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**NON-TARIFF BARRIERS**

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## From the Director's Desk



K.T. Chacko

Tariff and non-tariff barriers (NTBs) are two chief hindrances to international trade. GATT and subsequently WTO has contributed significantly to address both kinds of barriers. There has been substantial reduction in tariffs over the years and these reductions remain locked in as tariffs cannot take newer forms. On the other hand, addressing NTBs has been more challenging because *firstly*, given their diverse nature, all of them may not be amenable to WTO discipline; *secondly*, they may acquire newer forms; and *thirdly*, they may be applied in a manner which though ostensibly in tune with WTO commitments, may not be so upon deeper analysis.

The older forms of NTBs like quantitative restrictions, voluntary export restraints, cumbersome import licensing procedures, multiple exchange rates, customs valuation practices, etc. have largely been disciplined. However, there are areas where challenges persist. The most important among these relate to standards for agricultural and industrial goods. This issue is supposed to have been addressed under the WTO Agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade but there are persistent complaints, particularly by developing countries, that these standards have been used by the developed world as market access barriers. There are complaints relating to testing methods and procedures being specified at more than required sensitive levels, keeping standards higher than what might be scientifically justified.

During Doha Round of negotiations, an attempt is being made to address some of these NTBs. For instance, in the negotiations on Non Agriculture Market Access (NAMA), there is a specific mandate to address NTBs. Countries have listed the existing NTBs and there is an effort to find horizontal as well as sector-specific solution to these issues. There is also a proposal for more informal dispute resolution mechanism through a process of mediation by a "facilitator". It is expected that this may provide a less adversarial means of resolving disputes than the formalized and costly recourse to Dispute Settlement Understanding (DSU). There is also an effort to fine-tune some of the existing disciplines in WTO which are perceived to act as a non-tariff barrier. An important example in this regard is a proposal to prohibit "zeroing" while calculating the margins of dumping under the Agreement on Anti Dumping. Another facet of addressing NTBs in the Doha Round is the negotiation of a new agreement called Trade Facilitation which is expected to improve transparency, predictability and efficiency of clearance of goods at the borders.

To quote an eminent economist John Jackson, as the tide of tariff recedes, the shoals of NTBs become more and more visible. There is a need to constantly monitor these shoals to keep apace the flow of international trade. In this regard, it will be important to monitor and address newer forms of NTBs relating to labelling, conformity assessment procedures, rules of origin marking, etc. Another important area requiring greater attention relates to NTBs in services trade, particularly those relating to regulatory barriers.

# Non Tariff Barriers and Developing Countries

*Nitya Nanda, Souvik Bhattacharjya and Saswata Chaudhury\**

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*NTBs are playing an important role in limiting the growth of international trade. As they act as impediment in realizing the growth potential of various countries, the need to streamline the process of identifying and removing these barriers occupies centrality in the formation of global trade policy. Individual countries should make necessary arrangements and considerations in consonance with the WTO rules to facilitate global trade. This Paper explains various forms of NTBs present in goods and services sectors and how they obstruct the movement of goods and trade in respect of developing countries and suggest measures for negotiations.*

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## Introduction

**B**ARRIERS to international trade can be broadly divided into two categories, viz. quantifiable tariff barriers and non tariff barriers (NTBs) or non tariff measures.<sup>1</sup> Although, tariff barriers had been the key trade restrictive measures exercised by different countries of the world, NTBs have too gained prominence in the global arena. There are no formal definitions of NTBs. They refer to a wide range of policy interventions other than border tariffs that affect trade in goods, services, and various factors of production. Common NTBs include, import quotas and restrictions, voluntary export restraints, restrictive state-trading interventions, export subsidies, countervailing duties, technical barriers to trade, sanitary and phytosanitary (SPS) policies, rules of origin, and domestic content requirement schemes among others (Beghin, 2006). United Nations Conference on Trade and Development (UNCTAD), classify measures under seven broad heads, viz. (i) Para-tariff measures (customs surcharges, additional charges, internal taxes levied on imports); (ii) Price control measures (administrative pricing, Voluntary Export Restraints, anti-dumping, countervailing measures); (iii) Finance measures (advance payment requirements,

multiple exchange rates, transfer delays); (iv) Automatic licensing measures (automatic licence, prior surveillance); (v) Quantity control measures (non-automatic licensing including prior authorizations, quotas, prohibitions, export restraint arrangements, enterprise specific restrictions); (vi) Monopolistic measures (single channel for imports, compulsory national services); and (vii) Technical measures (technical regulations, pre-shipment inspection, special customs formalities, obligation to return used products, obligation of recycling).

Some literatures (e.g., Dhar and Murali, 2007) have classified the NTMs into two broad categories, namely (i) Technical Barriers to Trade (TBT), and (ii) Sanitary and Phytosanitary Measures (SPS). While SPS measures are dealt with in the broad agreement on SPS, TBT measures are dealt with in the TBT Agreement under the WTO. The SPS Agreement covers all measures that aim at protecting human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs, pests, diseases. The TBT Agreement covers all technical regulations, voluntary standards and procedures to ensure that these are met except those that are defined under the SPS

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agreements. Major provisions under the TBT Agreement include the principle of non-discrimination, avoidance of unnecessary obstacles to international trade and the transparency provisions.

## NTBs and the Rising Global Concerns

Integration with the global markets by the developing countries is sometimes argued to have the potential to promote inclusive growth in these nations as these may create markets for various non-agricultural goods produced by the small and micro enterprises. The issue of improved market access for such goods was taken up at various GATT rounds in the past. Even though the progress in reducing tariff barriers has been achieved to a great extent, yet it has been counterbalanced by NTBs, somewhat foiling the objective of tariff reduction, viz. free trade. Although NTBs based on quantity, price controls and finance measures may have decreased over the years, the NTBs associated with non-quantity price controls have increased significantly. Rising consumer demand for safety and environment friendly features have resulted in an increase in the number of NTBs.

NTBs were initially identified as measures that are imposed for legitimate objectives and can be introduced in a WTO consistent manner. Such trade restrictions may be important and necessary for countries to ensure the safety of the food production and distribution and the health of plants, animals and the

environment. However, sometimes governments may go beyond what is necessary to protect and nurture national industries. Member needs to follow specific provisions to ensure WTO compatibility. However, some NTBs are not compatible with the multilateral trading rules and are not based on a legitimate goal and negotiations are there to clarify the grey areas (Sen, 2010). NTBs are regulated by WTO agreements that came out of the Uruguay Round. NTBs in service industries have recently become more important as trade in services has been expanding (Ardakani, 2009).

Apart from government mandated standards, there are also private and voluntary standards and such standards vary from country to country. These standards are sometimes not only high but arbitrary and change frequently. Exporters, particularly from the developing countries may not always cope with multiple standards and loose price competitiveness. In recent years there has been growing use of environmental standards. Although some of these measures may not be mandatory, their campaigns in these nations can make the consumers more environmentally conscious thus affecting exports of products from developing nations (Nanda, 2009). As some of the big retail companies are adopting such standards, they often have significant impacts. In July 2008, 158 food consignments from China and 126 from India were rejected by United States and a considerable share of these consignments was rejected due to

vague charges like "no English", "unusual names" (George, 2009). Despite these adverse effects, Nixon and Wiganraja (2004) argued that these measures can also have a positive effect for the developing countries as it spurs new competitive advantages and investment in technological capability, and help develop various product and process standards as per international standards.

## Trends in NTBs

Developing countries are increasingly playing important roles towards global market integration. For a major rise in the share of developing countries in world exports - and the decline of the share of already industrialized countries since the late 1980s. The share of industrialized countries in world exports fell from 70.3 per cent in 1988 to 53.3 per cent in 2007. In the same period the share of developing countries rose from 27.9 to 45.2 per cent. The trade between developing countries is also gaining importance. However, imposition of NTBs has affected exports from developing countries. These countries have filed a growing number of cases under the Dispute Settlement Understanding (DSU). Since 1995, 418 dispute settlement cases have been raised with the WTO. From Table 1, it is clear that although the total number of dispute settlement cases filed has come down, the share of cases against developed countries have risen over the years due to imposition of various NTBs by developed countries and increased concern of the developing countries.

Between 1995-99 and 2005-09, the share increased from 31 to 51 per cent, while against developing countries for the same time period it has come down from 69 to 49 per cent.

Till October 2010, the US is the major complainant (96) in WTO against NTB, followed by EU (82) and Canada (33). Among developing countries, Brazil (25) has lodged maximum complaints followed by Mexico (21) and India (19). They rank 4th, 5th and 6th position respectively in the list of complaints lodged with dispute settlement body. Interestingly,

most cases were lodged against US (110) and EU (70) followed by India and China (20 each). India has lodged maximum complains against EU and US (7 each) while majority of the complaints against India were lodged by EU (10) and US (4).

From the list of dispute settlement cases, it was also observed that:

- The complaints of developed countries against developing were higher than the complaints of developing against developed between 1995 and 1999. However, we

find an opposite trend between 2005 and 2009.

- The share of cases against developing countries by developing countries has increased compared to that by developed countries between 1999-99 and 2005-09.

The current status of disputes filed with WTO shows that only 22 per cent of the dispute cases were settled (withdrawn or mutually agreed solution), while 34 per cent remains in consultation status, and the remaining 54 per cent are under process. Table 3 shows a comparison between EU, USA (as representatives of developed countries) and India, Brazil and Mexico (as representatives of developing countries) regarding the current status of complaints filed by/against them.

It shows that while only 16 per cent cases filed by India were settled, 30 per cent cases against India were settled. Similarly, for Mexico corresponding figures are 19 and 21 per cent. On the other hand, the corresponding figures for EU are 17 and 16 per cent while 27 and 16 per cent for USA respectively.

As per recent estimates, majority of the NTB cases notified (till September 2006) are under TBT Agreements. Table 4 highlights TBT notifications by OECD and developing countries (Dhar and Murali, 2007).

From Table 4, it is evident that the use of TBT notifications by the WTO member countries has been on the rise. In 1995, 365 TBT notifications were issued, while in 2005, 900 notifications were issued. However, there has

**TABLE 1**  
**DISPUTE SETTLEMENT CASES WITH THE WTO**

	1995-99	2000-04	2005-09	2010 (till Oct.)	Total
Total	184	139	79	16	418
Developing	57	81	40	11	189
Developed	141	65	38	5	249

Source: WTO.

**TABLE 2**  
**COMPLAINANT AND RESPONDENT WISE DISPUTE SETTLEMENT CASES**

Complainant - Respondent	1995-99	2005-09
Developed – Developed	93	20
Developed - Developing	67	21
Developing – Developing	23	16
Developing – Developed	50	30

Source: WTO.

**TABLE 3**  
**SELECTED COUNTRY WISE CURRENT STATUS OF DISPUTES**

		In consultations	In process	Settled or terminated	Total
Complaint	EU	29	39	14	82
	USA	27	43	26	96
	India	7	9	3	19
	Brazil	10	13	2	25
	Mexico	7	10	4	21
Respondent	EU	27	32	11	70
	USA	25	67	17	109
	India	7	7	6	20
	Brazil	9	4	1	14
	Mexico	5	6	3	14

Source: WTO.

**TABLE 4**  
**TBT NOTIFICATION BY OECD AND DEVELOPING COUNTRIES**

	1995	2000	2005	2006 (till Sept.)
Non-OECD countries	349	419	319	270
OECD countries	40	188	544	479
Total	389	630	900	800

Source: Dhar, 2007.

not been a steady rise in the TBT cases. Rather there were fluctuations around this rising trend. Within three years after the formation of the WTO, the total notifications issued reached 846 in 1997, then there was a fall in the TBT notifications and reached 572 in 2001. Between 2002 and 2005, the number of notifications increased by more than 300, thus making the total notifications around 900 by 2005. Another feature of these notifications is the significant increase in the number of countries that have been involved in issuing notifications. In 1995, it was observed that 26 members (out of 123), issued TBT notifications while in 2005, 67 members (out of 148) issued notifications. Over time, share of notifications by developing countries has outstripped that of OECD member countries. Developing countries' share was around 10 per cent in the total notifications issued in 1995. Interestingly, in 2005, the share had increased to more than 60 per cent. There was a sharp increase in the number of notifications made by them that rose from 40 to almost 550 between 1995 and 2005. OECD members saw a fall in their total number of notifications, from 349 in 1995 to 319 in 2005. However, the share of developing countries

in the issuance of total notifications between 1995 and 2005 was around 41 per cent (Dhar and Murali, 2007).

A survey conducted by OECD of intra-regional trade, indicates that the countries are mainly concerned about "additional charges", "difference in tax regulations", "transportation regulations and costs", "restrictive finance measures" and "limited information on foreign firms" apart from political, social and economic factors (Wilson 2005).

A detailed and systematic account of perceptions of non-tariff barriers also came from the notification process established under the patronage of the Negotiating Group on Market Access for Non-agricultural Products (NAMA). WTO Members were invited to submit notification on NTBs that directly affect their exports. Singapore, Mexico, Egypt, Japan and Korea rank the top 5 positions in NAMA NTB inventory while USA and India rank 9th and 16th respectively. TBT is found to have the major share (26%) followed by "TF Article VIII" (17.6%) and "SPS" (6.4%) in the NTB notifications inventory. The sectors that faced the most measures as per the NTB notifications inventory include, generic (all products) (23.9%), chemicals (11.6%), machinery & equipment (9.3%), textile & clothing (8.5%), and motor vehicles and parts (7.3%) (Sen, 2010).

### **Nature of Barriers and the Trade Effects**

As mentioned, regulations and standards associated with NTBs can affect exports as also

the capacity to trade (Mehta, 2004). NTBs affecting developing countries' export to both OECD and non-OECD countries are most often the same and primarily consist of import licensing systems (including allocation of tariff quotas), production and export subsidies primarily in the agricultural sector, quotas associated with imports and exports of commodities as may be observed in textiles and clothing, and export subsidies to develop non-traditional manufactures (administered as tax breaks or subsidized finance, as direct subsidies have almost disappeared under fiscal pressures), and state trading operations.

Despite these broad classifications, regional studies have pointed subtle differences among the NTBs that affect the exports of developing countries from various regions of the world. In Asia and the Pacific region, whose exports are primarily labour-intensive products (textiles and garments), tariff quotas applied under the MFA, which has since expired, and technical regulations (primarily labeling) emerge in literatures as the most significant NTBs in terms of the volume of exports affected. Export destinations sometimes lay down more stringent norms than those specified by international bodies without any scientific basis. Testing methods and processes may be specified at high sensitivity levels that may not be required at times and increase testing costs significantly due to unavailability of technology or testing equipments in these

countries. The differing standards and non-transparent testing and certification procedures for a number of environmentally sensitive products like leather particularly among the EU members are important. The presence of various national eco-labeling schemes, with different criteria, leads to market fragmentation and additional economic costs (Chakraborty, 2009). In EU and Japan there is the use of testing methods for high levels of sensitivity in marine products for chloramphenicol by high performance chromatograph mass spectroscopy (HPLCMS).

The stringent US TBT measures, often far exceed international standards and increasingly becoming a serious issue. The standards are enforced through testing of goods before entry, certification, labeling requirement, and examination of complainants on standards related to health and sanitation, which sometimes crosses the required level of protection. Third party certification is becoming increasingly important for a wide range of products.

In case of Latin America, which are primarily agricultural exporters, SPS standards and agricultural export subsidies emerge as the main issues affecting market access at major OECD destinations. Studies on Africa and the Middle East indicate that key NTBs faced by exports from these regions include some quantitative restrictions and special import charges. SPS related challenges are also common.

## NTB in Services

NTB in services can be classified under four broad categories, viz. market access barriers, national treatment barriers, regulatory barriers and other barriers. Under market access barriers, a country does not allow (or partially allows with some restrictions) foreign service providers to enter and operate in its domestic market. A full or partial restriction FDI could be example of market access barriers. National treatment barriers occur when foreign service providers are allowed to enter and operate in domestic market but are treated unfavourably compared to domestic service providers. Tax benefit for local companies could be an instance of such barriers. On the other hand, cumbersome domestic regulations lead to regulatory barriers. Multiple clearance requirements or cumbersome licensing procedures are these types of barriers. Even if both domestic and foreign service providers face these barriers, they affect foreign players more compared to their domestic counterparts. Finally, other barriers include lack of knowledge about local market, foreign language and culture apart from political and financial instability.

According to a recent study (Mukherjee 2009), most developed countries impose few market access restrictions for commercial presence of foreign service providers, but majorly in cross-border supply of services and presence of persons. Moreover, developed countries are gradually shifting from

market access barriers to regulatory barriers, which can not be addressed in multilateral forums such as WTO. On the other hand, developing countries are more restrictive than developed countries regarding FDI flow.

Rigid work permit and visa regime is one of the important and common market access barriers. It includes delays in visa processing along with non-transparent and discretionary visa approval, problems in having multiple entry visa and/or extension of period of stay. Similarly, non-recognition of foreign professional qualifications, requirement for registration with domestic professional bodies, citizenship requirement, local staffing and minimum wage requirement are also important hindrances to trade in services. On the other hand, security concern and domestic policy objectives like providing employment to residents, restricts physical presence of foreign persons. In fact, after 09/11 incident and financial meltdown, USA imposes restriction in this regard. The restriction level varies across countries but more stringent for independent professionals and contractual service suppliers than intra-corporate transfers. Cumbersome licensing procedures, requirement of knowing local language and stringent labour laws are some of the regulatory barriers which also constraint presence of natural persons. Similarly, United Kingdom has recently introduced a limit on the number of applications to be granted to professionals outside UK desirous

to work in various high skilled sectors in the country.

One important regulatory barrier is differential treatment for different form of operation. For example, a branch of foreign company present in EU does not get an EU company treatment while a wholly-owned subsidiary of a foreign company gets similar treatment of an EU company. Other major regulatory barriers include minimum capital/investment requirement, restriction on advertising/foreign exchange and profit repatriation, requirement to employ local residents/certain quality certification and stringent environmental standards, subsidy to local players, etc.

But, till October 2010, only 26 dispute settlement cases were filed with the WTO regarding NTBs in services. Among those, seven cases are related to distribution services and five are general service related. Within the five general service related dispute cases, three are developed country versus developed country cases while only one case is there where developing country complains against another developing country. Similarly, within distribution service related dispute cases (as well as all other service related cases), either of the party or both parties are developed country for all the cases. With recent increase in trade in services, this fact is quite striking.

### Resolving NTBs

To deal with the NTB issues among member countries, available modalities can be

classified into five broad categories, viz. vertical or sectoral approaches; horizontal or multilateral approaches; Request/offer, bilateral, or plurilateral negotiations; dispute settlement; and tariffication of NTBs. Under the vertical approach, sector or industry specific discussion is required. This approach is strongly backed by USA, south Korea, Canada and Switzerland and many other member countries had supported this as it helps in sequential removal of NTBs. Many industries including automobile and IT have already engaged in innovating ways for NTB removal mechanism. But, one of the drawbacks of this approach is that, the measures have to enter through “back door” as those are not included in current round of negotiations. European Commission is the major supporter of horizontal or multilateral approach while USA is skeptical about it. Under this approach members have to discuss several selected NTBs across all sectors. The major advantage of this approach is that member countries could negotiate on Customs Valuation and Import Licensing, besides negotiating on Trade Facilitation issues. But, identification of generic issues involving NTBs creates problem to this approach. Similarly, the other three have their own benefits and constraints (e.g., dispute settlement is time consuming).

Recently, NAMA-11 and EC have proposed “NTB Resolution Mechanism”, which will be guided by the principle of “good faith”. It also proposes the guidance of a mutually agreed “facilitator” which has to be

accepted by confronting countries. As per this proposal, consultations would be informal, and less adversarial than the “dispute settlement understanding (DSU)”, and without prejudice to the rights of Members under the DSU.

### Conclusion

It is now well recognized that tariff barriers, particularly in industrial goods are quite low in developed countries. However, this does not mean that developing countries have easy market access to developed country markets. The new age trade barriers are essentially non-tariff barriers and it is well recognized that developing countries hardly use them but they are the sufferers of such barriers. They are not in a position to use such barriers because if they adopt higher standards for foreign goods they have to adopt the same standards for their domestic producers as well in keeping with their non-discrimination commitment at the WTO. But if they do that their domestic industry would be in deep trouble (Nanda, 2008).

All countries, developed and developing, have a legitimate right to maintain some non-tariff measures for health, safety, social and environmental reasons. However, many of the measures go beyond what may be necessary to achieve these objectives. Since most developing countries are yet to have a comprehensive system of such standards they are likely to adopt more non-tariff measures in near future. However, such standards may not pose much of problems

for developed country exporters though they may still cause difficulties for less advanced developing countries. Nevertheless, they are likely to be lesser barriers.

It would be naïve to expect either that developed countries would dilute their standards substantially to accommodate the export interests of the developing countries or that developing countries can catch up with the developed world standards in the near future. Nevertheless, there is significant scope to strike a middle ground bringing some relief to developing country exporters. A large number of non-tariff measures relate to standards and developing country exporters often find it difficult to procure the necessary certification even if they meet such standards as very often they need to be received from foreign agencies and costs are particularly high for small and medium producers as they operate at a low scale. Hence efforts should be made to ensure that developing country exporters can get their products certified in their own countries.

Though the WTO has been dealing with both mandatory and voluntary standards including those by non-governmental organizations, the so-called private standards have been outside its domain. With the revolution of retail business and many of the big retail companies setting their own standards, can they be considered private standards? Time has possibly come to reconsider what is private and what is not when it comes to setting standards. The

issue has already drawn attention of the WTO but not much discussion has taken place. This is going to become more prevalent in future and hence going to be a bigger challenge when it comes to dealing with non-tariff barriers.

#### NOTE

<sup>1</sup> As per the WTO there is no difference between Non Tariff Barriers and Non Tariff Measures. However, OECD defines NTM as policy measures that have the effect of limiting trade, with no implied judgment on the legitimacy or otherwise of these measures. Non-tariff barriers (NTBs) are defined as instruments that are in violation of WTO law. In this paper, the WTO definition has been maintained.

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## Stop Complaining about Higher Product Standards

THE Commonwealth Games went off without any hitch but it is difficult to shake off the defence of an official when shown pictures of unclean toilets at the Games village, that "their (western) standard of hygiene and cleanliness could be different from ours, so there is nothing to be ashamed about".

The Commerce Ministry takes a somewhat similar position when it comes to Technical Barriers to Trade (TBT) and Sanitary and Phyto Sanitary (SPS) measures in matters relating to trade. The Ministry protests that the higher standards in other countries are non-tariff barriers (NTB) that hurt Indian exporters. The World Trade Organization (WTO) agreements on TBT and SPS measures allow the member-countries to stipulate their own standards, if based on science, made known to all and applied without discrimination. If the goods do not meet the standards, their entry can be denied.

The Commerce Ministry says with the lowering of tariffs across the globe, it is not surprising that developed countries, with relatively lower tariffs, are the more prolific users of NTBs, especially to keep out developing country exports. It lists several TBT/SPS measures taken by other countries. Yet, of 25 measures listed, 13 are from rich countries but 12 are from poorer ones. Some objections of the Ministry may be valid but some are baffling. It protests that detailed labelling requirements with extensive product and content description are stipulated for food products by the United States. Now, what is wrong with that? No Indian exporter ought to have any problem in being transparent and telling the world what he is selling. But,

apparently, some exporters do have a problem and the Commerce Ministry goes to town with it.

Another example is the protest against rejection and subsequent destruction of marine products consignments with chloramphenicol/nitrofurans residues in the European Union (EU), rejections in Italy and France due to presence of *Vibrio Parahaemolyticus* without judging the virulence factors, rejection in the EU due to alleged presence of bacterial inhibitors/antibiotic residues without any confirmatory test. The essential point is whether these standards were made known and whether they are applied to all imports without discrimination. But mere protest that their standards are different from ours does not help.

Yet another protest of the Ministry is that the Registration, Evaluation and Authorization of Chemicals legislation in the EU for chemicals increases the cost of compliance by •85,000 to •325,000 per chemical. Here, again, so long as the EU does not apply different standards for its own locally produced goods and for goods produced in different countries, the protests can have little impact. Similarly, there is no point in objecting to the stipulation of CE (originally known by the French term *Conformité Européenne*) marking to indicate conformity with the essential health and safety requirements on the grounds that it increases the cost for small and medium enterprises.

The world is still a long way from uniform international standards for all products and services. Till then, exporters must learn to respect others' higher standards, even if these are different from their own. The Ministry should encourage exporters to achieve the standards that buyers expect from their suppliers.

*(Business Standard, 18 October 2010)*

## FM Flays American Trade Walls

REJECTING the “protectionist policies” of the US, Finance Minister Pranab Mukherjee said free flow of goods, services and capital would ease the global financial crisis.

“We shall have to keep in view that if the world economy is to come out of the present crisis, then protectionism is not the answer,” Shri Mukherjee said. Noting that the US protectionist policies could impact India’s software companies, the Minister said that the financial crisis would ease if “uninterrupted flow of goods and services and capital are allowed to take place”.

Protectionist measures like Ohio state banning outsourcing of state IT contracts to companies in places like Bangalore had stirred a hornet’s nest in India. The move was preceded by Washington’s decision to hike fee for H1B and L1 visas to fund a US border security fund. This had also invited strong criticism in India.

Indian software exporters fear both these measures would hit the \$50 billion Indian IT industry which earns more than 50 per cent of its revenues from America. However, late last month, Republicans in the US Senate successfully blocked the passage of an anti-offshoring bill that would have denied tax breaks to US companies that move jobs overseas. The bill proposed a ban on government contractors from using American taxpayers’ money to move jobs offshore.

Shri Mukherjee said India would be speaking out against protectionism at the meeting of the finance ministers of G20 countries in South Korea later this month. “If there be no robust demand for exports from the developed countries then our exports may suffer...it may affect our trade balance in the course of time,” he said.

*(The Economic Times, 8 October 2010)*

## Government, Business Push Back at US Trade Barriers

THE Union Commerce Ministry plans to present Prime Minister Manmohan Singh with a list of issues in trading with the US, which the PM will take up with President Barack Obama during his November visit to India. At a recent trade review meeting of

the WTO held in Geneva, the Indian side presented a list of eight concerns to US trade ambassador Michael Punke, ranging from the hike in fees of H1B and L1 visas to the proposed legislation on foreign manufacturers’ liability. Last month, industry association FICCI too had raised similar concerns with the US trade ambassador, signalling the convergence of business and Government concerns over what are perceived as protectionist policies in the world’s largest economy.

There are several issues on trade and if India and the US need to reach a new level in trade relations, then these have to be sorted out,” said a Government official.

At the WTO trade review meeting, Jayant Dasgupta, India’s ambassador to WTO, presented a detailed list of New Delhi’s concerns. Among some of the key issues raised are high tariff and non-tariff barriers on textiles, food products, footwear, leather goods and automotive components. New Delhi also said that since the US does not recognize any international standards, it forces Indian exporters to adhere to multiple regulations.

“India will consistently nudge the US to lift the restrictions on trade and urge other countries to follow suit since it would impact global trade,” a source said. He added that these issues would be raised at the Seoul meeting of G20 meeting in November.

The proposed legislation which will force foreign manufacturers to get an agent registered in the US to take all the liabilities has also ruffled feathers in India. Shri Dasgupta said that the Foreign Manufacturers Liability Bill currently pending with the US Congress could be in breach of international trade treaties. Even the European Union had raised similar concerns with the legislation earlier

Commerce Minister Anand Sharma had minced no words in attacking the US proposal to hike visa fees: “It is estimated that the Bill will have an additional cost implication of over \$200 million annually and an adverse impact on the competitiveness and commercial interests of Indian companies sending professionals to undertake projects locally for American customers in the US,” he wrote to US Trade Representative Ron Kirk.

*(The Financial Express, 7 October 2010)*

## A Case Against Protectionism

THE so-called bastion of free trade, the US, has of late turned to putting more fetters to trade, both tariff and non-tariff, to the extent that the Obama Administration is living up to the traditionally protectionist image of the Democrats. No wonder, there is scarcely any sense of urgency in concluding the Doha Development Round that is touted to bring benefits in billions of dollars to the developing countries.

The state of Ohio's latest ban on foreign outsourcing of government-funded information technology projects, the recent move by the Federal Government to raise fees for skilled workers' visa, capped by Mr. Obama's outburst to end the tax-break for firms creating jobs and profits overseas, have raised the hackles of trading partners while mollifying the domestic constituency.

Added to these protectionist moves is the legislation before the US Congress called the Foreign Manufacturers Legal Accountability Act (FMLLA).

### Dubious Bill

In a neatly presented monograph (*Free Trade Bulletin* No. 42, "Consumer Safety" Bill Could Boomerang against US Manufacturers <http://www.cato.org/pub>) the Director of Centre for Trade Policy Studies at the Cato Institute, Daniel Griswold, and a trade policy analyst, Sallie James, have highlighted the dubious intent of the proposed legislation and pointed out how this "consumer safety" Bill could boomerang on US manufacturers.

This is a fitting riposte by the researchers to the contention of the sponsors of the legislation that their primary goal is to protect American consumers from unsafe foreign products.

The nub of the Bill introduced earlier this year in the House and the Senate is that FMLLA would require any foreign producer selling goods in the US market to designate a legal agent, who could be served papers in a product liability suit. The agent would be required to register in a state with a substantial connection to the import, distribution and sale of the product and by so registering an agent, the foreign producer would agree to accept

the jurisdiction of the State and the federal courts of the State where the agent is located.

The researchers contend that initiating legal action against a foreign-based entity is a common and established procedure, with efforts to move against foreign manufacturers being currently subject to the Hague Convention on the Service Abroad of Judicial and Extraterritorial Documents in Civil and Commercial Matters.

This is a multilateral treaty governing the channels of transmission of judicial documents across borders, to which most of US' trading partners are a party.

Requiring foreign firms to designate a legal representative in the US would not guarantee collection of damages from the producer, they said. Besides, the fact that a foreign producer may not have a legal representative in the US does not change the fact that Customs officials, the Food and Drug Administration and the Consumer Product Safety Commission and agencies retain broad powers to bar the entry of tainted or defective products.

### The American Reality

In that case the proposed legislation is just a non-tariff barrier. The researchers have bluntly stated that today most manufactured products are composed of components made in a host of countries – a sort of outsourcing in manufacturing.

As the future of American manufacturing is contingent on the ability of American firms to supply the design, engineering and higher-end components for increasingly complex global supply chains, this "new reality" for American manufacturing has implications too. Thus, the US companies must not only export to expand revenue but also import raw materials, capital machinery and intermediate components to control cost and remain profitable and competitive.

The Cato scholars aptly admonish the Administration that "any effort by it to discourage imports generally, through a general tariff hike, an intentionally depreciated dollar or new non-tariff regulatory barriers, will impose real costs on American producers as well as consumers".

(*The Hindu Business Line*, 4 October 2010)

## IT Industry Relieved at Senate Blocking Anti-Offshoring Bill

THE Indian information technology (IT) industry is relieved at the US Senate's decision to block the proposed "Creating American Jobs and Ending Offshoring Act", that sought to offer a tax holiday for employers moving jobs to the US from abroad.

"It (sought to) encourage people to remove foreign workers and create jobs in the US and tax those companies that have subsidiaries overseas. It would have affected the manufacturing industry and has been condemned by the US Chambers of Commerce. Though we knew it will not be passed, this blocking has conveyed the message that regressive bills create unnecessary hype about protectionism," said Som Mittal, President, Nasscom.

Girish Paranjpe, Joint CEO, IT business and member of the board, Wipro, said, "While we have mentioned before that this bill is not something that was going to affect us directly, we are encouraged by the current sentiments of the US law makers, that seem to encourage globalization. This move is especially good for our customers, as it helps them drive efficiencies in the global markets. For economies and businesses to continue to grow, countries globally must resist protectionist practices."

However, with elections in the US, Nasscom is wary of more election rhetoric that may come. "This Bill was not to impact us much and no such other legislation has come to place after the Border Security Law but these things can impact the electorate," Shri Mittal added.

The industry's fears are justified in the light of the Border Security legislation the Obama Administration cleared last month, which nearly doubles the H1B and L1 visa application fee from the present level of about \$2,300 to about \$4,300 per application. While this would not much impact the industry's revenues, Shri Mittal said, the costs would certainly go up. The \$50-billion Indian IT exports industry derives 60 per cent of its revenues from the US.

"The bill may not have impacted India-based outsourcing companies, as it would have impacted those that were contracting with the US Government and those that have data centres in

India," said an official from the Nasdaq-listed business process outsourcing company, EXL Service.

"The US' recovery is based on global trade and if it becomes protectionist, then it will be a problem for them, as they will be closing the doors to markets of growing countries," added Shri Mittal.

(*Business Standard*, 30 September 2010)

## India Slams US Trade Policies

THE US has been subject to criticism of some of its trade policies at WTO's review meeting. India, Brazil and other affected countries slammed its protectionist policies, which are affecting their economies. India's Ambassador to the WTO, Jayant Dasgupta, put forward India's several concerns on the policies of the US, which it wanted the US to address.

Shri Dasgupta said that India is deeply concerned with the tariff and non-tariff barriers to India's exports to the US. They include high tariffs on textiles, food products, footwear, leather goods and automotive components.

The recent fee hike for H1B and L1 visas and a ban on outsourcing by a particular US state are matters of acute concern to India. They are trade restrictive as they appear to be adversely impacting Indian companies, he added. Indian exports face additional customs impediments, such as import user fees and excessive invoicing requirements on importers, which add to the costs in the same way as tariffs, Shri Dasgupta said.

India also slammed the latest US position on intellectual property such as the emergence of new TRIPs plus initiatives in bilateral or plurilateral FTAs. Structures like ACTA and IMPACT are undermining the TRIPs Agreement as well as the multilateral trading system, Shri Dasgupta said.

(*The Times of India*, 30 September 2010)

## Sharma Raises Visa Fee Issue with US, Seeks Resistance to Trade Barriers

COMMERCE and Industry Minister Anand Sharma has raised the visa fee increase and offshoring ban by Ohio state with US Trade Representative Ron Kirk during the seventh ministerial session of the

US-India Trade Policy Forum (TPF) in Washington, DC.

He also stressed on the Tantalization Agreement between both countries. "Protectionism kills growth and innovation. In order to ensure that we continue our high growth trajectories, we have to be strong to resist domestic calls and pressures to increase barriers to trade," Shri Sharma told Mr. Kirk.

Recently, the US had been resorting to a series of protectionist measures that could have adverse impact on India's economic interest. While it passed a law to hike visa fee for H1B and L1 categories, the state of Ohio banned outsourcing of jobs stirring up sharp and outrageous reactions from the Indian industry.

Shri Sharma also highlighted the need to establish the Tantalization Agreement between India and the US that would seek greater avenues and cooperation between the two in the services sector, stated an official communication.

Under the agreement, Indians who go to the US to work for a stipulated amount of time would not have to pay social security tax in the US. At present, Indians working there on a short-term basis pay social security tax but are not entitled to enjoy the benefits of social security in return for the taxes.

"The dynamic growth of the Indian economy and its increasing importance to the United States as a strategic trade partner means that fostering solid connections between the United States and India opens valuable markets to American companies and supports job creation within the United States," according to a statement issued by the USTR's office.

During the meeting both ministers discussed the recommendations of the five focus groups on agriculture, innovation and creativity, investment, services and tariff and non-tariff barriers to trade that work under the TPF. Shri Sharma sought greater cooperation between small and medium enterprises for greater employment opportunities and higher incomes.

According to the joint statement issued by the Indian embassy, both sides held comprehensive discussions on a wide range of issues, identifying areas for future constructive engagement between the two trading partners.

The meeting, which was also attended by Commerce Secretary Rahul Khullar and deputy US Trade Representative Demetrios Marantis, sought to focus on wide-ranging areas of interest to firms and workers in both countries, including agriculture, investment, services, and tariff and non-tariff barriers.

(*Business Standard*, 23 September 2010)

## ASEAN – Non-Tariff Barriers for Agri Trade

ASSOCIATION of South-East Asian Nations is a geopolitical and economic organization of ten countries located in Southeast Asia. The organization was established with an objective of accelerating economic growth among its members by enhancing trade and investment relations among its member countries. Agri-trade is one of the main focus areas. Discussed below are non-tariff barriers for Agri-trade in select ASEAN countries:

### Thailand

Control of the import, marketing, distribution and sale of products is shared between Food and Drug Administration (FDA), the Customs Department, the Ministry of Agriculture and the Ministry of Commerce. The Agricultural Regulatory Division of the Department of Agriculture classifies the import requirements for plant material for quarantine purposes. For all the commodities of import interest only a phytosanitary certificate is required, and the Indian Directorate of Plant Protection, Quarantine and Storage (IDPQS) is recognized as a competent authority to issue a certificate.

Commodity	Requirements by Thailand
Tomato, Onion, Ginger	Only printed (no handwritten) Phytosanitary certificate; post-entry quarantine, and radiation certificate not required. Must be free of pests of quarantine concern
Sesame seed, Soya, Raw Cotton	Only printed (no handwritten) Phytosanitary certificate. Imports of soyabean meal are subject to a requirement, that proportionate quantity of the same type of goods produced in Thailand is imported by the exporter
Banana, Pineapple, Pomegranate	Prohibited imports

In addition, food products must be approved and registered with the Food and Drug Administration (FDA); all consignments must be labelled in the Thai language showing both the generic and trade, registration number, name and address of the manufacturer, date of manufacture, details of the exact composition by percentage of each ingredient, net weight of contents and any additives used. Foodstuffs in sealed containers are subject to specific regulations.

### Indonesia

The main prerequisite for importing fresh produce into Indonesia is a phytosanitary certificate issued by the appropriate authority such as the Department of Agriculture or Primary Industries in the country of origin (e.g IDPQS in India). The consignments are subject to plant quarantine inspection upon arrival in Indonesia. Fumigation dipping as well as cold treatments are allowed for specific products. Pesticide regulations including Maximum Residue Level for fresh fruit and vegetables exist. All food and beverages whether imported or locally produced must be registered at the Indonesian Food and Drug Control Agency. For food imports, samples needed to be sent for analysis to determine ingredients, additives and micro-biological content.

The use of labels in Bahasa Indonesia is mandatory on all types of goods. Exemptions may

<i>Commodity</i>	<i>Requirements by Indonesia</i>
All Fresh Fruit	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate; import permit, and radiation certificate not required.</li> <li>• Product must originate from areas free of all types of fruit fly.</li> <li>• Product may be subject to Cold Disinfestation treatment (2.8oC) for up to 18 days and fumigation with Methyl Bromide.</li> </ul>
All Fresh Vegetables	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate; import permit and radiation certificate not required.</li> <li>• Must be free of pests of quarantine concern.</li> </ul>
Dry Fruit and Raw Cotton	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate; import permit, and radiation certificate not required.</li> </ul>
Seeds and Grains (e.g. Sesamum)	<ul style="list-style-type: none"> <li>• Phytosanitary certificate and import permit</li> </ul>
Raw Cotton	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate</li> </ul>

be granted only if there are no Indonesian words that can act as a substitute or if there is difficulty in finding Indonesian words with a similar meaning. Approval to omit Bahasa Indonesia labelling must be obtained from the Indonesian Attorney General.

Labels for food products must:

- Indicate registration and issue of a product number (ML number) by the Food and Drug Control Agency;
- Have an expiration date, and complete name and address of the importer; and
- Have a Halal certificate from an agency approved by the Indonesian Islamic Council if the product is Halal.

### Philippines

All bulk agricultural product shipments must be accompanied by a corresponding export/sanitary certificate from an appropriate agency at origin. Philippines quarantine is administered under the Plant Quarantine Act of 1978. Processed food and beverage products are required to be registered with the Bureau of Food and Drug, prior to being sold commercially in the Philippines market. Generally, food regulations are based on guidelines of the Codex Alimentarius Commission.

An import permit is required for most plants and plant products, including fruit and vegetables.

<i>Commodity</i>	<i>Requirements by Philippines</i>
All Fresh Fruit	<ul style="list-style-type: none"> <li>• Phytosanitary certificate, and import permit</li> <li>• Product may be subject to Cold Disinfestation and should be declared on the Phytosanitary certificate.</li> <li>• Fruit must also be free of Sa Jose (Quadrastpidiotus perniciosus), Oriental fruit moth (Cydia molesta), and Codling moth (Cydia pomonella).</li> </ul>
All Fresh Vegetables	<ul style="list-style-type: none"> <li>• Import permit and Phytosanitary certificate.</li> <li>• Must be free of pests of quarantine concern</li> </ul>
Dried Fruit and Vegetables	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate (2 copies)</li> <li>• Certification of compliance with specifications of Philippines required from shipper (5 copies to be lodged).</li> </ul>
Seeds and Grains (eg Sesamum)	<ul style="list-style-type: none"> <li>• Phytosanitary certificate and import permit.</li> </ul>
Raw Cotton	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate.</li> </ul>

An import permit is not required for cereals and grains, grains for animal feed purposes or for processing or manufacturing, and which are not prohibited.

In addition, all goods must give a label in English, Spanish or Filipino (Tagalog), showing:

- Common or generic name;
- Physical or chemical composition;
- Preparation and storage directions;
- Name and address of manufacturer, packer or distributor;
- Country of origin; and
- Net contents.

### Malaysia

Malaysia applies strict sanitary and phytosanitary measures to trade in plants, forest products, food, and animal and seafood products. The legislative and regulatory framework on which these measures are based include:

- The Plant Quarantine Act of 1976 and Rules of Plant Quarantine 1981; and
- The Food Act 1983 and Food Regulations 1985, covering the preparation, sale and use of food.

If required, import permits should be obtained from the Director-General of Agriculture in Kuala Lumpur for imports into Peninsular Malaysia and the Director of Agriculture in Sabah or Sarawak for importation into Sabah or Sarawak.

Malaysian food standards and regulations include requirements that food be processed, stored and handled in a sanitary manner. There are nutritional labelling requirements for certain food products, including cereals, breads, milk, various canned foods and fruit juices, soft drinks and salad dressings.

Malaysia has played a leading role in the development of Halal certification, reflecting the objective of the government of developing the country as a hub for Halal food products. Halal certificates are issued by Department of Islamic Development Malaysia (JAKIM), which is widely recognized.

Labelling requirements for pre-packed food include:

- Type of product;
- Minimum quantity (weight, number or capacity) in metric;
- Name and address of manufacturer, importer, producer or wholesaler;
- Country of origin;
- Language must be in Bahasa, Malaysia or English; and
- Labels must not include wording or illustrations likely to be misleading.

Customs duty is based on *ad valorem* rate (a percentage applied to the dutiable value of the imported goods). Essential foodstuffs, and food commodity, are generally non-dutiable or subject to lower rates of duty. The Royal Customs Malaysia is the government agency mandated to collect duties and taxes as well as ensure compliance of legislation.

<b>Commodity</b>	<b>Requirements by Malaysia</b>
Mangoes	<ul style="list-style-type: none"> <li>• Phytosanitary certificate</li> <li>• Mangoes should be free of mango seed weevil (<i>Sternochetus mangiferae</i>) and certified accordingly in Phytosanitary certificate</li> <li>• Inspection on arrival</li> </ul>
Other fresh fruit	<ul style="list-style-type: none"> <li>• No certificate required</li> <li>• Inspection on arrival</li> </ul>
All fresh vegetables	<ul style="list-style-type: none"> <li>• Inspection on arrival</li> </ul>
Seeds and Grains (e.g. Sesamum)	<ul style="list-style-type: none"> <li>• No certificate required</li> <li>• Stored product pests of concern are: Khapra beetle (<i>Trogoderma granarium</i>) and Greater Grain Borer (<i>Prostephanus truncatus</i>).</li> </ul>
Raw Cotton	<ul style="list-style-type: none"> <li>• Only Phytosanitary certificate</li> <li>• All consignments must be free of prohibited weed seeds: <ul style="list-style-type: none"> <li>- <i>Rottboellia cochinchinensis</i>;</li> <li>- <i>Parthenium hysterophorus</i>; and</li> <li>- <i>Sorghum halpense</i></li> </ul> </li> </ul>

([www.eximbankagro.in](http://www.eximbankagro.in), September 2010)

## Alleged Dumping of Chemicals under Lens

THERE has been a rise in investigations by the Government into alleged dumping of chemicals and petrochemicals.

Anti-dumping investigation is usually initiated on petitions from a company or a group of

companies complaining of increased imports into their markets here. Of late, such complaints have increased. In the past two months, the department of revenue has imposed anti-dumping duty on 10 new items, mainly in chemicals and petrochemicals (solvents, dyes and so forth).

Dumping is defined as an unfair trade practice, with goods exported to another country at a price lower than its normal value. Thus anti-dumping, as approved by the WTO, is a measure to restore fair trade by imposing additional "anti-dumping" duty on the imported goods to remove the price anomaly between these and domestic products.

Analysis shows the Revenue Department had, over the past two years, imposed anti-dumping duty on one or only two new items per month, while the others were renewals of earlier impositions. In 2010, however, new duties have been imposed on 26 items, mostly on industrial chemicals. On most, duty has been imposed for five years.

The Ministry of Commerce has also got feedback from the Ministry of Chemicals and Fertilizers about heavy dumping of chemicals and petrochemicals by various European countries. The explanation is that India is one of the few markets witnessing increasing demand for petrochemicals and chemicals. Added to this is inadequate domestic capacity.

In 2008-09, the anti-dumping directorate got 31 applications for imposing duty on new items, of which eight were rejected and duty was imposed in 23 cases. In 2009-10, another 53 applications were received, of which 28 got rejected and duty was imposed on the rest. In 2010-11, till now, around 50 applications have been received.

Currently, investigations are on for 60-odd products. Some of these are phenyl methyl pyrazole (from China), hexanelactum (Japan, EU), acetone (Japan, EU, Russia, China), acrylic fibre, barium carbonate, polyester yarn, polypropylene (EU, China), butadiene rubber (EU), azodicarbonamide (China), caustic soda, bus truck radials, carbon black for rubber, diethyl thiophosphoryl chloride (China), ethylene, propylene (EU, Brazil, China), phosphorus-based chemicals and cold rolled flat products of steel (EU, Japan, South Africa, US).

"The last major duty was imposed on steel and steel items by Europe in 2008. Unlike 2005-06, this time India has to face the burden of heavy imports, since overseas markets for these European companies are reeling under slowdown and industrial capacity is running below normal," said officials.

(*Business Standard*, 12 August 2010)

## US Acts Tough on Indian Apparel Exporters for using Child Labour

INDIAN apparel exporters, still reeling under the impact of the global economic downturn, are in for fresh trouble as the US Government has put India among a list of countries that use child labour. Such an inclusion is not only going to tarnish the image of Indian apparel exporters but can also harm the flow of orders from the US.

India's current stand that there is no incidence of forced child labour in its garment manufacturing industry is not acceptable to the US Government, which has included India along with 28 other countries in the Executive Order 13126 list (EOL) and Trafficking Victims Protection Reauthorization issued by the US Department of Labour last September. The list includes names of other competing exporting countries like Bangladesh and Pakistan.

The US is the largest importer of apparel from India, and accounts for nearly 75 per cent of the overall apparel exports from the country. Given the sovereign debt crisis in Europe, exporters have been banking on US orders to compensate the EU shortfall. Though industry insiders are of the view that as of now there will be no major impact, initial estimates suggest there can be 15-20 per cent shortfall in US orders in the medium term.

According to sources in the industry, the inclusion in the lists are an "unsettling stigma" for responsible manufacturers as they are industry-wide and not company-specific allegations. The Apparel Export Promotion Council (AEPC) had taken a delegation, including ministry officials, to the US in June and had appointed US-based law firm, Sidley Austin LLP (SAL), to lobby for Indian apparel exporters.

"This means the reputation of Indian industries is at risk because no socially responsible US buyer

wants to be affiliated with child labour or forced labour of any kind. US manufacturers may now ask their Indian suppliers to provide them with further assurances and might go for third-party inspections," said an official at SAL.

Though AEPC has tried to prevent India's inclusion in the list, some industry observers say the body was slow in taking action, as the Carpet Export Promotion Council has been successful in getting itself off the list through timely action, by providing detailed information of inspection and monitoring systems in place.

"Well, I don't know what will be the impact of the move but it does not bode well and of course we are concerned. The US is a big market for us and small and medium exporters rely primarily on US orders... Indian manufacturers do use child labour in many instances and AEPC should play a greater role in vigilance and monitoring activities," said a Delhi-based medium-sized garment exporter, on condition of anonymity.

The US Department of Labour has stated that its decision to remove carpets in the final list was based on the "detailed and analytical information" provided by the CEPC. AEPC expects to emulate CEPC's example and work towards removing apparel exports from the EOL list when it is revised next month.

*(Business Standard, 10 August 2010)*

## So What do NTBs Cost?

TO tackle the menace, India Inc needs to detail all the non-tariff barriers faced by it while exporting and their cost. Tariff liberalization, most trade negotiators will agree, is no longer a difficult area for trade negotiations. The increasing number of free and preferential trade agreements has ensured that bargaining in tariff negotiations is limited to select list of products which are sensitive to the economy.

The biggest barrier to global trade that needs immediate attention, however, is the issue of non-tariff barriers (NTBs). There is very little to show in terms of progress in addressing NTBs in international trade. Interestingly, the issue of slashing tariffs and non-tariff barriers under the WTO negotiations is discussed by the same

committee on NAMA (Non-Agricultural Market Access) which is chaired by Ambassador Luzius Walecha of Switzerland.

The negotiations at the WTO for identifying a mechanism to deal with NTBs are woefully slow and incomplete and the free trade agreements do not pay anything more than lip service to this important aspect for global trade liberalization. India has been at the receiving end of many such non-tariff barriers in several sectors, especially the food sector. From arbitrary maximum residue levels of pesticides on products like rice and grapes to confiscation of drugs at airports in the guise of IPR protection, the list of NTBs faced by Indian exporters has been long in the last 12 months.

Importantly, NTBs are not region- or country-specific, and nearly all countries have their own set of NTBs to protect domestic industry and trade. They cut across developed and developing economies while the impact on the developing economies is far more severe when faced with an NTB in an important market in a developed country since most developing countries concentrate on just a few markets for exports.

It is not just the NTBs developed by governments that impede trade but several private standards emerging in global markets are also aimed at helping a particular country or producer over another. While governments have to provide scientific backing to create non-tariff barriers, though they are in many cases arbitrary, in case of private standards even the pressure of building scientific reasoning to introduce a standard is not needed.

The need to address these issues was identified in the Doha Round and the negotiators at Geneva have been attempting to find a way forward on this issue though they have been moving very slowly on the negotiations. In the last few weeks, there has been an attempt to find a horizontal mechanism by four countries – Colombia, Hong Kong, Singapore and Thailand – that call themselves the "middle grounders" to find a horizontal mechanism that will help countries resolve the issue of NTB without going for the time-consuming dispute settlement mechanism at the WTO.

This proposal will now need to be studied in detail by countries before it can move forward. However, it is an important step forward as there is a need for a critical mass of proposals on the table to ensure that this critical area of trade liberalization moves ahead. There have been a few more areas discussed under the issue of NTBs at the WTO.

The first is the issue of international standards and harmonization of standards across countries based on global standards so that there is transparency for companies on standards that would be used in countries. However, this may not be fully possible as members are at differing levels of development and it would be difficult to expect that standards across all countries will remain the same.

Various factors would have to be taken into account for developing countries, for instance, before adopting standards. This would include issues such as the cost of adopting a standard, the environment for setting a standard, etc. However, what would be important is to ensure that there is transparency by the standard-setting agencies across the globe when standards are at variance with the internationally accepted norms.

Given this backdrop, it is important that industry in India takes a lead in ensuring that NTBs become an important component of discussions at both WTO and for the FTAs. First, there is a need for a comprehensive document that lists out the various NTBs that sectors face across the globe. This document will have to spell out in numbers the loss of business because of an NTB or lack of transparency in setting standards by countries. Such exercise would goad negotiators to move ahead in the area of discussing ways and means of tackling NTBs. Without a comprehensive document that is constantly updated, it would be difficult to achieve the objective of targeting NTBs.

Second, there has to be a global dialogue among industry to identify issues such as private standards which are hurting trade. Open trade would benefit all countries and it is important that NTBs do not replace tariffs as impediments to global trade.

*(Business Standard, 5 August 2010)*

## India to Push for Non-Tariff Barrier Database at WTO's Geneva Round

INDIA will drum up consensus at the Geneva Round of the WTO for setting up an integrated database that will compile all non-tariff barriers existing worldwide as it feels that changing quality standards for imports to developed nations and abrupt policy changes make things tough for its importers.

The seventh session of the WTO ministerial conference is slated later this year, and India has already made a formal submission to the organization in this regard.

"Indian exporters send consignments to countries only to discover that they failed some specific quality or technical norm. This gap of information has to go as it causes a lot of losses to exporters," a Commerce Department official said.

He said quality standards and specifications keep changing in the developed countries, including the EU and the US, making it difficult for exporters in developing countries to keep a track on the latest standards.

"Once the WTO makes it mandatory to post all such data, there would be a pressure of some sort on the developed countries not to change their standards so frequently. Exporters too would know at the click of their mouse the existing standards in the destination countries," the official said.

The WTO ministerial, which is a formal meeting of trade ministers from all the 149 member countries, is expected to give the ongoing Doha Round of multilateral talks, which started almost eight years back, the much-needed push. The Doha Round seeks to open up markets for trade in goods and services further.

India has started stressing the need to put a check on non-tariff measures as there has been a sharp rise in both sanitary and phytosanitary measures (restrictions to ensure food safety and control diseases) and technical barriers to trade (measures such as labelling requirements with a gradual decline in import tariffs in all countries) coinciding with a fall in import tariff levels.

The number of TBT measures have risen sharply from 365 in 1995 to 1,030 in 2007. China alone has

560 TBT measures in place followed by the US, which has 460, and the EC at 290.

India has already asked the WTO to conduct a study on how the multiplicity of international standards and technical regulations affect trade flows of developing countries.

*(The Economic Times, 22 July 2009)*

## Basmati Exporters Urge Centre to Hold Talks with EU over Pesticide Norms

WITH aromatic basmati rice from India kept out of the supermarkets in Germany for the last few months, following reports of the presence of high levels of pesticide residue, exporters are urging the Government to hold discussion with the EU for bringing in uniformity in the norms concerning the minimum residue limit (MRL).

“EU approval process for the presence of pesticide residue as to reset as precautionary principle approach sometimes result in ambiguity about MRL,” a leading exporter of basmati rice said.

In June, a Hamburg-based lab had issued reports to buyers suggesting that organic basmati rice imported from India has elevated levels (0.03 per cent) of carbendazim and isoprothiolane (both plant protection products and PPP), after the European Commission fixed an arbitrary MRL of 0.01 ppm.

This has stalled the export of 20,000 tonne of organic basmati rice (worth \$310 million) to Germany in last few months. However, a leading exporter confirmed that “no consignment has been rejected by the EU”.

Exporters have been asking about the reasons of reduction of EC pesticide levels in the first place. They acknowledge that awareness about pesticide residue is low amongst the farmers.

With Europe and the Gulf countries, the key export markets for India’s basmati rice, putting in place stringent safety norms for ensuring that pesticide residue in agricultural crop remain below prescribed limits, aromatic rice exporters had recently urged the Agriculture Ministry to ensure that farmers use less pesticide.

In a letter to Agriculture Ministry, All India Rice Exporters’ Association President Vijay Setia had stated, “Some of the pesticide manufacturers are not giving correct and complete advice to farmers on proper use of chemicals. This is resulting in indiscriminate use of the products by the farmers.”

Even Iran had put a temporary halt on the import of basmati rice last year after few samples were alleged to have higher pesticide residue, which later was contested by rice exporters. Iranian state-owned laboratory Standard Institute of Industrial Research had claimed that Indian rice contained arsenic, lead and cadmium and did not have nutrition value.

Iran had emerged as one of the biggest export markets for Indian basmati in last two years with close to 40 per cent of the country’s exports, totaling around 2.2 million tonne, being shipped to that country.

Basmati rice exports crossed 2 million tonne last fiscal largely because of bumper local harvest and strong demand from the Gulf countries, particularly for the newly classified PUSA 1121 variety. Iran and Saudi Arabia constitute more than 65 per cent of the country’s total basmati rice exports.

According to the latest data compiled by Agricultural and Processed Food Products Export Development Authority (APEDA), export of the premium aromatic rice has increased by an impressive 44 per cent in comparison to 1.6 million tonne in 2008-09. In value terms, the export of basmati rice has crossed ₹12,000 crore last fiscal against ₹9,476 crore achieved during 2008-09.

*(The Financial Express, 30 August 2010)*

## Not-So-Free Trade Agreements

### Clauses on Social Issues in FTAs with the Developed World Can Impede Market Access for Developing Countries

THE flavour of protectionism is spreading in the US sometimes at the cost of impeding market access for trade partners. The recent law signed by US President Barack Obama to raise work visa fees will hit Indian companies immediately and US companies with global operations in the medium and long term.

It is obvious that the US is addressing domestic policy concerns by triggering policy initiatives that discriminate foreign service suppliers *vis-a-vis* the domestic companies. There are two main concerns in the visa fees issue.

*First*, there is a direct reference to Indian companies. *Second*, and more serious, is the issue of raising revenue through increased visa fees to fund a \$600-million initiative for securing the US-Mexican border through 1,500 new border personnel, a pair of unmanned drones and military-style bases along the border.

The concern is that the US is impeding genuine market access through the use of domestic policy to address the issue of illegal immigration. It is very important to examine if the US move is the WTO-compliant.

In an unrelated recent decision, the US has used policy space to focus on labour rights. The US has used the clause in the FTA Agreement to file the first-ever formal labour case under a free trade agreement when it filed a case against Guatemala under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

An announcement by US Trade Representative Ron Kirk says that “the Government of Guatemala’s apparent failure to effectively enforce its labour laws harms US workers by forcing them to compete against substandard labour practices and tilts the playing field away from American workers and businesses. By holding the Government of Guatemala accountable to its labour commitments under the CAFTA-DR, we can help to ensure that US businesses and workers are able to compete on fair terms”.

The US has already held informal consultations with Guatemala on this issue and is now seeking formal consultations under the relevant chapter in the FTA. If the two sides fail to resolve the issue and the US continues to find that Guatemala is not “effectively enforcing domestic labour law”, then the US has the choice to seek dispute settlement.

Both these incidents bring two very important points to the fore. *One*, the unhindered use of policy space to safeguard domestic interests. *Two*, the use of social clauses in the FTA to provide a level playing ground to its workers.

One interpretation of the American decision to take Guatemala to task is that the US Administration is seeking congressional approval for several FTAs that have not been ratified as yet, including agreements with South Korea, Panama and Colombia. Congress has been dragging its feet stating these agreements do not have adequate labour provisions. By taking Guatemala to task, the US Administration may be sending a signal that will safeguard labour interests.

Both these decisions by the US provide valuable lessons. *First*, there would be a continuous effort by the developed world to pander to protectionist lobbies through use of domestic policy. With the pace of growth increasing in the developing world, this form of protectionism will thrive. Businesses in India will, therefore, have to remain dynamic to emerging situations and adapt quickly to remain on top.

Industry will need to keep a constant watch on such developments and take precautions against it becoming an impediment as has been the case with the visa issue.

*Second*, the larger lesson is that though FTAs provide a platform for increasing trade, there is a need to be very careful while negotiating any specific clause with the developed world. The environmental and labour clauses are the most important to watch.

Developed countries, for instance, are now seeking to introduce elements in FTAs that call for specific social obligations on various issues. The European Union, for example, has inserted the labour and environment clause in the FTA with South Korea and is reported to be keen to introduce the same elements in the agreement it is negotiating with India. While India has reportedly not accepted the EU proposal, the 27-nation Union is expected to seek the inclusion of these clauses to get the agreement ratified by the European Parliament as was the case with the South Korean FTA.

It is important for FTA negotiators on both sides to understand that policing by other partners on social issues can lead to unfair situations where developing countries would find access to markets restricted.

(*Business Standard*, 19 August 2010)

## UN Food Regulations may not Impact Indian Exporters

INDIA is unlikely to be impacted by the new melamine and aflatoxin limit set by the UN Codex Alimentarius Commission (Codex), a body run jointly by the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization.

In an effort to help prevent dangerous contamination of food with melamine, a toxic chemical, Codex set new limits for the amount of the substance that can be present in baby formula, other foods and animal feed without causing health problems. The maximum melamine allowed in baby formula was set at 1 mg/kg and 2.5 mg/kg in other foods and animal feed.

India does not produce, consume or export melamine. Hence, exporters need not fear for this chemical used in a variety of industrial processes, including the manufacture of plastics used for dishware, kitchenware and can coatings.

Traces of it unavoidably get into food by contact without causing health problems, but the substance is toxic at high concentrations. The recent scare caused by Chinese made goods, particularly milk powder tainted with melamine causing illness of more than 13,000 and death of 4 children in China. This was caused by manufacturers putting dangerously high levels of the toxic chemical in milk powder and other foods. Earlier this chemical was also found in Chinese made pet foods leading to its massive recall in the United States.

Melamine is a toxic chemical and because it is a hard synthetic substance with flame retardant properties, is commonly used in making countertops, dry erase boards, and other house wares including utensils.

This toxic substance is sometimes illegally added to food products in order to increase their obvious protein content. When mixed with diluted milk it thickens the milk and make it appear rich in protein. More importantly, it would seem that normal testing of the product cannot detect the substance but shows it as protein.

If consumed it causes renal and urinary problems in humans and animals when it reacts with

the cyanuric acid present in the human body and sometimes in drinking water and animal feed. Due to this harmful nature its use in food production is universally banned.

India needs no worry as melamine is not produced, consumed or exported from here, said Sanjay Shah, former Chairman of Indian Oilseeds and Produce Export Promotion Council (IOPEPC), a trade body set up by the Ministry of Commerce.

As far as aflatoxin goes, it seems UN has relaxed the norm, said Shri Shah. Maximum levels of 10 micrograms/kg were set for aflatoxins in Brazil nuts (shelled, ready-to-eat) and 15 micrograms/kg for shelled Brazil nuts (intended for further processing), while the Commission also adopted a code of practice to prevent this contamination.

Aflatoxins are carcinogenic fungal toxins that can contaminate corn, peanuts and other food crops such as tree nuts under certain conditions.

The new Codex measures provide specific guidance for production, harvesting, packing, processing, storage, distribution, marketing and consumer education to reduce food safety risks associated with these products. Guidance covers such aspects as the control of irrigation waters, cooling and storage and correct washing of hands by consumers.

*(The Business Standard, 9 July 2010)*

## EU Raps G-20, Emerging Economies' Protectionist Policies

THE 27-member European Union (EU) has lamented that there was no let-up in the protectionist policies of its major trading partners including India during the economic crisis over the last 18 months.

This is despite the pronouncements and posturing to the contrary by the G-20 members, both developed and emerging economies.

In a recent report covering the EU's 30 main trading partners over the period October 2008 to April 2010, the Brussels-based European Commission's Directorate General of Trade contends that as many as 280 trade restrictive measures have been put in place by its major trade partners during the economic crisis.

The protectionist measures range from classical trade measures such as import bans or tariff increases to “buy national” and other behind-the-border measures. It deplored that many of the new barriers were rapidly becoming permanent features of the global trading system.

Stating that very measures introduced since the advent of the monitoring exercise by the EU have actually been removed, the report said the steady overall spurt of protectionist measures linked to a very low level of removal of extant restrictions shows “a clear risk of entrenchment and institutionalization of trade-restrictive measures in the post-crisis period”.

It said such a “quiet proliferation of trade barriers poses an important systemic challenge, notably for the EU, which is large player in world trade and whose recovery remains heavily dependent on external demand”.

Pointing out that between November 2009 and April 2010, 73 further trade restrictive measures were put in place, bringing the total figure of measures in force to 278, the EU said a “striking fact is that only around 18 measures have been withdrawn or expired between November 2009 and April 2010”.

## India

On India, a G20 member, it said New Delhi has put in place as many as 13 potentially trade restrictive measures, behind China at 19, in areas such as textiles and clothing, toys, agri food, steel, other metals, automotive and others.

It also referred to the “discriminatory components of fiscal support schemes” particularly the stimulus package for exporters – incentives for the textile sector, engineering, electronics and agro-food products.

While it said incentives for textiles (readymade garments) would be available till September 2010, incentives for electronics, engineering and agro-chemical products are being given for the entire 2010-11 period under the Market-Linked Focus Product Scheme. It also referred to a *de facto* export ban on raw cotton and hike in the export tax on iron ore and iron ore concentrate from 10 to 15 per cent.

While China had in place 19 potentially trade restrictive measures, the other major countries include Russia at 69, Argentina at 61, Indonesia at 48 with South Africa and South Korea at 15 measures each and the US at 18.

The EU categorically urged it “utmost important” for G20 members to keep the recovery’s momentum so as to actively address the measures introduced so far “in order to further help the global economy exit from the crisis”.

It said G20 commitment on this count and attendant monitoring have been instrumental in containing a major protectionist backlash so far.

“We should now build on this relative achievement to implement also the second leg of the G20 commitment and make a firm case for the need to discontinue the trade restrictive measures taken in the context of the crisis”, it said adding that “this is all the more important as the majority of the most restrictive measures were introduced by emerging economies where the economic rebound is much stronger than in the EU”.

It warned that “maintenance of restrictions in particular by these economies risks creating an uneven playing field for the recovery”.

(*The Hindu Business Line*, 7 June 2010)

## Increase in Non-Tariff Barriers Causing Concern in Comesa

THE increase of non-tariff barriers in the \$350 billion Common Market for Eastern and Southern Africa in the recent past is causing concern among some member states.

The countries are expressing fear that efforts to establish a fully functional customs union, launched last year, in the 12 million square kilometre trade bloc may be hampered if the problem is not tackled fast and swiftly.

Numerous meetings held at Comesa headquarters in Lusaka, Zambia, and other cities in the region to solve the problem have failed to solve the issue.

Even a major resolution by the council of ministers, one of the top decision-making organs in Comesa, that non-tariff barriers be removed by

March last year was ignored by as member states came up with new barriers to dodge the declaration.

“Though some non-tariff barriers were eliminated after the council of ministers’ resolution, other new non-tariff barriers quickly came up,” said Geoffrey Osoro, senior trade policy expert at Comesa secretariat.

Some countries are now calling for stiff penalties on those flouting rules regarding the indiscriminate use of NTBs.

At a recent Comesa meeting held in Nairobi, representatives from Uganda, Zimbabwe, Burundi and Comoros among others expressed concern that non-tariff barriers had become a major hurdle in the intra-Comesa trade.

Some of the barriers cited are quality inspections, delays in inspection of commercial vehicles, cumbersome and costly quality inspection procedures and unstandardized quality inspection and testing procedures. Others are lack of transparency and consistency in customs procedures, high freight and transport charges and wide-ranging health and safety requirements.

Though Comesa secretariat officials do not name the culprits, arguably, every member country uses a range of non-tariff barriers regulate goods entering or transiting its territory for reasons like health, environment and security.

“Non-tariff barriers are not bad if applied fairly, because they are needed in some cases. A government cannot let anything enter the country,” said Tasara Muzorori a Senior Trade Officer at Comesa secretariat.

In the modern world, where diseases and invasive species can spread from one corner of the world to another in a matter of days, countries need both tariff and non-tariff barriers to protect human health and environment.

Infant industries also need to be protected from competition to allow them to establish themselves and create employment.

It is partly the reason why non-tariff barriers are important in some cases, and a country can take its case to the council of ministers, which can grant a time-bound permission for their application. Kenya, for example, was granted a four-year

moratorium by Comesa to enable it prepare the local sugar industry for full liberalization by 2012.

However, the concern by the secretariat is that many countries do not seek permission from Comesa to apply certain non-tariff barriers, deemed by others as discriminative and a hurdle to free trade.

The major reason for their persistent use is the fear, by governments, of losing revenue, given the fact that customs form a major source of revenue.

Rwanda and Burundi, for example, received a total \$22 million as compensation for projected revenue loss as a result of adopting the East African Community External Tariff, with the former receiving \$15.5 million, while the latter got \$6.5 million from the Comesa Compensation Fund.

The two states applied to the fund, anticipating revenue losses from the implementation of the EAC lower tariff rates.

According to Comesa Secretary General Sindiso Ngwenya, it was the first decision to be made under the Comesa Fund for the disbursement of adjustment support.

The Compensation Fund supports economic integration programmes of the East and Southern Africa region by cushioning countries from loss of customs and other tax revenues.

More countries are yet to apply for aid in cases of revenue loss, and have chosen instead to stick with non-tariff barriers.

To check the problem Comesa secretariat has formulated penalties, which if approved by member states will see, stiffer penalties coming into force. But in the meantime, non-tariff barriers will continue to hinder trade in the region.

([www.theeastafrican.co.ke](http://www.theeastafrican.co.ke), 8 June 2010)

## SAARC: “Non-Tariff Barriers Must Go”

PARTICIPANTS of a SAARC Seminar on “Trade Facilitation in South Asia” have urged the member countries to cut down non-tariff barriers to facilitate direct trade.

South Asia is home to 25 per cent of the world population and half of the world’s poorest people

live here. It contributes only 2.5 per cent to the world GDP and 2 per cent of world exports. Only 1.6 per cent FDI comes into South Asia. Trade between the SAARC member countries is very little. Pakistan's total exports in 2008 remained above \$20 billion against its export of only \$578 million to SAARC region. India's export in the same period reached around \$182 billion against its total export to SAARC member countries of around \$6.5 billion.

Zafar Mahmood, Secretary Commerce, Pakistan said the pace of progress in South Asia was not satisfactory. "SAARC region has not yet realized its potential," he said. Dr. Muzaffar Ali Isani, professor of economics, Iqra University, Pakistan said: "trade between developing economies has grown with a snail's pace." Non-tariff barriers were kept there to protect the domestic industry.

"Trade facilitation can increase world trade by 10 per cent or \$400 billion," he said. He stressed the need for improving the port efficiency and simplifying the regulatory measures. "South Asia has the highest transaction charges in the world," he said.

Suwendrani Jayaratne, Research Assistant, Institute of Policy Studies, Sri Lanka gave presentation of trade facilitation through automation process. She said South Asia required highest number of documents for trade in the region, which created non-tariff barriers. There was need to speed up the process through computer technology, she said.

Mujeeb Khan, head WTO cell, TDAP said only signing of Free Trade Agreements (FTAs) was not guarantee of increasing the trade, there was need to remove non-tariff barriers as well.

([amannews.com](http://amannews.com), 4 April 2010)

## EU-JAPAN ECONOMIC STUDY

### Non-Tariff Barriers Main Obstacle to Bilateral Trade

THE European Commission has just released a new study on "The Trade Barriers to Trade and Investment between the EU and Japan", carried out by external consultants from Copenhagen Economics A/S.

The study focuses predominantly on regulatory measures in seven key sectors in Japan

(pharmaceuticals, medical devices, processed foods, cars, transport equipment, telecoms and financial services). The study indicates that existing non-tariff barriers to trade between the EU and Japan are the main obstacle to increasing bilateral trade flows. Highlights of the study are:

- While tariff dismantling would be beneficial to both economies, the real gains would be reaped by lowering regulatory differences, which have become the main obstacle in EU-Japan trade relations.
- As the study notes, trade gains for the EU could be even higher if Japan were to open public procurement and transport equipment markets.
- The study estimates that trade flows could increase by •43 billion for the EU and •53 billion for Japan. Two-thirds of the benefits could come from potential reductions in the trade costs of non-tariff regulatory measures, and about a third from tariff dismantling.
- While more than half of the trade benefits go to Japan, two-thirds of the welfare benefits go to the EU (•33 billion for the EU and •18 billion for Japan).

The study uses information on the trade costs of regulatory barriers obtained through a survey of European firms operating in Japan. The study's results support the continued focus on the reduction of regulatory trade barriers, in line with the issues currently discussed between the EU and Japan.

([www.3plnews.com](http://www.3plnews.com)., 3 February 2010)

### Industrial Goods Talks Examine Non-Tariff Barriers

TARIFFS are far from the only obstacle keeping goods out of potential export markets. A country's various technical regulations, health and safety standards, and certification and labelling requirements, can all make it harder for companies elsewhere to get their wares into its market.

Although these policies are often intended to promote legitimate objectives like consumer protection, they can be more trade-restricting than strictly necessary. The way governments introduce new measures can also make life difficult for would-be exporters. Existing WTO agreements - on

sanitary and phytosanitary measures, technical barriers to trade, and import licensing procedures, to name a few – set out some rules for such regulations, to ensure that they do not become a vehicle for disguised protectionism. And the mandate for the negotiations on non-agricultural market access (NAMA) in the Doha Round trade talks calls for the reduction of “non-tariff barriers” (NTBs, in negotiators’ parlance), particularly on products of export interest to developing countries.

For much of the NAMA negotiations, NTBs have taken a low profile, with centrestage occupied by deep divisions on the parameters determining tariff cuts by developed and developing countries, and the extent to which the latter would be able to shield some products from liberalization.

But with little movement in the past year on what is now the main difference in the NAMA talks – whether large developing markets like China, Brazil, and India choose to participate in voluntary initiatives to cut deeply or even eliminate tariffs across entire industrial sectors – officials have been turning their attention to NTBs.

The bulk of discussions during a week of NAMA talks during 2-6 November focused on some of the proposals for how to deal with problems arising from NTBs. Officials met in a range of formats, from bilateral and in groups to the multilateral plenary.

One of the newer submissions discussed was a paper from India and the EU that outlined a framework for addressing industry-specific NTB proposals. The document remains classified, but sources told that it works from the premise that many NTB proposals are similar, whether they deal with toys, automobiles, or electronics. For example, several proposals call for members, when adopting a new regulation for a product, to consider the costs of compliance to would-be exporters, discuss prospective regulations with trading partners, and respect international standards when possible. The EU-India proposal suggests that rules for transparency regarding different non-tariff measures could be identical for different sectors, and accompanied by sector-specific disciplines.

Cuba, which has been the target of a US trade embargo for 50 years, reiterated its call for the elimination of “unilateral economic or trade measures”, arguing that they constitute a non-tariff

barrier that violates the spirit of the WTO agreements. According to its proposal (TN/MA/W/94/Rev.2), a country’s ability to invoke national security exceptions to justify trade barriers that might otherwise be the WTO-inconsistent should be made contingent on “agreement at the international level about the situation” concerned. The US embargo on Cuba lacks such agreement: in a non-binding vote at the United Nations last month, governments condemned it by a 187-to-3 margin (with two abstentions), as they have in previous years. Sources report that while countries including Argentina and Brazil now support Cuba’s initiative, the US insisted that “it does not believe that this proposal can gain consensus.”

Another proposal, this one from Japan, Switzerland, and the US, urged liberalizing trade in “remanufactured goods” (TN/MA/W/18/Add.16/Rev.3). Pointing to the raw materials saved when goods are refurbished and used again, the proposal called for countries to review their non-tariff measures so that re-manufactured goods are subject to the same rules as new ones. During the recent meeting, Cuba, Indonesia, and India expressed reservations about the proposal. One concern is the proposal’s lack of a clear definition for exactly what constitutes a re-manufactured good. Some manufacturers from developing countries fear that opening up trade in re-manufactured products would expose them to a wave of cut-rate, second-hand goods from the industrialized world.

Two papers from the EU – one that sets out potential rules for standards, technical regulations, and conformity assessment procedures for the automotive sector (TN/MA/W/118), and another that does the same for electronics (TN/MA/W/119) – were criticized by both developed and developing countries as complicated and overly prescriptive.

Both proposals said that unnecessary duplication in national standards raised costs for industry. Both called for regulations to converge with relevant international standards and for members to adopt common conformity assessment procedures. And both said that transparency procedures – such as consulting with interested parties before introducing new regulations that differ from global benchmarks – should be required, and that regulations should be made public in a clear format.

The auto proposal provided for mutual recognition of domestic technical regulations. The electronics proposal, which was co-sponsored with Switzerland, stipulated that countries should not "prevent or unduly delay" the entry to market of products incorporating new technologies unless they could scientifically demonstrate safety or other risks.

The US has tabled proposals on the same two topics (TN/MA/W/120 and TN/MA/W/105/Rev.2). While similar to the EU proposals in terms of international standards and conformity assessment procedures, the US papers set out more detailed transparency requirements. For instance, countries proposing to adopt new technical regulations or conformity assessment procedures must give interested parties a minimum time period – "which normally shall not be less than 60 days" – to comment in writing on the potential measures, and take any comments into account.

A proposal that seems to have more widespread acceptance is one concerning labelling requirements for textiles, clothing, and footwear (TN/MA/W/93/Rev.1), sponsored by the EU, the US, Mauritius, and Sri Lanka. In addition to rules about consulting with trading partners about regulation, the proposal would forbid countries to have rules prohibiting labels in non-official languages, or for including information beyond the minimum required by domestic regulations.

(ictsd.org, 11 November 2009)

#### FACTBOX:

### Trade Barriers to the South Korean Market

SOUTH KOREA'S parliament approved a trade deal with India and is moving closer to approving a sweeping pact with the European Union.

Major economic players have lists of grievances that run into scores of pages. Here is a look at just a few of the reported trade barriers in South Korea:

*Basic Problems:* Foreign goods and services that run into direct competition with South Korean offerings are often subject to market access barriers. Both South Korean and foreign goods and services often face regulatory issues coming from excessive

government oversight, which leads to increased costs.

*Agriculture:* South Korea uses high tariffs to protect its politically important farm sector while farm activists have used mass protests to target wholesalers and retailers to block sales of imported foods. The pact with the United States is aimed at cutting out beef tariffs that can range up to 40 per cent.

*Automobiles:* The deal with the US is supposed to end a tax on engine displacement that the US automakers have said hurts sales of their products. The EU and US have complained of numerous non-tariff barriers to trade in the sector. The EU has complained that South Korea keeps foreign auto technologies out of the country through regulatory barriers and may not enforce market opening conditions in a consistent manner.

*Beverages:* The EU says South Korea has five government agencies overseeing labelling, with foreign liquor companies are asked to provide 18 pieces of information for labels. The layers of bureaucracy add significant costs.

*Construction:* An import tax of 8 per cent on building materials hurts foreign firms who use the materials more.

*Mobile Phones:* Up until April, South Korea required all mobile phones sold to contain Korean-market specific technology, which led many firms to avoid the country due to re-engineering difficulties. Those who try to enter face stiff competition due to market saturation by LG and Samsung handsets.

*Intellectual Property:* While South Korea has made progress in addressing intellectual property infringement, the EU has complained of lax enforcement of existing laws.

*Copyright and Trademarks:* South Korean data indicate that Hollywood loses at least \$1 billion a year due to pirated movies and TV shows distributed over the Internet. Luxury goods makers have charged South Korea-based operations with making illegal knock-offs of their products, which has undermined their brands.

*Other Industries:* The list of sectors complaining of trade barriers includes: banking, chemicals,

cosmetics, financial services, insurance, legal services, media, medical devices, pharmaceuticals and real estate.

(*in.reuters.com*, 6 November 2009)

## Exporters to Face Non-Tariff Barriers in EU Countries – FICCI

NOTWITHSTANDING the European Union's (EU) long-term attractiveness to Indian business as a market with immense promise, ground-level feedback received by FICCI reveals that corporates are up against protectionism by way of agriculture subsidies and Non-tariff Barriers (NTBs) on services exports.

A FICCI Survey on "India-EU Trade Relations" on the post-recession experience of Indian exporters doing business with the EU reveals that exporters are facing the adverse impact of the huge amount of subsidies enjoyed by EU farmers through free seeds and fertilizers and a freight subsidy to producers. In addition, exporters face cumbersome quality testing which increases the cost and time dimension of Indian companies. In particular, many mid-sized Indian pharma companies have been severely hit due to the recent seizure of shipments at transit ports located in the EU.

The respondents to the FICCI Survey felt that the main impediment in the expansion of services to the EU were visa and consular issues, non-clarity of taxation and cross-border transaction laws as applicable to Indian service providers.

Specifically in the IT sector, companies face difficulties in obtaining work permits for their professionals. Besides, issue of work permits is time consuming. Delays are rarely appreciated by clients in the EU who sign tight and time-bound contracts and expect timely delivery.

Difficulties are still being experienced by exporters in obtaining visas/work permits for spouses of IT professionals travelling to the EU. Moreover, work permits are still being issued for a particular city only in some of the EU countries such as Germany. Currently, the UK government issues visas only for 6 months, while a period of two years would be reasonable considering the repeated time and resource commitment in applying for visas.

Non-recognition of Indian qualifications in many EU countries is a further hindrance to the growth of trade in services.

Another major issue being faced by IT companies with business in more than one EU constituent is that of movement of personnel between branches within Europe. Many a time, flexibility is required for efficient execution of projects. The current rules require the procurement of a separate work permit each time, involving elaborate bureaucratic procedures.

The FICCI Survey reveals that exporters doing business with more than one EU country are not able to reap economies of scale by producing in bulk for both markets. This is because the EU countries follow different standards domestically. A further complication is that products complying with the UK standards and supplied from India to other EU countries like Germany are not accepted whereas the same product complying with same the UK standards and supplied through UK to Germany are accepted and vice versa.

The Survey covered four broad aspects: Perception of the EU as a trade partner; Issues of concern with the EU; Reaction to the proposed India-EU FTA; and the Future plans of business expansion with the EU.

(*www.fibre2fashion.com*, 1 August 2009)

## Non-Tariff Barriers, Protectionism Top India Agenda at G20

AT the forthcoming G20 meeting in London, India will pitch for a new international financial architecture, raise its concerns on the impact of "protectionist provisions" in the multi-billion dollar stimulus packages of the developed countries on global trade and also highlight the non-tariff barriers of the West that are curbing exports from developing countries.

"It is all right if the stimulus package helps in nursing certain sick sectors in rich countries back to good health. But we will be worried if the bail-out packages, through their financial institutions, result in dumping of cheap and subsidized goods by those rich countries in developing countries," a senior official told *Financial Express*.

Besides, India would call for reforms of World Bank and International Monetary Fund by demanding more representation of members from developing countries in these international financial institutions. New Delhi will also pitch for more financial muscle to IMF and World Bank.

Though India was criticized by some countries including the US on taking protectionist measures like increasing in import duties of certain items like steel, officials here defended such decisions saying India's applied tariffs (decided by the government) on items are much lower than its bound tariffs (tariffs that India has committed in the WTO).

Meanwhile, the US exhorted all G20 member countries to "unite" in taking actions to fight protectionism and in ensuring that systemic risks do not happen again. Brazil has warned that the increasing trend of protectionism would cause difficulties in taking the Doha Round of world trade talks, while Russia demanded that emerging countries should have more say in global finance. Experts said India should focus on making an intellectual contribution to the proceedings, rather than taking up the oft-repeated issues like protectionism.

([www.financialexpress.com](http://www.financialexpress.com), 31 March 2009)

## Removing Hidden and Non-Tariff Barriers - Helping European Business

THE European Commission reinforced its commitment to keeping Europe's markets open and to increasing efforts to improve openness further afield. This Communication identifies the main non-tariff barriers faced by European exporters and sets out a plan to tackle them, including through deepening regulatory cooperation with key countries and regions.

As part of the European Commission's Lisbon package, the Commission has taken a further step forward in giving a stronger external dimension to the Lisbon Strategy for Growth and Jobs. It builds upon on the Global Europe strategy, launched at the end of 2006, which set out an ambitious agenda for opening the markets that matter most, particularly in Asia. It also builds on the EU's renewed Market Access Strategy, in place since 2007.

The Commission reports on a number of significant trade barriers in important existing and future markets for EU exporters. It also identifies the different tools available to ensure a coherent and targeted response. The European Commission intends to strengthen regulatory cooperation with key trading partners and focus it on achieving maximum results. A priority region will be the European Neighbourhood. The Commission also identifies the main non-tariff barriers in key sectors, as a starting point for further action. The instruments at our disposal include multilateral and bilateral trade negotiations, bilateral high level contacts and international regulatory cooperation, formal instruments to tackle specific barriers and the "Market Access Partnership".

([ec.europa.eu](http://ec.europa.eu), 16 December 2008)

## Trade Frictions due to Non-Tariff Barriers

*The worries of WTO's Director-General Pascal Lamy in an exclusive CBI-interview*

NON-TARIFF barriers are a growing source of trade friction around the world. The issue of governments taking measures to restrain imports from developing countries is gaining importance every year. At least a part of those measures are arbitrarily imposed to protect home markets against cheaper imports from low-cost countries, thus obstructing fair, global competition.

Mr. Pascal Lamy, Director-General of the WTO said this in an interview with the *CBI News*. According to Mr. Lamy, the international Aid for Trade programme should bring about important changes for the better.

### Standards Difficult to Meet

"Governments can take measures to protect the health and safety of humans, animals and plants. It's true that these health and safety standards can be difficult to meet for some developing countries. Developing countries have not been participating as fully as they could have in the standard setting process. This is an important area of work in the WTO's Aid for Trade initiative. Over the next year, as governments work to develop their national Aid for Trade programmes, you will see more resources dedicated to meeting such standards. But standards

designed to protect health and safety are a political reality and I don't see these being scaled back since societal demands are rising on this front."

### Trade Tariff Barriers Significantly Lower

Mr. Lamy also indicates that trade tariff barriers around the world are already quite low and will be significantly lower still following the present global negotiations in the so-called Doha Round. These negotiations also play a key role in reducing trade distorting subsidies provided by rich countries to their farming and industrial sectors. "Coupled with adequate levels of capacity-building assistance to developing countries, this would transform the [global] trading system. But we are not there yet, the major players have to top up their offers just a bit. The last mile is always the most difficult."

([www.cbi.eu](http://www.cbi.eu), 09 April 2008)

### WTO: Proposals Tables on Forest Tariff, Non-Tariff Barriers to Trade

*Draft negotiating text on accelerated liberalization of tariffs on forest products and disciplining forest-related non-tariff barriers (NTBs) to trade were presented during the WTO Negotiating Group on Non-Agricultural Market Access (NAMA).*

DURING an informal meeting organized by the proponents of accelerated liberalization of forest trade during NAMA week, Canada presented a proposal which sketches out the parameters of a so-called "sectoral initiative" on forests.

In the proposal, Canada and other proponents of the initiative, which currently includes Hong Kong, New Zealand, Thailand and the US, would reduce their tariffs on import of forest products more than that required by the general NAMA formula.

On NTBs, a Japanese proposal presented during the formal negotiating session calling for increased transparency in export restrictions could affect developing countries' ability to put in place log export bans or quotas to prevent unsustainable and illegal logging or to promote value-added processing of natural resources.

It proposes to cover products in five forest categories, including wood; plywood; wood pulp;

paper and paperboard; books and newspapers; and wooden furniture.

Under the tariff reduction suggested in the submission, developed countries signing on could reduce their tariffs to zero and developing countries could reduce to an as-yet-to-be determined "x" tariff rate.

However, the paper leaves open by what date countries would have to reduce tariffs and how developing countries could have better, "special and differential" (S&D) treatment. S&D treatment options include possible exemption from the initiatives for some sensitive products for particular countries; credits for participation in the initiative in the overall NAMA formula; and longer implementation periods or different implementation patterns for developing countries.

Notwithstanding the high participation at the informal meeting, the proponents encouraged more countries to commit to the initiative in order to reach the "critical mass" of participating countries, which should represent around 90 per cent of world trade in forest products.

The current proponents cover an estimated 37 per cent of the trade. For participation to even approach the 90 per cent target, the EC, Japan and China, all of whom are major importers and exporters of forest products, would have to join the initiative. However, Japan has in the past said that it is not interested in getting involved because accelerated liberalization of trade in forest products could have an adverse impact on sustainable use of forests (TN/MA/W/15/Add.1).

While most developing countries have been reluctant to formally get involved in the process, Thailand and others have been sympathetic because participation could enhance developing countries' abilities to attract foreign direct investment, reduce the cost of inputs to value-added production, and could increase South-South trade. The parameters of the formula, and the flexibilities for developing countries, could also strongly impact on South-South trade as well as the pervasive use of tariff peaks (high tariffs on sensitive products) and tariff escalation (when tariffs are low for raw or unfinished materials, somewhat higher for semi-finished products and highest for finished products) in forest trade.

Negotiations are continuing on other sectoral initiatives, including on fish products. The possibility of creating initiatives that allow lower tariff reductions in sensitive sectors has been proposed by Turkey (in the context of textiles trade) and supported by several developing countries. However, in a submission to the NAMA group on 20 April, Singapore, supported by the US and Canada, objected to this proposal, arguing that sectoral initiatives should only go "over and above" the tariff cuts required by the NAMA formula.

The Japanese proposal (TN/MA/W/15/Add.4) calls for the creation of a new agreement on enhanced transparency in export restrictions, listing wood and minerals as two sectors where the need for related rules has been raised.

Several developing countries questioned Japan's motivation behind the proposal, fearing that the proposed rules might try to limit countries' flexibilities to use export restrictions. They argued that export bans, restrictions and taxes are legitimate policy tools to, for example, prevent illegal logging, promote sustainable forest management and encourage value-added processing of fish and forest products. One observer speculated that Japan might in fact be attempting to reduce the prices of primary inputs to production, including natural resource products such as minerals, fish and forest products, by making it easier for developing countries to export them as raw materials.

A proposal from the EC addresses the related issue of export taxes – which are also used to prevent or control the export of natural resource products in some countries – and presented a draft agreement on the issue that calls on all WTO Members to eliminate their export taxes, "as well as internal taxes and other charges" on products that are going to be exported.

### Background

WTO Members continue to struggle with how the WTO should deal with NTBs. Many Members have notified policies, regulations or other measures to the NAMA Negotiating Group that they consider to constitute NTBs. Several of these notifications concern measures adopted to promote

environmental, social and developmental public policy objectives. While WTO Members note that many of the NTBs that have been notified to the Group are legitimate public policy measures, it is still unclear how they will be examined to determine whether they are legitimate, what criteria could be used in this process and what the WTO should do to address the measures – which in some cases are national policies or legislation – if they are found to be "illegitimate". Members are also unclear on whether they should address all these notified measures horizontally, that is, by the type of measure, or vertically, in terms of the affected sector.

([www.illegal-logging.info](http://www.illegal-logging.info), 28 April 2006)

## Maximum Non-Tariff Barriers Faced in US

IN Japan, Indian roses are brought to auction platforms towards the end of the session, by when, prices have dipped. In Indonesia, non-Basmati imports from India are allowed a broken rice content of only 15 per cent. For China, Vietnam and Thailand, the permissible levels are 25 per cent; Kenya imports fruit from South Africa but does not allow similar imports from India, on the grounds that India's tropical climate affects quality; the EU doesn't allow its members to import Indian whisky on the pretext that it is based on molasses and not cereal.

These are a few examples of the non-tariff barriers (NTBs) that Indian exporters face in various parts of the globe, according to a recent report prepared by the Department of Commerce.

The report suggests that Indian exporters tend to suffer more than other exporters on account of NTBs. Compared to the global average, the report says, Indian exports to the US face greater NTBs. For instance, 25 per cent of India's exports in value-terms are subjected to safety requirements against the global average of 22 per cent, and 19 per cent are faced with labeling restrictions against 16 per cent from other countries.

Other than the usual suspects – labour, environment, and sanitary and phyto-sanitary measures – Indian exporters regularly come up against novel forms of trade restrictions in global

markets. The report calls these “indirect” NTBs as opposed to “direct” NTBs such as quantitative restrictions, export subsidies, government procurement and import licensing.

The indirect NTBs that Indian exporters are subject to include measures like health and safety and technical regulations, customs valuation procedures and marks of origin restrictions. Even anti-dumping duties, countervailing duties, regional subsidization, subsidization of public enterprises, tied aid, etc., come under this category.

Among the products to be hardest hit by the NTBs are textiles, nuts, fruit and vegetables, iron and steel, machinery, pharmaceuticals, wood and marine products.

Also, India’s three largest trading partners – the US, the EU and Japan – account for a majority of the NTBs. Among these, the US accounts for the maximum number though developing countries are also on the list. Apart from product-specific NTBs imposed by various countries, the report also lists out unilateral measures put in place by the US. These include “Special 301” measures, essentially to protect intellectual property rights. Also, under the Water Resources Development Act, the US can impose *ad valorem* taxes of 0.125 per cent.

The report says that the tax burden on exports from the US and national freight for domestic consumption are relatively lower and exceptions are permitted. This report, which was prepared in consultation with exporters and industry, is the second attempt to judge the impact of the NTBs on Indian exports.

The first was prepared in 1999. Both reports were prepared by Dr. HAC Prasad, Economic Advisor in the Commerce Department.

The current report is, however, the first attempt to quantify NTBs. For this, the report has drawn on the database of the United Nations Conference of Trade and Development (UNCTAD).

According to the UNCTAD estimate used by the Commerce Department, 44 per cent of India’s exports in 1999 worth around \$35 billion, faced NTBs in the US.

([www.business-standard.com](http://www.business-standard.com), 3 January 2002)

## Non-Tariff Barriers to Trade

NON-TARIFF barriers to trade (NTBs) are trade barriers that restrict imports but are not in the usual form of a tariff. Some common examples of NTB’s are anti-dumping measures and countervailing duties, which, although they are called “non-tariff” barriers, have the effect of tariffs once they are enacted.

Their use has risen sharply after the WTO rules led to a very significant reduction in tariff use. Some non-tariff trade barriers are expressly permitted in very limited circumstances, when they are deemed necessary to protect health, safety, or sanitation, or to protect depletable natural resources. In other forms, they are criticized as a means to evade free trade rules such as those of the World Trade Organization (WTO), the European Union (EU), or North American Free Trade Agreement (NAFTA) that restrict the use of tariffs.

### Types of Non-Tariff Barriers to Trade

1. Specific Limitations on Trade:
  1. Quotas
  2. Import licensing requirements
  3. Proportion restrictions of foreign to domestic goods (local content requirements)
  4. Minimum import price limits
  5. Embargoes
2. Customs and Administrative Entry Procedures:
  1. Valuation systems
  2. Antidumping practices
  3. Tariff classifications
  4. Documentation requirements
  5. Fees
3. Standards:
  1. Standard disparities
  2. Intergovernmental acceptances of testing methods and standards
  3. Packaging, labeling, and marking
4. Government Participation in Trade:
  1. Government procurement policies
  2. Export subsidies

3. Countervailing duties
4. Domestic assistance programmes
5. Charges on Imports:
  1. Prior import deposit subsidies
  2. Administrative fees
  3. Special supplementary duties
  4. Import credit discriminations
  5. Variable levies
  6. Border taxes
6. Others:
  1. Voluntary export restraints
  2. Orderly marketing agreements

### Examples of Non-Tariff Barriers to Trade

Non-tariff barriers to trade can be:

- Import bans
- General or product-specific quotas
- Rules of Origin
- Quality conditions imposed by the importing country on the exporting countries
- Sanitary and phytosanitary conditions
- Packaging conditions
- Labeling conditions
- Product standards
- Complex regulatory environment
- Determination of eligibility of an exporting country by the importing country
- Determination of eligibility of an exporting establishment (firm, company) by the importing country.
- Additional trade documents like Certificate of Origin, Certificate of Authenticity, etc.
- Occupational safety and health regulation
- Employment law
- Import licences
- State subsidies, procurement, trading, state ownership
- Export subsidies

- Fixation of a minimum import price
- Product classification
- Quota shares
- Foreign exchange market controls and multiplicity
- Inadequate infrastructure
- “Buy national” policy
- Over-valued currency
- Intellectual property laws (patents, copyrights)
- Restrictive licences
- Seasonal import regimes
- Corrupt and/or lengthy customs procedures

(<http://en.wikipedia.org>)

### Non Tariff Measures

NON Tariff Measures (NTMs) are all measures other than normal tariffs, namely trade related procedures, regulations, standards, licensing systems and even trade defence measures such as anti-dumping duties, etc., which have the effect of restricting trade between nations. Some of these measures could be justified under the provisions or the exceptions provided under the various multilateral agreements governing international trade. On the other hand, certain non-tariff measures which cannot be justified under any of these legal provisions are normally termed as non-tariff barriers (NTBs).

With the lowering of tariffs across the globe, NTMs have come into prominence with the Members using these measures to erect entry barriers for goods and services. It is, therefore, not surprising that the developed countries with relatively lower tariffs are the more prolific users of NTMs/NTBs especially to keep out developing country exports.

The details of some of the major NTMs that are maintained against Indian exports are as given in the Table.

With a view to strengthening its information base on NTMs/NTBs, the Department of Commerce has attempted to put in place a database of NTMs/NTBs imposed by trading partners on its exports.

<i>Country</i>	<i>Item</i>	<i>Details of NTM</i>
United States	Marine products	Increased inspections under the Bio-Terrorism Act, Customs Bond requirement, Mandatory labeling discriminating "farm raised" and "wild" with punitive fines and non-recognition of EIC certification.
United States	Paper products	Non-scientific quarantine restrictions, customs surcharges, eco labeling stipulations and food safety/ health standards exist on paper products exports.
United States	Tobacco	A TRQ regime restricts imports.
United States	Food products	Detailed labeling requirements are stipulated with extensive product and content description.
Argentina	Processed marine products, Matches, Insecticides, Fungicides, Plastics, Rubber, Leather, Wood & paper products, Textiles & clothing, Headgear, Footwear, Articles of iron & steel, Mechanical & electrical Machinery, Two wheelers, Optical instruments, Furniture, Toys, Miscellaneous manufactured articles	A new regulation (57 & 58/2007 dated 24.08.2007) wherein minimum import price has been established for specified product imports from India and some other countries. Under this the Argentine Customs authorities can ask for validation of Indian customs invoice with a full set of original documents if they suspect that the invoiced value is less than the minimum import price established.
Argentina	Pharmaceuticals	There is delay in registration leading to non-viability of exports.
Australia	Mangoes	Australia maintains ban on the pretext of the presence of fruit flies and stone weevils.
Armenia	Agro chemicals and pharmaceuticals	Armenia stipulates registration requirements and mandates permission for imports and exports
Bangladesh	Poultry products	Bangladesh continues to ban imports despite India gaining the avian influenza free status.
Brazil	Pharmaceuticals	Procedural delays occur in the clearances, inspections and registration by the Brazilian Health Surveillance Agency (ANVISA)
Canada	Paper products	Non-scientific quarantine restrictions, customs surcharges, eco labeling stipulations and food safety/ health standards exist on paper product exports.
Chile	Wheat, wheat flour and sugar	A complex price band system wherein a minimum import price (well above the international price and domestic prices) is stipulated. On account of a WTO dispute decision, this band would be lowered by 2% every year from 2008 to 2014 after which a Presidential review would be undertaken.
China	Agricultural products	Opacity of Sanitary and Phytosanitary (SPS) measures and delays in giving clearances.
Colombia	Pharmaceuticals	The registration by Colombian Drugs Control and Certification takes 11 to 12 months, inspections are undertaken for environmental compliance and a 10% price preference is granted for French pharmaceutical companies under a bilateral agreement.
European Communities	Bovine meat	Standards are more stringent than OIE (World Organization for Animal Health) Terrestrial Animal Health Code, a ban is maintained on account of Foot and Mouth Disease (FMD) and prolonged delay in upgradation of India's status to GBR1 (No risk of BSE).
European Communities	Marine products	Rejection and subsequent destruction of consignments with chloramphenicol / nitrofurantoin residues, rejections in Italy and France due to presence of <i>Vibrio Parahaemolyticus</i> without judging the virulence factors, rejection due to alleged presence of bacterial inhibitors/ anti-biotic residues without any confirmatory tests.
European Communities	Chemicals	The Registration, Evaluation and Authorization of Chemicals (REACH) legislation increases cost of compliance by • 85,000 to • 325,000 per chemical.

Country	Item	Details of NTM
European Communities	Engineering and electronics	The stipulation of CE (originally known by the French term Conformité Européenne) marking to indicate conformity with the essential health and safety requirements increases cost for small and medium enterprises.
Japan	Footwear	The tariff rate quota (TRQ) restricts imports to the quantum of the quota.
Korea	Chemicals, pharmaceuticals, computer and medical equipment	Certification requirements (incl. prior approval) add on to the cost of exports.
New Zealand	Paper products	Non-scientific quarantine restrictions, customs surcharges, eco labeling stipulations and food safety/ health standards exist on paper products exports.
Norway	Marine products	The pathogen analysis is carried out by the NMKL method which is not accepted internationally.
Russia	Meat products	Standards for bovine meat are more stringent than the OIE Terrestrial Animal Health Code, EIC Conformity certificates are not recognized and Certification with respect to swine fever and FMD are insisted upon for poultry exports which are not relevant.
Ukraine	Bovine meat, coffee, tea, spices, pharmaceuticals, cosmetics, plastics, leather products, textiles & clothing	A compulsory certification with the option of either (a) certificate of acceptance of foreign certification by Derzh Standard or (b) Conformance certificate by Ukrainian Agency. Though ISO 9000 Standards are adopted by Derzh Standard, foreign certification recognition exists only to the extent of international treaty obligations of Ukraine.
Uzbekistan	All products	Cumbersome procedure for registration and certification, a customs processing fee @ 0.7% of value and lengthy procedure for conversion of hard currency as well as profit repatriation.

(www.commerce.nic.in)

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## BOOKS/ARTICLES NOTES

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### BOOKS

**Trade in Services & India: Prospects and Strategies** by Rupa Chanda (ed), Centad, Wiley India (P) Ltd., New Delhi, 2006.

THIS book is an attempt to address the gap in the services sector through the available research which is inadequate and often unavailable as a single reference point. Twelve papers are covered in this book. These papers analyze sectoral and modal issues pertaining to India's services trade.

The services sector has played an important role in India's economic growth. It grew at an average annual rate of 9 per cent during the 1990s, contributing nearly 60 per cent in the overall growth rate of the economy during the period. Services sector's share in India's GDP has been rising consistently over the years, with an average share of 52 per cent between 2000-01 and 2005-06.

India's competitiveness in certain service segments, such as information technology and business process outsourcing is well known in the global service economy. It has played a proactive role in the WTO negotiations on services under the General Agreement on Trade in Services. The country is also increasingly pursuing its interests in the services sector under regional and comprehensive economic partnership agreement.

The author is of the opinion that intent is to use such agreements to negotiate the removal of various barriers affecting India's service exports in world markets as well as provide an external stimulus and lend credibility to the liberalization process undertaken in India's services sector.

There are numerous domestic and external constraints which impede the realization of India's true potential in the services sector. India's exports of professional services are subject to restrictions

on the movement of its service providers. Certain services in India remain closed to the presence of foreign establishments, limiting competition and possible gains in efficiency.

The author argues that if India is to sustain its momentum in the services sector, it must address the existing and potential protectionist challenges to its main activities and modes of export interest. She further suggests that the country must also shape the process of domestic liberalization and regulatory reforms in this sector so as to align this growth with its long-term and social objectives.

**Quality - A Prerequisite for Exports: Increasing Complexity of Technical Requirements in Export Markets** by Shyam K. Gujadhur, ITC, International Trade Forum - Issue 3/2010.

THIS book says that exporters from developing countries are increasingly feeling the pressure to conform to international standards if they are to enter successfully developed country markets. Much has been achieved in various developing countries to construct the requisite quality infrastructure, to enable exporters both to understand the nature and detail of the quality standards to be met and to take the steps to comply with them. For many developing countries yet to install the necessary infrastructure to help their exporters meet market requirements, the path to effective arrangements is well defined and, importantly, there are many good examples to follow and opportunities to influence standards.

The author says that the gradual reduction of tariff barriers to facilitate trade has been accompanied by an increase in NTBs. These consist of technical regulations and sanitary and phytosanitary measures (SPS), imposed by governments to protect the health and safety of their citizens and the environment, and voluntary

standards established by national, regional and international standards bodies, such as ISO 9001 for quality management systems and ISO 22000 for food safety management systems. They also comprise private standards established by consortiums and retailers.

In the food sector, periodic outbreaks of food-borne illnesses have led to stricter regulation, making suppliers of branded produce liable for the safety of their products unless they can show due diligence. This resulted in private standards developed by consortiums and forums, e.g. British Retail Consortium Technical Food Standard and GlobalGAP, produced by the Euro Retailer Produce Working Group on Good Agricultural Practice. Environmental and social concerns have led to standards such as Worldwide Responsible Accredited Production, applicable mainly to the apparel, footwear and sewn sectors, SA 8000 on social accountability, Forestry Stewardship Council for the wood and furniture sector, Marine Stewardship Council for fishery products, and standards for carbon footprints.

The World Trade Organization (WTO) has tried to minimize non-tariff barriers by requiring its members to use international standards as a basis for their technical regulations and SPS. This decision has significantly increased the use of international standards as they are more significant for exports than national standards. It is, therefore, imperative for developing countries to be standard-makers for products of export interest so that their specific needs are taken into account when international standards are elaborated.

The author opines that mechanisms can be developed at national level to obtain the views of the business sector and involve them in the development of international standards. When WTO members propose to establish technical regulations and SPS not based on international standards, and which can have a significant impact on trade, they must notify other WTO members so that their views can be taken into consideration before standards are finalized. They should track these notifications and submit comments whenever required to protect their exports.

One of the obligations of WTO members under the WTO Agreements on Technical Barriers to Trade

(TBT) and the Application of Sanitary and Phytosanitary Measures is to set up enquiry points to provide information about technical requirements to other WTO members. Exporters need to keep abreast of changes in the technical requirements for products in their export markets.

Countries should establish an adequate national quality infrastructure, taking into account relevant value chains. This is critical for food and agricultural products, as certification should be provided by competent national authorities and to protect fruits and vegetables from pests and diseases.

Mechanisms should be set up to keep track of upcoming technical requirements for products of export interest so that they can be taken into account and to disseminate up-to-date information to exporters. A public-private partnership would be appropriate, the author asserts.

Sector associations could provide advisory services for adapting products to the requirements of target markets and accredited domestic bodies could provide certification to these requirements, if they are recognized in the target market. Or the services of foreign bodies could be used.

Meeting technical requirements will ensure that market access is obtained. However, there is a need to go beyond technical requirements and delight consumers. Promoting a culture of innovation, continual improvement and excellence, e.g. through a national quality policy, will go a long way to enabling exports.

## ARTICLES

**Tackling Non-Tariff Barriers** by Jaemin Lee, 25 August 2010.

THE article at its outset focuses on Korean non-tariff barriers in the automobile sector as one of the final sticking points in the Korea-US FTA. The US position is stated by stating that the enormously low penetration of the US automobiles into the Korean market can only be explained by NTBs. While listing a range of NTBs in Korea that Washington takes issue with, the article mentions that the US

automakers are determined to oppose any free trade agreement with Korea unless Korea commits to fully dismantle all these NTBs. Explaining about the NTBs, the article says that they cover various exercises to avoid otherwise applicable international trade norms so as to keep out foreign products from one country's domestic market. While describing about the difficulties associated with the NTBs, the article further states that these NTBs distort international trade and possibly constitute violations of various trade norms. It further says that a fine line would have to be found between negative consequences from NTBs and mere unsatisfactory business performance caused by other factors than NTBs.

The author opines that an NTB would not only violate a laundry list of provisions of trade agreements, it would also fuel distrust between the two countries. These seeds of distrust will bloom into more NTB claims in more sectors and they will hurt Korea's long-term interest. He suggests that in order to find solution, the alleged NTBs must be substantiated with specific information and materials beyond the US automobiles' optimal business performance in the Korean market. The Korean government in response may accommodate the US concern and take necessary follow-up measures without delay.

While mentioning about the trade imbalance between the two countries, the article points out that most of the statements on Korean NTBs apparently only point out the imbalance in the automobile trade. It also states that the trade imbalance becomes meaningful only if it has been caused by a disguised trade measure and as there are numerous factors that contribute to the specific performance in the domestic market of another country, one could not simply attribute any imbalance to the existence of NTBs. It says that regardless of NTBs in the automobile sector in Korea, the current situation shows that sincere discussions on the NTBs in the automobile sector and other areas require more explanation and clarification from Korea.

The author says that it would be better if Korea may be able to explain the misperception of the US automobile manufacturers, or Washington may end up clarifying its source of

concern which may turn out to be NTBs. He concludes by saying that the automobile sector has been the source of attention throughout the negotiations of the FTA.

([www.bilaterals.org/spip.php?article17962](http://www.bilaterals.org/spip.php?article17962))

**NTBs Obstruct Correction in Trade Imbalance with China** by Dhiraj Nayyar, *The Financial Express*, 18 January 2010.

THE non-tariff barriers are curtailing India's effort to correct its huge trade imbalance with China. Taking the reference of the India-China Trade and Investment Cooperation Forum convened in Beijing, the article states that Beijing's policy has not only adversely affected the exports of agriculture and food items like bovine meat but also Bollywood, which is an important Indian export.

Mentioning the Indian industry's concern, the author points out that the trading relationship with China is rather lopsided. He explains that with little value addition India exports raw commodities to China, and 60 per cent of India's total exports to China are in ores, slag and ash and another 10 per cent is in cotton. At the same time, India's imports from China are higher value-added manufacturing items, which include electrical machinery, nuclear reactors, boilers, machinery and mechanical appliances, processed iron and steel. Despite Chinese manufacturing advantage over India, Indian industries argue that restrictive Chinese policy plays major role in blocking competitive Indian exports. This article gives the reference of FICCI estimates and mentions that 20-39 per cent of the tariff and NTBs of equipment cost in power equipment, Indian companies like BHEL and L&T are losing competitive market in middle-level power equipment. Taking the example of wind power equipment, where few Indian firms can potentially make a dent in China, the article points out that China has not even committed to binding its tariffs on such equipment. China maintains strict NTBs on the import of agricultural produce and meat from India, which is exported to 60 countries including the developed world. Despite written assurances of standards from the Government of India, Chinese authorities have done little to ease the barriers.

China maintains a peculiar annual quota under which only 30-40 overseas films can be legitimately exhibited in China but Hollywood films get most of the quota leaving Indian films to pirated viewing. The article concludes by mentioning that the Chinese side will also have its share of concerns about policy towards the Chinese goods and services in India in the discussion of coming India-China Trade and Investment Cooperation Forum.

### **Protectionism Risks Rise in 2009-2010**

by John Kemp, 8 January 2009.

THE introductory section of the article focuses on the worldwide slump in demand. It says there are risks that countries will have to respond to protectionist measures either in form of competitive devaluations, tariff rises or other trade barriers. The author says that such incidents in international arena will lead to trade wars defeating the very purpose of the trend towards global integration. Pointing out the tariff wars of the 1930s, the article says that it belonged to a vanished world of fixed exchange rates, militarism and failed multilateralism. It further explains that the real risk is a more insidious undeclared trade conflict based on rises in applied rates, NTBs, bad faith, and an upsurge in trade defences as countries try to "allocate" scarce demand and placate industries and workers under particular pressure.

The next section of the article mentions about raising applied tariff rates and NTBs. It describes that the differential between applied rates and bound rates is a measure of how far countries could raise their tariffs in practice without violating their WTO commitments. It further mentions that the risk is greater for long-standing members of the GATT like India due to their relatively high bindings while it is less for members like China because bindings cover a much wider range of items at lower levels. The WTO agreements restrict the use of health, safety and other technical standards to ensure that they are not used as hidden trade barriers. Further explaining the issue of raising NTBs the article points out that lobbies for domestic producers are skilled at proposing government regulations which appear to be neutral in theory between the domestic industry and importers but

discriminates in practice. The WTO system relies to a considerable extent on the good faith of its member countries and treaties are concluded between sovereign entities so they differ from ordinary private contracts particularly in their enforcement mechanisms. The article states that most countries so far in most cases have acted in good faith. But as trade tensions escalate, there is really nothing to prevent more countries in more disputes acting in bad faith, introducing various NTBs and gaining 2-3 years worth of protection.

The author says, WTO obligations appear to be tightly binding, but system contains a number of built-in "safety valves" designed to allow countries to reintroduce higher tariffs well above the bound rates on a selective basis against imports from selected countries. These "trade defences" include anti-dumping duties, countervailing duties against foreign subsidies, and safeguard measures designed to protect domestic producers from a sudden and unforeseen surge in imports while they restructure to meet the competition. Mentioning the risk in a downturn, he points out that with exchange rates shifting substantially and altering relative competitiveness, the WTO members could increasingly resort to anti-dumping and countervailing duties or safeguard tariffs to offer a measure of protection to domestic producers under pressure. The author concludes by saying that with the NTBs, there may also be a temptation for countries to impose duties now and worry about proving WTO compliance later.

(www.reuters.com)

### **Eliminate Punitive Non-Tariff Barriers to Global Trade** by Hasmukh Dawda, 4 November 2008.

THE momentum towards a more open global trading system has dissipated since the Doha Round of negotiations of 2001. The article states that despite two decades of trade liberalization, tariff levels are highest in developing countries. While average tariffs amount to 5 per cent of the value of trade in developed countries, they are around 15 per cent in Latin America and sub-Saharan Africa, and around 25 per cent in South Asia. It also points out that the tariffs imposed by the developing countries on each other's goods are as high as those they

impose on goods originating in developed countries. Due to a series of measures enacted by developed countries, the share of goods from developing countries that can enter duty-free is steadily growing.

The next section of the article brings about the initiatives taken by the Canadian government which allows duty- and quota-free import of supply-managed goods such as dairy products, eggs and poultry from 48 least developed countries. While mentioning about the unfinished business in reducing protectionism in developing countries in Doha negotiations, the article states that the volume of trade between developing countries is so low that it does not contribute to the export woes faced by developing countries. It says that the logic of putting the focus on protection in developing countries ignores the crucial contextual questions of how a host of parallel policies, promoted by developed countries makes it more difficult for their poorer trading partners to move towards lower tariff regimes. Although, none of this is intended to criticize the idea that lower tariffs promise significant benefits to developing countries. Fewer barriers to imports would provide developing nations the best goods and advantages such as technology transfer and the enhancement of productive capacity, at the best possible prices.

The article states that quick transition to lower tariffs in many developing countries without the necessary public finance reforms in place would be an invitation to fiscal calamity. It also explains that "technical barriers to trade" like product content and packaging requirements, mandatory labeling, SPS measures are more serious barriers for products from developing countries than duties or quotas. Although there are some solid scientific and public health concerns underlying the discussion of matters such as SPS standards, it is also clear that these concerns have been manipulated for protectionist purposes.

It has been the experience of several countries that just when they meet the requirements set by developed countries, the goalposts are shifted and a new set of standards imposed. However, the biggest stumbling block remains agriculture. Most developing countries define their comparative advantage through this sector. And yet, this is the sector that remains the most protected in developed

countries. A more sensible global agricultural regime would increase incomes around the world. Ultimately, these are the issues that must be resolved before the world can expect developing countries to lower tariffs. In global trade negotiations, the low-hanging fruit has already been picked.

(<http://www.nation.co.ke>)

**Trade Possibilities and Non-Tariff Barriers to Indo-Pak Trade** by Nisha Taneja, ICRIER Working Paper No. 200, October 2007.

THE paper is based on an extensive survey conducted in India and Pakistan. It focuses on the key aspect of identifying items that have bilateral trade potential and also Non-Tariff Barriers (NTBs) being faced by traders in India and Pakistan. It points out that the trade developments between the two countries need to be examined against the backdrop of SAFTA which envisages removal of tariffs in the region in a phased manner. This paper aims to identify the bilateral trade possibilities and NTBs between India and Pakistan. It examines the recent bilateral trade trends between India and Pakistan and conducts a statistical exercise to arrive at trade possibilities between the two countries. While study shows that there remains a large untapped trade potential between the two countries, it uses the potential trade approach to find that the export potential from India to Pakistan is to the tune of US\$9.5 billion as compared to US\$2.2 billion from Pakistan to India.

The author explains that items having export potential from Pakistan are largely in the textile sector while items having export potential from India are predominantly in non-textile sectors. At the same time very few items having export potential from India are on the positive list adopted by Pakistan and there are several items that India is importing from other countries but not from Pakistan. The examination of the top 50 potential export items from Pakistan indicates that India is importing 45 of these items from the rest of the world but not from Pakistan. An examination of the top 50 items having export potential from India indicates that only 22 items are on the positive list. The approach adopted by the study for identifying the NTB is extensively discussed in the paper.

While the study indicates that TBT and SPS measures applied by India are not discriminatory, it needs to be noted that any measure applied at the land border becomes specific to India and Pakistan. Therefore, the trade facilitation measures undertaken by both countries at the land border become important. The study suggests that the rationale for setting up the Asian Clearing Union needs to be re-examined as the initial conditions that justified such a mechanism may not prevail any longer. Traders feel vulnerable due to a lack of a formal dispute settlement mechanism. It also suggests that the two countries need to have an institutional arrangement so that the state, private and foreign banks can participate freely in banking transactions. Due to extremely restrictive visa regime in India and Pakistan, granting city specific visa, visa for a limited number of cities, limited number of entries and for a limited period of stay, requirement of police reporting on arrival and before departure, requirement of exit from the port of entry, lack of criterion for rejection of visa, granting mode-specific visa, disregarding requested date of entry, and delay in granting visa are some of the restrictions that are reported in the survey.

### **Taming Non-Tariff Barriers: Can the World Trade Organization Find a Solution?**

by Biswajit Dhar and Murali Kallummal, *Studies in Trade and Investment*, Economic and Social Commission for Asia and the Pacific, United Nations, New York, 2007.

THE paper is divided into four sections. The introductory part of the paper provides an insightful historical report on how the multilateral trading system has attempted to address the issue of NTBs, from the Kennedy Round of GATT negotiations in the 1960s to the ongoing Doha Round of WTO negotiations. The paper suggests that, despite wide recognition of the need to tame NTBs, the multilateral trading system has throughout this extended period been unable to tackle this issue successfully. This commentary first elaborates on some important issues raised here by Dhar and Kallummal and then briefly highlights the relevance of the ongoing trade facilitation negotiation as a small step towards taming NTBs at the multilateral level.

Section A reflects on how the received literature has addressed NTBs. The focus of the analysts has largely been on NTMs, which, in the view of the authors, has shifted attention away from the NTBs and which therefore needs urgent attention at this juncture. The section A also explores the analytical framework as well as the evidence for understanding the phenomenon of NTBs, beginning with a discussion of some of the more contemporary literature on the subject. A brief discussion follows regarding available data on NTMs, with the focus on the widely consulted UNCTAD Trade Analysis and Information System (TRAINS) database.

The handling of NTBs by the multilateral trading system is discussed in sections B and C. The main focus of this discussion is on the current round of negotiations in which WTO members are expected to provide a framework for disciplining NTBs. The paper discussion indicates that the identification of NTBs by WTO members has revealed that their exporters consider some of the so-called NTMs to be technical barriers, and sanitary and phytosanitary measures as NTBs. The paper points out that it is imperative for the WTO members to carry out a detailed review of the agreements on technical barriers to trade (TBT), and sanitary and phytosanitary (SPS) measures to ascertain whether these so-called NTMs are behaving more like NTBs. The authors believe that this review is necessary, given the high degree of proliferation of these measures since 1995.

The concluding part of the paper which is Section D analyzes the trends in the growth of TBT measures by mentioning that the multilateral trading system has addressed the issue of NTBs. An attempt has been made to describe the developments in both GATT and WTO in order to analyze the issue of NTBs. Past developments have made it fairly clear that a considerable distance will have to be traversed before the multilateral trading system can put in place a meaningful set of disciplines covering NTBs. This observation should be viewed with some concern since, in recent years, there has been a proliferation of NTBs. The paper concludes by saying that the increase in the use of TBT measures, particularly by the more advanced developing countries, is contributing to the increase in complexities in what seems to be a veritable maze of NTBs.

**Impact of Non-tariff Barriers on China's Textile and Clothing Exports and Relevant Strategies** by Tingqin Zhang and Lihong, *Asian Social Science*, Vol. 4 No. 1, January 2008.

THE paper at its outset mentions about the importance of textile and clothing industry in China's economy. It says that China now produces an astonishingly wide range of textiles, comparable with any other country in the world due to improved technology. The international trade and exports have constituted a substantial share of China's economic growth. With the drop in tariffs, there has been an explosion in the amount of exported textiles and an ever-increasing share of textile manufacturing has come to be dominated by Chinese companies. The author also points out that China has developed rapidly in international textile and clothing trading and has gained significant achievements in this field with reform and opening-up to the international market.

The paper says that the industry is still facing great challenges and difficulties from non-tariff barriers which are playing an ever-greater role in the ability of governments to regulate imports from other countries. Known as "green trade barriers", new non-tariff barriers to trade, such as technical trade barriers and environmental trade barriers, have taken the place of traditional trade barriers, such as tariffs and quotas. Mentioning about the environmental issues the paper points out that there is no international standard on what qualifies as harmful and countries are free to make up their own standards such as certain azo-free fabrics, nickel-free buttons or zippers and so on. Exporters have been responsible for abiding by these requirements and as such have had to assume the cost. The paper also focuses on the issue of social concerns and mentions that major concerns have been focused on child labours, forced labours, health and safety, disciplinary practices, working hours and remuneration. It also mentions about the anti-dumping actions and safeguard measures. Elaborating upon the characteristics of the NTBs, the paper states that with the development of the world economy and technology, NTBs tend to be more varied and unpredictable with the same result of tariffs and quotas. It further says that

while tariff barrier settings must be agreed to by legislation, usually over a drawn-out period of time, NTBs can be carried out by an administrative process very quickly, and it is much more convenient in urgent cases where the importing country needs to take a quick action on one importing item from one certain country.

By analyzing the background and current situation of China's textile and clothing industry, as well as the great impact on both sides of these new barriers, this paper puts forward an effective way to clarify what efforts should be made not only by trade companies, but also by the government to alleviate the effects of NTBs. While discussing the impact of non-tariff barriers on China's textile and garment exports, the paper mentions about positive and negative impact on textile and garment export in detail. Mentioning about the negative impact of the non-tariff barriers the paper says that due to the technological gap between developed countries and developing countries, goods from developing countries will always have problems reaching the technological standards or environment standards in developed countries, which will put such goods at a competitive disadvantage. As NTBs evolve according to environmental and technological changes, exporters have difficulty reacting and formulating a business strategy. They receive every order with big risk; the result could be a very huge financial loss, so they will gradually lose their interest in the market.

Finally, the paper suggests that only through a well-coordinated joint effort, manufacturers can break through such non-tariff trade barriers and enhance the overall quantity and quality of clothing exports, so that China can maintain its current growth in the textile and clothing trade and also regain its reputation as the "kingdom of textiles". It is also important for exporters to realize that the market demand along with international regulations is fluid and that changes have to be expected. It also mentions that Chinese manufacturers have not previously emphasized such efficiency because it was not necessary given their cost advantage due to low labour costs. But as the cost of trade increases, manufacturers will have to boost efficiency to remain competitive.

### **Non-Tariff Barriers in a Non-Tariff World**

by Marco Fugazza and Jean-Christophe Maur, OECD Economics Department, Working Paper No. 179, July 2006.

THE article draws attention to the fact that with ever diminishing tariffs, especially in developed countries' markets, the focus of trade policy makers and analysts is logically turning towards non-tariff barriers (NTBs).

In terms of policy decisions to dismantle these barriers and in analyzing the impact of this on the economy, so far little has been attempted and achieved in these directions. For the economic and business analyst, tackling NTBs pose many additional challenges because of their diverse and complex nature, and the lack of available evidence, which all make modelling their effects more complicated. This poses also particular difficulties to Computable General Equilibrium (CGE) modelling, traditionally more comfortable in dealing with policies that have direct effects on prices.

The paper tries to address this lacuna in policy analysis of NTBs and contributes to fill up this analysis gap. It provides a quantification of the impact of liberalization of non-tariff barriers (NTBs) at the global level, using recent data from the World Bank and UNCTAD.

The model used is significantly larger than in any previous studies. For purpose of analysis, the study uses a 27-sector and 26-region aggregation based on the GTAP 6 database. However, this research essentially focuses on methodological questions related to the treatment of NTBs in CGE models with a focus on the GTAP model. The main message is that serious modelling efforts remain to be undertaken in order to make CGE modelling a useful policy tool to analyze NTBs. A promising route that could be pursued is the one opened by recent trade models offering a treatment of the extensive margin of trade.

Since this is a first attempt to investigate a truly global general equilibrium modeling of the costs of NTBs, keeping in view the importance it has gained in terms of policy analysis, significant recent advances in better survey of NTBs have been undertaken here, and thus, this paper also leaves many questions unanswered which should form a sizeable future agenda for research.

The author indicates that issues of making GTAP modelling more compatible with the empirical data, including resolving issues around aggregation and compatibility of theoretical approaches underpinning the empirical and GTAP work can be a prominent and important area of future research in this category. Moreover, refining the GTAP modelling to better reflect the nature of NTBs, including introducing imperfect competition, and domestic effects of NTBs in order to elicit policy responses may also be an area of further research.

(<http://www.etsg.org/ETSG2006/papers/Fugazza.PDF>)

**Non Tariff Barriers** by John C. Beghin, Working Paper 06-WP 438, Center for Agricultural and Rural Development, Iowa State University, December 2006.

THIS short paper provides a definition of non-tariff barriers (NTBs) and a general NTB taxonomy. It reviews recent trends in the structure of trade barriers and then describes common approaches used to measure NTBs and their effects.

NTBs refer to the wide range of policy interventions other than border tariffs that affect trade of goods, services, and factors of production. Most taxonomy of NTBs includes market-specific trade and domestic policies affecting trade in that market. The paper is a handy tool for all those who want a quick survey of all that can come as NTBs and comes with a list of all such measures categorywise. Extended taxonomies include macro-economic policies affecting trade.

NTBs have gained importance as tariff levels have been reduced worldwide. Common measures of NTBs include tariff-equivalents of the NTB policy or policies and count and frequency measures of NTBs. These NTB measures are subsequently used in various trade models, including gravity equations, to assess trade and/or welfare effects of the measured NTBs. The paper discusses the current trends in terms of such trade barriers.

It also covers the problematic area of measuring NTBs as the measurement of an NTB is hard to disentangle from the measurements of its effects on market equilibrium and trade. Most NTB measures and analyses focus on the increase in the price of imports resulting from the NTB, the resulting import reduction, the change in the price

responsiveness of the demand for imports, the variability of the effects of the NTB, and the welfare cost of the NTBs.

It discusses, for that matter, the Price-wedge method, Inventory-based frequency measures, and Risk assessment approaches. NTB measures are an essential step in computing welfare effects of the NTBs.

Beyond welfare effects, these measures are also useful for policy purposes. WTO disputes frequently arise alleging that some NTBs impede trade more than necessary to achieve some legitimate objective or that they are just protectionist. These NTB measures are used in the formal dispute process to estimate export market losses and price lowering effects of the incriminated policy.

([http://www.econ.iastate.edu/research/webpapers/paper\\_12703.pdf](http://www.econ.iastate.edu/research/webpapers/paper_12703.pdf))

**An Analysis of the Special Safeguard Mechanisms in the Doha Round of Negotiations** by Parthaprati Pal and Deepika Wadhwa, Working Paper No.189, ICRIER, October 2006.

IN the backdrop of the Uruguay Round of negotiations, the paper deals with the WTO Agreement on Agriculture (AoA), which aims to bring about a structural change in global agricultural trade. This instrument was expected to be beneficial for agricultural producers, but the reality remains that after the implementation experience of the AoA, though there is reduction in the widespread use of quantitative restrictions (QRs) in agricultural trade, agriculture still remains a distorted sector.

It is a realization in the WTO regime that given the importance of agriculture in developing countries and the prevalent distortions in international farm trade, developing countries should be allowed some defence mechanisms to tackle their non-trade concerns.

One such instrument was proposed in the Doha Round of negotiations on agriculture, which allows all developing and least developed member countries of the WTO access to a Special Safeguard Mechanism (SSM), which accords the option to temporarily impose higher tariff rates on the import of an agricultural product if there is either a surge in its import volumes or a sharp dip in its import prices.

The aim of this paper is to take a detailed look at the mechanism and analyzes its usefulness for developing countries. The special mechanism, according to the authors, is a necessity due to the imbalance of the existing safeguard mechanisms and the continued volatility of international commodity prices, and factors which goes a long way to explain the fundamental differences between the developed and developing countries in terms of agriculture.

To a large extent, the plight of the poor in developing countries can be traced to the structural limitations of the agriculture sector in these countries. In most developing countries, agriculture is dominated by small and marginal farmers who are engaged in subsistence farming. Farming in these countries is also characterized by low level of commercialization of agriculture, low productivity, weak market orientation, lack of infrastructure, high dependence on weather and susceptibility to natural calamities. As a result, most of the farmers are very poor and lack any risk-taking ability.

It also explores how the concept of a special agricultural safeguard has evolved in the present round of negotiations and what are the country positions on SSMs in the Doha Round. The paper then proposes a price-trigger-based SSM instrument which is consistent with the goals spelt out in the Doha Development Agenda and satisfies most of the desired features of a safeguard instrument.

However, the paper also indicates that mere availability of safeguard instruments may not be sufficient for ensuring protection from price volatility and import surges. Developing countries need to have a proper mechanism in place to take advantage of these instruments. There is a concern that the infrastructure in most developing countries may not be adequate to monitor the volume of imports in real time.

Since monitoring is a must for ensuring proper safeguard of interests for developing countries, the administration of these safeguards also demands co-ordination between the agencies which handle the trade of the country and those which determine the tariff policies. Unless these conditions are fulfilled, developing countries will not be able to take advantage of these instruments even if the WTO allows liberal use of SSMs.



## DOCUMENTS

### Negotiating Group on Market Access

## Market Access for Non-Agricultural Products

### NEGOTIATING TEXT

#### Understanding on Non-Tariff Barriers Pertaining to Standards, Technical Regulations and Conformity Assessment Procedures for Chemical Products

##### *Communication from the European Union*

The following communication, dated 17 March 2010, is being circulated at the request of the delegation of the European Union.

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#### **Understanding on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Chemicals**

Members,

*Recalling* that pursuant to paragraph 16 of the Doha Ministerial Declaration, Members agreed to negotiations aimed at reducing or as appropriate eliminating tariffs and non-tariff barriers on non-agricultural products,

*Recognizing* the important contribution of chemicals to global economic growth, trade and sustainable development, in particular its significance for the economies of developing countries,

*Renewing* their commitment, as advanced in Agenda 21, to sound management of chemicals throughout their life cycle and of hazardous wastes for sustainable development as well as for the protection of human health and the environment,

*inter alia*, aiming to achieve, by 2020, that chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment,

*Acknowledging* that the chemical industry is essential for a wide variety of manufacturing and agricultural industries and bearing in mind its contribution to the transfer of advanced technology, whilst noting that parts of these chemical industries are composed of small and medium-sized enterprises,

*Affirming* their existing rights and obligations under the WTO Agreement, including the Agreement on Technical Barriers to Trade (TBT Agreement),

*Recognizing* that no Member should be prevented from taking measures that are necessary for the protection of human, animal or plant life or health, for the protection of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Understanding;

*Desiring* to ensure that technical regulations, standards, and conformity assessment procedures are not designed, neither adopted, nor applied so as to create unnecessary obstacles to international trade in chemicals;

*Reaffirming* the commitment to the conclusions of the World Summit on Sustainable Development in Johannesburg of 2002 encouraging the Members to implement the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) as soon as possible,

*Confirming* their shared objectives and principles of:

- establishing competitive market conditions based on principles of openness, non-discrimination, and transparency;
- ensuring a high level of protection of human health and the environment;
- enhancing international cooperation to foster continued beneficial development in trade;
- promoting alternative methods for assessment of hazards of substances and reducing animal testing;
- implementing appropriate regulatory mechanisms and protecting confidential information;
- contributing to the fulfillment of the Strategic Approach to International Chemicals Management (SAICM), and
- developing and promoting best practices on chemicals assessment and management globally,

*Recognizing*, based on the objectives and principles above and with a view to facilitating and promoting trade, the importance of:

- ensuring transparency regarding the content of their laws, regulations and other measures of general application in the area of chemicals,
- providing transparency and due process when regulating and operating their chemical management regimes,
- applying, whenever possible, best practices with respect to the adoption and implementation of regulations concerning management of chemicals, and

- cooperating in the development of international standards on good laboratory practice and testing, in order to seek more harmonized approach to chemical assessment and management,

*Recognizing* that no country should be prevented from taking measures necessary to fulfill its legitimate objectives in accordance with the provisions of Article 2.2 of the Agreement on Technical Barriers to Trade, and in particular the protection of human health or safety, animal or plant life or health, the environment, or for the protection of its essential security interests,

The Members,

**Agree as follows:**

## **1. Scope and Coverage**

1.1 This Understanding shall apply with respect to chemicals.

1.2 Members assume obligations under this Agreement only with respect to standards, technical regulations and conformity assessment procedures.

1.3 This Understanding shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

1.4 Any reference in this Understanding to standards, technical regulations or conformity assessment procedures shall be construed to include any amendment thereto and any additions to product coverage or other provisions thereof, except amendments and additions of an insignificant nature, to the extent such amendment or addition pertains to chemicals.

## **STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES**

### **2. International Standardization and Regulatory Harmonization**

#### *2.1 International Standard-Setting Bodies*

For the purpose of applying Articles 2.4, 5.4 and point F of Annex 3 of the Agreement on Technical Barriers to Trade, with regard to the areas of testing, data acceptance and good laboratory practice, the

Organization for Economic Cooperation and Development (OECD), in relation to the classification and labeling of chemicals the United Nations Subcommittee of Experts on GHS (UNSCOE GHS) under the auspices of UN Economic and Social Council, and otherwise the International Organization for Standardization (ISO) shall be considered the main relevant international standard-setting bodies for the purposes of this Understanding.

## 2.2 Regulatory Harmonization

2.2.1 With a view to harmonizing technical regulations and conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards, guides and recommendations pertaining to chemicals.

2.2.2 Members commit to participate actively in the development of international standards, guides and recommendations, in particular in the international standard-setting bodies identified in paragraph 2.1, and shall cooperate for the adoption, without undue delay, of new international standards, guides and recommendations by these bodies.

## 2.3 Development of International Standards, Guides and Recommendations

For international standards to make a maximum contribution to the achievement of trade facilitation for the chemicals under this Understanding, Members confirm the importance they attach to the principles announced in the Decision of the WTO Committee on Technical Barriers to Trade on *Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*.<sup>1</sup>

## 3. Classification and Labelling of Chemicals

3.1 Members recognize the importance of achieving global harmonization of the classification and labelling of chemicals and the progress achieved with the establishment of the Globally Harmonized System of Classification and Labelling of Chemicals.

3.2 Members shall gradually align their technical regulations to the Globally Harmonized System of Classification and Labeling of Chemicals with a

view to having substantially aligned their domestic legislation by the end of [2015].

3.3 Any Member's classification and labelling requirements for chemicals under the coverage of this Understanding shall be in conformity with Article 2.2 and 2.4 and 2.5 of the Agreement on Technical Barriers to Trade.

## 4. Technical Regulations and Conformity Assessment Procedures

### 4.1 Management of Chemicals

4.1.1 Members recognize the importance of achieving global harmonization of the management of chemicals.

4.1.2 Members shall ensure that in respect to regulations and conformity assessment procedures relating to management of chemicals, chemicals imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like chemicals of national origin and to like chemicals originating in any other country.

4.1.3 Any Member shall endeavour to provide in its regulations and conformity assessment procedures relating to chemicals for special and differentiated treatment with regard to small and medium enterprises with a view to reducing the administrative burden for them.

4.1.4 Any Member shall ensure that its regulations and conformity assessment procedures ensure full and comprehensive protection of confidential business information.

4.1.5 In accordance with Article 2.2 of the Agreement on Technical Barriers to Trade, any Member that is planning to establish regulations relating to chemicals, shall ensure that the information required cannot be obtained by other means that would be less trade-restrictive to fulfill the legitimate public policy objective.

### 4.2 Registration of Data

4.2.1 Members recognize that the current knowledge of hazards deriving from chemicals for safety, health and the environment requires the collection of data and scientific evidence of their hazardous effects to allow a proper assessment of the risks associated with their handling and management. For this purpose, requirements on

collection and registration of data may be set up by any Member in view of pursuing their legitimate public policy objectives.

4.2.2 Members shall ensure that in respect to registration of data,<sup>2</sup> chemicals under the coverage of this Understanding imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like chemicals of national origin and to like chemicals originating in any other country.

4.2.3 When a Member designs, adopts or applies a technical regulation requiring collection or registration of data for chemicals covered by this Understanding, it shall ensure that costs and procedures associated with registration of data are proportionate with regard to the legitimate objectives pursued according to Article 2.2 of the TBT Agreement. In particular, the impact of such costs for small and medium companies shall be taken into account.

4.2.4 Members should, when determining the appropriate level of data collection, take into account the objective of minimizing negative trade effects whilst meeting the objectives of the measure.

4.2.5 When data and scientific information and evidence of their hazardous effects become available through the data collection process itself, the Member shall periodically review the scope of the data collection and registration obligations on the basis of this new information.

4.2.6 Members may require registration of data for chemicals contained in imported articles<sup>3</sup> when the chemicals are intended to be released.

4.2.7 Members may require registration of data for chemicals contained in imported articles<sup>4</sup> when the chemicals are not intended to be released, if there is sufficient scientific evidence that, because of their intrinsic properties, the chemicals in those articles pose a risk for human, animal, plant health and life, or the environment.

### 4.3 Testing and Sampling of Chemicals

4.3.1 If a Member requires a positive assurance of conformity for a chemical, in accordance with Article 5.4 of the Agreement on Technical Barriers to Trade, any government body of this Member shall use, require or accept the use of test methods

for conformity assessment conforming with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies or conforming with the principles of Good Laboratory Practice (GLP) and the Guidelines for the testing of chemicals as established by the Council of the Organization for Economic Co-operation and Development on 12.05.1981 (C(81)30/Final) and with the principles of Good Laboratory Practice as adopted by the Council of the Organisation for Economic Co-operation and Development on 02.10.1989 (C(89)87/Final), respectively.

4.3.2 In accordance with Article 5.1.2 of the Agreement on Technical Barriers to Trade, any procedure to assess the conformity of a chemical shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that such chemicals conform with the applicable technical regulations or standards.

4.3.3 Members shall neither require any re-certification, nor any re-declaration for chemical substances which have not changed from the moment of their first certification or declaration.

4.3.4 In accordance with Article 5.1.2 of the Agreement on Technical Barriers to Trade, any sampling required by a Member to establish a positive assurance of conformity shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that the chemicals conform with the certificates or declarations provided by the manufacturer or supplier. The sampling methods shall be proportionate to the risks non-conformity would create.

## 5. Mutual Acceptance of Data

5.1 Any Member shall give positive consideration to accept registrations of data that originate from any other Member when:

- (a) it has an equivalent level of requirements;
- (b) it fulfils the same legitimate objectives; and
- (c) it uses the internationally agreed data reporting format.

With this purpose, Members shall also participate in international initiatives aimed at harmonizing registration of data requirements.

5.2 Whenever possible, Members shall strive to adhere to the plurilateral system of mutual acceptance of data in the assessment of chemicals as established by the Council of the Organization for Economic Co-operation and Development on 12.05.1981 (C(81)30/Final) according to the rules and procedures thereof.

5.3 Members that are not yet members of the Organization for Economic Co-operation and Development shall endeavour to adhere to the Council acts related to the mutual acceptance of data in the assessment of chemicals according to the procedure established by the Council decision of the Organization for Economic Co-operation and Development of 26.11.1997 (C(97)114/Final).

5.4 Members that are part of the plurilateral system of mutual acceptance of data in the assessment of chemicals as referred to in paragraph 5.1 shall accept test data generated by an accredited laboratory of another Member in accordance with the Good Laboratory Practice (GLP) principles as soon as that Member has adhered to the system in accordance with its rules and procedures and has issued the assurance of GLP Compliance according to the Council decision on compliance with principles of Good Laboratory Practice as adopted by the Council of the Organisation for Economic Co-operation and Development on 02.10.1989 (C(89)87/Final).

#### TRANSPARENCY, PROCEDURES FOR JUDICIAL REVIEW, AND CONFIDENTIAL INFORMATION

### 6. Transparency

{Disciplines as resulting from the horizontal discussions on transparency.}

### 7. Good Regulatory Practice

7.1 Where a Member prepares or proposes to adopt a technical regulation or conformity assessment procedure covering registration of data and a relevant international standard or a relevant guide or recommendation issued by an international standardizing body does not exist, it shall:

- (a) consider, *inter alia*, the commitment to achieve the 2020 goal articulated in paragraph 23 of the Johannesburg Plan of Implementation,

- (b) assess the available regulatory and non-regulatory alternatives to the proposed technical regulation or conformity assessment procedure that may fulfill the Member's legitimate objective in accordance with Article 2.2 of the TBT Agreement, and
- (c) consider, *inter alia*, the impact of the proposed technical regulation or conformity assessment procedure on interested parties as well as its impact on international trade.

7.2 The requirements in paragraph 7.1 do not imply any determination on the way or format this consideration shall take.

7.3 Each Member shall establish or maintain procedures for it to review, at regularly-scheduled intervals, its technical regulations and conformity assessment procedures to determine whether such measures should be modified or eliminated so as to make the Member's regulatory programme more effective in achieving the legitimate objective(s) pursued.

### 8. Regulatory Cooperation

8.1 Members agree to discuss in good faith any issues arising from the application of any Member's regulation on chemicals that have a substantial effect on the trade of another Member.

8.2 The authorities of Members responsible for regulating chemicals shall endeavour to enhance their regulatory cooperation on a multilateral level to share experiences, *inter alia*, in the application of regulatory matters under this Understanding with a view to facilitating trade whilst enhancing regulatory practices. Participating Members shall report on the outcome of their cooperation to the Subcommittee established under Article 12.

### 9. Procedures for Judicial Review

Each Member shall establish or maintain judicial, quasi-judicial, or administrative tribunals and procedures for the purpose of the prompt review and, where warranted, correction of its final administrative actions relating to technical regulations and conformity assessment procedures. Each Member shall ensure that such tribunals are impartial and independent of the office or authority entrusted with administrative enforcement and do not have any substantial interest in the outcome of the matter, and that proceedings before such

tribunals are transparent and comply with due process of law.

## 10. Confidential Information

Nothing in this Understanding shall be construed to require a Member to furnish or allow access to confidential information or business secrets, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular economic operators, public or private.

## 11. Technical Assistance

11.1 As provided for by Article 11 of the TBT Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions with developing and least-developed country Members, technical cooperation in the implementation of the commitments under this Understanding.

11.2 Members shall endeavour to take effective actions in order to promote the exchange of technical expertise, experience and information within the context of the technical regulations, standards and conformity assessment procedures applicable to chemicals covered by this Understanding.

11.3 Developed Member countries shall provide, upon request and under terms and conditions mutually agreed with developing countries and less developed countries, technical cooperation to assist compliance with registration of data requirements and with mutual acceptance of data agreements.

## ADMINISTRATION, DISPUTE SETTLEMENT AND FINAL PROVISIONS

### 12. Monitoring and Oversight

12.1 A Subcommittee on Chemicals (Subcommittee) is hereby established as a subcommittee to the TBT Committee to oversee the operation and implementation of this Understanding and further its objectives and to provide a forum for discussions on any matter related to this Understanding.

The Subcommittee shall:

- (1) comprise representatives of each Member, including from its regulatory authorities;

- (2) elect its own Chairman and apply the TBT Committee working procedures;
- (3) meet, at least every [five] years, to review the implementation and operation of this Understanding and share experiences, *inter alia*, in the application of regulatory matters under this Understanding with a view to facilitating trade whilst enhancing regulatory practices;
- (4) report to the TBT Committee with a view to complementing and not duplicating the work of that Committee and, to this end, communicate to the TBT Committee the results of its review conducted pursuant to subparagraph (3); and
- (5) update Annex 1 in accordance with the provisions in paragraph 4.3.1.

### 13. Dispute Settlement

Article 14 of the TBT Agreement shall apply *mutatis mutandis* to this Understanding.

[Note: Need to further consider relationship with Dispute Settlement Understanding]

### 14. Final Provisions

[Note: Need to consider final provisions to be included in this Understanding, such as entry into force, withdrawal, amendment, WTO Secretariat to service Understanding, deposit, etc.]

## NOTES

<sup>1</sup> Annex B of the Document G/TBT/1/Rev. 9 dated 8 September 2008.

<sup>2</sup> Registration of data means any submission of information concerning chemicals to a national or regional authority as part of a regulatory and non-regulatory scheme. It therefore covers, for example, notification schemes for new substances and chemical registration schemes.

<sup>3</sup> As defined in "Guidance on definitions of key terms for new chemical notification", OECD ENV/JM/MONO (2007) 13 of 20.06.2007.

<sup>4</sup> *Ibid.*

(www.wto.org TN/MA/W/137, 19 March 2010)



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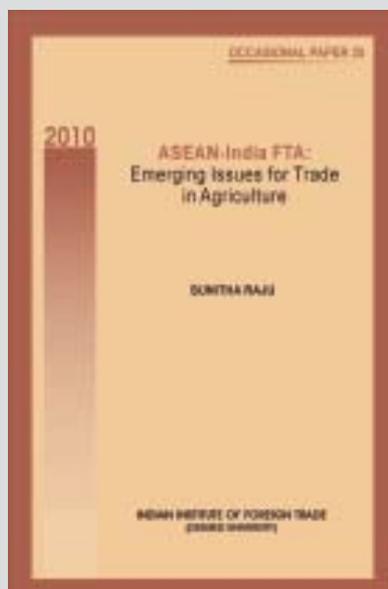
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