

WORLD TRADE ORGANIZATION

TN/MA/W/46/Add.4
3 November 2004

(04-4668)

Negotiating Group on Market Access

NON -TARIFF BARRIER NOTIFICATIONS

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I. INDIA

A. STANDARDS AND RELATED REGULATIONS AND PROCEDURES

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier Trade effects of the barrier 3 & 4	Inventory category 5	Relevant WTO provision 6	Treatment of the barrier 7
Several	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. Some measures clubbed hereunder affect individual consignments while some like those involving costs put additional burden on exports.</p> <p>a) Harmonization – 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>	Part III A, B & C	Provisions of Agreement on Technical Barriers to Trade; Agreement on the Application of Sanitary and Phyto-Sanitary Measures	(a)

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		<p>Harmonization of both standards and procedures applicable within a common customs territory is necessary for predictability.</p> <p>Harmonization with international standards and use of agreed testing methods with scientific justification will reduce the trade restrictive impact</p> <p>(i) <i>One instance of the use of testing methods for high levels of sensitivity is the testing in marine products for chloramphenicol by High Performance Liquid Chromatograph Mass Spectroscopy (HPLC MS). MS has sensitivity at levels of 0.2 ppb whereas the AOAC¹ specifies test by HPLC which has sensitivity to a level of 10 ppb. The additional equipment means incurring expenditure of around Rs 1.5 crores (US\$ 3.5 Million) per equipment with this cost increase being proportionately reflected in each test carried out.</i></p> <p>(ii) <i>Certain countries are using test methods, which are neither those accepted internationally, nor are these validated. An example is use of non-validated test method by a country for testing vibrio cholerae which is felt to be the cause of failure of samples in that country</i></p> <p>b) Transparency - 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</p>			

¹ Association of Official Agricultural Chemists

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		<p>about the specific requirements prescribed by the country of destination, which has led to rejection at the point of import.</p> <p>(i) <i>Several countries lay down their specification in their national language with no official English version and for translating these, either facilities in the exporting country are not easily available or these are very costly.</i></p> <p>(ii) <i>Some countries have standards for Hessian bags which are not technically achievable and the details relating to the standards are not available in English. Similarly requirements on using certain specified packing materials without providing any reason or justification for the same acts a trade barrier.</i></p> <p>(c) Conformity Assessment Issues – Several conformity assessment issues have the effect of restricting trade, these include:</p> <ul style="list-style-type: none"> • Excessive costs levied for testing - for small developing countries exporters these are a significant barriers; • Location of testing facilities including testing being done only single/limited centre(s); • Limited validity of certificates, requiring re-testing with attendant costs; • Procedures involving site/ factory visits by the certifying authorities – both the time taken and costs involved act as hindrances; • Non-recognition of certificates from accepted international bodies; and • Easier or preferential conformity assessment for RTA Members which is discriminatory. <p><i>Tyre marking is an expensive proposition; in some countries it costs a company around US\$ 20,000 for the first application and approval. The certificate is valid for one year and US\$</i></p>			

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		<p><i>1100 has to be paid for every year for getting the certificate revalidated; in addition for the factory visit of inspectors, an amount of US\$ 600 per day has to be paid which is inclusive of transportation charges, hotel charges, tickets, etc.</i></p> <p>(d) Risk-based Approach - 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 sanitary and Phyto-sanitary 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><i>In the case of marine products where consignments are being rejected due to presence of certain micro-organisms such as Vibrio parahaemolyticus a 'nil' limit has been laid down. Vibrio parahaemolyticus is a habitant of the marine environment of the tropical waters and there is every chance for the presence of this organism in raw fish and fishery products. However, they are generally destroyed during chilling/freezing or by heating at 60 degrees C. Besides, the organism is not considered as a potential hazard in raw frozen products which are to be cooked before consumption. Some countries are specifying limits for Vibrio parahaemolyticus only for ready-to-eat cooked products or seafood for raw consumption and at levels ranging from 1 000 to 10 000 per gram which may be acceptable. However, despite the above, some countries have specified limits for Vibrio parahaemolyticus in products which are to b</i></p>			

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		<p><i>cooked before consumption and these also at levels as low as 100 per gram. Risk evaluation reports have not been made available in such cases.</i></p> <p>(e) Safety Management Systems Approach - 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. Such a 'safety management systems' approach is being insisted upon by many countries for allowing import of products such as marine products. This system allows building in controls in a flexible manner based on conditions applicable in a country/ industry etc.</p> <p>However, certain countries are building in prescriptions in the production process. Process standards based on conditions and production systems prevalent in the importing country are not relevant for the developing countries for achieving the required product standard. It is internationally accepted that alternate equivalent measures should be permitted if these meet the requirements of the importing country in the use of the final product. It also may be in contravention of Article 2.8 of TBT and definition of technical regulations in Annex I.</p> <p><i>In the case of seafood units some assessment teams which have come for inspection insist on flake ice machines being installed in the processing units whereas the same purpose can be served by crushing block ice in a hygienic manner. Insistence on such practices involves not only excessive costs but is also unjustifiable in terms of end-product safety criteria.</i></p> <p>(f) Equivalence - Equivalence agreements between Members are seen in the WTO as the 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</p>			

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		<p>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. Some countries use regulatory standards to address demand supply conditions. Further, at times it is seen that important components such as provision for re-testing and appeal in case of rejections are not addressed in such Agreements as these are not considered to be in the interest of the importing country. It is also a requirement of TBT under Article 2.7 that alternate equivalent measures should be permitted if these meet the requirements of the importing country. A similar provision exists in Article 4 of SPS.</p> <p>(g) Rejection & Destruction of Consignments - 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. The decision regarding destruction of a consignment is often not a correct decision and is also not justified. It is necessary to involve the exporting country in such decisions of destruction for the following reasons: (i) The consignments found contaminated in the importing country may need to be brought back to enable the competent authority to re-test them and ascertain whether the consignments were contaminated or not as certified. And if contaminated examine the cause and take immediate corrective measures to control/eliminate its recurrence. (ii) 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>			

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		<p>(iii) 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>(iv) 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. It may be pointed out that a country can fix standards lower than, say Codex.</p> <p>(v) Sometimes a product is rejected in one port and accepted in another port of the same market.</p> <p>(vi) 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> <p>It may also be noted that Codex has brought out a guideline for the exchange of information between countries on rejection of imported foods (CAC/GL-25-97) wherein the standard provides for destruction of the consignment, retesting of the consignment, re-export of the consignment to countries which state in advance that they are prepared to accept the consignment knowing that it has been refused entry elsewhere.</p> <p>h) Other Standards related issues - Voluntary Standards - Imposition of voluntary international standards such as ISO 14000 on Environmental Management Systems by buyers on their suppliers in exporting countries has the effect of not only restricting market access for at least sometime until the industry upgrades itself, but also leading to high cost of implementation. The standard on Social Accountability, SA 8000 is a recently announced international standard for management systems primarily dealing with working conditions. Under the guise of Social Accountability, the imports of various products can be restricted on alleged violation of any of the above 'voluntary requirements'.</p>			

B. MARKETING RESTRICTIONS INCLUDING LABELLING PRACTICES

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier Trade effects of the barrier 3 & 4	Inventory category 5	Relevant WTO provision 6	Treatment of the barrier 7
Several	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> <p>Some buyer requirements like comprehensive product liability insurance also restrict the export and marketing ability of developing country exporters.</p>	Part IV F, K & L	Article IX of GATT 1994	(a)

C. RESTRICTIVE PRACTICES TOLERATED BY GOVERNMENTS

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier Trade Effects of the Barrier 3 & 4	Inventory category 5	Relevant WTO provision 6	Treatment of the barrier 7
Several	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>	Part I D	None directly	(a)

II. SINGAPORE

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier 3	Trade Effects of the barrier 4	Inventory category 5	Relevant WTO provision 6	Treatment of the barrier 7
	Chapters 84 and 85 - Mechanical Machinery, Equipment and Parts	Non – transparent and unnecessarily lengthy customs clearance and valuation procedures	Delay in Trade – to Market time Increase in cost	IIB & IIG	GATT Articles VIII(1)(c), VII and X(1),	Cat. (b) for TF-related barrier, Cat. (d) or (a) for barrier related to GATT Art.VII
		Adherence to safety requirements	Delay in Trade – to Market time Increase in cost	IIIB	Agreement on Technical Barriers to Trade (“TBT Agreement”) Article 2.2	Cat. (d) or (a)
		Inconsistent Custom Classification	Delay in Trade – to Market time Increase in cost	IIC	NG MA generally GATT Article X(1) and VIII	Cat. (d) or (b)
		Discriminatory, unreasonable or inconsistent implementation of Rules of Origin	Admin Hassles Delay in Trade – to Market time Total or partial loss of Market share Increase in cost	IIF	Agreement on Rules of Origin (“ROO Agreement”) Article 1	Cat. (d) or (a)
		Excessive / irrelevant requirements for documentation	Delay in Trade – to Market time Total or partial loss of Market share Increase in cost	IIG	GATT Article VIII(1)(c)	Cat. (b)

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier 3	Trade Effects of the barrier 4	Inventory category 5	Relevant WTO provision 6	Treatment of the barrier 7
		Costly or lengthy procedure to obtain licence. In some cases, authorities stopped issuance of import licenses altogether	Delay in Trade – to Market time Total or partial loss of Market share Increase in cost	IVA, IIIH	<ul style="list-style-type: none"> • Agreement on Import Licensing (“IL Agreement”) Article 1, • GATT Article VIII(1)(a) & (c) 	Cat. (b) where it relates to GATT Articles VIII Cat. (d) or (a) where it relates to Import Licensing Agreement
		Adherence to packaging requirement	Total Rejection of Goods Delay in Trade – to Market time Increase in cost	IVK	TBT Agreement Article 2.2	Cat. (d) or (a)
		Non-transparency, lack of advance notice & opportunity to comment on new regulation. Legislation changes frequently in some cases	Delay in Trade – to Market time Total or partial loss of Market share	IVL	GATT Article X(1), TBT Article 10.	Cat. (b) where it relates to GATT Article X
		Federal government regulations are often implemented differently at local / provincial levels	Delay in Trade – to Market time Total or partial loss of Market share Increase in cost Uncertainty in trade	IVL	GATT Article X(3)(a)	Cat. (b)
		Port, customs or other levies and fees which fluctuate excessively.	Delay in Trade – to Market time Increase in cost	VB	GATT Articles VIII and X	Cat. (b)
	Chapters 84 and 85- Electrical Machinery, Equipment and Parts	Non – transparent and unnecessarily lengthy customs clearance and valuation procedures	Delay in Trade – to Market time Increase in cost	IIB & IIG	GATT Articles VII, VIII(1)(c) & X(1)	Cat. (b) where it relates to GATT Articles VIII and X, Cat. (d) or (a) where it relates to Article VII.
		Inconsistent Customs Classification	Uncertainty in trade	IIC	GATT Article X(1)	Cat.(b)

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		Discriminatory unreasonable or inconsistent implementation of Rules of Origin	Administrative Hassle	IIF	ROO Agreement, Article 2	Cat. (d) or (a)
		Excessive/irrelevant requirements for documentation	Delay in trade – to market time Custom of import countries insist to specific product description instead of exporter given description	IIG	GATT Articles VIII(1)(c)	Cat.(b)
		Extensive and costly certification process. Refusal by importing country authorities to accept manufacturer’s self-certification of conformance to foreign product standards	Delay in Trade – to Market time	IIIC	TBT Agreement Articles 2.7 & 2.9.	Cat. (d) or (a)
		Extensive and costly licensing procedures	Delay in Trade – to Market time	IVA	IL Agreement Article 1	Cat. (d) or (a)
		Adherence to packaging requirement	Increase in costs	IVK	TBT Agreement Article 2.2	Cat. (d) or (a)
		Adherence to labelling requirements	Total Rejection of Goods	IVK	TBT Agreement Article 2.2	Cat. (d) or (a)
		Non-transparency, lack of advance notice & opportunity to comment on new regulation. Often, federal government regulations are implemented differently at provincial levels	Delay in Trade – to Market time Total or partial loss of Market share Increase in cost	IVL	GATT Articles X(1) & (3)(a)	Cat. (b)
	Chapter 39- Plastics and Plastic Articles	Anti-Dumping (AD) Measures	Total or Partial loss of Market share	IIA	Agreement on Implementation of Article VI of the GATT 1994	Cat. (b)

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		Non – transparent and unnecessarily lengthy customs clearance and valuation procedures	Delay in Trade – to Market time Increase in cost	IIB & IIG	GATT Articles VII, VIII(1)(c) & X(1)	Cat. (b) for those related to Articles VIII and X, cat. (d) or (a) for those related to Article VII.
		Excessive/ irrelevant requirements for documentation.	Delay in Trade – to Market time Increase in cost	IIG	GATT Article VIII(1)(c)	Cat. (b)
		Port, customs or other levies and fees which fluctuate excessively	Increase in cost	VB	GATT Articles VIII and X	Cat. (b)
	Chapter 90 - Optical & Photographic Products	Non – transparent and unnecessarily lengthy customs clearance and valuation procedures	Delay in Trade – to Market time Increase in cost	IIB & IIG	GATT Articles VII, VIII(1)(c) & X(1)	Cat. (b) for those related to Articles VIII and X, cat. (d) or (a) for those related to Article VII.
		Excessive/ irrelevant requirements for documentation	Increase in costs	IIG	GATT Article VIII(1)(c)	Cat. (b)
	Chapters 28 to 29, and 31 to 38 - Chemicals	Safeguard action imposed on top of existing anti-dumping duties for product.	Total or partial loss of Market share. Increase in cost.	IE	Agreement on Anti-Dumping Measures	Cat. (b)
		Anti – Dumping (AD) Measures	Total or Partial loss of Market share	IIA	Agreement on Implementation of Article VI of the GATT 1994	Cat.(b)
		Non – transparent and unnecessarily lengthy customs clearance and valuation procedures	Delay in Trade – to Market time Increase in cost	IIB & IIG	GATT Articles VII, VIII(1)(c) & X(1)	Cat. (b) for those related to Articles VIII and X, cat. (d) or (a) for those related to Article VII.

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		Excessive/irrelevant requirements for documentation		IIG	GATT Articles VIII(1)(c) and X	Cat. (b)
		Refusal by importing country authorities to accept manufacturer's self-certification of conformance to foreign product standards	Full re-test at first point of entry For every new batch sent	IIIC	TBT Agreement Articles 2.7 & 2.9	Cat. (d) or (a)
		The non-acceptance of certificates of analysis.	A second full release testing at the first point of entry is required.	IIIC	TBT Agreement Article 2.7	Cat. (d) or (a)
		Extensive licensing procedures	Total rejection of goods Delay in trade - to market time Total or partial loss of market share Increase in costs	IVA	IL Agreement Article 1(6)	Cat. (d) or (a)
		Adherence to packaging requirement	Total Rejection of Goods Delay in Trade – to Market time Increase in cost	IVK	TBT Agreement Article 2.2	Cat. (d) or (a)
		Adherence to labelling requirement	Total Rejection of Goods Delay in Trade – to Market time Increase in cost	IVK	TBT Agreement Article 2.2	Cat. (d) or (a)
		Non-transparency, lack of advance notice & opportunity to comment on new regulation	Delay in Trade – to Market time Increase in cost	IVL	GATT Article X(1)	Cat. (b)
		Quantitative import restrictions (quotas)	Delay in Trade-to Market time	IVA	GATT Article XI	Cat. (d) or (a)
	Chapter 30- Pharmaceuticals	Excessive/irrelevant requirements for documentation	Delay in Trade – to Market time Total or partial loss of Market share	IIG	GATT Article VIII(1)(c)	Cat. (b)

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier 3	Trade Effects of the barrier 4	Inventory category 5	Relevant WTO provision 6	Treatment of the barrier 7
		Non – acceptance by importing country authorities of manufacturer’s self-certification of conformance to foreign product standards	Full re-test at first point of entry for every new batch sent	IIC	TBT Agreement Articles 2.7 & 2.9	Category c)
		Extensive and costly licensing procedures	Delay in Trade – to Market time Total or partial loss of Market share	IVA	IL Agreement Article 1(6)	Cat. (d) or (a)
		Adherence to labelling requirement	Delay in Trade – to Market time Total or partial loss of Market share	IVK	TBT Agreement Article 2.2	Cat. (d) or (a)
		Federal government regulations are often implemented differently at local/ provincial levels Legislation which changes frequently	Delay in Trade – to Market time Total or partial loss of Market share	IVL	GATT Article XAAC	Cat. (b)
	HS 8519, 8520, 8521, 8522, 8527, 8529 - Sound Recorders and Reproducers	Unnecessary delays/lengthy customs clearance		IIG	GATT Article VIII(1)(c)	Cat. (b)
		Unreasonable Licensing requirements		IVA	IL Agreement Article 1	Cat. (d) or (a)
		Port, customs or other levies and fees which fluctuate excessively		VB	GATT Articles VII and X	Cat. (b)
