

Dynamics of NAMA - NTB Negotiations in the Doha Round

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26 July 2010

Definition:

- There is no agreed definition at the WTO
- Non-tariff barriers include, in principle, all measures other than tariffs used to protect a domestic industry
- The term normally refers to “government imposed” or “government sponsored” measures, other than tariffs

- Non-tariff Measure vs. Non-tariff Barrier
- Many of the NTBs are measures imposed for legitimate objectives and can be introduced in a WTO consistent manner (e.g. measures to protect the environment, SPS, TBT, national security, etc.)
- But, Member needs to follow specific provisions to ensure WTO compatibility
- Some NTBs are not compatible with the multilateral trading rules and are not based on a legitimate goal (Protectionism!)
- Negotiations are to clarify the “grey areas”

Protectionism/
NTB



Legitimate
goal/ NTM

Reasons for negotiating NTBs include:

- To ensure that tariff commitments are not eluded or undermined
- To limit trade disputes between Members
- To minimize the trade distorting effects of a legitimate measure

- 1967/69 Inventory of NTBs: Aprox. 800 NTBs notified and classified in 5 broad categories (COM.IND/4+6)
- Tokyo Round: Inventory was continued and improved for both agricultural (MTN/3E/DOC/5-10) and industrial products (MTN/3B/1-5). NTBs on products of interest to developing countries were also identified (MTN/3B/16 and COM.TD/W/203/Rev.1).
- 1979/81 Decision to update NTB inventory Aprox. 1000 out of 1400 NTBs were retained after the revision (See L/5118)
- Uruguay Round: A Negotiating Group on Non-Tariff Measures was created (MTN.GNG/NG2 series). Proposals were compiled and classified by the Secretariat (MTN.GNG/NG2/W/19+Rev.1). Results include several Agreements plus **Part III** of the Schedules

What has been the process
for negotiating NTBs in the DDA?

Doha mandate on NTBs:

“16. We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, **as well as non-tariff barriers**, in particular on products of export interest to developing countries.”

NAMA – NTBs: Sequence of main events



2002/2003 → Generic proposals by Participants

Apr. 2003 → Overview of neg. proposals submitted, NTBs
(TN/MA/9)

Jan. 2003 → **1st Notification exercise** (TN/M/W/25 and addenda)

Aug. 2003 → Chair's Draft Elements for Modalities, including NTBs

Oct. 2003 → **2nd Notification exercise** (TN/M/W/46 and addenda)

2004/2005 → Review and classification of notifications
(JOB(04)/62/Rev.3)
Where should the notified NTBs be negotiated?

Hong Kong Ministerial Declaration

22. We note that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs. We also take note that Members are developing **bilateral, vertical and horizontal** approaches to the NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. **We recognize the need for specific negotiating proposals** and encourage participants to make such submissions as quickly as possible.

2006/2007 → 13 vertical and horizontal proposals were submitted by Participants (many TBT related); some have more support than others. Bilateral requests were also made (TN/MA/NTR/)

2008 → Should NTB negotiations finish with the modalities or afterwards? If afterwards, then how? (TN/MA/W/103/Rev.3 P. 23-26)

2009 → Intensive technical work

December 2008 text (TN/MA/W/103/Rev.3)

- ❖ Text based negotiations should continue on proposals after modalities are established. Seven “*merit particular attention*”
- ❖ Aim is to finalize discussions on proposals as early as possible for their inclusion in any final package in NAMA
- ❖ Members should pay attention to any systemic or cross-cutting issues, including those relating to the TBT Agreement, that may arise from these proposals
- ❖ Negotiations on bilateral requests should proceed in tandem. Need to multilateralize the outcomes through *inter alia* incorporating them where appropriate into Part III of the schedules

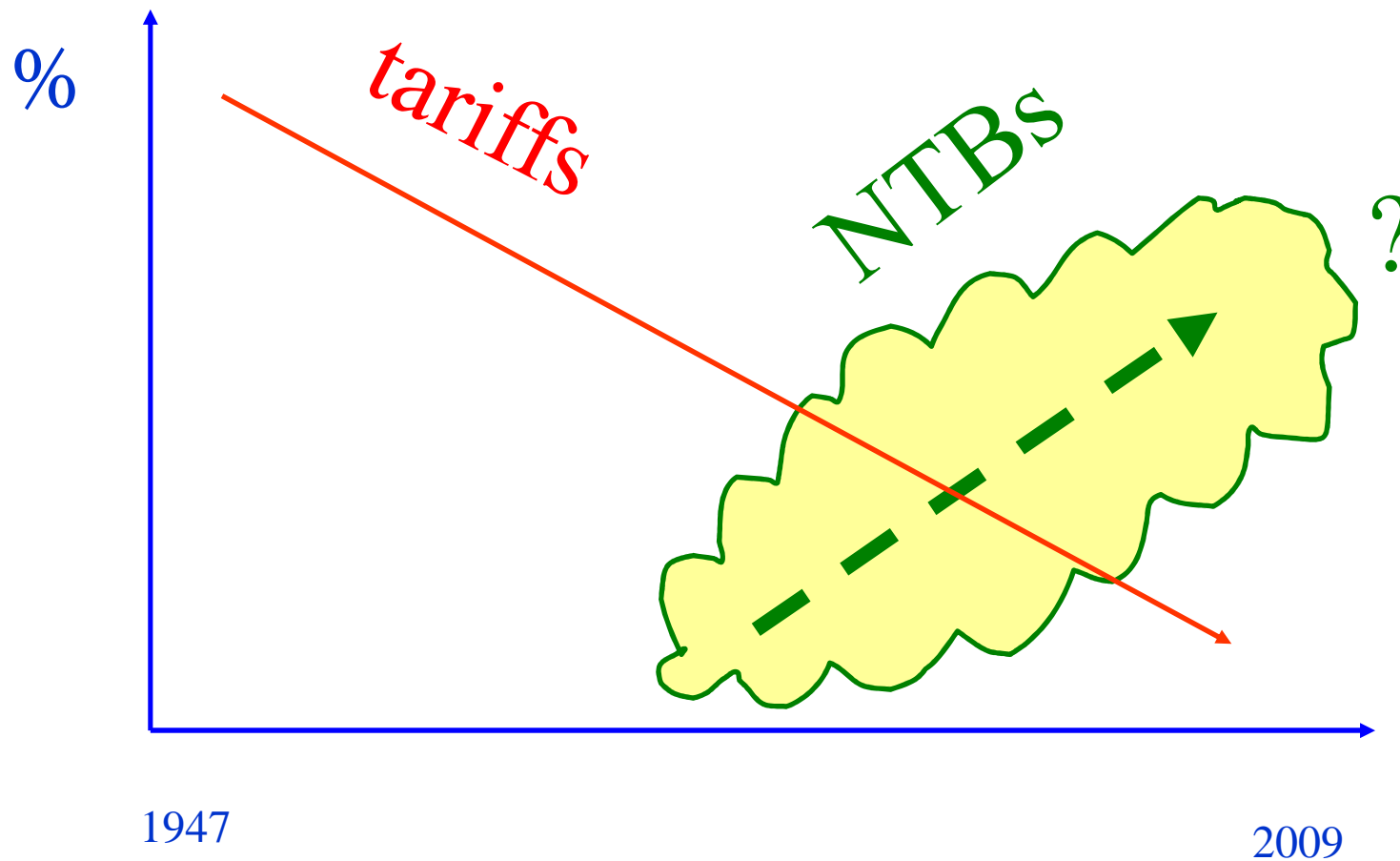
So, how will the NTBs be “reduced” or “eliminated”?

- Some raised in other WTO bodies
- Some raised in other Negotiating Groups (e.g. NG TF and NG Rules)
- Some negotiated in sectoral (“vertical”) discussions
- Some negotiated in “horizontal” discussions
- Some raised bilaterally; eventually multilateralized
(e.g. Part III of Schedules)
- Some could be subject to the DSU
- **There is no magic bullet!!!!**



India's Imperatives

- Political necessity to have a robust outcome on NTBs (in developed countries!) to balance tariff reduction

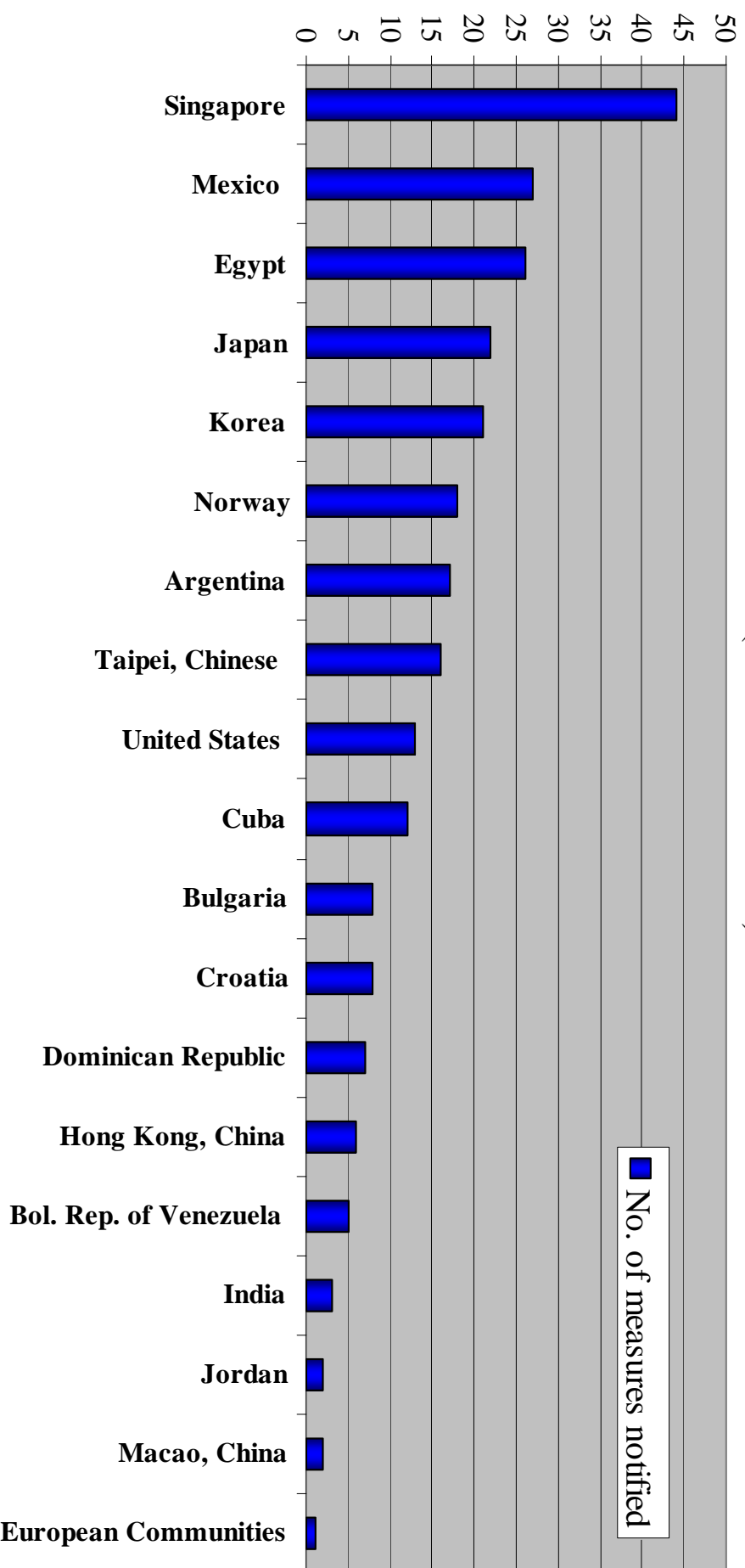


- As India develops and export basket expands – need to have in place a conducive trading regime.
- To try and address problems in NTM related Agreements not under DDA, based on experience since 1995.
- To address specific NTBs faced, largely in the fisheries and chemicals sectors.

NTBs Notified and Negotiated

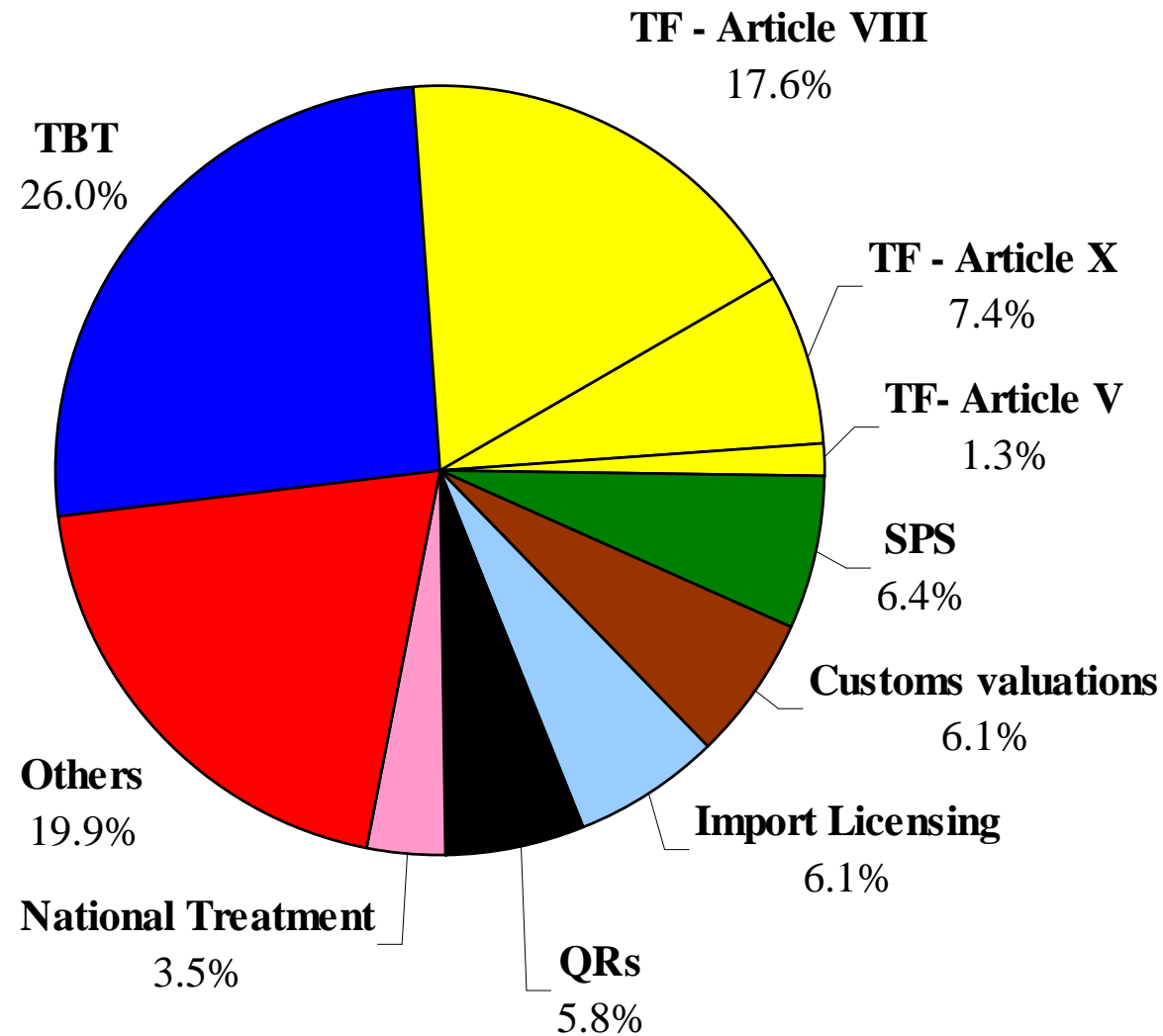
NAMA NTBs Inventory (TN/MA/W/46 series)

Which Members made a notification?



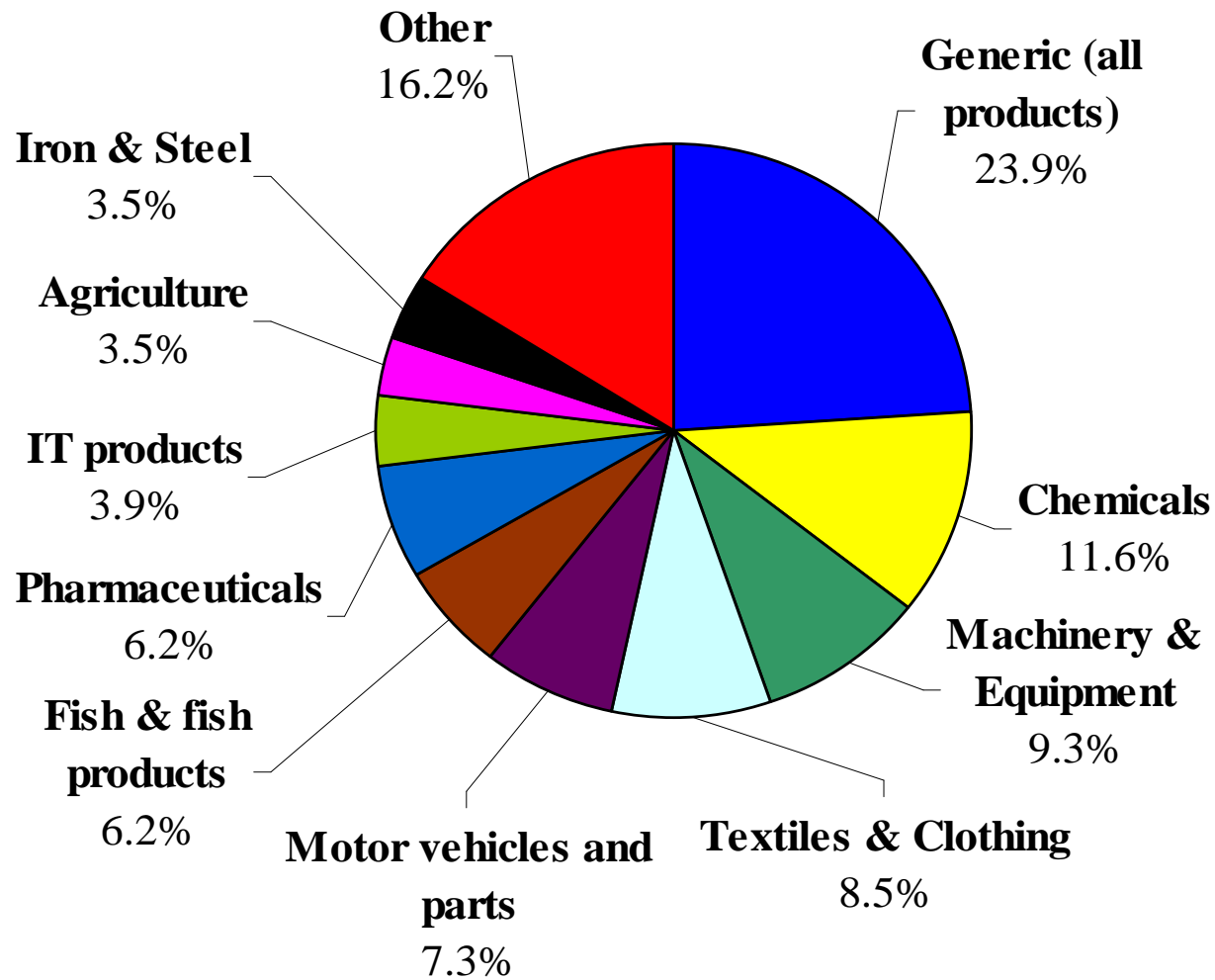
NAMA NTBs Inventory (TN/MA/W/46 series)

What type of measures were notified?



NAMA NTBs Inventory (TN/MA/W/46 series)

Which sectors faced the most measures?



D. NTB Proposals

Name of the proposal: **Ministerial Decision on Trade in Remanufactured Goods**

Document reference(s): TN/MA/W/18/Add.16/Rev.3 (09.09.2009)

Sponsor(s): Japan, Switzerland and the United States

Summary: Establish that each Member's trade regime should evolve in a manner that enhances market access opportunities for remanufactured goods; establish a review program under the auspices of the CTG to review NTBs affecting the sector.

Issues/questions raised by other Members: Definitional issue: i.e. what is a remanufactured good? Is it different from a “used”, “refurbished” or “recycled” good?
Why is a Ministerial Decision required to launch a work programme in the CTG?



Name of the proposal: Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers (a.k.a. the “Horizontal Mechanism”)

Document reference(s): TN/MA/W/106/Rev.1 (03.02.2010)

Sponsor(s): African Group, Canada, European Union, LDC Group, NAMA-11, New Zealand, Norway, Pakistan and Switzerland

Summary: Seeks to introduce a procedure for a non-binding, non-legal, mutually agreed, solution through a facilitator

Issues/questions raised by other Members:

- “Committee first” issue
- Relationship with the DSU proceedings,
- Confidentiality of information
- Selection of the facilitator
- Third parties
- Scope (which measures?)
- Cost and transparency



Name of the proposal: Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labelling of Textiles, Clothing, Footwear, and Travel Goods

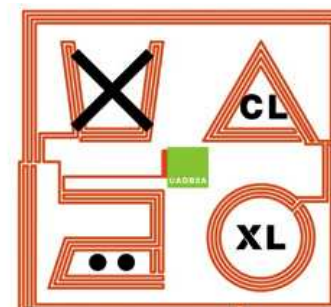
Document reference(s): TN/MA/W/93/Rev.1 and Add.1 (15.09.2009)

Sponsor(s): European Communities, Mauritius, Sri Lanka, Ukraine, and the United States

Summary: Encourages the harmonization of information requirements on labels (permanent vs. non-permanent) by calling for greater transparency; ensure Members and stakeholders are afforded meaningful opportunities to participate in rule-making process.

Issues/questions raised by other Members:

- Sounds like standard-setting
- Which information should go where
- Relationship with TBT Agreement
- “Rebutable presumption”



Name of the proposal: Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Electronics

Document reference(s): TN/MA/W/129 (07.12.2009)

Sponsor(s): European Union

Summary: Establish rules concerning the conformity assessment of
1) safety of electrical equipment and
2) electromagnetic compliance (EMC);
Favour supplier declaration of conformity (SDOC) and/or assurance of conformity; laboratory accreditation

Issues/questions raised by other Members:

- Should try to merge with the US proposal on the same subject
- Not sure developing countries can apply SDOC due to lack of a post-market surveillance system



Name of the proposal: Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods

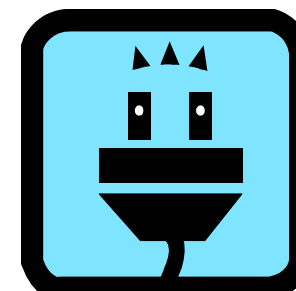
Document reference(s): TN/MA/W/105/Rev.2 (15.09.2009)

Sponsor(s): United States

Summary: Electrical safety and electromagnetic compliance (EMC) of electronic goods; elaborate further on some disciplines of the TBT agreement; recommendation by the TBT Committee; transparency provisions; conformity assessment (test results, SDOC, 3rd party).

Issues/questions raised by other •Should try to merge with the EC proposal on the same subject

Members: •Relationship with the TBT Agreement



Name of the proposal: **Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products**

Document reference(s): TN/MA/W/118/Rev.1 (04.12.2009)

Sponsor(s): European Union

Summary: Modified version of the US proposal which aims at bridging systemic differences between regulatory systems based on “self-certification” and systems based on “type-approval”. Recognize work of the World Forum for the Harmonisation of Vehicle Regulations (WP.29), within the framework of (UNECE).

Issues/questions raised by other •Should try to merge with the US proposal on the same subject

Members: •Relationship with the TBT Agreement



Name of the proposal: **Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products**

Document reference(s): TN/MA/W/120 (15.09.2009)

Sponsor(s): United States

Summary: Define in more specific terms the provisions of the TBT Agreement in respect of good regulatory practices, technical regulations, conformity assessment, transparency provisions and testing.

Issues/questions raised by other Members: •Should try to merge with the EC proposal on the same subject

•Relationship with the TBT Agreement



Name of the proposal: **Negotiating Proposal on Non-Tariff Barriers in the Chemical Products and Substances Sector**

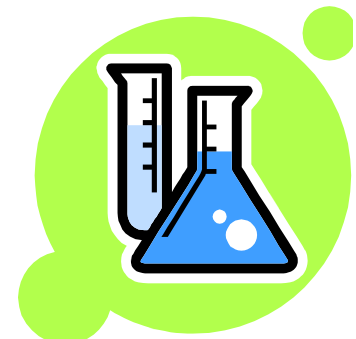
Document reference(s): TN/MA/W/135 (04.02.2010)

Sponsor(s): Argentina and Brazil

Summary: Solve issues relating to labelling, conformity assessment, registration and laboratory accreditation

Issues/questions raised by other Members:

- Relationship with the TBT Agreement
- Product coverage



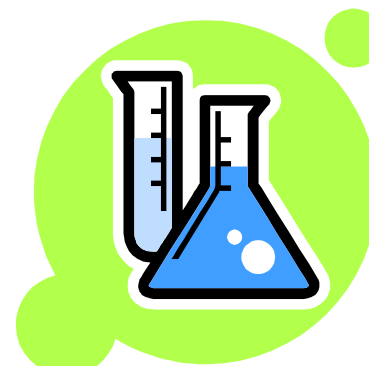
Name of the proposal: Understanding on Non-Tariff Barriers Pertaining to Standards Technical Regulations, and Conformity Assessment Procedures for Chemicals

Document reference(s): TN/MA/W/137 (18.03.2010)

Sponsor(s): European Union

Summary: Solve issues relating to labelling, conformity assessment, registration and laboratory accreditation

Issues/questions raised by other Members: Relationship with the TBT Agreement Product coverage



Name of the proposal: Framework for Industry-specific NTB Proposals

Document reference(s): TN/MA/W/136 (15.03.2010)

Sponsor(s): Brazil, European Union, India

Summary: Establish a framework structure for the industry-specific NTB proposals that relate to the TBT agreement in order to allow for the catering of cross-cutting elements and allowing for inclusion of the industry-specific rules (i.e. a sort of “cupboard” to include the other TBT-related proposals)

Issues/questions raised by other Members: Unclear relationship with TBT-related proposals on the table



Thank you!