

FAQ

Frequently Asked Questions



Non Agricultural Market Access

(NAMA)

Centre for WTO Studies
Indian Institute of Foreign Trade



Foreword

Since the inception of General Agreement on Tariff and Trade (GATT) in 1947, a major focus in GATT and thereafter in WTO has been to reduce and bind customs duties on industrial goods. This creates greater certainty and predictability for international trade, as a country cannot ordinarily impose duties higher than its binding commitment, called 'bound tariffs'. In the ongoing Doha round, modalities for reduction of customs duties on industrial goods is a crucial issue and is more popularly known as negotiations on Non Agricultural Market Access (NAMA). Reduction of customs duties is being negotiated by application of a formula, called the Swiss Formula. For a balanced outcome, the Doha mandate stipulates that developing countries would need to be accorded less than full reciprocity obligation and expect the same to be reflected in the coefficients of the tariff reduction formula to be applied.

The Centre for WTO Studies in collaboration with the Department of Commerce has brought out a small booklet explaining the salient features of the negotiations under NAMA by way of an FAQ. I hope this will be a useful reference for all those who are interested in following the WTO negotiations and will help improve the readers' understanding on this complex subject.

A handwritten signature in black ink, appearing to read 'K.T. Chacko'.

K.T. Chacko
Director, IIFT

Acknowledgements

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Background

Q1: What is NAMA? What is covered by these negotiations?

A1: NAMA or “Non-Agricultural Market Access” refers to negotiations for reduction in tariffs and non-tariff measures on non-agricultural products. Traditionally in WTO, agricultural products are defined in the Agreement on Agriculture. All other products, which mainly refer to industrial goods with certain additions are included in the term NAMA. Products like fish and fish products; wood and wood products; and rubber and its products figure under NAMA. It may be noted that on the other hand, certain raw materials used in the industrial sector such as raw silk, wool, cotton, flax, hemp; fur skins, hides and skins; and albuminoidal substances and modified starches figure in the agriculture negotiations.

Q2: How is NAMA different from Agriculture Negotiations?

A2: The primary focus of the NAMA negotiations is reduction in customs duty on non-agricultural products. An additional issue is non-tariff barriers, but this is loosely defined. Agriculture, on the other hand, covers the issue of domestic support or subsidies (direct or indirect) provided to the agricultural products; market access primarily dealing with tariffs on agricultural products and export subsidies and its related disciplines.

Q3: What are the Negotiating objectives for NAMA?

A3: At Doha, Ministers mandated reduction or as appropriate

elimination of 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. This mandate was further qualified by the Hong Kong Ministerial Declaration of December, 2005 which directed:

- (i) Adoption of a Swiss Formula for tariff reductions with coefficients at levels which shall inter alia:
 - a. Reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries; and
 - b. Take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments.
- (ii) Reaffirmation of the importance of special and differential treatment and less than full reciprocity in reduction commitments
- (iii) Participation in sectoral initiatives should be on a non-mandatory basis.
- (iv) Comparably high level of ambition in market access for Agriculture and NAMA to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment

Process of Negotiations

Q1: Which is the negotiating group for NAMA?

A1: The negotiating group for NAMA is known as the Negotiating Group on Market Access (NGMA). The current Chairman of the NGMA (2009) is Ambassador Luzius Wasescha of Switzerland.

Q2: What are the various levels of engagement at the NAMA negotiations conducted in the World Trade Organisation?

A2: The multilateral negotiations at the WTO occur at three levels of engagement namely (i) technical discussions, (ii) senior official meetings and (iii) Ministerial or political level discussions. The meetings could be held at the multilateral level (namely with all Members of the WTO) or with select group of Members.

Q3: How do the NAMA negotiations proceed and what is the specific mandate?

A3: The mandate for the NAMA negotiations emanates from the Ministerial Declarations or Agreements. Currently, the mandate is based on the November 2001 Doha Ministerial Declaration; July 2004 Framework Agreement and the December 2005 Hong Kong Ministerial Declaration. The Chairman of the Negotiating Group has also been taking out draft modalities of the various elements of NAMA. This seeks to capture the Chairman's view of the negotiating position of the Members. The 4th revision of the

draft modalities was taken out on 6 December, 2008. The Members either alone or through specific coalitions also submit their position papers from time to time. All these declarations, agreements, modalities and position papers form the basis of the negotiations.

Q4: What are the important elements of the NAMA negotiations?

A4: The key elements of the NAMA negotiations are:

- i. Formula for general tariff reductions
- ii. Treatment of Unbound tariff lines
- iii. Flexibilities for developing countries
- iv. Sectoral initiatives for elimination or harmonisation of tariffs
- v. Non tariff barriers

Q5: Which are the specific coalitions in the NAMA negotiating group?

A5: There is no specific coalition amongst the developed countries though some of them join together while submitting their papers on common negotiating positions. Amongst the developing countries, the NAMA 11 coalition was formed during the December, 2005 Hong Kong Ministerial meeting and comprised of Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, Tunisia, South Africa and Venezuela. The other coalition groupings in the NAMA negotiations are the small and vulnerable economies (SVE) which are Members who command less than 0.1% of the global NAMA trade; Paragraph 6 countries who have a binding coverage of less than 35%; Least Developed Countries (LDCs); and the Recently Acceded Members (RAMs) of the WTO. Common position papers have also been submitted by other groupings like the African, Caribbean and Pacific (ACP) group of countries and the SAARC Members.

Formula

Q1: What is the Swiss Formula?

A1: The Swiss formula is a non-linear formula which is mathematically expressed as:

$$T_f = (A * T_o) / (A + T_o)$$

A = Swiss Coefficient

T_f = Final Tariff Rate

T_o = Initial Tariff Rate

Q2: What are the features of the Swiss formula?

A2: The Swiss formula is a non-linear formula that carries out proportionately greater reductions on higher tariffs and *vice versa*. The nature of the Swiss formula is such that:

- (a) it reduces all the final tariffs to below the value of the coefficient "A"
- (b) if the initial tariff is below the value of "A", the tariff reduction would be below 50%
- (c) if the initial tariff is higher than "A", the tariff reduction would be more than 50%
- (d) if the initial tariff is equal to "A", the tariff reduction would be 50%

Q3: Would the Swiss formula be beneficial or detrimental to developing countries like India?

A3: The reduction commitments under the Swiss formula are dependent on the choice of the coefficient "A". Higher the

value of “A”, lower the reduction commitments and *vice versa*. Therefore every country would try to negotiate for as high a Swiss coefficient as possible in order to take on lower reduction commitments. The selection of the coefficient is hence crucial in order to determine the effect of the formula on the final tariff profile of any WTO member.

The reduction commitments on various tariffs under different Swiss coefficients are as under:

	Swiss 15		Swiss 20		Swiss 25		Swiss30	
Initial Tariff	Final Tariff	% Cut	Final Tariff	% Cut	Final Tariff	% Cut	Final Tariff	% Cut
0	0.00	0	0.00	0	0.00	0	0.00	0
10	6.00	40	6.67	33	7.14	29	7.5	25
20	8.57	57%	10.00	50%	11.11	44%	12.00	40%
30	10.00	67%	12.00	60%	13.64	55%	15.00	50%
40	10.91	73%	13.33	67%	15.38	62%	17.14	57%
50	11.54	77%	14.29	71%	16.67	67%	18.75	63%
80	12.63	84%	16.00	80%	19.05	76%	21.82	73%
100	13.04	87%	16.67	83%	20.00	80%	23.08	77%

Q4: What is the Swiss coefficient proposed in the 4th revision of the draft modalities?

A4: A Swiss coefficient of 8 has been proposed for developed countries while 3 tier Swiss coefficients of 20, 22 and 25 linked to specific flexibilities have been proposed for developing countries applying the formula.

Q5: What is the mandate of Less than Full Reciprocity (LTFR) in reduction commitments?

A5: The term “Less than Full Reciprocity (LTFR) in reduction commitments figures in the NAMA mandates. Though the

term does not explicitly figure in any of the WTO legal texts, references to it were made in the Uruguay Round of trade negotiations. It is being interpreted by a large membership of the WTO, chiefly the developing countries, to mean that they would take on **lower percentage reduction commitments** than the developed countries. The expression finds reference in para 16 of the Doha Ministerial Declaration; paras 2 & 4 of Annex B of the Framework Agreement ; and para 7 of Annex B and paras 14 & 15 of the Hong Kong Ministerial Declaration.

Q6: Does the average initial bound tariff take the same percentage cut as an individual tariff line which is at the same level?

A6: No, the averages do not follow the same pattern in terms of percentage or absolute reductions as the individual tariff lines. For example, if a country has an average initial bound tariff of say 35%, it is not necessary that the percentage cut taken by the average tariff would be the same as that of an individual tariff line with an initial bound rate of 35%. This is on account of the fact that the Swiss formula is a non-linear formula. This means that average tariffs are dependent on the tariff profile of the WTO member. The Swiss formula subjects each tariff line to a different percentage cut depending on the absolute value of these tariffs. Therefore the averages, after the application of the formula cuts, are dependent on the tariff profile of the WTO member.

Treatment of Unbound Tariffs

Q1: What are Unbound and Bound Tariffs?

A1: During the earlier rounds of multilateral negotiations in the WTO, the Members did not undertake any binding commitment on several tariff lines. These are called unbound tariffs. The commitments were not undertaken as these lines were either sensitive or there was no request from other WTO members for taking binding commitment on them. Therefore, theoretically a WTO member can increase the customs duty on its unbound tariffs to any level.

On the other hand, Bound tariffs are those tariff lines on which the WTO member had taken a binding level in the earlier round of multilateral negotiations. The binding level is the maximum customs duty that can be levied by a WTO member on a particular tariff line.

Q2: What is meant by “water” in Bound tariffs? Why is there a difference between bound and applied rates?

A2: Bound rates, as explained earlier, are the binding levels committed to by a WTO member beyond which it cannot increase its customs duty. Applied rate, on the other hand, is the customs duty actually levied by a WTO member on the import of that specific product. A member is free to alter applied duties on any tariff line at any point of time provided it is equal to or less than the bound rate committed. However, in the case of unbound tariff lines, a member is free to levy any amount of applied customs duty.

The difference in the bound and the current applied duty is what is known as the binding overhang or “water”. Higher the binding overhang, greater is the flexibility for a member to adjust its applied duties. However, on the other hand, this also creates uncertainty for exporters to that WTO member.

Q3: What is the treatment for unbound tariffs in the NAMA negotiations?

A3: The thrust of the NAMA negotiations has been to bind all tariff lines. However, there is some scope for specific exemptions by way of flexibilities for developing country Members such as under para 8(b) of the Framework Agreement under which some tariff lines can be kept unbound. The NAMA negotiations have to arrive at the base rate to be fixed for the unbound tariff lines from where the formula reductions have to commence.

Based on deliberations on the various proposals, the negotiating members zeroed in on a non-linear mark up for unbound tariffs and the same finds expression in para 17 of the Hong Kong Ministerial Declaration which reads as under:

*Para 17. “For the purpose of the second indent of paragraph 5 of the NAMA Framework, we adopt a **non-linear mark-up approach** to establish base rates for commencing tariff reductions. We instruct the Negotiating Group to finalize its details as soon as possible”.*

As per para 5 of Annex B of the Framework Agreement, the mark-up would be on the applied rates of November, 2001.

Q4: What is the proposal in the 4th revision of the NAMA draft modalities?

A4: The 6 December, 2008 NAMA text proposes a 25% mark up on the applied tariff of 2001. This would mean that if the 2001 applied tariff of an unbound tariff line was at 35%, it would be marked up to 60% (35% +25% mark-up) before applying the Swiss formula.

Flexibilities

Q1: What are the paragraph 8 flexibilities?

A1: The provision of flexibilities for developing countries was given in paragraph 8 of the Framework Agreement and reads as under:

Paragraph 8. "We agree that developing country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility:

- a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or*
- b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.*

We furthermore agree that this flexibility could not be used to exclude entire HS Chapters."

Q2: How would these flexibilities help developing countries like India?

A2: Flexibilities are intended to address the developmental imperatives of developing countries like India. They would assist in the economic development and address the special needs of the developing countries. They are particularly important for sensitive sectors of the economy especially those which are employment intensive, those

which address the livelihood concerns of the economically weaker sections of the populace and those dealing with Small and Medium Enterprises who are the most vulnerable to any trade liberalisation.

India would use these flexibilities to keep such sensitive sectors completely or partially out of the purview of formula reductions or bindings.

Q3: What flexibilities have been proposed in the 4th revision of the draft modalities?

A3: The flexibilities proposed in the 4th revision of the draft modalities of 6 December 2008 are linked to the Swiss coefficients and are as under:

Coefficient	Flexibilities
20	At least half the formula cuts on 14% tariff lines subject to imports not exceeding 16% of value <u>or</u> No cuts or binding on 6.5% tariff lines subject to imports not exceeding 7.5% of value
22	At least half the formula cuts on 10% tariff lines subject to imports not exceeding 10% of value <u>or</u> No cuts or binding on 5% tariff lines subject to imports not exceeding 5% of value
25	No flexibilities

Q4: What is the concept of anti-concentration clause (ACC)?

A4: Anti concentration clause (ACC) is a clause intended to ensure that developing countries **do not concentrate** their flexibilities under specific NAMA product groups. With this in view, it was agreed in the Framework Agreement that flexibilities could not be used to exclude entire HS

Chapters. For example, since HS Chapter 3 pertains to fresh, frozen or chilled marine products, a developing country applying the formula cannot put all NAMA tariff lines of Chapter 3 under flexibilities.

Q5: What is the anti concentration clause proposed in the latest NAMA text?

A5: The anti-concentration clause was amended in the 4th revision of the draft modalities of 6 December 2008 to ensure that developing countries take the full formula cuts on a minimum of either 20% of tariff lines or 9% import volume of NAMA lines under an HS Chapter. This was known as the *de-minimis* criteria since it referred to the concept of “*minimum*” number or import volume of NAMA lines.

Sectoral Initiatives

Q1: What are sectoral initiatives (also known as sectorals)?

A1: Sectoral Initiatives are proposals for the elimination or harmonisation at low levels of customs tariffs in specific NAMA sectors by a group of WTO Members. The tariff reductions in sectorals would be higher than the formula reductions. The critical mass in any sectoral is the percentage trade covered (of all WTO Members) in that sector by the participating Members. The critical mass is kept high in order to ensure that all the major players in that sector are covered.

Q2: What is the free rider problem in sectorals?

A2: WTO Members who do not participate in a sectoral do not have to eliminate or harmonise their tariffs. However, they have access to the zero duty (or a harmonised low duty) regime of the participants of the sectorals. Such Members are called free-riders since they take on no commitments but are given the right to take advantage of the zero or low duties of the Members of the sectorals. In order to ensure that the free-riders are minimised or at least the major players in that sector are not free-riders, the critical mass is kept as high as possible. In most sectoral proposals, the critical mass is 90% i.e. Members participating in the sectoral must comprise 90% of the total trade of all WTO Members in that sector.

Q3: Which are the sectorals proposed in the latest NAMA text?

A3: In the 4th revision of the draft modalities of 6 December, 2008, 14 sectoral proposals are annexed which includes automotive and related parts; bicycle and related parts; chemicals; electronics/ electrical products; fish and fish products; forest products; gems and jewellery; hand tools; enhanced healthcare; industrial machinery; raw materials; sports equipment; textiles clothing and footwear; and toys. In terms of the number of proponents, the sectoral initiatives on chemicals, industrial machinery and electrical/ electronics have the maximum support.

Q4: What is the language suggested in the latest NAMA text?

A4: In the 4th revision of the draft modalities of 6 December, 2008 the text spells out that participation in sectoral initiatives is on a non mandatory basis without pre-judging the outcome. Further, specified group of countries are to agree to participate on a self-identified basis in negotiating the terms of sectoral tariff initiatives, with a view to making them viable.

Non-Tariff Barriers

Q1: What are non tariff measures (NTMs) and how do they differ from non tariff barriers (NTBs)?

A1: Non Tariff Measures (NTMs) are all measures on international trade that are not in the form of a tariff or a tax. These measures include trade related procedures such as documentation, certification and inspections; technical regulations; standards; import related measures such as restrictions, prohibitions, seasonal duties, tariff rate quotas; foreign exchange controls including artificial exchange rates; public procurement practices etc. Certain NTMs such as imposition of anti-dumping and safeguard duties have the effect of tariffs. On the other hand, some measures are intended to protect human, animal and plant life and health, and are known as sanitary and phytosanitary (SPS) measures.

Non Tariff Barriers (NTBs), on the other hand, are a sub-set of NTMs which violate the obligations under the Agreements of the WTO. Therefore, NTBs are unfair measures which serve to discriminate against imports.

Q2: What is the process of negotiations on NTB?

A2: The negotiations initially focussed on the listing of NTBs by countries. Subsequently, the Negotiating Group went into text based negotiations on various proposals. These texts include both horizontal (across all sectors) and vertical (specific sector) proposals. Some proposal relate to exports while others pertain to technical barriers to trade (TBT).

Q3: What were the proposals listed in the latest NAMA text?

A3: There were 13 NTB proposals listed in 4th revision of the draft modalities. These could be categorised as:

- (a) Horizontal proposals (those related to across sectors)
 - i. Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers (known as the Horizontal Mechanism)
 - ii. Decision on the elimination of Non-Tariff Barriers imposed as unilateral trade measures
 - iii. Ministerial Decision on Trade in Remanufactured Goods
- (b) Vertical proposals (related to specific sectors)
 - i. Negotiating Proposal on Non-Tariff Barriers in the Chemical Products and Substances Sector
 - ii. Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labelling of Textiles, Clothing, Footwear, and Travel Goods
 - iii. Automotive NTBs
- (c) Export related proposals
 - i. Revised submission on Export Taxes
 - ii. Protocol on Transparency in Export Licensing to the General Agreement on Tariffs and Trade 1994
- (d) TBT (Technical Barriers to Trade) related proposals
 - i. Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Fireworks

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- ii. Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Lighter Products
 - iii. Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Electronics
 - iv. Decision on non-tariff barriers affecting forestry products used in building construction
 - v. Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods

Erosion of Preferences

Q1: What is the concept of Erosion of Preferences?

A1: Some countries have been granted unilateral preferential market access into EC and the US under specific market access schemes such as the GSP. These countries have argued that on account of the tariff reductions envisaged under NAMA by the EC and US, their relative tariff preferences *vis-a-vis* other exporters would be eroded and they would lose markets on some products of their export interest. This is the concept of erosion of preferences.

The solution proposed is that those tariff lines would be identified where the erosion of preferences would adversely affect the preference beneficiaries. On these lines, the implementation period of tariff reductions in the case of EC and US would be increased so that the effects of erosion of preference are mitigated.

Q2: What is the concept of Disproportionately Affected Members (DAMs)?

A2: Some developing countries including LDCs have argued that the products identified for longer implementation period are products of their export interest. The erosion of preference modality would disproportionately affect them and therefore they have argued for MFN derogation by allowing speedier implementation of reductions or a shorter implementation period on these thrust lines only for them.

Q3: What is the current proposal on erosion of preferences?

A3: The 4th revision of the draft NAMA modalities taken out on 6 December, 2008 has identified the following lines susceptible to erosion of preferences:

- a. 57 EC tariff lines (marine products, textiles, clothing, and aluminium)
- b. 29 US tariff lines (clothing)

An implementation period of 9 equal rate reductions with 2 year grace period has been proposed on these lines.

Some specific DAMs as well as the tariff lines of EC and US have been identified on which 6 equal rate cuts have been proposed. The number of lines and DAMs are as under:

- a. 5 tariff lines of US for Bangladesh
- b. 5 tariff lines of US for Cambodia
- c. 5 tariff lines of US for Nepal
- d. 5 tariff lines of EC and 5 tariff lines of US for Pakistan
- e. 5 tariff lines of EC and 5 tariff lines of US for Sri Lanka

Duty Free Quota Free (DFQF) Market Access

Q1: What is the mandate on Duty Free Quota Free (DFQF) market access?

A1: The Duty Free Quota Free (DFQF) access initiative for Least Developed Countries (LDCs) was formulated at the WTO Hong Kong Ministerial Meeting, held in December 2005. This DFQF decision as given in Annex F of the Hong Kong Ministerial Declaration *inter alia* requires all developed country Members, and developing country Members declaring themselves in a position to do so, to:

- (a) Provide *duty-free and quota-free* market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability;
- (b) Members facing difficulties should provide market access for at least 97 per cent of products originating from LDCs defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products;

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- (c) *Developing country Members are permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage;*
- (d) *Preferential rules of origin applicable to imports from LDCs are required to be transparent and simple, and contribute to facilitating market access.*

Q2: When did India launch its Scheme under the DFQF mandate?

A2: India formulated the Duty Free Tariff Preference (DFTP) Scheme for Least Developed Countries (LDCs) under the DFQF mandate. India announced this Scheme at the India Africa Forum Summit on 8 April, 2008.

Q3: What are the salient features of the DFTP Scheme for LDCs?

A3: The DFTP scheme for LDCs grants duty - free access on 85% of India's total tariff lines which is to be implemented over a period of 5 years through 5 equal tariff reductions of 20% each on the current applied rates. On 9% of India's total tariff lines (468 tariff lines), India grants preferential duty access as per a prescribed margin of preference (MOP) on the applied rates over the same period of 5 years. Thus, the DFTP Scheme for LDCs provides duty free and preferential market access on 94% of India's total tariff lines. Only 6% of India's total tariff lines (326 tariff lines) figure in the Exclusion List.

The Scheme provides preferential duty access on products comprising 92.5% of global LDC exports. This is indeed substantial and could safely be covered under the Hong Kong mandate which provides "*appropriate flexibility in coverage*" for developing countries. Some of the products of interest for LDCs which are covered include cotton, cocoa, aluminium ores, copper ores, cashew nuts, cane sugar, readymade garments, fish fillets and non-industrial diamonds.

Useful Web Links

- www.commerce.nic.in
- www.wto.org
- www.unctad.org
- www.worldbank.org
- www.wipo.int
- www.fao.org
- www.unescap.org
- www.artnetontrade.org

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The Centre has recently undergone considerable strengthening. It has now a wider mandate and is tasked to carryout research activities, bring out newsletters on WTO related subjects, organise outreach and capacity building programmes through seminars, workshops, subject-specific meetings etc. and to be a repository of important WTO documents in its Trade Resource Centre. An Advisory Committee has been constituted to guide the work of the Centre.

The Centre is currently engaged in research activities on following WTO related subjects:

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- **Agreement on Technical Barriers to Trade**
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Centre for WTO Studies
Indian Institute of Foreign Trade

IIFT Bhawan, B-21, Qutab Institutional Area, New Delhi-110016

Tel: 011-26564409

E-mail: editor_wtocentre@iift.ac.in