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## From the Director's Desk



K.T. Chacko

Liberalization in world trade has witnessed substantial tariff reductions and tariff eliminations since the Uruguay Round. Though tariffs continue to be lowered, yet the need to regulate and discipline other forms of trade barriers, namely NTBs assumed critical importance. Concerns towards NTBs for the first time were expressed during Kennedy Round (1964-67), but a more comprehensive Plurilateral Agreement on Technical Barriers to Trade (TBT) was signed during the Tokyo Round, which came to be popularly known as "Standards Code." It tried to ensure that global trade must not get unnecessarily impeded by technical regulations and standards, drawn up to protect human, animal and plant life and health, national security, the environment, consumers and other policy interests.

A large number of countries were not signatories to the "Standards Code". Uruguay Round of negotiations created a forum for many developing countries to participate in the negotiations so that a well defined package with wider acceptability could be worked out. The TBT Agreement which came into effect recognized that countries should have the right to establish technical regulations for protection of human, animal or plant life subject to the condition that these regulations do not create unnecessary obstacles to international trade.

The Agreement further encourages the countries to recognize each other's testing procedures. For the trade to flourish, it is necessary to provide adequate information to manufacturers and producers to know the standards and norms in prospective markets, hence the Member Governments are required to set up national enquiry points.

Since the WTO came into being, Members have increasingly taken recourse to technical regulations. More than 9000 TBT notifications have been made by the WTO Members. The coverage of these standards, notified so far, and their linkages with technology levels and production process methods are emerging as serious constraints for market access. Besides, current level of technological competence of developing countries would undermine their market access prospects. There is a need to comprehensively address these issues.

# WTO and Technical Barriers to Trade

Rajesh Mehta\*

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*The protection of human health and environment is one of the most important policy objectives for international trade. In this direction the WTO-TBT agreement was supposed to prevent a risk that the technical regulations and standards could be adopted and applied solely to protect domestic industries. The total of 8,774 TBT notifications made by 103 WTO member nations in the span of 13 years (1995-2007) highlights the increasing use of TBT measures in the era that is moving gradually towards tariff free regime. The widespread abuse of TBT measures to safeguard the domestic interests has obscured the free flow of international trade. The enormous budget required for facilitating the implementation of new standards and regulations has posed the biggest constraint for India and producers of the developing countries. Future course of action unfolds huge challenges for the WTO.*

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**I**N the absence of defined rules under the multilateral trade regime national technical measures could be misused as a tool for protecting domestic interests. The WTO Agreement on Technical Barriers to Trade (TBT) seeks to protect the interests of: (i) Importers by allowing them to protect human, plant and animal health and life, consumers, environment, national security and other policy interests by imposing technical regulations and standards on their imports, and (ii) Exporters by assuring them that these standards, regulations and conformity assessment procedures do not impede trade.<sup>1</sup>

At the dawn of multilateral trade negotiations technical regulations and standards were not the cause of major concern since they found hardly any mention in the provisions of GATT 1947 in Articles III, XI and XX. Later on when it was noticed that technical measures might hinder exports in the form of non-tariff barriers, it became important to chalk down rules and disciplines for these regulations. Therefore, an agreement on TBT called "The Standards Code" was signed by the 32 GATT contracting parties at the conclusion of Tokyo Round in 1979. Later at the end of Uruguay Round of trade negotiations (1986-1994) the new

WTO agreements on technical barriers to trade (TBT) and sanitary and phyto-sanitary (SPS) measures were adopted. The primary objective of the WTO-TBT Agreement is to reduce obstacles to international trade by ensuring technical regulations, standards and conformity assessment procedures. They are prepared, adopted and applied in a "trade friendly" manner and do not result in unjustifiable discrimination against imported goods. The primary objectives of the WTO-SPS Agreement are: (i) to set out the basic rules for food safety, animal and plant health standards, (ii) to agree to the use of harmonized sanitary and phyto-sanitary measures between members on the basis of international standards, and (iii) to allow members the appropriate level of protection of human, animal or plant life/health for their country of origin. The difference between SPS and TBT measures is given in Box 1.

The TBT Agreement covers "technical regulations", "standards" and "conformity assessment procedures" that are dealt in different parts of the agreement. A *technical regulation* is a "document, which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.

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It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method". A *standard* is a "document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling

requirements as they apply to a product, process or production method". Although international usage sometimes differs, a technical regulation is therefore mandatory, while a standard is voluntary. Finally, a *conformity assessment* procedure is "any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled". There are some misunderstandings regarding coverage of SPS and TBT measures. Table 1 gives some examples to clarify them.

The TBT Agreement has 15 Articles and 3 Annexes. The important principles governing the TBT Agreement are:

### Avoidance of Unnecessary Obstacles to Trade

A technical regulation can become an unnecessary obstacle to trade when it is not aimed to achieve a legitimate objective or is more restrictive than required to attain a given objective. According to Article 2.2 of the TBT Agreement, the legitimate objectives include protection of human, animal, plant health and safety, environment, prevention of deceptive measures and national security/policy objectives. Further, the conformity assessment procedures (Article 5.1.2) can also become trade restrictive when more time consuming or stringent processes appear as part of the requirement than the necessary to analyze or deal with that the imported goods fulfils the regulations imposed by the importing governments are applied. Selection of difficult samples and "arbitrary requirements related to information" are some examples.

### Non-discrimination and National Treatment

With respect to the technical regulations applied to imported products Article 2.1 of the TBT Agreement specifies that all products imported from any WTO member nation should be treated no less favourable than "like products" originated in domestic territory and "like products" imported from any other WTO member nation. Similar is the case with

#### BOX 1 DEFINITION OF SPS AND TBT MEASURES

The TBT Agreement (Article 1.5) states that the provisions of the TBT Agreement do not apply to measures as defined in Annex A of the SPS Agreement. In other words, the measures which fall within the "To protect from?" column below are **not** covered by the TBT Agreement.

##### SPS Measures

To protect what?	To protect from?
Human or animal life	risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs; (contaminants include pesticide and veterinary drug residues and extraneous matter)
Human life	plant- or animal-carried diseases (zoonoses);
Animal or plant life, including fish, forests and wild animals or plants	pests (including weeds), diseases, or disease-causing organisms;
A country	damage caused by the entry, establishment or spread of pests (including weeds)

##### TBT Agreement

It is similar to the SPS Agreement in its content and format. The difference between the agreements is primarily one of coverage and the underlying basis for the application of a measure. In general terms, under the TBT Agreement a measure has to be based on a legitimate objective. For example, governments may impose special requirements on imports of armaments (national security) or restrict imports of endangered species (environment), or mandate that labels on cigarette packs should warn consumers of the hazards of the smoking (human health). These are all examples of legitimate objectives which governments use as a basis for requirements on imported products. These measures would not fall within the scope of the SPS Agreement, as they do not meet the definition of an SPS measure.

The WTO-TBT Agreement applies to (i) Industrial products, and (ii) Agricultural products, but not to sanitary measures or phytosanitary measures applied to these products. These are covered by the WTO SPS Agreement.

**Source:** Mehta, R. and P. Agarwal (2007), "TBT Measures and South Asia", Chimni, B.S. et al. (ed.), *South Asia Yearbook on Trade & Development 2006, Multilateralism at Crossroads: Reaffirming Development Priorities*, Wiley-India, New Delhi.

conformity assessment procedures. However, legal problems had been seen in the description of like products that could be determined only on individual basis.

## Harmonization

One of the important pillars of the TBT Agreement is

harmonization. As per the agreement members are encouraged to participate in the functioning of international standards setting agencies like International Standardization Organization (ISO), the International Electro-technical Commission (IEC) and the International Telecommunication

Union (ITU). Members are further expected to set their domestic standards and technical regulations on the grounds of these internationally agreed standards. The use of international standards by all members in their domestically produced goods can lead to less disrupted flow of goods and

**TABLE 1**  
**COVERAGE OF TBT AND SPS MEASURES**

<b>TBT measures typically deal with:</b>	<b>SPS measures typically deal with:</b>
<ul style="list-style-type: none"> <li>• Labelling of food, drink and drugs</li> <li>• Quality requirements for fresh food</li> <li>• Packaging requirements for fresh food</li> <li>• Packaging and labelling for dangerous chemicals &amp; toxic substances</li> <li>• Regulations for electrical appliances</li> <li>• Regulations for cordless phones, radio equipment, etc.</li> <li>• Textiles and garments labelling</li> <li>• Testing vehicles and accessories</li> <li>• Regulations for ships and ship equipment</li> <li>• Safety regulations for toys</li> <li>• etc ...</li> </ul>	<ul style="list-style-type: none"> <li>• Additives in food or drink</li> <li>• Contaminants in food or drink</li> <li>• Poisonous substances in food or drink</li> <li>• Residues of veterinary drugs or pesticides in food or drink</li> <li>• Certification: food safety, animal or plant health</li> <li>• Processing methods with implications for food safety</li> <li>• Labelling requirements directly related to food safety, Plant and animal quarantine</li> <li>• Declaring areas free from pests or disease</li> <li>• Preventing disease or pests spreading to a country</li> <li>• Other sanitary requirements for imports (e.g. imported pallets used to transport animals)</li> <li>• etc ...</li> </ul>

### Differences between TBT & SPS Measures

- The key determinant to distinguish the SPS and the TBT measures is whether a measure is to address “SPS risks” i.e. food-risks from pests or diseases or food-borne risks.
- For example, measures regarding pharmaceutical restrictions or the labelling of cigarettes are considered TBT measures despite their objectives to protect human health because they do not involve food-borne diseases or diseases carried by plants or animals.
- SPS measures can only be introduced the extent necessary to protect life or health on the basis of Scientific Justification.
- TBT Agreement technical regulations can be introduced for a variety of reasons such as national security, the prevention of deceptive practices, the protection of human health or safety or the environment

### Examples: Differences between TBT & SPS Measures

<b>1. Fertilizer:</b>	Regulation on permitted fertilizer residue in food and animal feed > <b>SPS</b> Specifications to ensure fertilizer works effectively > <b>TBT</b> Specifications to fertilizer protect farmers when handling fertilizer > <b>TBT</b>
<b>2. Food Labelling:</b>	Regulation on permitted food safety: health warnings, use, dosage > <b>SPS</b> Regulation on label's position, lettering, nutrient content, quality > <b>TBT</b>
<b>3. Containers for Shipping Grain:</b>	Regulation on fumigation, disinfectant, to prevent disease spreading > <b>SPS</b> Regulation on size, construction/ structure, safe handling > <b>TBT</b>
<b>4. Fruit:</b>	Regulation on treatment of imported fruit to prevent pests spreading > <b>SPS</b> Regulation on quality, grading and labelling of imported fruit > <b>TBT</b>
<b>5. Bottled Water: Specifications for the Bottles:</b>	Materials that can be used because safe for human health > <b>SPS</b> Requirement: no residues of disinfectant in water > <b>SPS</b> Permitted sizes to ensure standard volumes > <b>TBT</b> Permitted shapes to allow stacking and displaying shapes > <b>TBT</b>

**Source:** Mehta and Agarwal (2007), *ibid*.

services around the world. This would also enhance the benefits of consumers who would have access to wide range of products.

With regards to conformity assessment procedures members are expected to use international guides or recommendations or their relevant portions issued by international standards setting organizations, for national procedures of conformity assessment. Members could be exempted to use these procedures if they are "inappropriate for the Members concerned for, *inter alia*, such reasons as national security requirements, prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or protection of the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems" (Article 5.4).

### Equivalence

The principal of equivalence is complementary to harmonization. If an importing country accepts that a technical regulation present in an imported product is different from what it has imposed but accomplishes the same policy objective it can eliminate its own regulation. For example, a motor vehicle containing diesel engine serves the same objective of emitting lesser levels of pollutants as a motor vehicle equipped with catalytic converter would. And if both the vehicles exporting and importing countries agree to the equivalence of their technical regulations then the exporting country would be saved from adjusting its production processes to provide for this regulation.

### Mutual Recognition

As per Article 6.3 of the TBT Agreement the member countries can negotiate for mutual consensus on conformity assessment results amongst themselves. In order to comply with the multiple conformity assessment procedures for the same product importable in multiple markets exporters need to incur huge costs. With the grant of the principle of mutual recognition a product could be tested only once and its results are valid in all other markets thereby reducing the huge costs borne by exporters. This requires confidence in the working of testing and certification agencies. Therefore as stated in Article 6.1 of the TBT Agreement there is need to reach a mutually satisfactory understanding on the efficiency of these conformity assessment organizations. If these bodies comply with the important guidelines issued by international standard setting agencies than they can be sufficiently considered as technically competent organizations conducting conformity assessment procedures. And the results produced by them can be accepted all over the world.

### Transparency

The concept of transparency in the TBT Agreement ensures that there exists transparent information on all the technical regulations, standards and conformity assessment procedures. From the process of their creation, all terms included with them and finally their application must be known to the member nations. Members are

supposed to **notify** to the WTO Secretariat in the event of (i) Non-existence of relevant technical content of a technical regulation already adopted in accordance with that of relevant international standards. Similarly it applies with standards or guides or recommendations issued by international standard setting agencies, and (ii) a technical regulation or conformity assessment procedures affecting trade of other member countries (Articles 2.9 and 5.6). All these **notifications** must reach WTO within sixty days before their adoption so that they can be made public for further comments from other WTO members. In case of urgent problems relating to health, safety and environment protection member countries can send their notifications later.

Besides sending notifications member nations are also required to establish a national enquiry point. These **enquiry points** become source of all information regarding technical regulations, standards and conformity assessment procedures adopted or awaiting to be implemented.

### Special and Differential Treatment

Considering the development needs and concerns of developing and least developed countries (LDCs) the implementation of certain elements of TBT Agreement has been eased. Also these countries can use production techniques that are compatible with their socio-economic conditions in order to preserve their traditional production processes.

## Consultation and Dispute Settlement

In the event of any matter critical to the functioning of the TBT Agreement countries can hold consultations or file complaints against the member causing such dispute. All this has to be handled under the Dispute Settlement Body (Article 14) of the WTO. A panel comprising of technical experts has to be set up at the request of the complaining party.

## Trend in TBT Notifications Informed to the WTO

The Doha Ministerial Declaration mandated the conduct of negotiations in several specific areas under the supervision of Trade Negotiating Committee (TNC), including agriculture, environment, implementation, industrial tariffs, services, etc. Implementation related issues came into notice during the Uruguay Round Agreement.

There were many issues regarding the imbalance in the implementation of various WTO-TBT agreements. The decision on implementation issues gave developing countries the permission to take at least six months for compliance with a new TBT measure, increasingly participate in the working of standard-setting organizations, and provide financial and technical assistance to least-developed country participants so as to enable them to work effectively towards the compliance of any new TBT measures which may affect their trade adversely.<sup>2</sup>

After holding a number of workshops and surveys and receiving various consultations from member nations the Committee on Technical Barriers to Trade conducted the third<sup>3</sup> triennial review<sup>4</sup> of the operation and implementation of the TBT Agreement at the end of 2003. The review carried certain recommendations on issues related to technical assistance, transparency and conformity assessment procedures, etc. Technical assistance that was considered as most instrumental in effective implementation of this agreement received the maximum priority in this review. The review specified the lack of adequate capacity, infrastructure and awareness, which restricts the developing countries in compliance with the TBT Agreement. As per the review each member nation should receive technical assistance depending on its particular requirements. It concludes that there is a need of co-ordination and coherence among the governments receiving the assistance and its donors. The review stressed on the significance of strengthening of infrastructure and institutions and appropriate follow-up of technical assistance activity in reaping its maximum benefits.

The Review had requested the member nations to comply with their transparency obligations, especially those concerned with the notification of draft technical regulations and conformity assessment procedures. It noted a number of trade concerns such as procedural problems in the form of failures to notify, short comment periods,

and inadequate handling of comments, all connected with the inadequate transparency that had been brought to the notice of the TBT Committee. With this reason the Review reiterated the obligation of Members to provide complete and timely information on any new technical regulation or conformity assessment procedure. Further, it urged the developed country participants to provide a comment period of more than 60 days. This recommendation had been given to enhance the developing countries' ability to comment in light of the principle of special and differential treatment.

The Review had also set up a work programme for "conformity assessment" that included a workshop on the various approaches to conformity assessment and its accepted results. It notes that the use of relevant international standards or recommendations can provide transparent information to the suppliers by which they can provide assurance of conformity to the specified requirements. This would be attained by the issuance of Suppliers Declaration of Conformity (SDoC) which if accepted by importing countries can improve the prospects of developing country exporters' business in that country.

The WTO-TBT Agreement was meant to remove the redundant barriers to the trade. But contrary to its objective TBT measures had been increasingly used against India and other developing countries as means to block their trade. Apart from bearing the additional burden of huge costs incurred to meet these

regulations, certification and testing requirements, developing countries have struggled hard in getting into mutual recognition agreements (MRAs) with developed countries. These countries generally refuse to show faith in conformity assessment procedures adopted in many developing countries. Further with various domestic problems like lack of resources and adequate infrastructure the compliance with standards and regulations becomes a major hurdle to trade.

The Figure 1 illustrates the total number of TBT notifications issued from its commencement on 1 January 1995 to 31 December 2007. Total number of notifications made by 103 member nations in 13 years is 8,774.

One can see that maximum numbers of notifications, i.e.1,030 were made in 2007. After declining for four years (1997-2001) the number of notifications again started increasing from 2001 onwards, touching 1,030 during 2007. This increasing trend confirms the increasing significance of TBT measures over the years.

The top stated objective of TBT measures as emerged in the WTO notifications received during 2007 is “protection of human health or safety” (50% of all notifications), as shown in Figure 2. Other important objectives were “prevention of deceptive practices” (in 14% notifications); “protection of the environment” (in 13% notifications); “consumer information and labelling” (in 5% notifications), etc. More than one objective were stated in 263

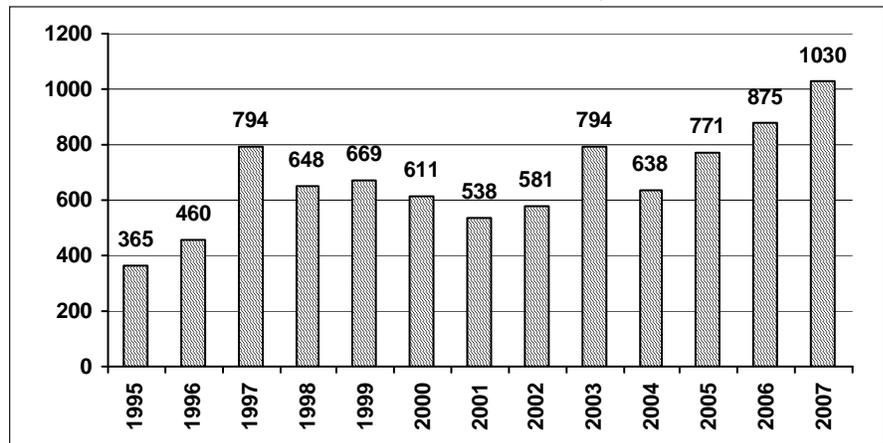
notifications, 32 notifications specified other objectives, and two did not refer to any legitimate objective.

The SPS Committee has suggested more than 60 days period be made available to other members to comment on notified technical regulations and conformity assessment procedures. Figure 3 illustrates the average time allowed to

members for comments on different notifications during 1995 to 2007. In 2007, member nations got on an average 59.9 days for comments on all notifications. Altogether, 148 notifications either did not specify a comment period or stated it as non-applicable or had a comment period that had lapsed.<sup>5</sup>

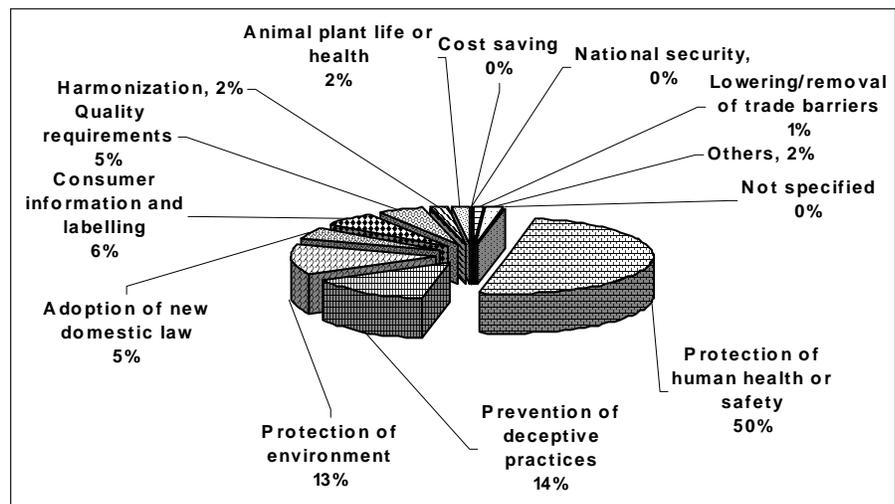
According to the WTO, India has issued 77 notifications during

**FIGURE 1**  
TOTAL NUMBER OF TBT NOTIFICATIONS, 1995-2007



Source: WTO, Thirteenth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/23, 20, February 2008.

**FIGURE 2**  
PERCENTAGE OF NOTIFICATIONS BY STATED OBJECTIVES IN 2007



Source: WTO, Thirteenth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/23, 20, February 2008.

1995-2007 as compared to 8,697 notifications issued by other countries. During 2007, India issued 10 notifications, which fall under Article 2.9.

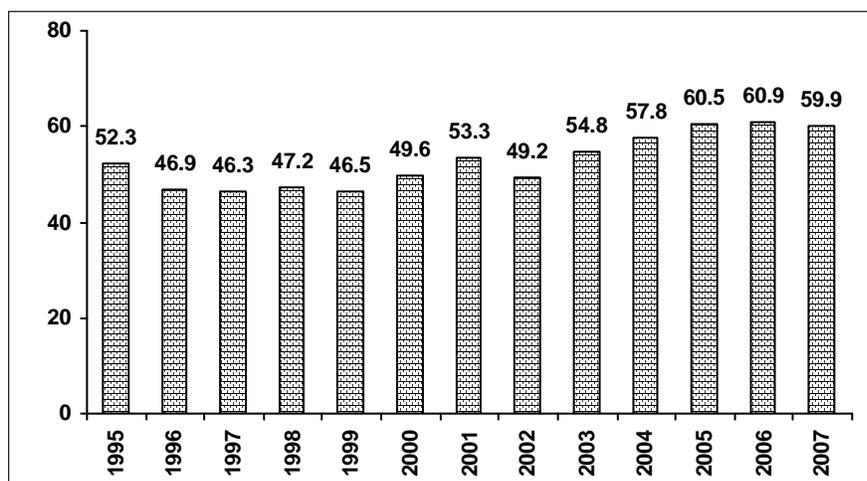
The type of products on which technical barriers (TBs) have been notified by India is illustrated through Table 2. Most of these items belong to electrical machinery, food products, and GM products. They have been notified under Articles 2.9 and 2.10 by competent agencies of India.

### Policy Options

The following points should be addressed by the WTO keeping in view India and other developing countries' perspective:

- The TBT Agreement doesn't take care of supply-side issues of TBT leading to non-tariff barriers,
- Change in TBT standards require capital intensive technology which has to be imported from countries that impose them,
- A large number of notifications issued by developed countries make it very difficult for producers and exporters to fulfil frequent changes in standards. There should be longer time-frame for developing countries to comply with new standards.
- The DDA-NAMA mandate has also recognized that the reduction or elimination of NTBs is an integral and equally important part of the negotiations. There is limited progress in elimination and

**FIGURE 3**  
AVERAGE NUMBER OF DAYS ALLOWED FOR COMMENTS ON SPS NOTIFICATIONS, 1995-2007



Source: WTO, Thirteenth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/23, 20, February 2008.

**TABLE 2**  
NOTIFICATIONS ISSUED BY INDIA UNDER TBT AGREEMENT

Ref. No.	Product	Date
G/TBT/N/IND/21	Tobacco products	17/08/2006
G/TBT/N/IND/20	Pneumatic tyres & tubes for automotive vehicles	17/07/2006
G/TBT/N/IND/19	Medical devices on: (i) cardiac stents, (ii) drug fluting stents, (iii) catheters, (iv) intra ocular lenses, (v) I.V. cannulae, (vi) bone cements, (vii) heart valves, (viii) scalp vein set, (ix) orthopaedic implants, (x) internal prosthetic replacements	16/06/2006
G/TBT/N/IND/18	All Packaged Commodities except Drugs	14/06/2006
G/TBT/N/IND/17	Genetically modified food, feed, Genetically modified organism	23/05/2006
G/TBT/N/IND/16	Generator sets (up to 19 killowatt) run on petrol and kerosene	19/05/2006
G/TBT/N/IND/15	Generator sets run on petrol and kerosene	19/05/2006
G/TBT/N/IND/14	Generator sets run with diesel	19/05/2006
G/TBT/N/IND/13	Generator sets run with diesel	19/05/2006
G/TBT/N/IND/12	Genetically engineered or modified or modified foods and food ingredients	17/05/2006
G/TBT/N/IND/11	Tyres	31/10/2005
G/TBT/N/IND/10	Packaged drinking water	06/10/2005
G/TBT/N/IND/9	Second-hand or new vehicles	10/07/2005
G/TBT/N/IND/8	Packaged food products	10/07/2005
G/TBT/N/IND/7	Vegetarian food	10/07/2005
G/TBT/N/IND/6	Packaged drinking water	10/07/2002
G/TBT/N/IND/5	Mineral water	09/07/2002
G/TBT/N/IND/4	All packed and/or bottled food items	10/07/2002
G/TBT/N/IND/3	Packed and bottled food items	09/07/2002
G/TBT/N/IND/2	Non-vegetarian food	09/07/2002
G/TBT/N/IND/1	Prepackaged consumer products	28/05/2002

Source: GOI, www.commerce.nic.in (visited on 19 Feb. 2008)

reduction of the NTBs including TBTs. Developing countries should take proactive approach in this regard.

- Technical regulations and conformity assessment practice should be made easy. In fact any new standards set up by developed country should suggest ways for its implementation to developing countries within sixty days.
- Adequate technical and financial assistance should be provided to producers and exporters, and not restricted to just workshops and seminars.

- There should be mechanism by which developed countries should give priority for granting "equivalence" and "mutual reorganization", and meet all expenses relating to visits, upgrading technology, etc.

#### NOTES

<sup>1</sup> WTO Secretariat, "Understanding the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures", <http://www.wto.org/wto/goods/spsund.htm> (visited 16 July 2006); and IIFT "Compilation of WTO-TBT Notifications Issued during 2001, 2002 & 2003 in Select Sectors" (mimeo), (2005).

<sup>2</sup> WTO, "Implementation-related Issues and Concerns", WT/MIN (01)/17, 20 November 2001.

<sup>3</sup> WTO, First and Second Triennial Reviews were concluded on 13 November 1997 (G/TBT/5) and 10 November 2000 (G/TBT/9) respectively, both before Doha ministerial conference (2001).

<sup>4</sup> WTO, "Third Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade", G/TBT/13, 11 November 2003.

<sup>5</sup> WTO, "Thirteen Annual Review of the Implementation and Operation of the TBT Agreement", G/TBT/23, 20, February 2008.



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## Indo-Japan CEPA Talks

THE conclusion of talks on the proposed Comprehensive Economic Partnership Agreement (CEPA) with Japan by 22 October when Prime Minister Dr. Manmohan Singh visits that country, appears unlikely. This is because Japan has refused to accept India's demand for harmonization of testing standards of both the countries and also bringing down their non-tariff barriers (NTB).

On the other hand, Japan's insistence on the inclusion of chapters on government procurement and competition policy in the CEPA, has not yet been agreed to by India. Japan's stringent sanitary and phytosanitary standards or SPS (that apply to animal & plant health measures and food safety), technical barriers to trade (TBT) and environmental norms have been hampering exports of several products from India.

Another NTB is the Japanese standards on drugs and other pharmaceutical products that are higher than the accepted international standards. India has been demanding that Japan should bring its national standards to international levels and also to ensure that there is a harmonization of SPS and TBT standards of both the countries.

The Indian industry sees Japan's drug approval procedures as stricter and time-consuming. Besides, it is also mandatory that such products are tested in Japan itself, as they do not accept products tested outside that country. India would now demand that if the US FDA (Food and Drug Administration) has given approval to a drug, Japan must also allow it without any further testing.

"It is very difficult for the Indian industry to match up to their standards," an official said.

Not just testing standards, but other approvals also take a long time. For instance, it takes around 7 years to get a registration for companies in the pharma sector in Japan, sources said. Language barriers are also proving to be a problem with most instructions being in Japanese. An outstanding issue is regarding India's proposal to tighten standards on rules of origin (ROO) of goods to protect sensitive sectors in the country and prevent them from being victims of trade diversion. In the proposed CEPA, India has insisted on a combination of value addition norms and change in tariff heading (CTH), while Japan is keen only on having either of the two. India says the combination is to ensure a major product transformation.

On the trade in goods, India's negative list has 1,500 items on the 8-digit HS (harmonized standards) code, mostly comprising auto and chemical products, while Japan has kept 1,456 items on the 9-digit HS code consisting primarily agricultural and leather products.

*(The Financial Express, 22 August 2008)*

## Food for Thought

THE Uruguay Round of the General Agreement on Tariffs and Trade (GATT) resulted in a decline in the tariffs imposed by developed countries to negligible levels. This was a matter of considerable jubilation for developing countries as their exports could now enter developed country markets more easily. Indeed experts reasoned that in the new era of almost complete openness in trade, countries could now specialize in areas of their comparative advantage to maximize productivity and then use exchange mechanism underlying trade to augment welfare.

Thus, it was pointed out that self-sufficiency in foodgrains was no longer required by a country as it could meet its foodgrain deficits through resources generated from exports. The only people that emphasized self-reliance in foodgrains were stoic nationalists, who did not want to depend on other countries for their daily bread or bow to the cold logic offered by economists. The subsequent turn of events has vindicated the stand taken by such nationalists and defeated the cold logical arguments offered by pedants.

The above developments can be explained in the following manner. When developing countries pulled at and demolished the traditional system of tariff barriers to trade, they expected easier entry of their primary products into developed countries. Instead, most developed countries came up with an even more deadly and sophisticated set of barriers to agricultural trade which were promoted under the garb of national self interest. These were termed as Technical Barriers to Trade (TBT) and Sanitary and Phyto-Sanitary (SPS) Measures. TBT were linked to product and process specifications. For example, using such restrictions an export consignment of mangoes can be returned if they are not of a certain hue or size or if the processes used for cultivation have not met certain requirements.

SPS measures on the other hand try to anticipate the danger caused to human, plant and animal health by export consignments through tests for concentrations of chemicals and pesticide residues. A ceiling is set for concentrations of residues in consignments. Consignments which exhibit concentrations exceeding this ceiling are returned to the country of origin by the importing country. These barriers have become so important that in a single year from August 2002 to July 2003, the US Food and Drug Administration rejected 630 Chinese shipments of agricultural and aquatic products. These barriers can therefore be a source of considerable loss for the exporting country.

India too has come under the hammer of such barriers and is likely to do so again and again in the future. The government has tried to tackle such barriers by promoting agricultural exporting zones in select crops. These zones try to encourage organic cultivation of cash crops, fruits and vegetables as such cultivation does not involve the use of chemical

fertilizers and pesticides and therefore minimizes the chances of rejection of exports because of SPS and TBT regulations.

It must be remembered though that organic cultivation is not only more labour intensive than conventional cultivation, but also involves unremunerative crop rotation which diminishes income of the farmer. Moreover, organic yields are often lower than conventional yields. Further, the price premium provided for organic produce in international markets often is not high enough to compensate for the various increases in cost that a switch to organic farming entails and justify such cultivation for exports. The silver lining is that niche markets for organic products are projected to grow in the immediate future and price premiums being offered for them are also likely to widen.

The implication of the above discussion is that a country cannot rush headlong into specialization in crops for export. Given the various cost increases that a switch from conventional to organic farming involves, the decision to produce organic crops has to involve a careful comparison of underlying costs and benefits. The decision to farm organically for export should be taken only if the benefits overcompensate the attendant costs. Thus, the above considerations dictate that crops can be cultivated for agricultural export only to a limited extent. In cases where the price premium being offered for organic produce in the international market does not compensate for the decrease in yields caused by a switch to organic farming or the attendant increases in costs, such a switch is not justified.

Thus, the traditional argument about focusing on areas of comparative advantage does not go through in the changed scenario as this very comparative advantage has been distorted by the mentioned non-tariff barriers. Therefore, a large-scale switch from foodgrain cultivation to export-oriented production which would then pay for resulting foodgrain deficits is no longer feasible. Indeed such a strategy could be dangerous and result in a massive net drain of foreign exchange reserves with the inflows from agricultural exports nowhere matching the outflows due to foodgrain imports.

To conclude, the need for self-reliance in foodgrains still holds in today's seemingly open but

much more strategic world. The stoicism of nationalists emerges triumphant over the cold logic of the economic rationalist. In economics, like in life, the heart should sometimes be allowed to rule over the head.

*(The Financial Express, 27 July 2008)*

## Austerity Drives Could Slow Down Indo-Japan CEPA Talks

AN unusual impediment is likely to slow down scheduled negotiations between India and Japan for a Comprehensive Economic Partnership Agreement (CEPA). It's not bilateral disagreements on the negative lists or modalities, but the Centre's recent austerity measures that could make the talks crawl.

Being a comprehensive agreement covering all aspects, like trade in goods, services, investment, rules of origin, bilateral cooperation, customs cooperation and sanitary & phytosanitary measures (SPS), technical barriers to trade (TBT), the negotiations needed a full-fledged team to ensure that India does not lose out on any aspect in talks with the sophisticated and aggressive Japanese.

Though upcoming talks are expected to go over the details and nuances in several parallel meetings, the original Indian team of 15 has been drastically pruned by the screening committee, headed by the expenditure secretary to just 7.

Of the seven members in the Indian team, the Commerce Ministry, the nodal ministry regarding bilateral trade talks, can send just two. The other five members would be from pharmaceuticals department, APEDA, DIPP, customs and the legal section of the External Affairs Ministry.

This pruning has forced officials and experts handling important topics such as intellectual property rights to stay back. The team would also, not have any support officials from the Commerce Ministry to take part in discussions on important sectors like pharmaceuticals and textiles. It would also not include officials for coordinating discussions. Besides, only one of the three officials handling market access, sanitary and phytosanitary measures, rules of origin and services would be in the team. Japan's stringent SPS (that apply to animal & plant health measures and food safety), technical

barriers to trade (TBT) and environmental norms have been hampering the exports of several products from India.

Despite the Commerce and Industry Minister, Shri Kamal Nath, stressing on the importance of sending a strong team to Japan for the last mile negotiations, the Department of Expenditure prevailed and trimmed the Indian delegation by half.

Negotiations between India and Japan had begun after Prime Minister Dr. Manmohan Singh's visit to Tokyo in 2006. The initial aim was to complete the negotiations by this year-end and help increase the bilateral trade to \$20 billion by 2010.

*(The Financial Express, 12 July 2008)*

## Ranbaxy Deal May Help India's Entry into Japan

THE Daiichi Sankyo-Ranbaxy Laboratories deal has come as a shot in the arm for India's Comprehensive Economic Cooperation Agreement (CECA) negotiations with Japan. Indian pharma companies have been unable to break into Japan, the world's second largest drug market, due to the country's stringent sanitary and phytosanitary standards, technical barriers to trade (TBT) and environmental norms.

The acquisition of Ranbaxy is a recognition of the quality of Indian drug and other pharma products by their Japanese counterparts. Before signing the CECA, we will now aggressively push the case of our pharma sector as well as that of the chemicals, bio-tech and cosmetics sectors to ensure that Japan agrees to opening up its market for these products.

Since the current Japanese standards on drugs and other pharmaceutical products are higher than the accepted international standards, it amounts to a non-tariff barrier. India will ask Japan to bring its national standards to international levels and also ensure that there is a harmonization of SPS and TBT standards of both countries.

The government is, however, seeing the Ranbaxy deal as a bigger opportunity apart from getting a foothold in the \$65 billion pharma market. In a bid to pave the way for the entry of Indian

health industry into Japan, New Delhi would also pitch for relaxing the norms for movement of doctors, nurses and other health professionals from India to Japan.

Indian industry sees Japan's drug approval procedures as stricter and time-consuming. Besides, it is also mandatory to get such products tested in Japan itself as they do not accept products tested outside that country.

India would now demand that if the US FDA (Food and Drug Administration) has given approval to a drug, Japan must also allow it without any further testing. The government is also keeping a close watch on the deal's impact on the Indian pharma market and if it would result in costlier drugs entering the country.

(*The Financial Express*, 14 June 2008)

## Exemptions in China Favour Domestic Industry

JUST one example – that of trade policy – suffices to show how very different are the BRIC economies even amongst themselves. The single aspect in which they all vary is the foreign exchange dividend that each economy reaps from its investment in a foreign trade policy (FTP). Even the more efficiently administered economies offer export sops and tax derogations, although they themselves would much rather that the developed economies did not.

Take, for instance, the cases of India and China. Both are BRIC economies, and their growth rates (ranging from 9 to 11%) are amongst the world's highest. But a closer look will show that China's most prolific exports are also the ones that have the highest amount of value-addition – while altogether too many of India's are reminiscent of the initial stages of development for industrialization.

According to the WTO norms, market access would entail developing economies opening up “substantially”, while they also bring export subsidies to heel. Also, it would have to be done *in tandem* with the phase-out of domestic support to effect “substantial” trade-barrier reductions.

Much, meanwhile, will also depend on the structure and depth of the subsidies that are on

offer. But that, alas, is just where most calculations have been going awry: observers apparently seem quite unable to distinguish between returns and outlays.

Some examples will not be amiss, and the thing to notice from the WTO's records is the contumace with which China treats economies that balk at importing from it. But there are not too many such products, nor even that many economies.

One example of the above, currently available in the WTO's internet portal, relates to the imposition, by the US, of punitive – tariff-based – “safeguards” against certain steel items (such as flat products, hot-rolled and cold-finished bars, rebars, welded tubular products, carbon and alloy fittings, stainless steel bars, wires, rods and tin-mill products plus stainless steel wire).

By so doing, however, the US has been violating the rules of GATT as well as of the Agreement on Safeguards. But China is not the sole exporter which has been thwarted. Keeping it company are the EU, Japan, South Korea, Switzerland, Norway, New Zealand and Brazil.

A second case, but one that is being fought by China alone, relates to the imposition by the US of countervailing and anti-dumping duties on Chinese exports of coated sheet-free paper.

Service exports are about the only ones in which India can claim to have stolen a march over China; but even there it looks as though the latter will forge ahead of us in the not-too-far-distant future.

Thus, the PRC Ministry of Commerce's “Foreign Market Access Report: 2007” reported that Chinese firms had been able to complete \$30 billion worth of engineering contracts in 2006 – a level that was 37.9 per cent greater than the previous year's numbers. Even better were the freshly signed engineering contracts; they amounted to \$66 billion – a rise of 123 per cent.

Even contracts that related to labour service cooperation realized \$5.37 billion – or a 12.3 per cent rise. Even the number of 351,000 Chinese workers and professionals expatriated, at 351,000, was an increase of 77,000 people. And, design and consulting services abroad notched up a turnover of \$330 million – up 45.4 per cent. Indeed, even non-financial foreign investment reached \$16.13

billion, up 31.6 per cent. In sum, the Chinese philosophy is that such rapid growth of its economy and foreign trade had attracted the jealousy and ire of some trading partners (or industry groups) – and that they were increasingly using trade and investment barriers against Beijing's exports of goods or services in self-protection. The Chinese Ministry of Commerce even has a number – 25 countries and regions – that initiated 86 anti-dumping, countervailing, safeguard and product-specific investigations against Chinese products in 2006. That represented a 37 per cent increase, its total value coming to \$2.05 billion.

The US also initiated thirteen Section 337 investigations against the Chinese products, in addition to other barriers to trade such as those based on TBT measures and the abuse of IPR protection. The impact of these barriers on China's economy and foreign trade is noteworthy. Chinese companies will have to face an increasingly challenging environment in international trade and investment.

Meanwhile, even if India does have suspicions about China's true intents, it takes good care to see that, when it comes to matters of trade, its suspicions are kept well out of sight.

Thus, since 1 September 2006, China reduced tariffs on products that figuring under more than 1,700 tariff headings, and originated in India and four other countries. That was to implement the third round of tariff concessions under the Asia-Pacific Trade Agreement.

Likewise, certain items of Chinese origin enjoy preferential tariff rates when exported to these economies. They include chemicals, wooden articles, plastic products, leather, textiles, and machinery and electronic items.

In fact, the evident difference in the nature of products that get to figure in the dumping allegations by, and against, India – the second most prolific complainant, after Brazil – is all too often thwarted in its attempts to export items like ready-made garments, crustaceans, pharma, hot-rolled, and cold-rolled coils, jute bags and rice – while alleged IPR violations by it drive its trading partners to request "consultations". But the main aspect to note, by comparing export structures, is that India still lags China rather. Its manufactured exports (not services) are still in the "first stage of

industrialization" stage, whereas China exports stuff that is much more contemporary.

And what about all the allegations that are levelled against China of hidden subsidies, renminbi undervaluation, tax derogations and duty exemptions? One practical response to that would be based on was told recently by one of the senior-most officers of the Ministry of Commerce: as long as the Doha Agreement stays in abeyance there are no rules binding India (nor, for that matter, anyone else) in the matter of such derogations. That means developing economies can keep on doing just as they please, as long as the OECD plays the game by eliminating agricultural subsidies and eschewing safeguards.

Another imponderable relates to Indian businessmen. Just how will they react to the sops that might be on offer? One possibility, of course, is that they will rise to the occasion; but, given the absence of monitoring and sanction, that is rather unlikely.

Finally, it is China's current account surplus – and the FDI that it attracts – which become the proof of the pudding. Looked at that way, China's is, far and away, the more competitive economy.

*(The Financial Express, 28 May 2008)*

## India Asks Indonesia to Remove Trade Barriers for Pharma Items

INDIA has asked Indonesia to remove non-tariff barriers on imports of pharmaceutical products as part of measures to boost two-way commerce. "Indian pharmaceutical products are exported to many countries, including highly regulated markets of the US, Europe, Japan and Australia," according to reliable sources.

The issue of removing non-tariff barriers on carbon black, wheat flour, uncoated writing, printing paper and milk products was also discussed for increasing the flow of goods between the two countries, it stated.

Trade between India and Indonesia in 2006-07 was US\$6.20 billion, a jump of 41.22 per cent over the previous year. India imported goods worth US\$4.17 billion and exported items valued at US\$2.03 billion.

*(The Hindu, 18 January 2008)*

## Trade and Climate Change

THE US and EU have jointly proposed priority action on climate change and energy related technologies as part of the Doha Round negotiations on the use of environmental goods and services. They have proposed a new environmental goods and services agreement (EGSA) at the WTO that seeks the removal of technical barriers to trade (TBT) in a specific set of climate-friendly technologies with a higher level of commitment to the green cause.

“WTO members have an unprecedented opportunity to address in a concrete and meaningful way the global environmental challenge of climate change,” said US Trade Representative Susan C Schwab, while announcing the proposal on 1 December 2007. “By eliminating tariff and non-tariff barriers to environmental goods and services, particularly clean energy technologies, we can lower their costs and increase global access to and use of these important products,” she said.

The joint proposal seeks to eliminate tariff and non-tariff barriers to environmental technologies and services through a two-tiered approach starting with an agreement on worldwide elimination of tariffs on a specific list of 43 technologies recently identified by the World Bank. The second tier suggests “a higher level of commitment on the part of developed and the most advanced developing countries to eliminate barriers to trade across a broader range of other environmental technologies and an array of environment-friendly services”.

The initiative was prompted by President George W Bush’s initiative earlier this year to seek an agreement with major economies, including India and China, on a new international climate agreement.

One of the Commerce Department’s agencies, the International Trade Administration (ITA), led a Clean-Energy Technologies Trade Mission to India and China in April 2007 to promote American clean technology goods and services that can help improve the environment.

The proposal underscores the importance of liberalizing trade in environmental goods and services in parallel by recognizing, for the first time, how the market works in this sector – how goods

are bundled with services, according to Ms. Schwab. For example, designing more energy efficient buildings requires consulting, design and construction services, as well as solar panels for heating.

Global trade in environmental goods covered by the US and EU proposal totalled about \$613 billion in 2006, and global exports of these goods have grown annually by an average of 15 per cent since 2000. WTO members currently charge duties as high as 70 per cent on certain environmental goods, impeding access to and use of these important technologies.

Ms. Schwab quotes a recent World Bank study on climate and clean energy technologies that suggests that by removing tariffs and non-tariff barriers to key technologies, trade could increase by an additional 7-14 per cent annually.

This push in the long-running Doha Round of world trade talks came as delegates from about 190 nations are participating in a meet in Bali, Indonesia, from December 3 to 14, to try to launch separate negotiations on a new pact to deal with climate change. The goal is a successor to the United Nations’ Kyoto Protocol, which binds 36 industrial nations to cut greenhouse gas emissions by 5 per cent below 1990 levels by 2008-12.

The US, of course, rejected Kyoto. But other rich nations have less than a month before they must start meeting emissions caps under the Kyoto Protocol to fight global warming. Yet, 16 of the 36 nations bound by Kyoto’s limits are over their targets set for 2008-2012, and will have to buy carbon offsets to meet these, drawing criticism at the ongoing UN meeting at Bali.

According to the Environment and Forests Ministry, India’s per capita energy consumption is below 500 kg of oil equivalent (kgoe), as against the global average of about 1,800 kgoe. Also, the country’s per capita carbon dioxide emissions are about 1 tonne per annum, compared to the world average of 4 tonne per annum.

Given those numbers, India and China can hardly be considered the most worrisome source of greenhouse gas emissions, as contended by the US and EU. The fact remains that the US produces 20 per cent of all pollutants that contribute to global

warming, and India only 4 per cent, which will further be reduced as India is taking strong measures in afforestation and other areas required for the protection of the environment.

However, the proposal of the US and EU to cut TBT *vis-a-vis* a specific set of climate-friendly technologies with a higher level of commitments on the part of the developed and advanced developing countries, is welcome.

(*The Financial Express*, 10 December 2007)

## EU, India to Make Major Offers on Duty Cut

INDIA and the European Union (EU) are expected to make big concessions on duty reduction at the eighth Annual Summit on 30 November so as to further ongoing talks on a bilateral trade and investment agreement. This was disclosed to visiting Indian journalists in an interaction with an official from the EU Trade Commission.

Both sides hope to build on the common understanding on the comprehensive elimination of duties and sustainable development. The EU, which has been concerned over the average 33 per cent tariffs on imports into India, is pushing for a complete elimination of duties on all industrial goods. As three quarters of India's imports in 2006 were intermediate goods, a lowering of tariff can only boost its exports, argue EU officials.

Procurement of contracts is another item on the agenda of the trade pact. Here again, a deal can help Indian businesses access to the EU market as India has not signed the plurilateral agreement on government procurements. Access to the market in services, improvement in the climate for investment in both directions and other issues such as trade facilitation and technical barriers to trade are some of the other controversial areas in the negotiations.

But the EU sees a new readiness on the part of the Indian side which, for the first time, has put poverty reduction, labour standards and environmental protection under the bilateral trade framework. The proposal for an ambitious bilateral trade and investment agreement was given the go-ahead at the 2006 Helsinki Summit. Talks

commenced in June after the European Council adopted a negotiating mandate on behalf of the 27-member states for the treaty in April 2007. While no strict deadline has been set for the finalization of the deal, India is believed to be keen on clinching it by 2008. The November Summit is, therefore, being viewed with a good deal of anticipation.

(*The Hindu*, 4 October 2007)

## China Reports Second Most TBT Measures

CHINA notified 63 technical barriers to trade (TBT) measures to the WTO members through the WTO secretariat in 2006 – the second highest number after the US aiming to protect public health and the environment.

Wang Nini, a senior official with China's General Administration of Quality Supervision, Inspection and Quarantine, said that many of China's TBT measures were promulgated as mandatory standards, covering fields such as electronic products, information technology, motor vehicles, chemical products, food and paper.

In 2006, China made assessment reports responding to 251 overseas TBT measures, or 26 per cent of the world's total, involving 34 WTO members including its three largest trading partners, the US Japan, and the EU. Some of the notifications urged WTO members to change the measures or delay the effective dates of new measures to reduce the negative impact on China's exports.

(<http://english.peopledaily.com>, 12 September 2007)

## India, Israel Ink Agreement to Cooperate in Trade Standards

INDIA and Israel have signed a cooperation agreement in the field of standards, technical regulations and sanitary measures.

The agreement, signed by Indian Commerce and Industry Minister Kamal Nath and visiting Israeli Deputy Prime Minister Eli Yishai, provides for cooperation in harmonization of national standards with international standards requirements, facilitation for establishing scientific and technical

collaboration and elimination of technical barriers to trade.

Both sides will cooperate on the basis of principles stated in the agreements on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures of the WTO, it said.

This was in continuation of the process started by the Israeli Prime Minister Mr. Ehud Almert's visit to India in December 2004, when it was agreed to establish a joint study group to make recommendations on mechanisms and targets for expanding trade and economic cooperation.

Several steps have since been implemented including the opening up of an Indian bank in Israel, finalization of an agreement on standardization and initiation of discussions between the two sides for a preferential trade agreement (PTA), based on the recommendations of the JSG.

*(The Economic Times, 6 December 2006)*

## New Policy on Standards Soon

A new comprehensive National Standards Policy for quality norms for goods and services is on the anvil. Efforts are on to strengthen the Bureau of Indian Standards (BIS) as the country's sole WTO enquiry point for technical barriers to trade (TBT).

As a TBT enquiry point, BIS has undertaken the responsibility of making available all TBT norms issued from time to time by different countries. BIS will also undertake the responsibility of translating the TBT norms issued in foreign languages into English.

BIS is taking up with the Commerce Ministry the issue of posting on the website the list of rejection of export consignments of other countries by India on TBT and sanitary and phytosanitary grounds.

BIS is in negotiations with standard setting bodies of different countries for mutual recognition agreements, which is likely to boost the prospects of trade.

"We have submitted the draft National Standards Policy to the Ministry of Food and Consumer Affairs, and the same is pending Cabinet approval," said BIS Director-General S.P. Sharma.

According to the draft policy, there should be a uniform national standard for each product and service. It has also prescribed the code of practice, uniform methods of tests and conformity assessments.

The International Standards Organization, of which BIS is an affiliate member, has suggested formation of separate harmonized standards for South Asian region. The technical committee of the South Asian Association for Regional Cooperation has begun this exercise. BIS too is active in this direction.

The draft policy proposed that BIS will be the apex national standards setting body and work in cooperation with other sectoral bodies. It will act as an accreditation body for other standard developing organizations in the country.

The draft policy also proposed formation of a small group to act as a watch dog to monitor changes in technology, new developments and in areas of health and environment safety. It will forewarn concerned sectors and authorities on the implications of trade and technical changes for initiating necessary corrective action.

*(The Financial Express, 20 April 2006)*

## Take A More Proactive Role on TBTs, Industry Told

THE Bureau of Indian Standards will function like an "information counter" on technical barriers to trade (TBT) Agreement and manufacturers and exporters should use the facility, says the BIS Director General S.P. Sharma. "We are only an enquiry point."

Shri Sharma said industry's response so far had not been good. "These are initial stages. Earlier people used to approach Customs and organizations of that nature... Now, for the past two years or so, only these technical barriers matter. We have to really sensitize the industry... we are doing it for them [the industry]," he said.

When the BIS raised a barrier with respect to an industry or a trade, then other countries and manufacturers asked questions on these. It was the duty of BIS to clarify on these issues. BIS, which has been designated as the WTO/TBT enquiry point

of India, has to answer all reasonable enquiries of other member countries regarding any technical regulation/standard/conformity assessment procedure adopted or proposed in India.

The TBT agreement tries to ensure improved market access to countries across the world and to ensure that non-tariff barriers in the form of regulations, standards and testing and certification procedures do not create obstacles to trade. Higher and differing technical standards often result in increasing costs to meet the differing requirements of the importing country and for fulfilling varying certification requirements at each stage to conform to these standards.

Asked if the BIS was prepared to shoulder this huge responsibility, Shri Sharma said the organization was fully prepared. There was no problem with respect to resources or manpower. "We have offices all over the country. We can manage with our own resources," he said. The crux of the problem now was that industry had to assume more proactive and take part in meetings/seminars on the issue both in India and abroad

(<http://www.thehindu.com>, 9 November 2005)

## Backdoor Attempts to Introduce Singapore Issues, Warns Study

BACKDOOR attempts to introduce abandoned Singapore issues including investment and competition are being made by developed countries via discussions on non-tariff barriers (NTBs) within the WTO framework, a recent study has warned.

A paper on NTBs and the on-going negotiations on non-agriculture market access (NAMA) brought out by Oxfam's Centre for Trade and Development pointed out that such attempts were evident in barriers identified by the US in notifications to the WTO.

The identified NTBs included foreign equity restrictions that restrict or manipulate investment in automotive production and distribution channels that are not open to imported products.

The two issues relate to investment and competition, both of which are not currently covered by WTO provisions, the paper said. The report advised India to oppose such backdoor

approaches to reintroduce the Singapore issues, within the negotiating mandate.

For identifying sectoral NTBs, the report suggested that India should focus on building alliances based on products of common interest across developing and developed countries to ensure that a critical mass is developed to move forward.

India has to engage in fair reciprocity and avoid demands for tackling NTBs for products of developing countries alone, the paper said. It suggested that one approach could be to table three sectors for vertical negotiations, of which two relate to export interest of developing countries and one sector of export interest of developed countries and then jointly address NTBs in those three sectors. This would also ensure special and differential treatment, it added.

The paper identified flexibilities in technical barriers to trade (TBT) and sanitary & phytosanitary (SPS) agreements as the single most contentious NTB for developing countries.

Focusing on standards and certification, it suggested establishing an accreditation system for certifying agencies and organizations and strengthening use of international standards, along with increased representation of developing countries in standard setting bodies. It added that there should be mandatory documentation of equivalence procedure and adoption of Codex consignment rejection guidelines.

(*The Financial Express*, 5 October 2005)

## Standards, A Major Hurdle for Market Access

THE promised access to developed country markets through the agreement on agriculture (AoA) in the WTO is still elusive for most developing countries. In fact, the emergence of standards, especially private standards, have become very potent trade barriers threatening a substantial proportion of agricultural exports.

Though the WTO agreements on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) aim to ensure that these standards and regulations are not used for protectionist

purposes and do not cause adverse impacts on trade, the same is not happening in reality. It is important that any solution at the AoA table should take these aspects into account.

The G-20 position on this particular issue has emerged in a very forceful manner and it may be expected that the same vigour would continue till the Hong Kong ministerial.

Within the SPS/TBT agreements, importing countries have considerable discretion available to impose their own rules in areas such as inspection of imported products, fixing of minimum allowable levels of pesticide residue, labelling and packaging requirements and good manufacturing practices.

The flexibility has been exploited by developed countries to impose stringent norms and standards that are acting as significant barrier for agricultural exports of developing countries. Very often flimsy grounds and very minute risk assessments are used to justify imposition of these higher standards.

For instance, adoption of a new aflatoxin standard in the European Union on the grounds that it would reduce health risk by approximately 1.4 deaths per billion a year. While there are not a billion people in the whole of EU, African exports of cereals, dried fruits and nuts to the region is expected to decline by 64 per cent as a result of these standards, resulting in losses worth \$670 million. Even though international standards such as Codex are evolved by developed countries, they do not adopt them.

The SPS agreement allows importing countries to impose SPS norms that are higher than international standards, provided there is a scientific basis. This provision is often misused. A case in point is unmanufactured tobacco where Japan insists on a DDT residue level of 0.4 particles per million (PPM) while the international standard is 6 PPM. Indian tobacco has a DDT residue level of 1-2 PPM which is well below the internationally permissible levels but is not allowed in Japan.

Another problem is the wide variation in agricultural product-related standards adopted by different importing countries. Different countries follow different norms of aflatoxins and pesticide residue increasing the compliance cost for exporting countries. Many of these standards are imposed in

a non-transparent manner and sometimes are accompanied by other requirements such as good manufacturing practice (GMPs).

Private standards are also emerging as major impeding factor. They are imposed informally by supermarket chains and other major importers on agricultural exporters. Often importers use these standards to depress prices of imports. The experience of India in the case of export of flowers to Japan is also similar.

The cost of compliance is also substantial and often beyond the competence of many enterprises, especially the smaller ones. A rough estimate for setting up a moderate lab for testing and analyzing samples of spices comes to about Rs 4 million. Furthermore, in a number of cases the technology for compliance with the standards may not be available easily in most developing countries.

There is an urgent need to respond to this challenge. AoA is one agreement which has cross linkages with several other agreements. Sometimes, the compliance of new standards is constrained by non-availability of technology due to stringent regime of IPR (patents) protection. The TRIPS agreement should provide for compulsory licensing. There is also a need to tighten the SPS/TBT agreements. Therefore, developing countries must seek a review of these agreements as not much can be done about the private standards because of consumers' sensitivities.

*(The Financial Express, 21 September 2005)*

## Alert System on Global Trade to Boost Exports

INDIAN exporters - who recorded \$80 billion trade last year - may soon have an alert system in place on global notifications under the technical barriers to trade (TBT) to shore up performance. Small exporters, who are expected to be directly hit by the lack of awareness on the TBT agreement, will be specifically focused.

TBT, under which India has only nine notifications, has emerged as the biggest threat to exporters, replacing tariff barriers as the main speed breaker to global trade, particularly by developing countries. At present, over 60 per cent of trade barriers are TBTs, which covers all products -

industrial and agricultural – but do not apply to SPS measures.

Till 2004, there have been 6,098 notifications in all. The Centre is belatedly keen not to be caught napping on this issue as it was, virtually, on SPS (sanitary and phyto-sanitary) barriers.

Specifically, feedback to the government from the Indian industry has said that the implementation of the TBT agreement suffers strongly from a lack of transparency, particularly transparency in the statement of objectives.

Two, the “arbitrariness” of the stated objectives is not tackled adequately in the agreement, harming genuine trade interests in the country. Three, the Agreement’s definition of what constitutes “urgent problem” is not clear. Four, the TBT does not address the key issue of costs incurred by exporters to protect their competitiveness.

*(The Economic Times, 31 May 2005)*

## India Should Become Aggressive: Governor Kidwai

THE Haryana Governor Dr. A.R. Kidwai has stressed on adopting a more proactive approach towards the WTO - Technical Barriers to Trade notifications in order to not only boost the Indian exports, but also to protect the genuine interests of the Indian consumers.

He was speaking in a seminar on “WTO-TBT Agreement: Role of Indian Stakeholders and Expectations from Enquiry Point” organized by the Bureau of Indian Standards (BIS).

Shri Kidwai said the role of BIS as Enquiry Point in India has become significant and BIS should make all efforts to create awareness about the TBT agreement amongst the industry, export promotion councils, R&D institutions and regulatory bodies. He also said it is high time when India takes an aggressive role rather than a defensive one.

The Governor also released a book titled, “WTO: Implications for Indian Economy” by Dr. P.K. Vasudeva, Principal, College of Communication and Management, Bhartiya Vidya Bhavan.

In his keynote address, S.P. Sharma, Director General, BIS, informed that India is a signatory to

WTO and is obliged to meet the WTO requirements. He emphasized on the need of harmonization of the standards.

<http://cities.expressindia.com>, 26 August 2005)

## BIS Steps into TBT Enquiry Point Role

THE Bureau of Indian Standards (BIS) has geared up to fulfill its mission of “Enquiry Point” in the country for WTO’s technical barriers to trade (TBT).

Knowledge of several non-tariff barriers like sanitary and phytosanitary measures (SPS) and TBT in importing countries are vital for Indian exporters. Non-tariff barriers are playing a major role in global trade and there are reports of rejections of Indian consignments by developed countries on account of various SPS measures and TBT.

The Union Health Ministry with its Directorate for Prevention of Food Adulteration and Central Committee for Food Standards (CCFS) is the nodal agency in the country for SPS measures relating to food and standards developed by Codex Alimentarius Commission. The Agriculture and Processed Food Export Development Authority (APEDA) and its designated agencies certify organic food. The Export Inspection Council of India (EIC) certifies items for export and also works out bilateral agreements with importing countries for acceptance of Indian standards on reciprocal basis.

The Union Commerce Ministry is the nodal ministry for administering the WTO agreement on TBT. The Union Commerce Ministry has designated the national standards body, BIS as WTO/TBT enquiry point in the country under Article 10 of the TBT agreement.

However, the BIS has admitted that it has been working on a “very moderate scale” due to lack of exposure and training in the activity and the inputs available with it. It has now planned a series of activities, including a seminar on “WTO-TBT Agreement: Role of Indian Stakeholders and Expectations from the Enquiry Point”.

BIS has also noted: “now, with the introduction of environmental management certification and

social accountability requirements and occupational health and safety measures being imposed, exports of developing countries are worst hit."

BIS is the member of International Standards Organization (ISO). ISO recently recognized that countries of South Asia should have harmonized standards of their own, in consonance with global standards and should plead for their acceptance by other countries.

BIS sources information from ISO Information Network (ISONET) and makes it available to Indian industry and exporters. Its EC Norm Scan keeps exporters abreast with the latest developments in Europe. Normally, a period of 60 days is allowed for submission of comments on draft standards, technical regulations and conformity assessment procedures developed in importing countries. Hence BIS can assume a vital role in this connection.

The Federation of Indian Chambers of Commerce and Industry (FICCI) is the nodal agency for implementing European retail chain standards, EUREPGAP from farm level to exports. The standards developed for fresh produce traceability under EUREPGAP certification procedure use EAN.UCC standards. BIS, being the national standards body, has an overall responsibility of harmonizing Indian standards with global standards.

*(The Financial Express, 9 May 2005)*

## Global Norms for Packaged Foods Soon

THE Union Health Ministry plans to make it mandatory for all packed food sold in the country to conform to stringent international packaging norms laid out by a commission established by the World Health Organization (WHO) and the Food and Agriculture Organization.

A top health ministry functionary said the government will adapt the Codex Alimentarius (Food Code) Commission's standards without compromising on its crux before implementing it in the country.

This will apply to all food and drinks except water, in other words, everything covered by the

Prevention of Food Adulteration Act. Once implemented, it will apply to imported eatables too.

However, the agreement on sanitary and phytosanitary measures (SPS) and the agreement on technical barriers to trade (TBT) under the WTO prevent a national government from disguising these standards as a trade barrier or to discriminate among trade partners. Besides ensuring quality, it will also facilitate fair practices in food trade.

The codex contact point in India is the Directorate General of Health Services (DGHS) and the Ministry of Food Processing is closely coordinating with the commission. The CODEX guidelines comprise more than 200 standards for individual classes of foods.

They also have norms for storage, transportation and packaging of all food items. Some of the products covered are fresh and processed poultry, meat, dried fruits, milk and sugar products and food for special dietary needs such as baby food.

The guidelines stipulate general standards related to labelling, claims, hygiene and additives for food, besides norms for contaminants and toxins for irradiated food. There are also norms for import and export of food and inspection of the consignment.

The commission has formulated a code of ethics for international trade in food as well. The food code has emerged as a global reference point in international food trade since the SPS Agreement is recognized as a benchmark for global food trade.

*(The Economic Times 17 December 2004)*

## No Action Unless Rich Nations Cut Subsidies – Ajit Singh

WHILE some rich countries and some Cairns Group members are concerned with access to markets and thus eye the Indian market, for India the entire issue is not agri-business, but agriculture and development.

"There is no way we can reduce tariffs on agricultural products unless the rich nations cut

their domestic support and subsidies as well as export subsidies," Indian Agriculture Minister Shri Ajit Singh declared at a press conference in Geneva.

Shri Singh returned to India after a four-day visit to Geneva. He met the WTO Director-General Supachai Panitchpakdi and his chef de cabinet and chairman of the Special Sessions of the Committee on Agriculture Stuart Harbinson.

The agriculture negotiations under the Doha round are taking place in the Special Sessions of the Agriculture Committee. Shri Ajit Singh also met other protagonists - the US, the EC, members of the Cairns Group and some of the African group countries - and said he had put forward India's position and stands.

His visit has come at a time when it is clear that the Doha deadline of agreeing on modalities of the agricultural negotiations by 31 March cannot and will not be met, with the European Union dragging its feet. The EU has so far failed to put its own proposals on modalities on the table.

The very modest proposals of the European Commission - which would not have involved any real cuts in domestic support or export subsidies, but would have merely shifted the method of support to farmers, and called them support decoupled from production and thus purportedly less trade distorting - have been virtually vetoed by France and a few others.

There is some talk of the Commission persuading members to agree to tabling some proposals before the end of summer.

But this will give no time for negotiating and agreeing on modalities, and for various country-members to table their offers or draft schedules by the September Cancun ministerial meeting of the WTO.

Shri Singh noted that there was now agreement that the March 31 deadline for drawing up modalities cannot be met since the EU has not given its proposals. However, he did not seem unduly perturbed and said India was concerned not over the deadline but over the substance.

Over and above the various support measures, the rich nations deploy a range of instruments

keeping out imports from the developing countries like India - through sanitary and phytosanitary (SPS) measures as well as technical barriers to trade (TBT) - though remedies on these two may need bilateral agreements also.

The Indian Minister called for restrictions on support through the so-called "green box" and complained that in terms of Annex 2 (domestic support) to the Agreement on Agriculture - para 5 (direct support), para 6 (decoupled income support) and para 7 (government financial participation in income insurance and income safety-net programmes), support to the farm sector had actually increased. Merely shifting support from one box to another did not solve the problem of market access.

Unless these distortions are first removed, countries like India cannot agree to cut tariffs, Shri Ajit Singh made clear in response to questions from journalists.

All these have to be tackled to create a level playing field. With 650 million dependent on agriculture, with an average farm holding of 1-1/2 hectares, and 80 per cent of farms below 2 hectares, and with tariffs as the only tool of protection against unfair competition from the rich nations with their domestic and export subsidies, it is just not feasible for India to agree to cut tariffs. It might result in social disorders in the rural sectors, Shri Ajit Singh said at his press conference.

The timing of the Minister's visit and talks in Geneva are somewhat still puzzling. During the Uruguay Round, the Agriculture Ministry was out of the loop. And so were the States, even though agriculture falls in both Central and State domains. The Commerce Ministry handled those talks so close to its chest that in 1993, when the Agriculture Ministry officials came to Geneva to help in preparing the Indian schedules, including on quantifying the various supports (for Aggregate Measure of Support), some of the officials had frankly admitted that they had not been aware until then of the full implications of the agreement.

*(Contd. on page 27)*



## BOOKS/ARTICLES NOTES

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### BOOKS

#### **Beyond the Transition Phase of WTO – An Indian Perspective on Emerging Issues**

by Dipankar Sengupta, Debashis Chakraborty and Pritam Banerjee (eds.), Academic Foundation in association with Centre de Sciences Humaines, 2006, New Delhi, pp. 683.

THIS book is devoted to those issues affecting international trade and domestic development whose international regulatory framework has not yet come up for discussion or whose final contours have not yet been decided upon so far. The various studies of lawyers and economists that go into this edited volume discuss issues ranging from the international trade in services including telecommunications, transport, education and e-commerce to questions of compatibility between obligations towards environmental protection and social concerns codified in international treaties and protocols and an international trade regime that promotes free trade. The book with the strong Indian perspective is divided into six sections and deals with different aspects of India's concerns *vis-a-vis* the WTO. The book also deals with the intensifying explanation of India's participation in WTO negotiations including the outcome of the dispute settlement cases, intellectual property rights, high customs tariffs, and the trade and investment framework in the automotive sector.

Initial section of the book discusses the issues related to the agriculture like SPS-TBT (sanitary & phyto-sanitary measures and technical barriers to trade) used as protectionist measures and the issue of agricultural subsidies. The book in one of the articles discusses the problems of this important sector, which includes the potential threats originating from higher standards and subsidies in developed countries, and the debates

over farmers' right to the seed to be used for sowing. In one of the articles in this section, Debashis Chakraborty and Yashika Singh welcome the formation of the G-20 and G-33 and advocate that developing countries continue on the track of collective proactive bargaining and negotiate jointly. The book also points out four main areas which need to be incorporated for the future negotiations like stepping up negotiating strength through alliance, pushing for developing of subsidy, eliminating blue and amber box measures within a specified timeframe and special and differential treatment for developing countries.

Next section titled "Indian Industry: The Impact of WTO Within and Without" mainly covers the issues related to industry. This section mentions that the WTO does not merely affect a country's ability to export; but for the countries like India, the trade related aspects of intellectual property rights also constrain the domestic industry. The section also points out sectors in the textile industry, where issues like inflexible laws; SSI reservation of garments, biases against synthetics and transaction costs of business, etc. which prevents India from taking full advantage of the multi fibre arrangement phase out. In one of the articles the author points out that despite of TRIPS rules and regulations, the Indian pharmaceutical industries are taking its advantage. This section also discusses the anti-dumping agreement in general and India's future negotiating policy in particular.

Third section of the book discusses developing countries view on the issues of barriers to trade in the changing nature of NTBs (non-tariff barriers), replacement of non-discriminatory trading policies by discriminatory arrangements, and the social clauses, core ILO labour standards, where they see it as a hidden agenda of the developed world for trade

protectionism and for denial of market access for their goods in the Western markets. This section also discusses about the environmental standards in the backdrop of the growing importance of standards in the global trading system.

The articles in the fourth section provide views on the issues of the services and e-commerce. In one of the articles, Pritam Banerjee strongly argues in favour of initiating bilateral general agreement on trade in services (GATS) initiatives with G-3 (the US, the EU, Japan). This section looks at the treatment of infrastructure services at the WTO and GATS, focussing on the transport and telecom sectors. This section also reiterates for negotiating market access for services for Indian experts. Competitiveness of India's higher education, and the market access for professionals in business services are the other issues of the discussion in this section. Section five concentrates on future concerns of growing incidence of regional trade agreements for India. Anirudh Shingal and Julien Chaisse maintain that there is hardly any substantial impact on the country's trading opportunities. The authors express faith in the multilateral trade liberalization for trade expansion, instead of overlapping RTAs, which have been proliferating at an alarming rate. There are various dimensions of international negotiations, which concern biotechnology from the perspective of a developing country.

The final section concludes with a discussion on the Singapore issues like trade facilitation, government procurement and competition policy. The volume not only discusses the importance of these issues to India as well as the current "state of play" but suggests the appropriate positions for India to take on all these issues at the WTO negotiations and other fora if a global agreement on an issue is not probable. Articles in final section also view that the Government of India has no policy regulating government procurement, although there are numerous rules and procedures made by central, sub-central and regional authorities and perception of the challenges posed by cross-border issues and attempt to identify the relevant competition problems.

## ARTICLES

**WTO and Technical Barriers to Trade (TBT): Creating Barriers Against Furthering Market Access** by Biswajit Dhar and Murali Kallummal, *Focus WTO*, Vol. VI, No. 2, July-August 2004.

THIS article is divided into three sections and the first section of the article traces the process of the liberalization of trade in goods by stating that substantial part of trade liberalization in developed countries was achieved under the general agreement on tariffs and trade (GATT) while majority of the developing countries have committed for lowering the tariffs as the part of the Uruguay Round commitments. Before reaching to the Uruguay Round commitments, the trade liberalization process witnessed the commitment for reduction in non-tariff barriers and freer trade for developed economies during the Kennedy Round (1964-67) and a plurilateral agreement on technical barriers to trade (TBT) known as the "standards code" during Tokyo Round (1973-79). The article describes the advantages and other issues related to the standard code and mentions that it encourages the signatories to use internationally agreed standards. The Uruguay Round, which introduced technical barriers to trade, gave the mandate that all GATT Contracting Parties would fully participate in the process of TBT. The Uruguay Round thus gave a political push to negotiations and a forum in which major changes to the Code were considered and also provided opportunities to the non-signatory developing countries for much wider discussions.

Section two of the article outlines the scope of the agreement on technical barriers to trade, where it states that TBT agreement seeks to ensure that technical negotiations and standards as well as testing and certification on procedures, do not create unnecessary obstacle to trade and recognizes the countries right to establish appropriate levels of protection. The agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies and similar principles can be adopted by local government and non-governmental bodies in applying their own regulations. It also points out that unfair advantage to any domestically produced

goods is discouraged while practices of recognizing each other's testing procedures in different countries are encouraged.

Second part of the section two explains the trends in the growth of TBT barriers and their impact, where it mentions the importance of the TBT by saying that increasing presence of TBT have become the guideposts for trade in the complex regime of multilateral trading system. The section also provides detail of the increasing TBT notifications during 1995-2003 made by different developed and developing countries. The article particularly mentions the share of developing countries, in total TBT notifications, which has increased from 29 in 1995 to 75 per cent by 2003, while developed countries share in total TBT notifications has declined from 71 in 1995 to 21 per cent in 2003. The article provides the statistics of the different developing countries in terms of number of TBT notifications and tells that India did not have significant number of notifications. It views that TBTs in the form of measures which include new domestic laws, prevention of deceptive practices, labelling and packaging requirements, quality and standards, regional harmonization, environment protection, and protection of plant, animal and human health, may emerge as serious trade barriers. As technical regulations under TBTs are being applied across almost all sectors, which come under the WTO negotiations on market access, therefore its impact would seriously enforce the overall liberalization initiatives.

The third and final section of the article states about the market access and other impacts where it says that the increasing TBT coverage of traded commodities and its linkages with tariff, technology and production process would pose serious challenges to overall market access conditions. Developing countries having low levels of technological competence in their goods and services sectors would find that their inability to meet the challenging standards that are being put in place by the developed and the relatively more advanced developing countries could prove to be formidable barrier to their market access prospects. The article finally says that the growth of TBTs emphasizes for the lesser players in the global economy to focus on the

mechanisms through which they can advance their technological muscles, which is significant factor that could contribute towards improving the quality of their goods and services.

**Discriminatory Rules Hurt Trade: Need to Develop Systems to Tackle Non-Tariff Barriers** by Dr. Jayanta Roy, *Financial Express*, 29 April 2004.

THE article at the outset describes the importance of the standards and regulations, and states that its application mitigates health and environmental risks, prevents deceptive practices, and reduces transaction costs in business by providing common reference points for notions of quality, safety, authenticity, good practice and sustainability. Standards and technical regulations not only impede international trade by laying out unjustified different requirements in different markets but makes agriculture and agro-industries, especially processed food vulnerable to these non-tariff barriers (NTBs) as health and environmental standards are growing rapidly in developed country markets.

The developed countries are front runner in taking the advantage of such standards and technical regulations, while almost all developing countries are subjected to such developed country-inspired non-tariff barriers including the worse affected African countries. The article states that implementation of EU's new aflatoxin standards could reduce African exports of cereals, dried fruits and nuts by more than 60 per cent or \$670 million and the large volume of Indian exports, which are far beyond international standards, are affected by EU norms. It says that WTO rule aims that technical regulations, voluntary standards, and testing and certification of products do not create unnecessary barriers to trade.

As per the WTO agreements, agreement on technical barriers to trade (TBT) and the agreement on sanitary and phytosanitary measures (SPS), which deal with product standards not only reduces transaction costs but also challenges discriminatory measures.

The article acknowledges the requirement of the internationally-accepted standard for both

exports and domestic sales and suggests for global threshold for standards rather than the standards dictated by a few countries to protect their industry.

Finally, the article suggests that India should make a lot of internal adjustments by integration and coordination among the bodies like Bureau of Indian Standards, NABL, CCFS, STQC, and NQC in order to have national notification of standards. It also proposes that standard-related NTBs should feature as an important agenda item during the bilateral talks with developed countries, especially with the EU and Japan.

**Government Asks EU to Lift ‘Paranoid’ Health-Related Trade Barriers** by Arun S., *The Financial Express*, 10 May 2008.

IN the beginning, the article states that two significant suggestions by India to the EU may help negotiators to move ahead with the proposed India-European Union free-trade agreement (FTA). The article elaborates that main hurdle was the EU's reluctance to make safety and health measures of farm products more amenable to Indian exports and avoiding discussions on a mutual recognition pact on laboratory testing standards. It views that lifting of the EU's rapid alert system for food and feed (RASFF) and RAPEX for non-food consumer products could potentially harm exports from India, as rapid alert system restricts the marketing and, use of such products that pose danger to consumers safety and health.

While mentioning about the troubles created by the rapid alerts in European countries the article states that one rapid alert in any European country may add to the delays and costs to Indian export in the EU, as the consumers are reluctant to purchase any item put on such a rapid alert. The article also includes the views of experts and trade analysts and states that measures such as SPS and TBT, which are seen as non-transparent and protectionist measures, are used by European countries to protect their domestic markets. One of the experts put the developing countries difficulties to match the stringent food standards set by the EU and the reluctance to recognize the developing countries standards by developed countries, which is a clear violation of the WTO's SPS agreement clause for mutual recognition of standards. The article

discusses the another view by Dr. Biswajit Dhar, who states that initiatives taken by India will bring more transparency in EU's SPS and TBT measures and a quick redressal of all disputes arising due to these measures.

Finally, the article says that the discussions between India and the EU on FTA are not gaining momentum due to difficulties in obtaining a consensus among the different countries within the EU but as a important trading partner of the EU India offers to include 90 per cent of the items it trades with the EU in the agreement, while it wants the EU to bring 95 per cent of their tradable items within the pact's purview.

**Trade and Climate Change** by P.K. Vasudeva, *The Financial Express*, 9 December 2007.

THE article at its outset states about the US and EU joint proposal on climate change and energy related technologies known as environmental goods and services agreement (EGSA), which seeks to remove technical barriers to trade (TBT) in climate-friendly technologies with a higher level of commitment to the green cause. It includes the views of the US trade representative, who mentions that elimination of tariffs and non-tariff barriers to environmental goods and services, particularly clean energy technologies, can lower their costs and increase global access and use of these important products.

The article points out that the specific list of 43 technologies identified by the World Bank would be subjected to the worldwide elimination of tariffs and non-tariff barriers to environmental technologies and services through a two-tiered approach. It also mentions that on second tier higher level of commitments are required by the developed and the most advanced developing countries to eliminate barriers to trade across a broader range of environmental technologies and services. The article outlines that such proposals emphasize the importance of liberalizing trade in environmental goods and services like designing more energy efficient buildings requires consulting, design and construction services, as well as solar panels for heating.

The joint proposal by the US and EU to the global trade in environmental goods has

contributed about \$613 billion in 2006, and global exports is growing annually by 15 per cent since 2000 and removing tariffs and non-tariff barriers to key technologies, trade could increase by an additional 7-14 per cent annually. While talking about the Kyoto Protocol the article mentions the industrial nation's commitments to cut greenhouse gas emissions by 5 per cent below 1990 levels by 2008-12 in order to fight global warming. The article also compares India's per capita energy consumption, per capita carbon dioxide emissions and greenhouse gas emissions with the global standards and states that India is far behind the global standards in all the things mentioned.

Finally, the article welcomes the proposal of the US and EU to cut TBT *vis-a-vis* a specific set of climate-friendly technologies with a higher level of commitments on the part of the developed and advanced developing countries.

**Economics of Technical Barriers to Trade in Processed Food Products** by Satish Chand, [http://www.ris.org.in/ifsr\\_satishchand\\_paper.pdf](http://www.ris.org.in/ifsr_satishchand_paper.pdf)

THIS paper is divided into six sections. The introductory section of the paper describes about the advantages and disadvantages of the SPS and TBT agreements in detail. The paper investigates the economic effects of TBTs, drawing on the theory of protection and the literature on industrial organization, with a particular focus on the processed food exports from developing countries into industrial country markets. The paper states that food exports from developing countries are at a significant risk of being affected by abuse of TBTs, while they could benefit greatly from the use of regulations and standards in the spirit of the WTO-sponsored agreements. The three primary claims related to TBTs made here are as follows: (1) the trade-impeding effects of TBTs on processed food exports diminishes welfare by reducing the range of products made available to home consumers and that this effect is missed by industry level analysis; (2) TBT disputes will remain a feature in international trade given room for their use *vis-a-vis* abuse; and (3) such disputes may be minimized but cannot be eliminated given the impossibility of reaching an agreement on internationally binding standards.

The paper also explains different aspects related to TBTs and states that technical barriers to trade are likely to increase in prominence for three principal reasons. *First*, TBTs provide a convenient camouflage for protection of domestic industry, particularly in a climate where traditional barriers to trade are being dismantled. *Second*, use of TBTs by incumbents to raise the costs of rivals, with the implicit threat of the same treatment for potential entrants, is a superior strategy for protecting market share to strategies such as predatory pricing. *Third*, the technology required for compliance with TBTs, including conformity assessment, is capital-intensive, placing developing countries at a disadvantage to industrialized nations. The paper mentions that the above aspects of the TBTs are problematic for exports of processed food since establishing the scientific basis for a particular TBT is most difficult for such products; and the perishable nature of food means that delays in clearance at the ports can be very expensive for the exporter.

Section II of the paper considers the meaning, rationale, and abuse of TBTs within the context of trade in processed food, where it states that the welfare effects of a TBT in the processed food sector very much depends on the use *vis-a-vis* abuse of the TBTs under the SPS and TBT Agreements of the WTO and the specific market structure. In the monopolistically-competitive case for the horizontally-integrated processed food sector (this being the most realistic case), abuse of TBTs lowers welfare via its variety-reducing effect, an effect that is completely missed by industry-level analysis. In the vertically integrated case under perfect competition where trade is driven by differences in endowments and taste/income, a trade-impeding TBT reduces welfare by curtailing the quality-range available to the consumers. While in the third case the home firm dominates the market in the presence of a competitive fringe from abroad, a trade-displacing TBT shifts market share to the home firm, granting increased profits from the induced exit of foreign firms.

Section III provides the analytical basis for considering the economic effects of TBTs, with a particular focus on the processed food sector. The section describes that the impact of the TBT on welfare depends greatly on whether it is used in

the spirit of the TBT and SPS agreements or used as a disguised barrier to trade: in the case of the former, welfare rises while in the latter, welfare falls. Section IV of the paper draws on the Australian food safety standards. While discussing about the Australian quarantine and export services (AQES), the section explains that in order to ensure the consumer protection as well as the responsible use of farm agricultural and veterinary chemicals the AQES rationalize strict agricultural and veterinary chemical registration procedures. Such registration procedures require that a chemical must be subjected to a rigorous scientific evaluation of its toxicology, chemistry and residue characteristics, as well as an assessment of its environmental impact, "and assessed against a range of other criteria" before use.

Section V provides some of the policy implications from the analysis. The paper also presents three results regarding the impacts of technical barriers to trade (TBTs), relative to tariffs, on economic efficiency and consumer welfare. *First*, if used appropriately - as per the SPS and TBT agreements of the WTO - TBTs are superior to tariffs on both counts while their abuse is detrimental to economic efficiency and welfare. *Second*, industry level estimates of changes in welfare from imposition of TBTs on processed food exports are biased downwards since they ignore the changes in variety resulting from such impositions. *Third*, TBTs may facilitate anti-competitive practices both within as well as across national borders.

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(Contd. from page 21)

## No Action Unless Rich Nations Cut Subsidies...

Now, there is probably a swing to the other end in India. Even now, overall it is not clear how far other parts of the government in New Delhi are really involved, and how far the public and Parliament are aware of what is being negotiated.

This time, it is even more complicated than in the Uruguay Round, since now all those issues as well as many others are being sought to be brought under the rubric of trade negotiations, going far beyond goods crossing borders, and involving so many complicated issues, ranging from harmonization of standards to production, employment, treatment of capital and labour and indirectly of even levels of taxation and other economic activities.

While some rich countries and some Cairns Group members are concerned with access to markets and thus eye the Indian market, for India the entire issue is not agri-business, but agriculture and development. If there is a surge in imports, it will affect a number of people, Shri Ajit Singh said.

Market access for Indian exports did not merely involve lowering of tariffs by trading partners in the industrialized world but cuts in domestic support and export subsidies. Shifting support from one kind

to another, or calling it de-coupled does not change things very much.

Shri Singh's visit at this time (when there are no ministers from other countries, though he could only interact with officials and trade diplomats) was described by him as aimed at getting an idea of other delegations with different interests and approaches.

On genetically modified organisms and their use in agriculture, he said the Government had allowed GM cotton. On other products, there was testing still being done. Shipments of US food, including soy, with GM admixtures had been refused. India would undertake extensive tests to ensure that not only the issues of effects on the environment but also on humans and animals were looked at.

Many agricultural commodities in India are consumed both by animals and humans, for example mustard. Biotechnology was a frontier science and India was engaged in it, nevertheless they had to carry out extensive testing on safety and other issues, Shri Ajit Singh said.

(The Hindu, 27 January 2003)



## DOCUMENTS

### Committee on Technical Barriers to Trade

## Submissions by Delegations on Elements Related to the Work Programme of the First Triennial Review of the Agreement\*

Stock-taking paper by the Secretariat

### A. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT BY MEMBERS UNDER ARTICLE 15.2

No submission has been made under this item.

### B. OPERATION AND IMPLEMENTATION OF NOTIFICATION PROCEDURES UNDER ARTICLES 2, 3, 5 AND 7

#### I. INFORMATION EXCHANGE IN RELATION TO THE OPERATION AND IMPLEMENTATION OF NOTIFICATION PROCEDURES UNDER ARTICLES 2, 3, 5 AND 7 (G/TBT/W/84) - Contribution from Thailand

1. This document provides "Thailand's experience with regard to the operation and implementation of notification procedures under Articles 2 and 5. The Thai Industrial Standards Institute (TISI), ... has been designated as the central government authority responsible for the implementations at national level of the provisions concerning

notification procedures under this Agreement. In compliance with these provisions, government departments and regulatory authorities responsible for the implementation and administration of technical regulations, standards and conformity assessment procedures have been informed of their obligations under the TBT Agreement. In addition, a National Committee comprising representatives from relevant organizations has been established for the purpose of ensuring implementation and administration of the Agreement."

#### 2. Specific Difficulties and Problems Concerning Notification Procedures

"(i) Ambiguities in the text of the TBT Agreement: The text of the Agreement contains certain ambiguities that need further clarification, e.g. Article 2.9 provides that: "Whenever a relevant international standard does not exist on the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall: 2.9.1 publish a notice ... 2.9.2 notify other members ..." therefore, in those cases where the technical content of a proposed technical regulation is in accordance with relevant international standards but could, in one way or another, affect trade of other Members, it is unclear whether the proposed technical regulation should be notified. And if not, the

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\* At its informal meeting on 22 January 1999, the Committee requested the Secretariat to prepare a stock-taking paper of the submissions by delegations (Annex 1) on elements related to the Work Programme of the First Triennial Review of the Agreement (G/TBT/5) to facilitate discussions in the Committee. The present paper aims at highlighting the key points of those submissions without any intention to summarize nor interpret Members positions on the issues.

transparency objective of the TBT Agreement may not be fulfilled.

(ii) Timing of notification: The regulatory bodies have the task of informing the notification authority as soon as the text of a proposed or amended technical regulation is finalized. However, it often occurs that by the time the technical regulation has been notified to the WTO Secretariat, it has already been adopted or entered into force. When comments are submitted, they are nevertheless taken into account and if justifiable, amendments can be introduced to those particular regulations. Thailand is well aware of this obstacle and various measures are presently being considered to minimize this problem.

(iii) Inconsistency of working period of agencies relevant to the notification procedures: As the 60-day comment period is counted from the day the notification authority announces the draft regulation to the public, the real time-span for comments after circulation under the WTO is often considerably shorter than the actual 60 days.

(iv) Documentation: Difficulties often arise from the fact that documentation regarding notified technical regulations, standards and conformity assessment procedures is not always available in one of the standard WTO working languages, causing further problems of translation.

(v) Delivery of documentation within the comment period: Relevant documentation is sometimes delivered beyond the deadline of the comment period and although requests for an extension of comment period are sometimes submitted to the notifying Member Countries, such postponement cannot be allowed due to legislative constraints.

### 3. Proposals or Suggestions Concerning Notifications

(i) Description of the content of notified technical regulations and conformity assessment procedures should represent an outline of the contents, allowing consideration by other Members in the absence of documentation.

(ii) Cooperation and coordination between national enquiry points needs to be strengthened.

(iii) Seminars on the operation and implementation of the TBT Agreement should be held regularly."

## II. INDIA'S EXPERIENCE ON TBT NOTIFICATION SYSTEM AND PROCEDURES FOR INFORMATION EXCHANGE (G/TBT/W/93) - Contribution from India

1. " ... the Ministry of Commerce, Government of India has appointed the Bureau of Indian Standards (BIS), the national standards body of India as the National Enquiry Point. Information on Standards, Technical Regulations and Certification Systems formulated and operated in India are notified by the BIS to the WTO for circulation to other Members. Ministry of Commerce, Government of India and BIS together are making joint efforts to evolve/develop a National System of Notification of technical regulations, standards and conformity assessment procedures. A beginning has been made by apprising Central Government, State Government, Statutory Bodies and Standardizing Bodies of the obligations under the TBT Agreement and also the importance of the acceptance of the Code of Good Practice and other notification obligations. A National Level meeting of these bodies is being planned shortly. It is hoped that a suitable National Notification System will be evolved in the near future."

### 2. Problems and Proposals

"(i) BIS has been implementing Article 2.9.2 of the Agreement regarding notifications but there is a need to take some remedial measures to implement the notification procedures so that comments are received in time by the notifying Members. Extension of time-period for comments may be considered from 60 days to 90 days, as the notifications take time to reach the concerned agencies who have to give comments.

(ii) Delayed response from Enquiry points of other Members greatly hampers a country's efforts to provide timely and quick information on standards, technical regulations and conformity assessment procedures of other Members to its industry, organizations and exporters. This has an obvious adverse effect on trade among different Member countries."

### 3. Conclusion

BIS would like to seek clarification on the following issues: Does the National notification system of developed countries include all organizations in the

country engaged in enforcement of technical regulations and conformity assessment procedures?

**C. ACCEPTANCE, IMPLEMENTATION AND OPERATION OF THE CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS BY STANDARDIZING BODIES**

**I. ENVIRONMENTAL LABELS AND MARKET ACCESS: CASE STUDY ON THE COLOMBIAN FLOWER-GROWING INDUSTRY (G/TBT/W/60) - Contribution from Colombia**

1. "For Colombia, it is of capital importance for the Code of Good Practice for the Preparation, Adoption and Application of Standards of the Agreement on Technical Barriers to Trade to be applied to voluntary eco-labels. This Code is open for acceptance by governmental and non-governmental bodies and is an important instrument for monitoring the adoption of labelling standards applicable to a product.

2. It is clear that if a private, recognized institution approves a document containing rules, guidelines or specifications on products or the related production processes and methods, intended for generalized and repeated albeit optional use, it is subject to the provisions of the Code.

3. Thus, by observing the principles of the Code of Good Practice, private organizations would ensure that products originating in the territory of any WTO Member receive treatment no less favourable than that accorded to similar products of national origin or originating in any other country. In that way they would effectively prevent the elaboration, adoption or application of standards having the objective or effect of creating unnecessary barriers to international trade.

4. In the light of the foregoing, Colombia reiterates the importance of applying Article 4 of the TBT Agreement which states that Members shall take such reasonable measures as may be available to them to ensure that non-governmental standardizing bodies within their territories accept and comply with the Code of Good Practice.

5. Finally, another aspect of interest to Colombia is for the WTO to study and develop the areas of mutual recognition and equivalence with respect to eco-labelling, for the application of these concepts could solve some of the problems raised in this document with regard to such schemes."

**II. NATIONAL EXPERIENCES WITH TECHNICAL REGULATIONS (G/TBT/W/71) - Canadian contribution**

This paper provides some examples of technical regulations where it has referenced, or considered as equivalent, the technical regulations of other Members. It should be viewed as a contribution to future Committee discussions on equivalency, pursuant to paragraph 14, of the Triennial Review (G/TBT/5). This contribution is designed to encourage further contributions by other Members.

**III. TBT AGREEMENT CODE OF GOOD PRACTICE, PARAGRAPH J: PUBLICATION OF THE WORK PROGRAMMES OF STANDARDIZING BODIES (G/TBT/W/74) - Note from the European Community**

The TBT Triennial Review Report states that the TBT Committee will examine problems encountered by Members in publishing work programmes on a six monthly basis (paragraph 12 (c) in G/TBT/5). The EC suggests "that the TBT Committee recognize other ways of achieving the transparency aims of paragraph J of the Code of Good Practice. This could be done, without publishing a formal work programme, through an internet web-site where up to-date comprehensive information is freely available in a user-friendly structure or through the establishment of an information center."

**IV. TBT AGREEMENT CODE OF GOOD PRACTICE, PARAGRAPH J: PUBLICATION OF THE WORK PROGRAMMES OF STANDARDIZING BODIES (G/TBT/W/74/Add.1) - Note from the European Community**

1. The EC proposal on Paragraph J of the Code of Good Practice (G/TBT/W/74) gave rise to questions from several delegations regarding its practical implementation. This note aims at clarifying the EC proposal.

2. "The EC proposal does not aim at withdrawing the current paper based publication system which obviously could continue to be used. The communication of the work programmes of the standardizing bodies via Internet would simply be **another** possibility to fulfil the paragraph J obligations by adapting to new technology. In other words, standardizing bodies would be offered the choice of publishing their work programmes either on paper or on an Internet web site.

3. With regard to the question of language to be used, the EC is of the opinion that the rules (already foreseen in Paragraph J) should be the same whatever the medium, paper or electronic."

**V. INFORMATION EXCHANGE IN RELATION TO THE ACCEPTANCE, IMPLEMENTATION AND OPERATION OF THE CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS BY STANDARDIZING BODIES (G/TBT/W/82) - Contribution from Thailand**

1. This document is being submitted to the Committee on Technical Barriers to Trade in light of paragraph 12 of the First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade (G/TBT/5) with a view to sharing the experiences of Thailand with other Members regarding the implementation of the provisions of the Code of Good Practice (Annex 3) of the Agreement.

2. "In Thailand, standards development activity is carried out by the Thai Industrial Standards Institute (TISI), ... In considering the potentiality of TISI to comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards which is an obligation under Article 4 of the TBT Agreement, TISI came to realize that the disciplines of the Code, e.g. harmonization of international standards, transparency, avoidance of unnecessary obstacles to trade and non discrimination would be beneficial to Thailand as well as to other developing countries in the sense that they can contribute an efficient and effective standards preparation process as well as facilitate the conduct of international trade ...

3. Thailand is of the opinion that alignment of TISI's working procedures with the ISO/IEC system helps ease the implementation of the provisions of the Code. Certain ISO Manuals and ISO/IEC Guides, for example: ISO Development Manual on Development on Establishment and Management of a National Standards Body; ISO/IEC Guide 21:1981 - Adoption of International Standards in National Standards; ISO/IEC Guide 26:1981 - Justification of Proposals for the Establishment of Standards; etc. have been used as guidelines in standards development process bearing in mind the principles of consensus, non-discrimination and transparency."

**4. Specific Difficulties and Problems Concerning the Implementation and Operation of the Code of Good Practice Regarding Harmonization of International Standards**

"(i) Thailand is of the opinion that in certain cases, the process for development of international standards is dominated by developed countries, while input from developing countries, such as proposals for establishing particular standards of interest, or comments for draft standards, or voting process are not properly taken into account. As a result, it always happens that published international standards are ineffective or inappropriate to be adopted by developing countries.

(ii) Paragraph J of the Code provides that the work programme shall be published at least once every six months. This is considered to be quite a burden, especially to developing countries."

**5. Proposals or Suggestions Concerning Implementation and Operation of the Code of Good Practice**

"(i) For those standardizing bodies that are still not able to accept and comply with the Code, it may be worth considering and following the experience of Thailand regarding the alignment of their working procedures with the ISO/IEC system.

(ii) WTO Members, especially developed ones, should be encouraged to afford sympathetic consideration to developing country Members in the preparation of international standards, so that

the standards would also be effective and appropriate for developing countries.

(iii) As the Code is aimed to provide transparency within the territory of WTO Members, the comment period for a draft standard may not be as long as 60 days, as it retards the normal standards preparation process. The Committee may consider the period of 30 days as an alternative.

(iv) Regarding publication of the work programme, limitation should not be made to hard copies. Members should also have an option of making available their standards work programme via the Internet."

#### **VI. INFORMATION EXCHANGE ON THE IMPLEMENTATION OF ARTICLE 2.7 RELATING TO EQUIVALENCY OF TECHNICAL REGULATION (G/TBT/W/83) - Contribution from Thailand**

"Thailand notes that the concept of equivalency is emphasized throughout the TBT Agreement, e.g. Article 2.7 ... and would like to point out the acceptance as equivalent of technical regulations of other members is provided in the Industrial Product Standards Act of Thailand. However, in practice, consideration of technical essence is required prior to conclusion as "equivalent". In some cases, this must be submitted to technical groups, and would take some time. In other cases, establishment of equivalency is proven difficult. Therefore, equivalency would be best resolved with the adoption of international standards."

#### **VII. INDIA'S EXPERIENCE ON TBT NOTIFICATION SYSTEM AND PROCEDURES FOR INFORMATION EXCHANGE (G/TBT/W/93) - Contribution from India**

1. Bureau of Indian Standards (BIS), the national standards body of India, has accepted the Code of Good Practice under the TBT Agreement. "In accordance with paragraph J of the Code of Good Practice, BIS is publishing the work programme on an annual basis in English language. The Code however, calls for publishing of work programme on a six monthly basis, which is difficult to implement in a developing country like India due to resource constraints.

2. The use of the Internet, it is felt, contains the potential to greatly facilitate Members to disseminate such information in a timely manner, and update it on a regular basis. The BIS has noted the suggestion by European Union that transparency of paragraph J of the Code of Good Practice under the TBT Agreement can be achieved in a more practical way through an Internet website where up-to-date, comprehensive information could be made available in a user-friendly manner, and that it should be recognized as an alternative to the published work programme. However, BIS feels that though the above is a good suggestion, in the current scenario some of the developing countries and least developed countries will not be able to benefit from it because of the lack of internet facilities and infrastructure. Thus, it is felt that though the Internet can be recognized as one of the measures to disseminate information on the work programme, it should be ensured that all Members will also publish and disseminate hard copies of the work programme as well."

#### **3. Conclusion**

BIS would like to seek clarification on the following issues: Have all the standards formulating bodies of developed countries accepted the Code of Good Practice and are they meeting the notification obligations?

#### **VIII. EQUIVALENCY OF STANDARDS: AN INTERIM MEASURE TO FACILITATE TRADE IN THE ABSENCE OF RELEVANT INTERNATIONAL STANDARDS (G/TBT/W/88) - Note from New Zealand**

1. "In the course of the First Triennial Review of the Operation and Implementation of the Agreement conducted in 1997, some Members submitted that the WTO TBT Code of Good Practice for Standards should also contain a similar provision to that of Article 2.7 of the TBT Agreement. It was noted that while the TBT Agreement differentiates quite rightly between technical regulations (mandatory in their nature) and standards (voluntary in their nature), that in practice standards could create unnecessary obstacles to trade... The TBT Committee recognized that divergent national standards serving similar objectives existed in

different Member economies. In particular, this occurred where international standards did not exist in a particular area." This paper is contributed as part of the follow up process to the Triennial Review. It seeks to prompt an exchange of views on these matters, and makes suggestions for ways in which individual and cooperative actions could facilitate removal of technical barriers to trade through the recognition of equivalency of national voluntary standards. It provides the reasons why international standards do not exist; New Zealand experiences in the implementation of Article 2.7 of the TBT Agreement; the application of the concept of equivalency to voluntary standards; means of applying the Article 2.7 concept of equivalency to voluntary standards; and What options are available to facilitate trade between countries whose different national standards appear to be underpinned by very similar objectives.

2. In New Zealand's view, in many instances an arrangement for recognition of equivalency of national standards should be relatively straight forward. It would also provide a useful interim solution for the facilitation of trade until an international standard is available. Furthermore, if agreement on an international standard proves difficult to achieve, an equivalency arrangement will tend to focus the developers of national standards on resolving the differences. This would be particularly effective if the international standards initially brought together collective agreement on just the performance objectives.

3. If national standards organizations were to address equivalency with foreign standards at the same time of developing their own national standards, there would subsequently be no need for governments to additionally cite foreign standards in regulations in implementing Article 2.7 of the TBT Agreement. In effect, the foreign standards would already have been taken into account in the specific equivalency arrangements recognized in the single national standard referred to in national compliance requirements. The consensus and public consultation processes employed by national standards bodies would ensure industry and community acceptance of these regulatory solutions.

4. There appear to be two main avenues that would be available to encourage and facilitate the

application of the Article 2.7 concept of standards equivalency.

(i) *Equivalency - Individual Action by a National Standards Body*

The implementation of the equivalency requirements for regulations in Article 2.7 of the WTO TBT Agreement relies on responsible individual action by the signatory economies. The most explicit and consistent way to incorporate the concept of standards equivalence in the TBT Agreement would be to add a similar commitment to Article 2.7 as part of the Code of Good Practice for the Preparation, Adoption and Application of Standards. A provision of this sort would provide a strong incentive in cases where no relevant international standards exists for national standardizing bodies to cooperate more closely with their counterparts within other WTO member-States to exchange information on their respective standards objectives. It would lessen the tendency for national standards to be construed "in a vacuum", without regard to the potential implications that they might have on trade. In effect, an additional provision on equivalency to the Code of Good Practice should not be seen as a revolutionary development, but rather as a natural one. Some national standardizing bodies are already actively engaged in addressing equivalency issues. This is very much the case between Australia and New Zealand, the two national standardizing bodies of which have developed an "umbrella standard" concept ...

(ii) *Equivalency - Cooperative Actions*

The TBT Committee may also wish to discuss whether it would be desirable to coordinate equivalency arrangements on a regional or international basis. It would be much easier to do this in areas of voluntary standards than for technical regulations, primarily because of the existence of international and regional coordinating bodies and networks (ISO, IEC, PASC etc). A sensible first step would be the encouragement of information exchange between the various bodies to explore strategies for the implementation of equivalency concepts in relation to the national standards of others. International and regional standardization bodies and networks could feasibly

coordinate the recognition of equivalency actions by national standards bodies by seeking collective agreement on priority areas for voluntary action by individual standards bodies. They could also facilitate collective agreement on which national standards provide for acceptable levels of performance in each of these priority areas ... It should be noted that the Pacific Area Standards Congress (PASC) is currently investigating areas in which Asia-Pacific standards bodies could voluntarily cooperate to implement recognition of equivalence."

### 5. Conclusion and Recommendations

"(i) In conclusion, the concept of standards equivalency has merit as a means of avoiding and further reducing unnecessary obstacles to trade. It is emphasized that it should only be applied where international standards do not exist, and then only as an interim measure until suitable international standards are made available. Arrangements for recognition of equivalency can provide a useful starting-point for agreement on content of future international standards.

(ii) In view of the benefits that recognition and application of a concept of equivalency could have in context of voluntary standard, the Committee could further consider the following draft recommendations:

- Endorsing the inclusion in the Code of Good Practice of the following additional paragraph:

*"The standardizing body shall give positive consideration to accepting as equivalent, standards originating from other Members of the WTO, even if these standards differ from their own, provided they are satisfied that these standards adequately fulfil the objectives of their own standards".*

- Requesting international and regional standardizing bodies to encourage an exchange of information from the standardizing bodies that make up their membership on the actions they have taken to implement equivalency in relation to national standards of other members.
- Encouraging international and regional standardizing bodies to coordinate and prioritise actions for recognition of equivalency by their membership."

## IX. NATIONAL EXPERIENCES WITH STANDARDS AND TECHNICAL REGULATIONS (G/TBT/W/99) - Contribution by Australia

1. This paper provides Australia's experience in developing standards due to its size and geography, its economic development and a range of other domestic factors; and taken account of specific industrial or infrastructure developments and more recently of the Closer Economic Relationship we enjoy with New Zealand.

2. "Many Australian standards are an amalgam of others, recognizing that the development of standards is the product of investment in research and development. The needs of multinational companies operating in Australia or countries which are the destination for our exports have been another factor. This has meant that standards have been developed in response to the need of Australian companies to meet the standards of others rather than a desire to develop a local standard for its own sake."

### D. INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS

#### I. ENVIRONMENTAL LABELS AND MARKET ACCESS: CASE STUDY ON THE COLOMBIAN FLOWER-GROWING INDUSTRY (G/TBT/W/60) - Contribution from Colombia

1. "The Colombian flower-exporting industry has identified the following as the most risky aspects of private eco-labelling:

(i) The lack of supervision or compliance with internationally accepted standards guaranteeing transparency, impartiality and objectiveness in the demands made and the absence of monitoring to allow for self-correction. This situation entails a serious risk for the bodies managing these labels in that they could fall prey to interests that have nothing to do with the actual environmental conditions of cultivation.

(ii) The absence of any common minimum parameters, which means that the consumer does not receive comparable and intelligible information. Each label may be designed based on different

criteria, or may assign greater specific weight to some criteria over others, depending on the orientation of its promoters. Furthermore, there is the risk that no account is taken of differences in production processes from one region to the next."

## **II. FORESTS: A NATIONAL EXPERIENCE (G/TBT/W/61) - Contribution from Canada**

This paper by Canada on its experience in the forestry sector is designed to complement the Secretariat paper (WT/CTE/W/67 7 November 1997) Section V: Forestry and follow-up to the Technical Barriers to Trade Report to the Singapore Ministerial (G/L/122 28 October 1996, paragraph 15 and the TBT Triennial Review (G/TBT/5 19 November 1997, paragraphs 18 and 22 (b)). The main focus of the paper is Canada's experience with standards-related issues. The paper reinforces the general premise that, given a sound domestic regulatory framework, the impact of trade barriers, including tariff escalation, on the environment is generally negative given that trade barriers impede efficient resource allocation and thus increase the overall impact on the environment.

## **III. TRANSPARENCY IN INTERNATIONAL STANDARDS DEVELOPMENT (G/TBT/W/ 64) - Contribution from the United States**

1. The paper intends to provide US views regarding international standards, in addition to those contained in the First Triennial Review (G/TBT/5), and to offer a proposal for the Committee's consideration. It is based on the idea that "The disciplines in the Agreement include detailed provisions to ensure transparency (e.g., the requirements to publish notice of proposed standards and to allow a reasonable period of time for the submission of comments by interested parties) in the development and application of standards, technical regulations and conformity assessment procedures. These same disciplines do not extend directly to the preparation of standards by international bodies. And, while Article 9 encourages Members to formulate and adopt *international systems for conformity assessment*, it also explicitly acknowledges Members' responsibilities to ensure that such systems comply with the relevant provisions of the agreement (i.e., Articles 5 and 6). The Agreement does not contain a

corresponding statement of Members' responsibility with respect to participation in international bodies developing standards."

2. "The United States continues to believe that bodies which operate with open and transparent procedures which afford an opportunity for consensus among all interested parties will result in standards which are relevant on a global basis and prevent unnecessary barriers to trade (G/TBT/W/40)."

3. The United States recommend that "the Committee could establish its view that international bodies which develop standards should have established procedures to ensure that all interested parties have adequate notice, time and opportunity to provide input in the development of standards. Based on the provisions of, and experience with, the TBT Agreement, the Committee could articulate a set of principles and procedures it considered desirable for international bodies which developed standards. With agreement on a common set of principles and procedures, the Committee could clarify the responsibility of Members' participation in international bodies along the lines of that now contained in Article 9.3. With broad endorsement for this approach by the Committee, the United States would volunteer to develop a draft for further consideration by Members."

## **IV. TRANSPARENCY IN INTERNATIONAL STANDARDS DRAFT - PROPOSAL FOR A DECISION (G/TBT/W/75) - Contribution from the United States**

1. Following document G/TBT/W/64, this paper provides proposal for a decision of the Committee on the transparency in international standards.

### **2. Background and Purpose**

In the first Triennial Review of the Operation and Implementation of the Agreement (G/TBT/5), the Committee reiterated the important contribution that international standards can make to improve efficiency of production, to facilitate the conduct of international trade, and to the transfer of technology from developed to developing countries. The Committee noted that in order for international standards to make a maximum

contribution to the achievement of the objectives of the Agreement, it was important that the interested parties of all Members have adequate notice, time and opportunity to participate in the discussions, elaboration and adoption of international standards. With a view to ensuring a common approach to Members' responsibilities with respect to the development and use of international standards, the Committee agreed upon the following:

### 3. Decision

(i) Members shall ensure that their central government bodies use international standards only to the extent that these standards comply with the provisions of Article 2, as applicable.

(ii) Members shall take such reasonable measures as may be available to them to ensure that international bodies developing standards in which Members or relevant bodies within their territories are members or participants have an established process that seeks to take into account the views of all parties concerned and to reconcile any conflicting arguments. It is the sense of the Committee that when developing standards, the procedures of the international body should, at a minimum, include:

- (a) the publication of a notice at an early appropriate stage, in such a manner as to enable interested parties within the territory of a WTO Member to become acquainted with it, that the international body proposes to introduce a particular standard;
- (b) the notification or other communication through established mechanisms to its members providing a brief description of the scope of the proposed standard, including its objective and rationale. Such communications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
- (c) upon request, the prompt provision, through electronic means whenever possible, to its members of copies of the proposed standard;
- (d) without discrimination, the provision of a reasonable period of time for interested parties in the territory of its members to make comments in writing and take these written

comments into account in the further consideration of the standard; and,

(e) the prompt publication of a standard upon adoption.

(iii) The international body developing standards should publish periodically a work programme containing information on the standards it is currently preparing and the standards which it has adopted in a specified period. Any fees charged shall, apart from the real cost of delivery, be the same for foreign and domestic parties."

### V. INFORMATION EXCHANGE IN RELATION TO THE USE OF INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS (G/TBT/W/81) - Contribution from Thailand

1. "As a developing country, Thailand realized the importance of international standards, guides and recommendations... Thailand also believes that standards, technical regulations and conformity assessment procedures which conform to the international system should not create an unnecessary obstacle to trade, including trade between Thailand and such partners as developed countries. In this regard, Thailand has made every effort in participating in the development of such international standards and in the use of international standards, as far as practicable, in establishing national standards ...

2. However, the use of international standards as a basis in the preparation of technical regulations by a number of regulatory authorities is still unsatisfactory due to lack of full understanding. In order to monitor this problem, relevant regulatory authorities are encouraged to take part in more international standardization activities and to be aware of the usefulness and application of international standards as well as the rights and obligations of Thailand under the TBT Agreement.

3. Thailand is of the opinion that in some cases, development of international standards is dominated by developed countries, while inputs from developing countries, such as proposals for establishing certain standards of their interests, or comments for draft international standards, are not properly taken into account. As a result, it always happens that published international standards are

ineffective or inappropriate to be adopted by developing countries.

4. The process for development of international standards usually takes some years to be completed and published international standards may not meet the demand of the market. Therefore, international standardizing bodies should be encouraged to speed up the process."

#### **VI. THE CONDITIONS FOR ACCEPTANCE AND USE OF INTERNATIONAL STANDARDS IN THE CONTEXT OF THE WTO TECHNICAL BARRIERS TO TRADE AGREEMENT (G/TBT/W/87) - Note from the European Community**

1. "In order to enhance international trade, the European Community considers that a greater emphasis should be laid on the use of international standards, as well as their elaboration. To achieve a wider use of international standards, there needs to be progress on three aspects: (i) A clear distinction is needed between international standards and other (national or regional) standards; (ii) Incentives are required to enhance the use of international standards; and (iii) Finally, bodies making standards that qualify as international should observe a set of principles of effectiveness, transparency, balance of interests and accountability.

#### **The Distinction between National and International Standards**

2. The European Community and its WTO partners have made a commitment - as signatories to the Agreement - to use international standards in their technical regulation. In view of this commitment, it is appropriate to seek to determine the standards to which it applies, i.e., to define the essential features that characterize standards as international. Furthermore, it is important that the status of international standards be strengthened, and thus a clear distinction between international and other standards has to be recognized. In certain sectors - for example, information technology, electro-technology and telecommunications, a process of internationalization in the market and in standardization is well advanced.

3. In this respect, the Community suggests that the following principles be observed:

(i) Apart from the criteria that apply to all standardization whatever its level, the key criterion for a body to be accepted as producing international standards, which will thus be privileged under the WTO, is that of international impartiality; that is, all countries with an interest in standardization must have access to the work, and international control over the results, without either discrimination or privilege as to the nationality of the participants. The question of the difference between participation and membership is not relevant to this question; for example, for inter-governmental organizations. The important point is that whatever the way in which the standards body operates, participation, and where appropriate membership, should be available on equal terms without discrimination as to nationality.

(ii) Standards bodies cannot claim two different levels of status (national, regional or international) for their core activity at the same time. Conflicts of interest and incoherence in the corpus of standards would arise if regional or national bodies were to act as though they were international. Similarly, international bodies would have difficulty in upholding their claim to that status were their membership not genuinely international.

(iii) The current Code (clause G) favours that participation in international standardization be carried out on a national basis. In general, it would be expected that the participants in international standards work would be national delegations, that is, delegations of national standards bodies or their representatives. In addition, regional standards bodies can contribute directly to international work.

#### **International Standardization and Trade**

4. Compliance with standards is voluntary. In examining, as required by the Triennial Review, why international standards do not exist, or are not used, attention should be paid to the absence of incentives to use them, and ways to create such incentives when they are lacking. The incentives may take different forms, and should be developed at different levels.

(i) The political commitment of public authorities to advance the aims of the WTO needs to be

reflected in legislative reform. This implies promoting the use of international standards, for example by deregulation and by setting up legislative frameworks that make reference to voluntary standards. More transparency is necessary, and more information should be provided, on the regulatory systems that are intended to stimulate the use of international standards.

(ii) There should be transparency on the application of the Code of Good Practice. Where Members have more than one standardizing body, they should provide explanations of the extent to which standardizing bodies are bound by the acceptance, and how they implement the Code, if one body has accepted on behalf of all of them.

(iii) In order to ensure efficiency and coherence, there is a need for arrangements between international and regional and national standardization. Arrangements should cover issues such as common programmes, common technical bodies, common work and common acceptance of the results. This also includes transposition of international standards as regional and national standards.

(iv) The international standardization system should ensure that the corpus of international standards is coherent. Were actual conflicting international standards to emerge, the system would become unworkable, since more than one standard would then be characterized as international and thus become privileged by the WTO, codifying barriers to trade. The activities of international standards bodies, and their results, should be complementary. Standards should not conflict, even when the individual standards bodies that issued them are different. Improved exchange of information between standards-making bodies and the WTO is desirable in itself, though not a complete solution. The emergence of competing international bodies must be deprecated.

(v) In order to provide transparency and certainty, further progress is required on designing a mechanism under which bodies are accepted by the generality of signatories to the WTO Agreement as international standards bodies.

(vi) National and regional standards bodies that participate in international standardization should

act coherently and in accordance with the aims of the Agreement. The legitimacy of an international standards body would be demonstrated, *inter alia*, by acceptance of the Code of Good Practice by its national and regional members.

5. Effective implementation of these points will require monitoring and collaborative action by the relevant bodies within the WTO.

### **The Activities and Discipline of International Standards Bodies**

6. Whilst the TBT Agreement provides a privilege to international standards, it does not set out provisions for observance by international standards bodies. If, however, international standards are to play the role assigned to them by the Agreement, the international standards bodies should remain accountable to the entire range of interested parties, and should achieve a high degree of effectiveness. The commitment to use international standards should be matched by the observance of rules in relation to accountability on behalf of international standards bodies:

(i) Openness should be provided in the drawing up of programmes, and in the ultimate results, which should be made publicly available for use.

(ii) There should also be openness to all views, general agreement, absence of sustained opposition and a process that seeks to reconcile conflicting opinions.

(iii) Standards bodies would have to show that these principles are enshrined in their rules and be effectively complied with.

(iv) The enhancement of their role also has an implication for the responsiveness of international standards bodies to the needs of the market and of regulators. Particularly, priorities in international standards work programmes should reflect trade priorities; up to date international standards should be delivered in due time, and the activities of international standards bodies, and their corpus of standards, both need to be coherent both internally and with other bodies, and kept up to date.

7. Compliance by international standards bodies with these criteria might be ascertained by the establishment of some kind of formal code of procedures for observance by international bodies,

along the lines of the undertakings laid on national and regional bodies by the Code of Good Practice.”

**VII. NATIONAL EXPERIENCES WITH STANDARDS AND TECHNICAL REGULATIONS (G/TBT/W/99)  
- Contribution by Australia**

1. “Standards Australia has notified adherence to the Code of Good Practice. The organization has a positive, proactive policy of adoption of international standards wherever possible and has been and continues to be an active participant in work to develop international standards especially in the ISO and the IEC. Some 30 per cent+ of Australian Standards are directly adopted from, or are modifications of, ISO or IEC standards.

2. Combined with a process of continual review, Australian standards will be progressively replaced with international standards where they are developed and applicable. There remains a significant proportion (approximately 25 per cent) of Australian Standards for which there is no international equivalent or international work ... As one of the small/medium developed country participants in the multilateral trading system Australian institutions and agencies recognise the commercial and trade value of participating in the development of and adoption of international standards. Australia’s standards and conformance infrastructure actively promotes their development and adoption and use by the major “blocs”.

3. The development of an agreed multilateral processes for negotiating international standards would address some of the key concerns which Australia has about the current development of regional standards through “bloc” support/application. For example, once a regional standard is developed, adopted and legislated there is through that process a significant ‘bloc’ of countries which are attached to that standard. It can be of concern that the countries involved may subsequently be reluctant to enter into further international negotiations towards a standard on the same products. Making more/better use of work which has already been done and making such work more inclusive from the outset are alternatives which could be examined by those organizations which are looking at the development of international standards.”

**E. PREPARATION, ADOPTION AND APPLICATION OF TECHNICAL REGULATIONS**

**I. NATIONAL EXPERIENCES WITH TECHNICAL REGULATIONS (G/TBT/W/71)  
- Canadian contribution**

This contribution by Canada is to provide some examples of technical regulations where it has referenced, or considered as equivalent, the technical regulations of other Members. It should be viewed as a contribution to future Committee discussions of the preparation, adoption and application of technical regulations, pursuant to paragraph 24 (c)... This contribution is designed to encourage further contributions by other Members in order to provide the TBT Committee with a variety of national experience with issues related to technical regulations.

**II. INFORMATION EXCHANGE IN RELATION TO THE PREPARATION, ADOPTION AND APPLICATION OF TECHNICAL REGULATIONS (G/TBT/W/80)  
- Contribution from Thailand**

This document is being submitted to the Committee on Technical Barriers to Trade in light of paragraphs 23 and 24 of the First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade (G/TBT/5) for the purpose of information exchange regarding technical regulations in Thailand.

**F. CONFORMITY ASSESSMENT PROCEDURES**

**I. CONFORMITY ASSESSMENT PROCEDURES: SUPPLIER’S DECLARATION OF CONFORMITY (G/TBT/W/63) - Contribution from the United States**

1. This submission by the United States is intended to provide additional background on the use of suppliers’ declaration of conformity as well as information on the US experience. “A supplier’s declaration of conformity is but one tool for indicating the conformity of a product, process or service to a standard or technical regulation. It is a

procedure by which a supplier (as defined in ISO/IEC Guide 22:1996, a supplier is the party that supplies the product, process or service and may be a manufacturer, distributor, importer, assembler, service organization, etc.) provides written assurance of conformity to the specified requirements. The declaration identifies the party responsible for making the declaration of conformity and for the conformity of the product/process/service itself."

2. "Reliance upon a declaration of conformity by suppliers is normally considered to be a trade friendly approach to conformity assurance. As noted above, from a manufacturer's perspective, the supplier's declaration of conformity allows flexibility in the choice of location to have a product tested, reduces the uncertainty associated with mandatory testing by designated laboratories based in foreign countries as well as associated costs. Reliance on a supplier's declaration of conformity can also be a cost saving and efficient tool for regulators to meet their legitimate policy objectives, such as ensuring protection of the environment and the health and safety of consumers. It can provide an assurance that a product conforms to regulatory requirements by identifying an accountable party in the event that non compliance is detected. Regulatory reliance on a declaration of conformity can be enhanced when "spot checks" are conducted and penalties are imposed for non compliance. Additional safeguards can be provided by customs inspections to verify the presence of the supplier's declaration of conformity documents and by affording an opportunity for market participants to inform regulatory authorities of perceived non conformance. A supplier's declaration of conformity is also beneficial in that there is no discrimination on the basis of the geographic location of a testing or other conformity assessment body conformity is, in short, the responsibility of the supplier. Under such a system, the question of "portability" of conformity assessment, or of the need to negotiate political agreements on mutual recognition, become moot."

3. "While the Committee has noted that the supplier's declaration of conformity can save

costs, it also acknowledged that such an approach to conformity assurance may not always be appropriate. The United States continues to support the voluntary exchange of information foreseen in the Triennial Review on the use of supplier's declaration and alternative approaches to conformity assessment and would welcome information from other Members on their experience. Such experience could include a further definition of the conditions supporting effective use of a declaration of conformity; considerations that may deem such an approach inappropriate from a regulatory perspective; an identification of technical infrastructure components which would be necessary to support reliance on this approach."

## II. ISO/IEC GUIDES ON CONFORMITY ASSESSMENT (G/TBT/W/70) - Note from the European Community

1. The European Community has in previous notes to the Committee reflected on the usefulness of the ISO/IEC Guides and their relationship to Article 5 and 6 of the TBT Agreement (document 3146, June 1997), as well as the Community's experience in their use (G/TBT/W/43). The Community considers that it is imperative that the TBT Committee can reach an agreement on the relationship of the ISO/IEC Guides to Articles 5 and 6 of the Agreement. The paper provides the reasons for this.

(i) "Agreement on the Guides would not only promote a consistent application of the Agreement as well as facilitating mutual confidence between Members, but more importantly provide a common language and preference point on conformity assessment. By pointing to the ISO/IEC Guides on conformity assessment will also increase transparency and predictability, which are basic principles underlying all WTO Agreements.

(ii) Agreement on the Guides is also necessary if any progress is to be made on discussions related to conformity assessment procedures and recognition of conformity assessment. Without a common basis and platform, in-depth discussions on these important issues will most likely be even more complex and endanger the possibility of

arriving at concrete results that can be beneficial for all Members.

(iii) These reasons are also based on the experience of the European Community from putting into place the Single Market. .... It is fair to say that without common criteria as a platform for mutual confidence the development of Community conformity assessment policy in the realization of the Single Market would have been greatly hindered if no made impossible."

(iv) The Community understands the practical difficulties that countries can encounter in implementing the Guides, and provides information on the technical assistance programmes in this regards. It says that "a negative stance towards the Guides by the Members of the WTO will only give a wrong message to their national organizations making considerable efforts to improve the technical infrastructure of their country as an aid to their industry and to facilitate international trade."

(v) The paper points out that "the aim of a recommendation is to identify which Guides can be considered relevant for the purpose of the TBT Agreement, thus giving visibility to these documents so that they can constitute a common basis for understanding basic and fundamental concepts on conformity assessment, but in no terms making the Guides mandatory or imposing additional obligations on Members."

2. "The Community welcomes the continued exchange of information between Members on their experience in using international guides and recommendations on conformity assessment. However, high priority must be given to arriving at an agreement on the relationship of the ISO/IEC Guides to Articles 5 and 6 of the TBT Agreement. The Community would therefore like to propose that the Committee at its next meeting devote the necessary time to carefully examine how agreement on a recommendation can be arrived at. Taking into account the technical nature of this issue, consideration should be given to asking the Technical Working Group on the ISO/IEC Guides to prepare such a discussion."

### III. AUTONOMOUS RECOGNITION OF THE RESULTS OF FOREIGN CONFORMITY ASSESSMENTS (G/TBT/W/79) - Communication from Switzerland

1. At the conclusion of the First Triennial Review of the implementation of the Agreement on Technical Barriers to Trade (TBT), the Committee reiterated "Members' rights and obligations under Article 6.1" of the Agreement (G/TBT/5, paragraph 25). Based on this provision, Switzerland has developed a system for the autonomous recognition of the results of foreign conformity assessments. In this communication, Switzerland explains the benefit of autonomous recognition and describes its experience in this respect.

2. "If a foreign laboratory or organization is recognized abroad and the accreditation scheme is applied by a regional organization [(European Cooperation for Accreditation (EA), Northern American Accreditation Cooperation (NAAC), Interamerican Accreditation Cooperation (IAAC), Southern African Regional Accreditation Cooperation (SARAC), Pacific Accreditation for Certification (PAC), Asia Pacific Laboratory Cooperation Accreditation (APLAC)] or an international accreditation organization (International Laboratory Accreditation Cooperation (ILAC), International Accreditation Forum (IAF)], it is assumed that the foreign organization has equivalent competence."

3. "The objective, namely recognition of foreign test reports and certificates, can also be met through the conclusion of mutual recognition agreements (MRAs). These have the advantage of offering the contracting parties a legal framework which they can use to seek recognition of their certificates. Nevertheless, the negotiation of such agreements is often long and difficult. Autonomous recognition can therefore be used where such agreements have not yet been concluded or trade flows do not justify the conclusion of an MRA because the volume of trade is too low."

4. "For Switzerland, the conditions governing autonomous recognition are closely linked to the use of international standards and guides on accreditation and certification. Switzerland would be interested to learn of other countries' experience in this field. It would be interesting to see how

other Members apply this Article and examine to what extent they also make use of international standards and guides in this context.”

#### **IV. INFORMATION EXCHANGE IN RELATION TO MEMBERS' EXPERIENCE IN THE VARIOUS TYPES OF CONFORMITY ASSESSMENT PROCEDURES (G/TBT/W/85) - Contribution from Thailand**

1. “This document is being submitted to the Committee on Technical Barriers to Trade in the light of the First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade (G/TBT/5) with a view to exchanging information on the national practice regarding conformity assessment procedures.

2. Three types of conformity assessment procedures are operated in Thailand, i.e. product certification, system certification and accreditation system. In development of these procedures, the ISO/IEC Guides as well as other international guides such as those of the International Accreditation Forum (IAF) and the International Auditor and Training Certification Association (IATCA) are used as a basis to ensure systematic and continual development, and technical competence of organizations, procedures and personnel as well as to facilitate arrangements for mutual recognition ...

#### **3. Comments**

(i) Thailand believes that in order to achieve “one test, one certificate”, the focus should be on the harmonization of conformity assessment procedures to the international system. The TBT Committee should cooperate with relevant international organizations in assisting Members to implement the relevant ISO/IEC Guides.

(ii) Mutual recognition arrangements will not be possible if technical infrastructure for conformity assessment procedures remains inadequate. Cooperation or assistance among Members should be encouraged.

(iii) Developed countries should provide the opportunity to developing countries, of which procedures for conformity assessment are in line with the international system, in entering into

negotiations for mutual recognition agreements.”

#### **V. NATIONAL EXPERIENCES WITH STANDARDS AND TECHNICAL REGULATIONS (G/TBT/W/99) - contribution by Australia**

1. “Australia has substantial experience in the utilisation of voluntary sector organizations by regulatory bodies both for establishing standards and for undertaking much of the conformance work. One good example of this is found in the activities of the National Association of Testing Authorities, Australia (NATA) and its relationships with regulatory authorities across a wide technical spectrum and at various levels of government.”

#### **Use of Accreditation by Regulators and Purchasing Authorities**

“2. NATA was created by government initiative to facilitate government purchasing. It was based on the development of trust and confidence in a system where privately and publicly owned enterprises work together. Its fundamental premise is that standards of technical competence, commitment and integrity do not vary between private and government laboratories and that a single test was more economically efficient than duplication. The same principle could be applied to testing for regulatory purposes.

3. With the exception of the areas of pharmaceuticals and medical devices (which are covered under the responsibilities of the Therapeutic Goods Administration (TGA)), almost all regulated sectors of the Australian economy which involve technical testing or measurement require such testing to be undertaken in accredited laboratories or a recognized equivalent. There are more than 50 Acts and regulations at Commonwealth and State level which reference NATA accreditation in this context. There may be some variation in the application of policy but all laboratories must demonstrate technical competence.

#### **Recognition of Foreign Test Data**

4. Historically, Australian regulators have tended to accept overseas data from “reputable”

laboratories. In recent years, however, with the advent of mutual recognition agreements (MRAs) between accreditation bodies, there has been a shift towards recognizing only laboratories that have been accredited by an organization with which NATA has such an agreement.

5. Australia thus pioneered the widespread use of MRAs in the voluntary sector for regulatory purposes. Where evidence is available, it suggests that the policy is effective but not without some technical problems associated with the application of different standards or different interpretations of common standards. Accreditation bodies have the responsibility to resolve issues of interpretation but the acceptance of the standard itself is a matter for the regulator."

## G. TECHNICAL ASSISTANCE UNDER ARTICLE 11

### I. INDIA'S EXPERIENCE ON TBT NOTIFICATION SYSTEM AND PROCEDURES FOR INFORMATION EXCHANGE (G/TBT/W/93) - Contribution from India

1. "Developed countries who have established a National Notification System and whose standardization bodies have accepted the Code of Good Practice and are meeting the notification obligations should hold workshops/seminars and provide assistance for the benefit of developing countries like India, so that the infrastructure in such countries can be upgraded in order to better fulfill the obligations of Notification under the WTO TBT Agreement.

2. Developed countries who are using the modern technologies like Internet to store and disseminate information on their standards, technical regulation and conformity assessment procedures should provide financial/technical assistance to developing countries in order to help them create their websites so that this information can be utilised by all Member countries of WTO."

## H. SPECIAL AND DIFFERENTIAL TREATMENT UNDER ARTICLE 12

No submission has been made under this item.

## I. OTHER ELEMENTS

### I. ENVIRONMENTAL LABELS AND MARKET ACCESS: CASE STUDY ON THE COLOMBIAN FLOWER-GROWING INDUSTRY (G/TBT/W/60) - Contribution from Colombia

1. "The case study of the Colombian flower-growing industry reveals the dangers inherent in private environmental labelling schemes and their potential negative implications for market access. Colombia therefore considers it important for the CTE and the Committee on Technical Barriers to Trade to have a clear position aimed at ensuring that the proliferation of private environmental labels without common standards or monitoring of any kind do not create trade and markets distortions and thereby confuse consumers.

2. It is essential to have a transparent, concerted and non-discriminatory policy on voluntary eco-labelling, which makes allowance for the circumstances of exporting and importing countries so that environmental and trade policies may really complement each other and satisfy both business and environmental interests.

3. Hence, it is necessary to guarantee transparency in the conception and application of eco labels, to ensure that they are non-discriminatory and that the parties concerned can participate in developing them, designing the programmes, choosing their product coverage, selecting the criteria on which they are based and in working out any audit procedures."

4. "Therefore, Colombia once again underscores the importance of implementing paragraph 185 of the Report of the Committee on Trade and Environment to the Ministers at Singapore, which reads:

As stated above, the CTE's discussion on eco-labelling has focused primarily on voluntary eco labelling schemes/programmes and in particular on the transparency of such schemes/programmes. Without prejudice to the views of WTO Members concerning the coverage and application of the TBT Agreement to certain aspects of such voluntary eco-labelling schemes/programmes and criteria, i.e. those aspects concerning non-product-related PPMs, and therefore to the obligations of Members under this Agreement regarding those aspects, the CTE

stresses the importance of WTO Members following the provisions of the TBT Agreement and its Code of Good Practice, including those on transparency. In this context, the CTE underlines the particular importance of ensuring fair access of foreign producers to eco-labelling schemes/programmes.”

## II. FORESTS: A NATIONAL EXPERIENCE (G/TBT/W/61) - Contribution from Canada

1. This paper by Canada on its experience in the forestry sector is designed to complement the Secretariat paper (WT/CTE/W/67 7 November 1997) Section V: Forestry and follow-up to the Technical Barriers to Trade Report to the Singapore Ministerial (G/L/122 28 October 1996, paragraph 15 and the TBT Triennial Review (G/TBT/5 19

November 1997, paragraphs 18 and 22 (b)). The main focus of the paper is Canada’s experience with standards-related issues. The paper reinforces the general premise that, given a sound domestic regulatory framework, the impact of trade barriers, including tariff escalation, on the environment is generally negative given that trade barriers impede efficient resource allocation and thus increase the overall impact on the environment.

2. This paper is not a position paper given that Canada’s position on environmental labelling and related standards issues is well known (WT/CTE/W/21 G/TBT/W/21 21 February 1996, G/TBT/W/41 25 April 1997). This paper is designed rather to illustrate national experiences in dealing with non product related PPM standards and labels.

### ANNEX 1

G/TBT/W/60	9 March 1998	Environmental Labels and Market Access: Case Study on the Colombian Flower-Growing Industry – Contribution from Colombia
G/TBT/W/61	11 March 1998	Forests: A National Experience – Contribution from Canada
G/TBT/W/63	7 April 1998	Conformity Assessment Procedures: Supplier’s Declaration of Conformity – Contribution from the United States
G/TBT/W/64	2 April 1998	Transparency in International Standards Development – Contribution from the United States
G/TBT/W/70	23 June 1998	ISO/IEC Guides on Conformity Assessment - Note from the European Communities
G/TBT/W/71	24 June 1998	National Experiences with Technical Regulations – Contribution from Canada
G/TBT/W/74, and Add.1	30 June 1998 10 August 1998	TBT Agreement Code of Good Practice, Paragraph J: Publication of the Work Programmes of Standardizing Bodies - Note from the European Communities
G/TBT/W/75	30 June 1998	Transparency in International Standards - Draft US Proposal for Decision
G/TBT/W/79	3 Sept. 1998	Autonomous Recognition of the Results of Foreign Conformity Assessments – Communication from Switzerland
G/TBT/W/80	9 Sept. 1998	Information Exchange in Relation to the Preparation, Adoption and Application of Technical Regulations – Contribution from Thailand
G/TBT/W/81	9 Sept. 1998	Information Exchange in Relation to the use of International Standards, Guides and Recommendations - Contribution from Thailand
G/TBT/W/82	14 Sept. 1998	Information Exchange in Relation to the Acceptance, Implementation and Operation of the Code of Good Practice for the Preparation, Adoption and Application of Standards by Standardizing Bodies – Contribution from Thailand
G/TBT/W/83	14 Sept. 1998	Information Exchange on the Implementation of Article 2.7 relating to Equivalency of Technical Regulation – Contribution from Thailand
G/TBT/W/84	9 Sept. 1998	Information Exchange in Relation to the Operation and Implementation of Notification Procedures under Articles 2, 3, 5 and 7 – Contribution from Thailand
G/TBT/W/85	9 Sept. 1998	Information Exchange in Relation to Members’ Experience in the Various Types of Conformity Assessment Procedures – Contribution from Thailand
G/TBT/W/87	14 Sept. 1998	The Conditions for Acceptance and Use of International Standards in the Context of the TBT Agreement – Note from the European Community
G/TBT/W/88	9 Sept. 1998	Equivalency of Standards: An Interim Measure to Facilitate Trade in the Absence of Relevant International Standards – Note from New Zealand
G/TBT/W/93	24 Sept. 1998	India’s Experience on TBT Notification System and Procedures for Information Exchange – Contribution from India
G/TBT/W/99	17 Nov. 1998	National Experiences with Standards and Technical Regulations – Contribution by Australia

(www.wto.org G/TBT/SPEC/11, 25 March 1999)



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