settlement. That may be necessary in some instances, though it plainly would not discharge the mandate. (New Zealand)</p>
2. Request-Offer; Bilateral; Plurilateral	<p>(1) The NTBs which are covered by WTO Agreements for which there is no negotiating mandate could be the subject of request-and-offer negotiations between the Members concerned, provided that this does not involve negotiating new disciplines. The results of these multiple bilateral or multilateral negotiations, which could deal with specific measures, types of measures, or specific production sectors, would be included in the Members' new schedules of commitments and applied on a most-favoured-nation basis at the end of the current Round. We can clearly see the limitations of a request-and-offer approach in negotiations with more than 140 participants and with a fixed end date less than two years off. (Chile)</p> <p>(2) This case-by-case approach dealing with specific non-tariff barriers could, if necessary, be supplemented by more horizontal provisions based on GATT Articles III and XI. In so doing, Members should take into full consideration the special needs of least developed countries. Nevertheless, we consider that request and offer approaches with individual commitments should not be excluded <i>a priori</i>. In fact, the usefulness of including such individual commitments in some Members' schedules has been demonstrated. (EC)</p> <p>(3) In addition to a sectoral approach on the two sectors, a bilateral approach could be used in combination with discussion at plenary sessions, and to grant outcomes of these negotiations to all the Members. (Japan)</p> <p>(4) Another possible approach to handling NTBs, noted in New Zealand's earlier submission, would be bilateral request/offer (R/O). We suspect that R/O may prove necessary as a fallback for some measures. But New Zealand would caution against making R/O the main modality for NTBs. Given the large membership of the WTO, the potentially huge number of NTBs as noted earlier, and the complexity of each individual issue, an approach solely based on bilateral R/O negotiations group would be likely to yield relatively limited results. That would imply a limited discharge of the mandate. (New Zealand)</p> <p>(5) On the subject of process for negotiating removal of NTBs, we are of the opinion that the request-offer process should be an appropriate process for the NTBs negotiations. (Thailand)</p>

Type	Points raised
	<p>(6) Specific bilateral issues relating to existing WTO disciplines might be raised by Members in the NGMA to pursue through a request/offer procedure. The United States also suggests that Members consider the possibility of a new approach, in which a core group of countries would make positive commitments in a particular area – essentially, a plurilateral NTB agreement. For example, in a particular situation or for a specific set of products, a group of Members would agree to implement specific international standards, which would then be applied on an MFN basis.</p> <p>Addressing some product-specific NTBs bilaterally or with a core group of countries “plurilaterally” through a request/offer procedure, either in the Negotiating Group on Market Access or elsewhere in the WTO could act as a residual method of negotiating to take up issues that do not fit neatly into the various multilateral methods outlined above.</p> <p>In addition, the United States believes a significant contribution to an ambitious NTB result can be achieved through the negotiation of positive commitments on a multi-country or “plurilateral” or even wider basis. Such agreements might be particularly useful in advancing vertical NTB negotiations, and could address issues relating to work in the NGMA, in existing WTO Committees, or in other areas of the Doha Declaration. For example, as indicated previously, in a particular situation or for a specific set of products, a group of Members would agree to implement specific international standards on an MFN basis. We note that several other Members have made suggestions along similar lines. We encourage Members to suggest potential positive agreements that would contribute to an ambitious market access result. Our initial thinking is that, even if the suggested agreements relate to issues not strictly under the purview of the NGMA, it may still be possible and desirable to negotiate them in the NGMA, with assistance from experts in existing groups, as appropriate.</p> <p>(United States)</p>
3. Horizontal Approach; Multilateral	<p>(1) We would like to reiterate our marked preference for multilateral approaches with commitments equally applicable to all Members.</p> <p>Disciplines on specific non-tariff barriers are unlikely on their own to be effective in removing all obstacles to trade, especially when some of them are immediately replaced by new barriers. For this reason Members should explore whether additional horizontal mechanisms could be useful in addressing unnecessary barriers affecting market access so that measures taken by Members are not more trade-restrictive than necessary to fulfil a legitimate objective. (EC)</p> <p>(2) New Zealand suggests that to achieve substantial progress on the NTB part of the mandate, this Negotiating Group will also need to consider multilateral approaches. In this paper we share some preliminary ideas about possible approaches based on examples of technical regulations (i.e. mandatory standards), procedures for assessing whether products comply with those regulations (i.e. ‘conformity assessment’), and quantitative restrictions. The reference to mandatory standards and conformity assessment reflects the fact that standards and certification ranked at the top of the seven categories of NTBs identified in New Zealand’s earlier submission to the NGMA. These types of NTBs are</p>

Type	Points raised
	<p>prominent in the New Zealand notification of the NTBs faced by our exporters. Within such a multilateral approach, there are various ways in which NTBs, especially those relating to technical regulations and conformity assessment, might be tackled.</p> <p>One approach would be to strengthen the application of existing horizontal disciplines. For example, the TBT Agreement already requires technical regulations to be specified in terms of performance wherever appropriate.⁴ In practice technical regulations are often described in prescriptive terms rather than in terms of product performance. (See example below from the forest products sector.) New Zealand suggests the negotiations should explore ways to strengthen horizontal disciplines by requiring a substantial increase in the proportion of Members' technical regulations to be performance based rather than based on product descriptions, and to provide some security that those performance based regulations will be maintained. In New Zealand's experience performance based standards are well received by the business sector because they result in technical efficiencies and consequently improved productivity levels.</p> <p>Another example might be to agree to strengthen the use of international standards. The TBT Agreement already requires Members to base national technical regulations on relevant international standards where they exist (or are imminent), except where the standards would be ineffective or inappropriate for fulfilling the legitimate objective of the technical regulation.⁵ In principle the NAMA negotiations might allow consideration of practical ways to foster greater use of international standards. This would of course have implications for the work of international standardising bodies, such as the ISO and IEC, and the capacity of all Members, especially developing and least developed Members, to participate effectively in that work.</p> <p>Harmonisation of national regulations to international standards is often proposed as the best way forward in this area, though New Zealand and other Members have consistently preferred approaches based on recognition of the equivalence of technical regulations in individual Members. One of the impediments to strengthening the use of international standards is that in some sectors, industry considers the standards take too long to develop, so that existing international standards are either far behind current business practice or simply non-existent. For example the development of ISO standards in the forest products and building sector has been slow, even though they may be seen as ultimate replacements for existing national building standards and codes. (New Zealand)</p> <p>(3) The NGMA may have an opportunity to promote a positive approach to enhance the trade opportunities for all Members by examining the possibility for new commitments that effectively deal with non-tariff barriers horizontally or vertically. WTO Members have some degree of experience in negotiating horizontal agreements, such as the Customs Valuation Agreement and the Agreement on Import Licensing Procedures. (United States)</p>

⁴ TBT Article 2.8

⁵ TBT Article 2.4

Type	Points raised
<p>4. Vertical Approaches/Sectorial Approach</p>	<p>(1) Japan suggests zero-for-zero and harmonization approaches for 18 specific sectors. Regarding the harmonization of textiles and clothing, Japan suggests that any NTB that is unique to this area, such as country-of-origin marking, trans-shipment and so forth, should be addressed in parallel with the reduction of tariffs. Furthermore, as suggested in the zero-for-zero approach for the motor vehicle sector, all NTBs that are unique in each sector, together with tariffs, should be treated simultaneously.</p> <p>There have been some strong requests from the private sector of these two areas to take a sectoral approach. In addition, these requests are gaining support beyond borders and activities to increase support among international industrial associations have been vigorous. As seen in the UR, support from the private sector among countries is indispensable for successful sectoral approaches. From this point of view, the two sectors mentioned above should be dealt with in priority. (Japan)</p> <p>(2) To supplement work on strengthening the application of existing horizontal disciplines, therefore, a further approach could be to explore negotiations to address generic clusters of NTBs, typically those associated with a particular sector. The forest products sector again provides an example of how this approach might deliver the results, which Ministers have sought.</p> <p>The Negotiating Group might therefore want to consider the feasibility of addressing these types of generic NTBs in single clusters. For example:</p> <ul style="list-style-type: none"> • In relation to technical regulations, and taking forest products as an example, members might want to consider if a ‘smorgasbord’ approach might be feasible to achieve certain regulatory objectives. For example, New Zealand permits imported cars which meet the safety standards of any of the EU, US, Japan, Australia or the UN-ECE to be placed on the market. Is a comparable ‘smorgasbord’ approach feasible for some forest product technical regulations? Could that provide a relatively efficient way for this negotiation to reduce the costs and distortions, which currently arise from businesses having to meet different technical regulations in various major global markets? It is notable that there is a move within ISO towards declaring specific national, or regional or international standards as equivalent wherever this is possible rather than setting up one standard as the only option. For timber this sort of approach is especially suited to things like grades, testing methods and strength classes. • Other alternatives within the generic clusters approach might also be explored in the course of negotiations in order to address the costs which business faces due to varied technical regulations.

Type	Points raised
	<p>Another option could be to consider classes of NTBs. An example could be NTBs that impose quantitative restrictions on imports, which could be discussed as a group, possibly on an industry basis. (New Zealand)</p> <p>(3) WTO Members have less experience in the WTO with vertical NTB negotiations, although we note the Information Technology Agreement NTB work. In addition, some Members have participated in similar work of this type in various regional fora. For example, the APEC Chemical Dialogue, an industry/government partnership that works to facilitate trade and enhance the competitiveness of the chemical industry in the Asia-Pacific region, includes a focus on NTBs as part of its work. Also, both the APEC Automotive Dialogue and the World Forum for Harmonization of Vehicle Regulations have worked toward the reduction of NTBs in the automotive sector. We note that New Zealand has made suggestions regarding forest products and fish as possible sectors for consideration in this regard. Our own thinking in response to comments from industry and WTO Members indicates that possible candidates for vertical focus in terms of NTB reduction/elimination also may include automotive products and textiles and apparel. We look forward to other Members' input for possible inclusion in this type of discussion. (United States)</p>

PART D – OTHER ISSUES

Other Issues	Points raised
1. Notification	<p>(1) In this respect, we would like to recall the provisions on notification already at the disposal of WTO Members. Decision G/L/59⁶ lays down an obligation for WTO Members to notify some import and export restrictions, such as prohibitions, quotas, automatic licensing, non-automatic licensing, state trading enterprises, mixing regulations, minimum price, and voluntary export restrictions. Decision G/L/60⁷ offers the possibility of reverse notification for trade barriers maintained by other members, whenever they are not subject to any existing WTO system of notification or reverse notification. Since Members have made almost no use of this possibility, it might be advisable to undertake a review aiming at operationalising such procedures within the Committee on Market Access, which could result in negotiations on new WTO rules, if Members so decide. (EC)</p>
2. Role of Intergovernmental Bodies	<p>(1) Tariff classification may be an area where the World Customs Organization could be involved in helping to resolve some outstanding problems. Ongoing WCO work, including periodic revisions of the Harmonised System (HS), may provide opportunities for changes which can facilitate better commonality of interpretation amongst customs administrations. In addition, however, some concerns appear to involve consistency in treatment within single customs administrations. (Canada)</p> <p>(2) Canada's suggestion is worthwhile and that this concept merits further consideration by Members. Members might also consider at the appropriate time later in the negotiations whether other intergovernmental bodies might be venues where progress could be made in addressing NTBs. We are not suggesting that negotiations properly conducted in the WTO take place elsewhere. Rather, Members ought to consider what role other intergovernmental bodies might have in addressing problems that are related to market access concerns. (United States)</p>
3. Capturing the results of the negotiations	<p>(1) Members must agree on a means of capturing the results of negotiations on NTBs. We note that the UR goods schedules provide in Part III a section for recording additional commitment, and that services commitments are recorded in an additional column to the services schedule. We might also consider using headnotes or footnotes to schedules in order to memorialize commitments. Ultimately we must ensure that commitments are recorded in an open and transparent manner and done on an MFN basis. (United States)</p>

⁶ Decision G/L/59 of the CTG of 10 January 1996 on notification procedures for quantitative restrictions.

⁷ Decision G/L/60 of the CTG of 10 January 1996 on reverse notification of non-tariff measures.

Other Issues	Points raised
4. Process for undertaking future work	<p>(1) Members would need a process for identifying NTBs that they believe should be considered for a vertical approach, and initiate work early in the process to begin trying to build consensus for their specific proposals. The same holds true for NTBs which Members propose should be handled on a horizontal basis. Informal or formal mechanisms could be considered with regard to monitoring progress on NTBs that might be raised by Members in the context of other negotiating groups or existing Committees. Additionally we will need to establish appropriate mechanisms for pursuing NTB reduction and elimination on a bilateral or plurilateral basis. In each case, appropriate measures to ensure transparency will need to be included. Once modalities are agreed, Members should set firm dates for accomplishing these tasks, so there is progress concurrent with tariffs. Among those deadlines should be a date certain for Members to indicate more precisely those NTBs they wish to address. (United States)</p>
