



PROGRESS ON NON-TARIFF BARRIERS IN THE “NAMA” TALKS

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Good morning ladies and gentlemen. It is a great honor to be here today.

I have been asked to speak on the Non-Agricultural Market Access (“NAMA”) thread of the Doha Development Agenda, and more specifically on the prospects for advancing discipline of non-tariff barriers (“NTBs”) as a NAMA subtopic.

This narrow focus is not meant to imply that the larger questions of the NAMA negotiation have all been, or can easily be, neatly answered. I harbor no such illusions. Just as forward progress gets harder to achieve in football once the offense crosses midfield – the defense seemingly stiffening as the field behind it shrinks – so each successive stage in liberalizing industrial market access seems to be harder than the last one.

From those who question the choice of a football analogy, I beg indulgence -- my Cincinnati Bengals haven’t gotten off to a 3-0 start since the mid-point of the Uruguay Round negotiations, so football is on my mind. Anyway, an interesting argument could be had about where we are on that hypothetical football field today. If the tariff-imposing government corresponds to the defense, the United States, with its minuscule weighted-average industrial tariff, is seemingly backed up against its own end zone. President Bush recently proclaimed himself quite eager to let a touchdown be scored. But if you envision the United States as the offensive team, it is hard to see us as close to a touchdown or even in field goal range. Many WTO Members have defenses that are just too effective.

Fortunately, my fellow panelists are here to explain the larger conundrums of the NAMA negotiation. I will be content to provide some background on a smaller one -- NTBs. I would like to leave you with five main points.

1. No one seriously questions the commercial and policy significance of NTBs, or the need to address them within the DDA. Even in the July 2004 “framework” package, which was rather broadly-worded and light on detail, the WTO General Council acknowledged the status of NTBs as an agenda item. Annex B, paragraph 14 of the August 1, 2004 General Council Decision (*WT/L/579*) states:

We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches

2. The NGMA chair has regularly included NTBs in his agendas and reports, but as with NAMA generally he has reported very little progress. In April 2004, the chair stated (in his first report after Cancun) that “in the area of non-tariff barriers, the Group still remains at the initial stages of its work” and that he had “urged all Members to make their NTB notification and in particular to indicate how they wished to see such barriers addressed in the context of the negotiations.” *TN/MA/13* (Apr. 19, 2004). In February 2005 the chair reported on an “open-ended” NGMA meeting where “NTBs which are a standing item of the Group’s agenda were also discussed. In particular two papers laying out possible vertical approaches to NTBs in the wood sector and automobile sector were introduced. The Group also agreed to undertake a multilateral examination of notified NTBs at a future meeting.” *TN/MA/14* (Feb. 2, 2005). Two months later, the chair was able to report that the NGMA had “conducted a multilateral examination of notified NTBs” and that this was done in an organized fashion, “on the basis of questions I had provided.” *TN/MA/15* (Apr. 22, 2005). However, the distance from jointly studying a list of notified NTBs to mapping out a negotiation in which those NTBs can be disciplined is vast. And then of course the negotiation itself must occur.

3. NTBs encompass a wide variety of constraints on the movement of goods and capital. Many areas of the DDA, and of the existing WTO rulebook, are implicated. This makes a negotiating approach hard to devise.

- One Congressional letter from 2003 listed, as examples of NTBs impeding U.S. access to foreign markets, “government-tolerated cartels, limited access to finance and distribution channels, investment requirements, customs practices, burdensome product standards, currency manipulations, prohibitive taxes and fees, and technology transfer requirements.” *Letter to Robert B. Zoellick from Reps. Rangel, Levin, Spratt, Cardin and Tubbs-Jones* (Sept. 10, 2003). This list, of course, includes items already subject to negotiation elsewhere in the DDA (e.g., customs practices – trade facilitation), items subject to WTO rules that have not been reopened in the DDA (e.g., product standards), items on which the WTO lacks rules and has specifically decided NOT to try to create them in the DDA (e.g., competition policy), and other categories as well.
- An overview created by the WTO Secretariat identifies, more systematically than I have just done, the following categories of NTBs that have been raised by Members: (1) NTBs that relate to existing WTO agreements which are not subject to a specific negotiating mandate (customs valuation, PSI, etc.); (2) NTBs that relate to existing WTO agreements which *are* subject to a specific negotiating mandate (antidumping, etc.); (3) NTBs that do not relate to existing WTO agreements but are already part of the Doha Declaration (e.g., Trade Facilitation); and (4) an “all other NTBs” category involving, for example, quotas, tariff classification, export restraints, buy national campaigns, and tax and duty exemptions. *TN/MA/9/Rev.1* (Oct. 29, 2004). The issue of NTBs is like the Avenue (is it Broadway?) that

angles across Manhattan: it crosses virtually everything. NTBs are important in agriculture trade as well.¹

- Any approach to NTBs has to square with the agreed negotiating mandate. An unbounded negotiation on NTBs could enable every Uruguay Round text to be reopened. For example, some might see excessive use of safeguard measures as a non-tariff barrier. However, there was a pretty clear decision by the members NOT to open the Safeguards Agreement to amendment in this round. Put differently: If, because of its inclusion of NTBs, the NAMA negotiation tries to be (or Members try to make it) everything, it will be nothing.²

4. The U.S. government clearly has an affirmative agenda on NTBs, but it is less clear whether there is a workable strategy.

- The USG has done targeted submissions on two sectors' NTBs (automotive, forest products), and has identified many others in the "reverse notification" process. *TN/MA/W/46/Add.8/Rev.1*. It has suggested a mix of rulemaking, vertical/sectoral initiatives, bilateral request/offer exchanges that could lead to scheduled commitments, and even plurilateral NTB agreements built on "positive commitments."
- The problem is that it hasn't clearly ascertained, or at any rate revealed, where the leverage comes from. The USG has (correctly) presented its sectoral proposals as serving many Members' interests, being pro-development, etc. But inevitably there are some NTBs we will have to pay to eliminate. Pay how? The auto industry has asserted ownership of the leverage arising from U.S. auto and light truck tariffs.³ Other U.S. *demandeur* sectors want access to that same leverage, although they may have a weaker claim to it. Other categories of U.S. trading stock, from farm

¹ See, e.g., "Portman Ready to Examine EU Demands on WTO Agriculture Formula," *Inside US Trade* (Sept. 16, 2005) at 15 (U.S. officials "pressed the EU to open its market for five products that face what the U.S. charges are non-tariff barriers. The products are U.S. poultry, beef, pork, corn and soybeans, which are affected by EU rules on biotechnology and sanitary and phytosanitary requirements. For example, on poultry, the EU refuses to accept U.S. decontamination methods, and the EU has imposed a ban on beef raised with growth hormones.").

² This calls to mind some of the more expansive definitions of market access which trade theorists have toyed with over the years. One wonders if we will ever graduate beyond an *a la carte* approach to individual types of barriers and exchange with our trading partners a more sweeping sort of guarantee – that markets will actually be contestable. My former boss, Alan Wolff, has persuasively advocated such an approach.

³ The Congressional letter noted above listed affected U.S. sectors as including "autos, auto parts, flat glass and others." It urged the Administration to obtain an "explicit linkage between progress on NTBs and progress on tariff reductions for these sectors." More concretely, it stated that U.S. negotiators should "remove these sectors from any broad-based formula approach and demand sector-specific negotiations on tariffs and NTBs for these sectors," or else demand that the NAMA modalities "include an explicit link between tariff cuts in these sectors and tangible progress ... on the NTBs facing U.S. producers."

subsidies to the great unmentionable of antidumping, likewise have no shortage of claimants.

5. Part of what has to occur at Hong Kong, or after, is a further clarification of the negotiating mandate which remains confused in various respects.

Discussions in the “Rules” NG, for example, have revealed a wide divergence of opinion on how much change can fit within a mandate that calls for “clarifying and improving” disciplines. Something similar is going on in NAMA. The sparring over modalities is in part a dispute over the negotiating mandate, and that is one reason why modalities have been so difficult to conclude. The challenge now is to finalize a negotiating structure that keeps NTBs on the table and provides appropriate signals about where the leverage will come from to get them addressed.

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It was a great honor to appear here today, and I look forward to your questions.