Policy Brief
On

SPS and TBT Measures-India’s Concerns

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**Executive Summery**

Due to successive trade negotiations tariffs on a number of goods have come down considerably all over the world. Members have started using various non tariff measures to protect their markets. The TBT and SPS agreements of WTO specifies various parameters under which these measures can be used for genuine purposes. However it is alleged that large number of members uses these measures to protect their markets in the guise of using them for legitimate purposes.

The NTB issue is under DDA negotiations and Progress has been made in the identification, examination and categorization of non-tariff barriers. Members are instructed to finalize their NTB work in 2006 before the conclusion of the tariff negotiations in order to multilateralize the outcomes through inter alia incorporating them where appropriate into Part III of schedules.

India expressed its concern over use of NTBs by various members which in its opinion are not in consistent with the TBT and SPS agreements. Similarly various countries have voiced their concern on India’s use of NTBs.

Further the use of Voluntary Standards, Marketing Restrictions including Labelling Practices, Adaptation of International Standards and PPM issues have been discussed. How these issues, which are not covered under WTO, undermine the marketing potential of developing countries has been discussed.

As the problems related to the use of NTBs need to be takled through negotiations. One way is to conclude MRAs of Standardising and Accreditation bodies between the members. The ILAC Arrangement can be used as to achieve this objective.
**Introduction**

This policy brief attempts to identify various Non-Tariff measures that affect India’s exports. As the subject of NTBs is a vast one, this paper limits the scope of discussion in relation to TBT and SPS measures only. The discussion focuses on the scope of agenda before the DDA negotiations, the NTB concerns expressed by India and other countries, the current trend of non tariff measures moving away from the Governmental domain to voluntary agencies and international cooperation required to deal with the international standards. As tariffs are progressively going down due to multilateral negotiations as well as various Free Trade Agreements all the governments including developing countries are increasingly resorting to the use of NTBs as a protectionist measure. However, the reality is that they defend the measures taken as consistent with the TBT and SPS agreements - as necessary measures to protect human, animal or plant life, to ensure national security requirements, prevention of deceptive practices or to protect environment etc. However the test of non conformity with the agreements lies in determining whether these measures are prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade or whether these are more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create.

1. **The Mandate:**

1.1 **The July Package**

The issue of NTBs is under discussion in DDA. The WTO members have in their July package agreed to take NTB negotiations further. The para 2 says “We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries.”

Further members have reaffirmed in Para14. “We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.”

1.2 **The Hong Kong Ministerial Declaration**

The Hong Kong ministerial further noted that in Para 22. “We note that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs. We also take note that Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations, and that some of

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1 The General Council’s decision on the Doha Agenda work programme (the “July package”), agreed on 1 August 2004, containing frameworks and other agreements designed to focus the negotiations and raise them to a new level.

2 Ministerial Declaration Adopted on 18 December 2005. WTO document WT/MIN(05)/DEC 22 December 2005
the NTBs are being addressed in other fora including other Negotiating Groups. We recognize the need for specific negotiating proposals and encourage participants to make such submissions as quickly as possible.”

1.3 Current State-of-play
Members reaffirmed that negotiations on NTBs are an integral and equally important element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration. The NTB initiatives shall aim to reduce or eliminate, as appropriate, non-tariff barriers, in particular on products of export interest to developing countries and to enhance market access opportunities achieved through the tariff formula modality and sectoral initiatives.

Progress has been made in the identification, examination and categorization of non-tariff barriers. Discussions have focused on defining the nature of the barrier, the scope of products affected and potential solutions. Some Members have also already submitted specific requests and specific negotiating proposals, including on horizontal issues such as export taxes, export restrictions, remanufactured goods and a future mechanism for resolving NTBs, as well as on vertical initiatives on automobiles, electronic products, textiles, clothing and footwear and wood products.

Members have expressed different views regarding these proposals and negotiations are now required to obtain results in line with the mandate.

Members are instructed to finalize their NTB work in 2006 before the conclusion of the tariff negotiations in order to multilateralize the outcomes through inter alia incorporating them where appropriate into Part III of schedules. These non-tariff barrier negotiations can include request/offer, horizontal and vertical approaches and they should also take fully into account the principle of special and differential treatment for developing and least-developed country participants.

2. The India’s Concerns
India has various concerns in the implementation of TBT and SPS measures by member countries. India is of the opinion that the measures as detailed below are not in conformity with the requirement that these measures should not become unnecessary obstacle to international trade and are necessary to fulfill a legitimate objective and taking account of the risks of non-fulfillment would create.

2.1 Various manufactured products including marine products
Restrictive standards and burdensome regulations and procedures in several countries have been acting as barriers that significantly affect exports as also the capacity to trade. There are several issues involved which are briefly discussed below.

2.2 Harmonization
Both the SPS and TBT agreements seek harmonization on as wide a basis as possible and for the applied measures to conform to international standards, guidelines or recommendations. A higher level of protection may be introduced or maintained if there is scientific justification (in case of SPS measures) or for legitimate objectives

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3 WTO Document JOB(06)/200 dated 22 June 2006
4 WTO document TN/MA/W/46/Add.4 dated 3 November 2004
(in case of TBT measures). However, it has been observed that certain countries are at times laying down norms more stringent than those specified by relevant international bodies without any known/justifiable scientific basis or for demonstrably legitimate reasons and which are difficult to meet.

Similarly testing methods are specified for very high levels of sensitivity which may not be justified or required and due to which the cost of testing becomes disproportionately high and prohibitive. Sometimes, levels of sensitivity are raised only because better technology or testing equipment becomes available, and not due to any scientific evidence that a higher sensitivity is required to meet a health concern. Moreover, the standards are revised, mostly upwards, at regular intervals making it very difficult for developing countries to adapt to these changing requirements. Harmonization of both standards and procedures applicable within a common customs territory is necessary for predictability.

Harmonization with international standards and use of agreed testing methods with scientific justification will reduce the trade restrictive impact

(i) One instance of the use of testing methods for high levels of sensitivity is the testing in marine products for chloramphenicol by High Performance Liquid Chromatograph Mass Spectroscopy (HPLC MS). MS has sensitivity at levels of 0.2 ppb whereas the AOAC specifies test by HPLC which has sensitivity to a level of 10 ppb. The additional equipment means incurring expenditure of around Rs 1.5 crores (US$ 325000) per equipment with this cost increase being proportionately reflected in each test carried out.

(ii) Certain countries are using test methods which are neither accepted internationally, nor validated. An example is use of non-validated test method by a country for testing vibrio cholerae which is felt to be the cause of failure of samples in that country.

2.3 Transparency

It has often been observed that there is absence of information and lack of transparency on the procedural norms and regulations of various countries regarding specifications as well as methods of sampling, inspection and testing. New Regulations are brought out and implemented without even giving the producers in the exporting country a chance to get familiar with these. Often the standards are available only in the language of the importing country or are presented in a very complicated manner. The result is that exporters are, at times, not clear about the specific requirements prescribed by the country of destination, which has led to rejection at the point of import.

(i) Several countries lay down their specification in their national language with no official English version and for translating these, either facilities in the exporting country are not easily available or these are very costly.

(ii) Some countries have standards for Hessian bags which are not technically achievable and the details relating to the standards are not available in English. Similarly requirements on using certain specified packing materials without providing any reason or justification for the same acts a trade barrier.
2.4 Conformity Assessment Issues
Several conformity assessment issues have the effect of restricting trade, these include:
- Excessive costs levied for testing - for small developing country exporters these are significant barriers;
- Location of testing facilities including testing being done only at single/limited centre(s);
- Limited validity of certificates, requiring re-testing with the attendant costs;
- Procedures involving site/ factory visits by the certifying authorities – both the time taken and costs involved act as hindrances;
- Non-recognition of certificates from accepted international bodies; and
- Easier or preferential conformity assessment for RTA Members which is discriminatory.

Tyre marking is an expensive proposition; in some countries it costs a company around US$ 20,000 for the first application and approval. The certificate is valid for one year and US$ 1100 has to be paid for every year for getting the certificate revalidated; in addition for the factory visit of inspectors, an amount of US$ 600 per day has to be paid which is inclusive of transportation charges, hotel charges, tickets, etc.

2.5 Risk-based Approach
Article 2.2 of the SPS Agreement clearly talks of SPS measures to be applied only to the extent necessary. There has been discussion in Codex regarding the level of protection. Citing the SPS Agreement, the developing countries have mentioned that appropriate levels of protection should be sought and not highest levels of protection. Clearly there is no definition as to what is the highest level of protection. Therefore, it is possible that this can be arbitrary. There have been instances where highest level of protection has been interpreted as that level where contaminant can be detected and which has nothing to do with Risk Analysis.

India desires that risk analysis establish the appropriate level of protection based on the level of risk. This has also been accepted in the Working Principles of Risk Analysis formulated by the Codex Committee on General Principle in April 2002 meeting. They repeatedly talk about risk management measures, which are least trade restrictive.

Under Article 3.3 of the SPS Agreement, countries have the right to set their own level of protection, provided it is scientifically justifiable. India accepts this position and the Risk assessment process as established under Article 5. But the insistence by some countries for 4 ppb level of aflatoxin in peanuts is an example where the highest level of protection sought is neither backed by Risk Analysis nor has any scientific justification. These have been questioned in Codex meetings by all developing countries and not only by India.

While risk to consumers resulting from hazard, particularly in foods, has been identified as a significant concern at the international level, it has been observed that some importing countries are fixing standards without carrying out comprehensive risk assessment work and despite repeated requests details of the basis for the standard are not made available.
This may at times be in contravention of Article 5 of the SPS Agreement which requires that Sanitary and Phytosanitary Measures should be based on risk assessment and take into account an appropriate assessment of the actual risk involved and if requested by the exporting country make known details of this assessment.

In the case of marine products where consignments are being rejected due to presence of certain micro-organisms such as Vibrio parahaemolyticus a ‘nil’ limit has been laid down. Vibrio parahaemolyticus is a habitant of the marine environment of the tropical waters and there is every chance for the presence of this organism in raw fish and fishery products. However, they are generally destroyed during chilling/freezing or by heating at 60 degrees C. Besides, the organism is not considered as a potential hazard in raw frozen products which are to be cooked before consumption. Some countries are specifying limits for Vibrio parahaemolyticus only for ready-to-eat cooked products or seafood for raw consumption and at levels ranging from 1000 to 10000 per gram which may be acceptable. However, despite the above, some countries have specified limits for Vibrio parahaemolyticus in products which are to be cooked before consumption and these also at levels as low as 100 per gram. Risk evaluation reports have not been made available in such cases.

2.6 Safety Management Systems Approach

In addition to end product criteria, a systems approach which builds in quality and safety throughout the food chain from primary production to final consumption is increasingly being used to ensure that food products are safe for consumption. Such a ‘safety management systems’ approach is being insisted upon by many countries for allowing import of products such as marine products. This system allows building in controls in a flexible manner based on conditions applicable in a country/industry etc.

However, certain countries are building in prescriptions in the production process. Process standards based on conditions and production systems prevalent in the importing country are not relevant for the developing countries for achieving the required product standard. It is internationally accepted that alternate equivalent measures should be permitted if these meet the requirements of the importing country in the use of the final product. It also may be in contravention of Article 2.8 of TBT and definition of technical regulations in Annex I.

In the case of seafood units some assessment teams which have come for inspection insist on flake ice machines being installed in the processing units whereas the same purpose can be served by crushing block ice in a hygienic manner. Insistence on such practices involves not only excessive costs but is also unjustifiable in terms of end-product safety criteria.

2.7 Equivalence

Equivalence agreements between Members are seen in the WTO as the means to address the standards related trade problems as they enable pooling and utilization of resources more effectively, avoiding duplication of inspection and testing, and ensuring that health and safety requirements are met effectively without unduly restricting trade. Such agreements would generally benefit exporters in a developing country as financial burden as well as risk of rejection would be reduced.
However, it is observed, Members often do not enter into such Agreements even after receipt of a formal request as either the administrative burden of entering into these is high or they don’t want to lose their control over imports. Some countries use regulatory standards to address demand supply conditions. Further, at times it is seen that important components such as provision for re-testing and appeal in case of rejections are not addressed in such Agreements as these are not considered to be in the interest of the importing country. It is also a requirement of TBT under Article 2.7 that alternate equivalent measures should be permitted if these meet the requirements of the importing country. A similar provision exists in Article 4 of SPS.

2.8 Rejection & Destruction of Consignments
Health Authorities in certain importing countries have started destroying the contaminated/ damaged consignments instead of returning them to the exporting countries as requested by the exporters/ importers. The decision regarding destruction of a consignment is often not a correct decision and is also not justified. It is necessary to involve the exporting country in such decisions of destruction for the following reasons:

(i) The consignments found contaminated in the importing country may need to be brought back to enable the competent authority to re-test them and ascertain whether the consignments were contaminated or not as certified. And if contaminated examine the cause and take immediate corrective measures to control/eliminate its recurrence.

(ii) Destruction of a consignment leads to wastage of a large amount of money as some cases of contamination can be taken care of through reprocessing.

(iii) Sometimes the importing country adopts different methods for sampling and testing and also testing for parameters/contaminants, which are not notified in their standards, which at times become reasons for rejections.

(iv) In certain cases the importing country may have higher standards than those followed by the country of export. The returned consignments could be utilised in domestic trade/ purposes. It may be pointed out that a country can fix standards lower than, say Codex.

(v) Sometimes a product is rejected in one port and accepted in another port of the same market.

(vi) Sometimes a product is rejected based on a national standard by a buyer, and it is accepted after price discounts; this shows that at times standards are used primarily to depress prices by the buyer.

It may also be noted that Codex\(^5\) has brought out a guideline for the exchange of information between countries on rejection of imported foods\(^6\) (CAC/GL 25) wherein

\(^5\)The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purposes of this Programme are protecting health of the consumers and ensuring fair trade practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations.
the standard provides for destruction of the consignment, retesting of the consignment, re-export of the consignment to countries which state in advance that they are prepared to accept the consignment knowing that it has been refused entry elsewhere.

3 Concerns of Members on India’s Measures

3.1 Indian Standards have not completely been harmonized with International Standards

There has been allegation that India has not done enough to harmonise the domestic standards with International Standards. It has been pointed out that only some 17% of Indian standards have been harmonized with international standards. India has clarified that there have been no significant changes in the legislative basis of India’s technical standards. India notified the WTO that the Bureau of Indian Standards, the national standards body of India, had been designated as the WTO-TBT Enquiry Point, while the Ministry of Commerce is responsible for implementing and administering the WTO Agreement on Technical Barriers to Trade. India accepted the Code of Good Practice on 19 December 1995.

Indian standards are formulated by the Bureau of Indian Standards (BIS), which was established as a statutory body under the Bureau of Standards Act, 1986, and became operational on 1 April 1987. Standards are developed through 15 division councils, covering a wide number of sectors. From its formation until 1 April 2001, the BIS had developed 17,428 standards relating to a number of sectors. In order to ensure their continued relevance, Indian standards are reviewed as and when considered necessary, but at least once every five years.

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<td>Proposals for establishing new standards or for revising existing standards may be submitted in writing to the Bureau of Indian Standards (BIS) by Ministries and agencies of the central and state governments, professional associations including consumer organizations, industrial units, industry associations and professional bodies, and members of the BIS and of its technical committees. The proposal is examined within the relevant Division Council, of which there are currently 15. Formulation of the new or revised standard is entrusted to an appropriate existing technical committee or, if necessary, a new technical committee, which is appointed by the Division Council. The draft standard is issued and circulated for a period of at least three months amongst the</td>
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7 WTO document WT/TFR/S/100 dated 22 May 2002
8 WTO document G/TBT/2/Add.56, 22 October 1999.
9 WTO document G/TBT/CS/N/26, 29 January 1996.
10 The BIS has its main office in New Delhi, with five regional and 19 branch offices around the country. To support its testing and certification activities, the BIS have a network of eight laboratories across India, which provide conformity testing and calibration services. In addition, the BIS recognizes and uses the services of a number of laboratories, which follow international criteria, including ISO/IEC Guides for testing.
11 The sectors or activities currently covered are: basic and production engineering; chemicals; civil engineering; electronics and telecommunications; electrotechnical; food and agriculture; mechanical engineering; management and systems; medical equipment and hospital planning; metallurgical engineering; petroleum, coal, and related products; transport engineering; textiles; and water resources (Bureau of Indian Standards online information. Available at: http://www.bis.org.in/sfp1.htm [21 August 2001]).
various interest groups concerned. The Technical Committee may also decide not to circulate the standard, if necessary, including when the standard is considered urgent or non-controversial.

Upon incorporation of comments deemed to be relevant by the Technical Committee, the draft standard is finalized and must be approved by the Sectional Committee before being submitted to the Chairman of the Divisional Council for adoption. All Indian standards must be reviewed periodically and at least once every five years; standards that need not be revised in the view of the Sectional Committee must be reaffirmed by the Committee. According to the authorities the process of drafting new standards may take between one year in the case of harmonization with international standards, and two-three years for the formulation of new standards.

As a matter of policy, the BIS endeavor to align Indian standards as far as possible with international standards. As of 1 April 2001, 3020 Indian standards (some 17%) had been harmonized with international standards; during the period from 1998 to 2001, however, the percentage of standards that have been harmonized with international standards is considerably higher, averaging around 42%.

The BIS, which was a founder member of the International Standards Organization (ISO), continues to participate in technical and policy-making committees of the ISO, and the International Electrotechnical Commission (IEC).

### 3.2 India Imposes Mandatory Standards

United States has alleged that the GOI has identified 109 specific commodities (including food preservatives and additives, milk powder, infant milk foods, cement, household and similar electrical appliances, gas cylinders and multipurpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. A system now exists by which foreign companies can receive automatic certification for products made outside India provided BIS has first inspected the production facility (at the manufacturers expense). Licensing fees include the cost of the initial inspector’s visit and tests, an annual fee of approximately $2,000 and a marking fee that ranges from 0.2 to 1 percent of the value of certified goods imported into or produced in India. Japan also expressed concerns about this measure in light of the TBT Agreement, as it seems to create unnecessary trade barriers, and the conformity assessment procedures are not clear.

India has clarified that the Notification number 44 dated 24.11.2000 has required the importers to comply with two separate requirements. (i) All packaged commodities have been made subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 upon import to India. All prepackaged commodities, imported to India, are required to carry the declarations like name and address of the importers, net quantity in terms of standards units of weights and measures, month and year of packing, maximum retail sale price etc.; (ii) Import of 131 commodities has been made subject to compliance of mandatory Indian quality standards. This list of 131 items has now been reduced to 109 items.

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12 USTR-the 2005 National Trade Estimate Report on Foreign Trade Barriers (NTE)
13 WTO document WT/TPR/S/100 dated 22 May 2002
14 The list of Indian Standards under mandatory certification is available at http://www.bis.org.in/cert/man.htm.
India has clarified that the requirement of labeling in accordance with the Standards of Weights and Measures (Packaged Commodities) Rules is equally applicable on domestically manufactured items. As regards the issue of valid shelf life, the requirement to have at least 60% of the valid shelf life at the time of import clearance has been imposed for consumer safety. This would allow reasonable time for the products to be marketed in the country before the expiry/best before date is over. Prevention of Food Adulteration Rules, 1954 requires domestic producers also to indicate best before date and in case of expired food articles are marketed, action can be taken under PFA Rules. This measure has been adopted based on factual survey report indicating that date expired imported products were being sold in the domestic market.

India further clarified that the measures introduced vide Notification 44 dated 24 November 2000 are within the parameters of Article III of GATT and Agreement on Technical Barriers to Trade and have only highlighted applicability of those standards on imported products, which are already mandatorily applicable on domestic products. Moreover para 4.12 of the then applicable EXIM Policy (1997-2002) and para 2.2 of the current EXIM Policy (2002-2007) explicitly stipulate that all imported goods shall also be subject to domestic laws, rules, order, regulations, technical specifications, environmental and safety norms as applicable on domestically produced goods. Therefore the labeling requirements on imports introduced vide Notification no. 44 are not new. These technical standards or labeling requirements are already being enforced on domestic manufacturers over a long time.

3.3 **Sanitary and Phytosanitary measures**

There is no single agency to implement Sanitary and Phytosanitary regulations; instead, measures are maintained under a number of Acts, which are implemented by different agencies. Under the Export and Import Policy, all imports of primary agricultural products are subject to a Bio Security and Sanitary-Phytosanitary import permit issued by the Department of Agriculture and Cooperation under the Plants, Fruit and Seeds (Regulation of Import into India) Order, 1989. The permits are issued on the basis of import risk analysis based on scientific principles, including, inter alia, the types of pests associated with the particular product being imported and their potential impact on India's international trade.

Other sanitary and health regulations are found in the Drugs and Cosmetics Act, 1940, and accompanying rules, as amended, which govern quality control for pharmaceutical products as well as alternative Indian medicines such as ayurveda, unani, and siddha systems. The Act and its accompanying rules are administered by the Ministry of Health and implemented by the state governments. All new pharmaceutical products, whether imported or domestically produced, must first be approved by the Central Drugs Standard Control Organization, headed by the Drugs Controller of India, before they may be marketed in India.

3.3 **Other concerns of United States**\(^{15}\)

In 2004, Indian Customs began to require registration or an exemption certificate for imported boric acid. The Ministry of Agriculture's Central Insecticides Board and Registration Committee has not yet published criteria and procedures for obtaining

\(^{15}\) USTR-the 2005 National Trade Estimate Report on Foreign Trade Barriers (NTE)
this documentation. Imports of boric acid are, therefore, effectively blocked. Indian government rule making has been ad hoc and confusing. India may be the only country that requires registration of boric acid intended for non-insecticide use. U.S. industry is required to register, although it asserts that 90 percent of all boric acid imports into India are for non-insecticide uses and should qualify for an exemption. India's boric acid producers are not, according to U.S. industry, subject to the same constraints.

India's procedures for establishing emissions standards are vague and non-transparent. The emissions standards seem to favor small displacement four-stroke motorcycles that are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers fails to meet India's requirements.

In 2001, India banned textile and apparel imports that contain certain dyes. In January 2004, the GOI relaxed its textile-testing requirement by announcing that it would accept, as proof of the absence of azo-dye, certification that the exporting country had banned azo-dyes in textiles.

Sanitary and Phytosanitary (SPS) Measures: The U.S. Government has raised with India concerns regarding its failure to notify certain SPS measures. Bilateral technical level discussions are ongoing and have resulted in a short-term agreement for important U.S. export commodities, such as almonds.

In 2003, the Ministry of Health implemented amendments under its Prevention of Food Adulteration Act (PFA) which could potentially restrict Indian imports of several agricultural products. In addition, at the end of 2003, the Ministry of Agriculture issued a set of new Phytosanitary regulations and quarantine requirements for imports of agricultural products.

These are entitled the "Plant Quarantine (Regulation of Import into India) Order, 2003". GOI implementation of these measures prior to notifying them to the WTO SPS Committee jeopardized Indian imports of U.S. almonds, pulses, fresh fruits and vegetables. Furthermore, new requirements affecting solid Wood Packaging Material (SWPM), as they were initially drafted, threatened adversely to impact U.S. exports of nonagricultural products. Bilateral discussions led the Ministry of Agriculture to amend its quarantine requirement for wood packaging materials to make it compatible with international standards, thereby resolving the market access problem. The Indian government has implemented several sanitary restrictions, which do not appear to coincide with the Office of International Epizootics (OIE) and CODEX recommendations. The OIE and CODEX are the global standard setting bodies for animal health issues and food products respectively. Such restrictions have affected Indian imports of poultry and poultry products, and pet food and dairy products.

The GOI reports that it is currently reviewing its policy for evaluating the safety of biologically engineered foods. In 2002, the Genetic Engineering Approval Committee (GEAC), the Indian government's regulatory body for biotechnology products, conditionally approved the import of refined soy oil and crude de-gummed soy oil. It declined, however, to consider importation of a corn-soy blend (CSB) without a special U.S.-issued certification. Even if a satisfactory certificate were available, the GEAC has not specified the criteria upon which it would evaluate the safety of CSB.
In the absence of a policy framework for assessing the safety of biotechnology commodities and foods, the decision-making process within the GEAC is slow, non-transparent and arbitrary. Meanwhile, Indian researchers themselves are engaged in the domestic development of agricultural products derived from biotechnology such as mustard seed, potatoes, tomatoes, cabbage, cauliflower, chilies, groundnuts, and rice.

4 Other NTB issues

4.1 Voluntary Standards
Mandatory Standards otherwise called technical regulations and set by the public institutions or regulatory agencies. However these regulations fall with in the purview of WTO especially covered by TBT and SPS agreements. However, recently the growth of voluntary standards is increasingly being felt by the exporters of the developing countries. These standards are set by the market players, standard setting institutions, voluntary agencies etc. Voluntary standards sometime become de facto regulations when the particular product gains the market share and well accepted by the consumers. In that event the producers need to follow the standards if they intend to remain in the market.

Imposition of voluntary international standards such as ISO 14000 on Environmental Management Systems by buyers on their suppliers in exporting countries has the effect of not only restricting market access for at least sometime until the industry upgrades itself, but also leading to high cost of implementation. The standard on Social Accountability, SA 8000 is a recently announced international standard for management systems primarily dealing with working conditions. Under the guise of Social Accountability, the imports of various products can be restricted on alleged violation of any of the above ‘voluntary requirements’.

Attention has been drawn to the increasing instances of campaigns carried out to create public opinion as well as to force buyers to change their source of imports on grounds other than trade related e.g. ethical treatment to animals. These campaigns could have various motivations not necessarily based on truth and certainly not based on any trade issues.

There may be two aspects to discussing such measures. First is that they do not follow from any governmental action and therefore the extent to which they could be discussed/disciplined in WTO would need to be deliberated upon. The second aspect is the increasing use of such methods and potential for these to divert trade and restrict market access especially from developing countries which may be vulnerable due to their own priorities thus making it important to be discussed.

4.2 Marketing Restrictions including Labelling Practices
Various requirements for marketing a product in different markets prove to be cumbersome and onerous to developing country exporters. These requirements include detailed labelling requirements with extensive product/content description. Such labelling requirements become a hindrance especially if the product is being exported to different countries each with different regulations.
In several countries there are registration requirements for firms before exporting, distributing and selling, with the registration process itself being costly, time consuming and not always granted. In the case of pharmaceutical products, import in several countries are tacitly encouraged/allowed only from particular countries and sources, such policies are enabled by the registration mechanism which is not transparent and favours producers only from certain countries.

Some buyer requirements like comprehensive product liability insurance also restrict the export and marketing ability of developing country exporters.

4.3 Adaptation of International Standard

The importance and benefits of international standards are well known in developed countries. The WTO agreements on TBT and SPS measures specifically recognize international standards. Article 3.2 of Agreement on the Application of Sanitary and Phytosanitary Measures says "Sanitary or Phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994." Article 2.5 of Agreement on Technical Barriers to Trade says “Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade”

The TBT Committee adopted\(^\text{16}\) a decision in respect of the principles to be observed, when international standards, guidelines and recommendations (as mentioned under Articles 2, 5 and Annex 3 of the TBT Agreement) are developed, so as to take account of, inter alia, transparency, openness, impartiality and consensus, and to ensure that the concerns of developing countries are considered.

In most developing countries there seems to be lack of awareness in the standard setting bodies as well as industrial associations in the role of international standards in facilitation of trade. Only a few developing countries, where the standardization infrastructure is well developed, have adopted effective mechanisms for obtaining the views of industry on draft international standards. In these few cases, however, industry often devotes resources on analysis and research to ensure that their specific national requirements are taken into account in the preparation of international standards. An example of this is the proactive role played by India in formulating the international standard on tea. The well-researched Indian Committee draft on the subject resulted in the Indian point of view being well taken into account in ISO 3720, the international standard for black tea. Participation in international standardization work is not the exclusive responsibility of national standards bodies; it is also that of business and industry. International Standardisation bodies should explore ways to ensure more effective participation of the developing world in the preparation of international standards.

Until recently the technologically advanced countries have dominated the debates and discussions in the bodies like International Organization for Standardization (ISO)

\(^{16}\)WTO document G/TBT/1/Rev.8
and the Codex Alimentarius Commission. Thus implementing TBT and SPS agreements which are based on these international standards means the developing countries are in fact implementing the standards which are prepared taking into consideration the conditions prevailed in the developed countries. This situation in one way is like imposition of standards on poor countries which acts as barrier to the trade from the developing countries.

4.4 PPM issues

The relationship between trade rules and product labels, particularly labels that distinguish between products based upon the “process or production method” (PPM) by which they are manufactured, has been a contentious issue since the creation of the WTO. Much of the controversy originally focused on the status of voluntary “eco-labelling” programs. Many developing countries have argued that the WTO Agreement on Technical Barriers to Trade (TBT Agreement) prohibits labels that distinguish between products based upon the environmental or social implications of different PPMs. The opposition from developing countries has been based primarily on the concern that PPM-based labelling programs could limit their market access based upon environmental and/or social standards developed in industrialized countries. These countries have consistently taken the position that

[w]e believe developing nations must be made aware of the adverse precedent that would be set were labeling based on process and production methods (PPMs) to be adopted. Such a labelling regime . . . creates a dangerous precedent not only for biotechnology, but for labor, environment, animal welfare and other non-science based social issues. The requirements necessary to support such labels create potentially insurmountable technical barriers to trade and technology sharing among developed countries. These would be far greater and more detrimental for developing countries.

Although the status of voluntary PPM-based labelling programs under the TBT Agreement remains controversial, during the last few years the relationship between trade rules and product labels has been discussed most frequently in the context of mandatory labelling requirements for genetically engineered (GE) food. Numerous WTO Members -- including the European Union (EU) -- have implemented or are developing mandatory labelling requirements for GE food. This issue has become a major trade concern for the United States, which is both the home of many biotechnology companies and a major producer of genetically engineered crops, including corn and soybeans. The industry coalition in United States have argued

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17 Member nations have failed to agree even on the extent to which PPM-based labeling programs are covered under the TBT Agreement, let alone whether they are permissible if covered. See Committee on Trade and Environment, Report (1996) of the Committee on Trade and Environment, WT/CTE/1 (Nov. 12, 1996) paras. 70-73.

18 Committee on Trade and Environment, Report (1996) of the Committee on Trade and Environment, WT/CTE/1 (Nov. 12, 1996) para. 70. See also First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade, G/TBT/5 (19 November 1997), para. 11 (noting “the proliferation of standards prepared, adopted and applied by standardizing bodies which did not follow the disciplines of the [CGP] could have a potentially adverse impact on trade, even if they were voluntary”)

19 See Letter from Agribusiness Association of Iowa et. al. to Ambassador Robert Zoellick (November 8, 2002), reprinted in INSIDE U.S. TRADE (November 8, 2002); Industry Letter on EU Biotech Rules to Secretary of Agriculture Ann Veneman (August 9, 2001), reprinted in INSIDE U.S. TRADE (August 10,
that the labelling regulations violate various trade rules, including provisions of the TBT Agreement. Significantly, the industry group has attempted to make common cause with developing countries on the issue of PPM-based labelling, stating that

\[\text{[w]e believe developing nations must be made aware of the adverse precedent that would be set were labelling based on process and production methods (PPMs) to be adopted. Such a labelling regime . . . creates a dangerous precedent not only for biotechnology, but for labor, environment, animal welfare and other non-science based social issues. The requirements necessary to support such labels create potentially insurmountable technical barriers to trade and technology sharing among developed countries. These would be far greater and more detrimental for developing countries.}\]^{20}

5 Conclusion
The issue of NTBs is a very tricky issue. Even though India’s trade do suffer because of various NTBs of other countries, the issue need to be handled delicately. SPS and TBT agreements allow measures which are absolutely necessary. No country is going to admit that their SPS and TBT measures are imposed as an instrument of trade restriction. Every country would defend their measures as consistent with the above agreements.

India should identify the products that are of interest to the country and should build alliances based on common interest across developed and developing countries. India has to follow the path of reciprocity to have a meaningful outcome of this issue. As regards to standards, India has to work in areas like establishing an accreditation system for certifying agencies/organisations, strengthening use of international standards, along with increased representation of developing countries in standard setting bodies, technical assistance and capacity building for developing countries, mandatory documentation of equivalence procedure and adopting Codex consignment rejection guidelines, standards in English language and agreement on self certification. Indian accreditation authorities should enter into mutual recognition agreements (MRAs) with similar agencies in other countries. This will greatly facilitate lower transaction costs as well as hassle free trade as for as conformity assessment procedures are concerned. India is already a signatory to ILAC C Mutual Recognition Arrangement (See Annexure – I). The issues of NTBs have to be resolved more with dialogue and leverage rather than dispute settlement.

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^{20} \text{Id.}

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^{20} \text{Id.}
Annexure - I

ILAC Mutual Recognition Arrangement

The purpose of the ILAC Arrangement is to develop a global network of accredited testing and calibration laboratories that can be relied on to provide accurate results.

The ILAC Arrangement, which entered into effect on 31 January 2001, provides technical underpinning to international trade by promoting cross border stakeholder confidence and acceptance of accredited laboratory data. Previously, there had been no international mutual recognition agreement in laboratory accreditation. This has been a hindrance for some types of international trade, particularly those products which have had to undergo re-testing or re-calibration upon entry to importing countries. The Arrangement should facilitate this trade.

The International Laboratory Accreditation Cooperation (ILAC) first started as a conference in 1978 with the aim of developing international cooperation for facilitating trade by promotion of the acceptance of accredited test and calibration results. Currently, 48 laboratory accreditation bodies of ILAC have signed the multi-lateral, mutual recognition arrangement (the “ILAC Arrangement”) to promote the acceptance of accredited test and calibration data. (A list of these signatories can be found on the ILAC website at www.ilac.org).

The “ILAC Arrangement” provides significant technical underpinning to international trade. The key to the Arrangement is the developing global network of accredited testing and calibration laboratories that are assessed and recognised as being competent by ILAC Arrangement signatory accreditation bodies. The signatories have, in turn, been peer-reviewed and shown to meet ILAC’s criteria for competence. Now that the ILAC Arrangement is in place, governments can take advantage of it to further develop or enhance trade agreements. The ultimate aim is increased use and acceptance by industry as well as government of the results from accredited laboratories, including results from laboratories in other countries. In this way, the free-trade goal of “a product tested once and accepted everywhere” can be realised.

The Arrangement is based on the results of an intensive evaluation of each body carried out in accordance with the relevant rules and procedures contained in several ILAC publications. Each accreditation body that is a signatory to the Arrangement agrees to abide by its terms and conditions and by the ILAC evaluation procedures.

The ILAC Arrangement builds confidence among accreditation bodies and their ability to determine a laboratory’s competence to perform testing or calibrations. Confidence facilitates the acceptance of testing and calibration results between countries when the results can be demonstrated to come from accredited laboratories. This ultimately helps to reduce some technical barriers to trade. Through the ILAC Arrangement, the foundation for realising the ideal of having products “tested once and accepted everywhere” has been established.

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