

## Negotiations on Non-Tariff Barriers under NAMA *The Major South Asian Concerns*

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### I Introduction

Countries bring into play various means to restrict imports, primarily to benefit their domestic industry. Import tariff was one such principle mode of protectionism until the beginning of 1970's. The main objective was not financial but economic as tariff was levied with the purpose of not increasing a nation's revenue but to protect domestic industries from foreign competition. However, since the inception of the GATT in 1947, average tariffs on manufacturing imports have fallen from around 40 percent to 4.7 percent.

Meanwhile, when tariffs were being cut through successive rounds of GATT agreements, the countries began to resort to another form of administered protection known as Non-Tariff Barriers (NTB). They consist of all barriers to trade, other than tariffs, and have effects similar to those of tariffs.

### II Definition and Classification

The definition of NTBs remained a problem that needed to be addressed. Major criteria used to define NTBs were its trade-restricting nature and stringency. Researchers like Baldwin (1970), Walter (1972), Mayer & Gevel (1973), and Deardorff & Stern (1997) have provided their definitions to NTBs.<sup>1</sup> The most general definition is credited to Walter (1972), who defines it as any measure that distorts the volume of trade, the composition of the basket of goods traded between countries, or the direction in which goods are traded.

Moreover, several international organisations like United Nations Conference on Trade and Development (UNCTAD), the Organisation for Economic Co-operation and Development (OECD), and others too have contributed to formulation of the term "NTBs".<sup>2</sup> The OECD (1997) chose to define NTBs as 'those broader measures other than tariffs that may be used by countries, usually on a selective basis, to restrict imports' for one of their studies.

While UNCTAD's TRAINS (Trade Analysis and Information System) classification defines over 100 different types of Non-Tariff Measures (NTMs), and a

much smaller subset called "hard core measures" that includes quantity control measures excluding tariff quotas and enterprise specific restrictions; finance measures excluding regulations concerning terms of payment; and price control measures. However, this classification excludes many internal regulatory measures that can also discriminate against imports such as production subsidies, tax concessions, and discriminatory government procurement.

There is no legal definition of NTBs in the WTO Agreements. Member countries define measures, which affect trade in goods as NTBs in a manner consistent with the Agreements. In other words, the major criterion of NTBs is WTO consistency in accordance with the provisions of relevant agreements, as well as decisions taken under the Dispute Settlement Understanding.

### Classification: (UNCTAD 1994; OECD 1994)

The UNCTAD's Coding System of Trade Control Measures (TCMCS) continues to be the most comprehensive international classification system available for NTBs. At its most detailed level, the classification identified over 100 different types of NTBs at its most detailed level though it does not incorporate any measures applied to production or to exports. This classification comprises of six categories/chapters of NTBs, including price control measures, finance measures, automatic licensing, quantity control measures, monopolistic measures and technical measures. These chapters on NTBs begin from chapter 3 to chapter 8 (See Annex 1), while chapter 1 and 2 are on tariff and Para-tariff measures.<sup>3</sup>

### III Measurement and Quantification of NTBs

To address concerns related to the use and impacts of NTBs, quantification of NTBs is a must. The two broad measurement methods commonly identified are NTB-specific and indirect consideration of NTBs.<sup>4</sup>

NTB-specific methods use direct information on NTBs to define their possible impact. But, obtaining the complete information set, even at the industry or sector

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level, is likely to be difficult and would require intensive and extensive data collection work. Even if exhaustive information were available, the construction of a general measure of NTBs could be tedious, as general equilibrium effects are likely to be excluded. Missing information could introduce a downward bias on the estimates of the trade impact of NTBs. Direct information, then, is an appropriate approach only when trying to assess NTBs' impact at a quite disaggregated level, which should normally be avoided when dealing with a more general analysis.

Nevertheless there exist arrays of more general approaches that are capable of addressing some of the shortcomings of direct approach. Like the *frequency-type measures* based upon inventory listings of observed NTBs that apply to particular countries, sectors, or categories of trade; *price-comparison measures* calculated in terms of tariff equivalents or price relatives; *quantity-impact measures* based upon econometric estimates of models of trade flows; and measures of *equivalent nominal rates of assistance*.

### III.1 General Methods for Measuring NTBs

#### Frequency-Type Measures

This method is simply to measure the policies in terms of their numbers and trade coverage. It record the number, form, and trade coverage of non-tariff trade policies as determined from special, surveys, frequency of complaints by trading partners, and government reports. The data are derived from various official national publications and information supplied by governments to the GATT.

#### Price-Comparison Measures

This measure provides direct measures of the price impacts of NTBs. This approach calculates the differential between the import price and the domestic price and the domestic price of each commodity at a disaggregated level and subtracts the tariff rate on the commodity from this differential. The result is treated as a NTB.

#### Quantity-Impact Measures

Jager and Lanjouw (1977) in an article 'An Alternative Method for Quantifying International Trade Barriers', argued that a quantity measure is preferable to a price measure since quantity measure tries to tell us what we really want to know about the effects of an NTB: that is, by how much it reduces trade. On the other hand, the price measures such as tariff equivalents fail to provide this information.

## IV NTBs in Multilateral Trade Negotiations

Despite a long history of NTBs in international trade, the special attention was given to this area only in the early seventies when discussion of the NTB was explicitly scheduled in the framework of Tokyo Round of the GATT negotiations. To date, eight rounds of GATT negotiations (see Box 1) have been completed, with the first six concerned almost exclusively with tariffs.

**Table 1: GATT Trade Rounds and the Subjects Covered**

Year	Place/name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva Dillon Round	Tariffs	26
1964-1967	Geneva Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva Tokyo Round	Tariffs, non-tariff measures, "framework" agreements	102
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123
Source: <a href="http://www.wto.org">www.wto.org</a>			

#### The Tokyo Round

The Tokyo Round lasted from 1973 to 1979, with 102 countries participating. It continued GATT's efforts to progressively reduce tariffs. The results included an average one-third cut in customs duties in the world's nine major industrial markets, bringing the average tariff on industrial products down to 4.7 percent. Nevertheless, a series of agreements on NTBs did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground.

New or reinforced agreements called "codes," were reached on the NTMs which include: 1) subsidies and countervailing duties; 2) government procurement; 3) technical standards; 4) import licensing procedures; 5) customs valuation; and 6) antidumping.

#### Uruguay Round

The issue was tackled in seriously in the Uruguay Round (1986-1994) by increasing the number of agreements dealing with NTBs, making them mandatory for all members and subjecting them to the WTO dispute settlement mechanism. Thus the Uruguay Round came out with various GATT Agreement concerning sanitary and phyto-sanitary measures (SPS), technical barriers to trade (TBT), anti-dumping, customs valuation, pre-shipment inspection, rules of origin, subsidies and countervailing measures and safeguards. These agreements are extensive versions of those concluded in the Tokyo Round of negotiations. However, the Tokyo Round agreements were

plurilateral in status, whereas the Uruguay Round agreements are multilateral—ensuring a global coverage of the rules.

#### ***Doha Mandate on NTBs under NAMA Negotiations***

While negotiating for greater market access in developed countries was taking place, the developing and the least developed countries (LDCs) Members notified the Negotiating Group on Market Access (NGMA) of certain NTMs that impacted their exporters. Thus it was at the insistence of developing countries in Doha that NTBs were included in the NAMA text.

The para 16 of the Doha Ministerial Declaration provides the mandate for negotiations on a range of subjects including NTBs, and other work including issues concerning the implementation of the present agreements. The mandate aimed to reduce or appropriately eliminate NTBs, in particular on products of export interest of the developing countries.

At the WTO General Council meeting in July 2004, Members reiterated the importance of NTBs to the NAMA negotiations in the July Framework agreement. The agreement recognised that NTBs are an integral and equally important part of the negotiations and instructed participants to intensify their work on NTBs. In particular, it encouraged all participants to make notifications on NTBs and then to proceed with identification, examination, categorisation and ultimately negotiations on NTBs.

Based on these lines, thirty-two WTO Members submitted notifications<sup>5</sup> which was compiled by the WTO secretariat<sup>6</sup> to distill three central issues for discussion: whether to address the broad range of NTMs identified or whether to limit the focus; the appropriate WTO Committee or negotiating group in which to address the NTBs; and the appropriate modalities (in other words, methodology) for negotiation of NTBs.

Notifications on NTBs are mostly in the areas/sectors like automobiles, chemicals, electrical, energy, environmental goods, fish and fish products, LAB foods, forest products, LAB generic, health and safety, REG leather, minerals, petroleum, pharmaceuticals, phyto-sanitary and textiles. The notifications are submitted to technical Barriers to Trade (Agreement/Committee), NGMA, SPS (Agreement / Committee), Negotiating group on Rules and others.

The Chairman's July 2005 report on the state-of-play of the NAMA negotiations made a short reference to NTBs but it did not introduce any new ideas for modalities. However, the Hong Kong Ministerial text notes that the Negotiating Group has made progress in the identification, categorisation and examination of notified NTBs and the Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations. The text further stresses the need for specific negotiating proposals and encourages participants to make such submissions as quickly as possible.

#### **V Notifications by South Asian countries**

From South Asia only India, Bangladesh and Pakistan have notified to the WTO regarding the NTBs faced by them.

##### *Notification by India<sup>7</sup>*

India has submitted notifications on NTBs along with other countries to the NGMA. India in its submission has stated that restrictive standards, burdensome regulations and procedures in several countries have been acting as barriers that significantly affect exports as also the capacity to trade. In its submission to NGMA the country pointed out the different kinds of barriers and the trade effects of such barriers.

**Table 2a: Standards and Related Regulations and Procedures**

<b>Products affected by the barrier</b>	<b>Nature of the barrier Trade effects of the barrier</b>
Various manufactured products including marine products.	<p>Restrictive standards and burdensome regulations and procedures in several countries have been acting as barriers that significantly affect exports as also the capacity to trade. There are several issues involved which are briefly discussed below.</p> <p><b>a) Harmonisation</b> – Both the SPS and TBT agreements seek harmonization on as wide a basis as possible and for the applied measures to conform to international standards, guidelines or recommendations. A higher level of protection may be introduced or maintained if there is scientific justification (in case of SPS measures) or for legitimate objectives (in case of TBT measures). However, it has been observed that certain countries are at times laying down norms more stringent than those specified by relevant international bodies without any known/justifiable scientific basis or for demonstrably legitimate reasons and which are difficult to meet.</p> <p>Similarly testing methods are specified for very high levels of sensitivity which may not be justified or required and due to which the cost of testing becomes disproportionately high and prohibitive. Sometimes, levels of sensitivity are raised only because better technology or testing equipment becomes available, and not due to any scientific evidence that a higher sensitivity is required to meet a health concern. Moreover, the standards are revised, mostly upwards, at regular intervals making it very difficult for developing countries to adapt to these changing requirements.</p> <p>Harmonisation of both standards and procedures applicable within a common customs territory is necessary for predictability.</p>

Products affected by the barrier	Nature of the barrier Trade effects of the barrier
	<p>Harmonisation with international standards and use of agreed testing methods with scientific justification will reduce the trade restrictive impact.</p> <p><b>b) Transparency</b> - It has often been observed that there is absence of information and lack of transparency on the procedural norms and regulations of various countries regarding specifications as well as methods of sampling, inspection and testing. New Regulations are brought out and implemented without even giving the producers in the exporting country a chance to get familiar with these. Often the standards are available only in the language of the importing country or are presented in a very complicated manner. The result is that exporters are, at times, not clear about the specific requirements prescribed by the country of destination, which has led to rejection at the point of import.</p> <p><b>(c) Conformity Assessment Issues</b> – Several conformity assessment issues have the effect of restricting trade, these include:</p> <ul style="list-style-type: none"> <li>• Excessive costs levied for testing - for small developing country exporters these are a significant barriers;</li> <li>• Location of testing facilities including testing being done only at single/limited centre(s);</li> <li>• Limited validity of certificates, requiring re-testing with the attendant costs;</li> <li>• Procedures involving site/ factory visits by the certifying authorities – both the time taken and costs involved act as hindrances;</li> <li>• Non-recognition of certificates from accepted international bodies; and</li> <li>• Easier or preferential conformity assessment for RTA Members which is discriminatory.</li> </ul> <p><b>(d) Risk-based Approach</b> - While risk to consumers resulting from hazard, particularly in foods, has been identified as a significant concern at the international level, it has been observed that some importing countries are fixing standards without carrying out comprehensive risk assessment work and despite repeated requests details of the basis for the standard are not made available.</p> <p>This may at times be in contravention of Article 5 of the SPS Agreement which requires that SPS measures should be based on risk assessment and take into account an appropriate assessment of the actual risk involved and if requested by the exporting country make known details of this assessment.</p> <p><b>(e) Safety Management Systems Approach</b> - In addition to end product criteria, a systems approach which builds in quality and safety throughout the food chain from primary production to final consumption is increasingly being used to ensure that food products are safe for consumption. This system allows building in controls in a flexible manner based on conditions applicable in a country/ industry etc.</p> <p><b>(f) Equivalence</b> - Equivalence agreements between Members are seen in the WTO as a means to address the standards related trade problems as they enable pooling and utilization of resources more effectively, avoiding duplication of inspection and testing, and ensuring that health and safety requirements are met effectively without unduly restricting trade. Such agreements would generally benefit exporters in a developing country as financial burden as well as risk of rejection would be reduced.</p> <p>However, it is observed, Members often do not enter into such Agreements even after receipt of a formal request as either the administrative burden of entering into these is high or they don't want to lose their control over imports.</p> <p><b>(g) Rejection &amp; Destruction of Consignments</b> - Health Authorities in certain importing countries have recently started destroying the contaminated/damaged consignments instead of returning them to the exporting countries as requested by the exporters/importers. It is necessary to involve the exporting country in such decisions of destruction. Destruction of a consignment leads to wastage of a large amount of money as some cases of contamination can be taken care of through reprocessing.</p> <p>Also sometimes the importing country adopts different methods for sampling and testing and also testing for parameters/contaminants, which are not notified in their standards, which at times become reasons for rejections.</p> <p>In certain cases the importing country may have higher standards than those followed by the country of export. The returned consignments could be utilised in domestic trade/ purposes.</p> <p>Sometimes a product is rejected in one port and accepted in another port of the same market.</p> <p>Sometimes a product is rejected based on a national standard by a buyer, and it is accepted after price discounts; this shows that at times standards are used primarily to depress prices by the buyer.</p>

**Table 2b: Marketing Restrictions Including Labelling Practices**

Products affected by the barrier	Nature of the barrier Trade effects of the barrier
Several Products	<p>Various requirements for marketing a product in different markets prove to be cumbersome and onerous to developing country exporters. These requirements include detailed labelling requirements with extensive product/content description. Such labelling requirements become a hindrance especially if the product is being exported to different countries each with different regulations.</p> <p>In several countries there are registration requirements for firms before exporting, distributing and selling, with the registration process itself being costly, time consuming and not always granted. In the case of pharmaceutical products, import in several countries are tacitly encouraged/ allowed only from particular countries and sources, such policies are enabled by the registration mechanism which is not transparent and favours producers only from certain countries.</p>

**Table 2c: Restrictive Practices Tolerated by Governments**

Products affected by the barrier	Nature of the barrier Trade effects of the barrier
Leather products (Potentially all products)	<p>Attention has been drawn to the increasing instances of campaigns carried out to create public opinion as well as to force buyers to change their source of imports on grounds other than trade related e.g. ethical treatment to animals. These campaigns could have various motivations not necessarily based on truth and certainly not based on any trade issues.</p> <p>There may be two aspects to discussing such measures. First is that they do not follow from any governmental action and therefore the extent to which they could be discussed/ disciplined in WTO would need to be deliberated upon. The second aspect is the increasing use of such methods and potential for these to divert trade and restrict market access especially from developing countries which may be vulnerable due to their own priorities thus making it important to be discussed.</p>

*Notification by Pakistan<sup>8</sup>*

Notifications put forward by Pakistan to the Negotiating group on market access for the NTBs faced by its exporters include:

**Table 3: Pakistan's Notification on Market Access for the NTBs**

Products affected by the barrier	Nature of the barrier Trade effects of the barrier
All products	Preshipment inspection required by certain countries for certain goods, hence shipments get delayed and importers avoid sourcing from Pakistan. There is a need for an Agreement on Preshipment Inspection
Pharmaceutical	Non-transparent procedure for registration of drugs provides undue protection to domestic pharmaceutical firms. Foreign pharmaceutical companies / drug suppliers denied market access. Registration procedures be made transparent under the Agreement on Trade-related intellectual property rights (TRIPs).
Fish & fish preparations; Shrimps, lobsters and crabs	<p>Quarantine certification; food labelling and packaging regulations [description of food ingredients; indication of nutritional claims-substantiated and specified] High rate of inspection etc raises the cost of export and delays for countries not having preferred status through bilateral MOU;</p> <p>Market access being denied due to stringent food sanitation law requirement. The quarantine certification, labelling and packaging regulations should be made less onerous and be brought at par with international standards. Non discriminatory treatment must be meted out to all irrespective of bilateral understandings. Inspections need to be carried out at par with internationally accepted standards.</p>
Cotton Yarn and Cotton Cloth	Market access being denied due to the SPS quarantine certification requirement
Petroleum & products	Market access being denied due to the SPS quarantine certification requirement.
Art silk fabrics; and art silk garments	The trade restrictive requirements be need to eliminated.
Azo Dyes	Azo Dyes certification test results differ from laboratory to laboratory. Market access being denied thus increasing the costs to exporters. The certification requirement needs to be standardised.
Electrical products	Safety test certification is not standardised thus the market access being denied. The measures are more stringent than internationally accepted standards and may be altered.



### Notifications by Bangladesh

Regarding the inventory of non-tariff barriers, the authorities of Bangladesh gathered information from Chambers, associations and individual exporters. The NTBs faced by exporters are of different nature, and are categorised in the following broad areas including:

(a) NTBs similar to SPS measures; (b) NTBs related to consular formulation; (c) NTBs related to TBT measures;

(d) Quantitative restrictions including ban; (e) Labeling requirement; (f) Rules of Origin; and (g) Visa requirement

In addition to above NTBs, it was found that some big importers while placing import order require compliance of several standards such as safety and health, child labour, working hours, wages and benefits, freedom of associations, environmental compliances, etc. which have direct impact on export.

Jute Yarn / Twine	<p>The packaging conditions require fumigation of the products by Methyl Bromide if Wood or Wooden substances are used packing, while Methyl Bromide is banned in many countries. Thus the packaging requirement restricts export of jute Yarn and Twine.</p> <p>Requirement of SPS measure and certification restricts exports due to extra formality, time and cost. Jute products are not live items. Therefore, the products should be excluded from SPS regulations.</p> <p>Moreover the requirement for special Certificate of Origin leads to extra formality and cost.</p> <p>Requirement of Import Licence by the importer restrict exports due to extra formality and cost in part of the importers. The provision of licensing for imports should be withdrawn.</p> <p>Extra documentation in the port of discharge for Customs Valuation. This should be withdrawn to avoid hassle and waste of time.</p> <p>Pre-shipment Inspections also lead to extra formality and cost and time.</p>
Soap, shampoo, dental care, shaving line, skin care, hair care, home care, fabric care products	<p>Printing of retail price on the packets in local currency and assessment of duties other than customs duty on the basis of retail sales price (RSP) printed on the packaging of the products. The export price increases due to labelling requirement and the total duty amount payable on imports increases. Hence assessment must be conducted on the basis of invoice value of the products.</p> <p>Sometimes customs authority raises disputes on flimsy grounds, labelling on the packaging of products, etc. This causes unnecessary hassles to buyers and they get discouraged to buy these products. It should be flexible considering the type and the nature of products.</p>
All toiletry products	<p>Attestation of export document from Chamber, Commerce, Ministry, Foreign Ministry and Embassy is required. It causes lot of hassle, time lagging and incurring costs on exports. It should be flexible for enhancing trade relations with those countries.</p>
Pharmaceutical finished formulations	<p>Requirement of manufacturing the products after being registered often result in discontinuation of export since investment in manufacturing is a difficult option. There should be withdrawal of the restriction on the ban of products that are locally manufactured.</p> <p>There is a need for allowing import along with local production. Import ban measure should be applicable to health, security and environment ground. Requirement of having release order and submission of many documents from the Ministry of Health for each and every consignment imported often results in inadequate supply of drugs. Products cannot be made available in the market due to lengthy bureaucratic procedures for releasing goods from ports.</p>
Pharmaceutical products	<p>Limitation on number of brands/products for registration for the purpose of import limits the scope of competition.</p> <p>Measures like the permission of imports only using the amount received from export restrict imports.</p> <p>Lengthy procedures for establishing L.C. which takes about 3-4 months to complete. Hence the products cannot be shipped in time due to unavailability of L.C. in time.</p> <p>Ban on imports of locally manufactured products limits competition.</p>
Juices/drinks, Pickles, Spices, Snacks	<p>Ban on imports hence no possibility of trade. Also the attestation fee is around Bangladesh Taka 13,000 to T.K. 14,000 thus increasing the cost.</p> <p>Requirement of lab testing upon arrival of the consignment, which takes a long time. Time-consuming and expensive and payment of extra charges</p>

## VI. Conclusion

The NTBs that a country faces are determined by who its major trading partners are and the composition of exports to those markets. South Asia as a regional block has been the significant exporters of T&C and marine products. The major export markets of South Asian countries (except Nepal, Bhutan and Maldives) are OECD countries.

Looking at the export composition of South Asian countries technical regulations and SPS measures seem to be the most significant NTBs for their exporters. India, Pakistan and Bangladesh too have highlighted NTBs arising out of these measures as major hurdles in their submission to the WTO under NAMA negotiations. Besides, LDCs like Bangladesh who is getting preferential

market access in developed countries have reported that Rules of Origin (RoO) are discriminatory, unreasonable and inconsistent.

The future export expansion of South Asian countries depends upon how meaningfully and comprehensively NTBs are addressed in the present Doha round of trade

negotiations. So far no real progress has been made on NTBs under NAMA negotiations except vertical and horizontal proposals on NTBs by WTO member nations. However, these negotiations are not yet sufficiently advanced to propose either the adoption or rejection of modalities for specific proposals.

## Endnotes

- 1 Eduardo M.R.A. Engel, 'Poisoned Grapes, Mad Cows and Protectionism', National Bureau of Economic Research (NBER) *Working Paper No. W6959*, Yale University - Department of Economics, February 1999. <http://cowles.econ.yale.edu/~engel/pubs/grapes.pdf#search=%22definition%20of%20non%20tariff%20barrier%201972%20walter%22>
- 2 McCarty, A. (1999) "Vietnam's Integration with ASEAN: Survey of Non-tariff Measures Affecting Trade". Volume 1 (Main Report). UNDP Project 'Promoting Vietnam's Integration with ASEAN-VIE 95/015, Hanoi, January. <http://www.arts.uwaterloo.ca/~vecon/download/mccarty/ntb.pdf#search=%22broader%20definition%20of%20non%20tariff%20barrier%20UNCTAD%22>
- 3 [http://r0.unctad.org/trains\\_new/tcm.shtm](http://r0.unctad.org/trains_new/tcm.shtm)
- 4 A comprehensive review and discussion of the issue can be found in Deardorff A. V. and R. M. Stern 1997, "Measurement of Non-Tariff Barriers", OECD Economics Department Working Paper No.179.
- 5 Argentina, Australia, Bangladesh, Bulgaria, China, Chinese Taipei, Croatia, Cuba, EC, Egypt, Hong Kong, India, Japan, Jordan, Kenya, Korea, Macao, Malaysia, Mexico, New Zealand, Norway, Pakistan, Philippines, Senegal, Singapore, Switzerland, Thailand, Trinidad and Tobago, Turkey, Uruguay, US, and Venezuela. Notifications are compiled in WTO Secretariat documents TN/MA/W/25 (including Addenda 1 & 2), as well as TN/MA/W/46 (including Addenda 1 - 12).
- 6 TN/MA/9/Rev. 1, dated October 29, 2004, consolidated twenty-six submissions. TN/MA/9, dated April 07, 2003, consolidated eighteen submissions from Members.
- 7 TN/MA/W/46/Add.4, November 03, 2004
- 8 TN/MA/W/25, March 28, 2003

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This Briefing Paper is an abridged version of research report entitled "Negotiations on Non-Tariff Barriers under NAMA: *The Major South Asian Concerns*" researched and written for CUTS Centre for International Trade, Economics & Environment under the phase-II of the project 'WTO Doha Round & South Asia: Linking Civil Society with Trade Negotiations' (SAFIT-II) funded by Oxfam Novib, The Netherlands. The views, expressed in this paper on those of the author and therefore in no way be taken to reflect that of Oxfam Novib, The Netherlands.

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