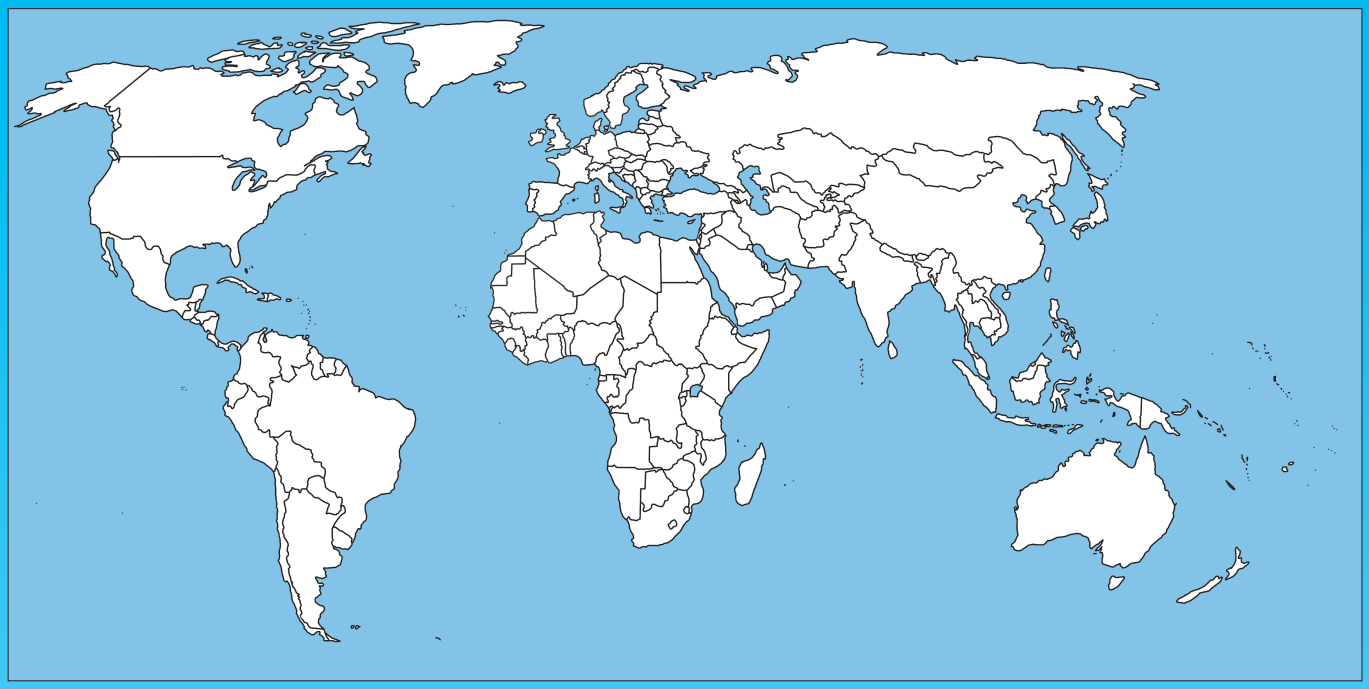
Review of Trade Policies of India's Major Trading Partners



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Review of Trade Policies of India's Major Trading Partners

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ABBREVIATIONS

AHTN	-	ASEAN Harmonized Tariff Nomenclature
APHIS	-	Animal and Plant Health Inspection Service
AQSIQ	-	General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China
BSE	-	Bovine Spongiform Encephalopathy
BTA	-	Bioterrorism Act
CBP	-	Customs and Border Protection
CCS	-	Contractual Service Suppliers
CNL	-	Competitive Needs Limitation
CSS	-	Comprehensive Consolidation Supervision
ECJ	-	European Court of Justice
EFSA	-	European Food Safety Authority
EHIC	-	European Health Insurance Card
EIC	-	Export Inspection Council
ENA	-	Extra Neutral Alcohol
EU ETS	-	European Union Emission's Trading Scheme
FATF	-	Financial Action Task Force
FDA	-	Food and Drug Administration
FDIC	-	Federal Deposit Insurance Corporation
FMD	-	Foot and Mouth Diseases
FOPPs	-	Follow on Protein Products or bio-generics
FSMSC	-	Food Safety Management System based Certification
FVO	-	Food and Veterinary Office
GAP	-	Good Agricultural Practice
GSP	-	Generalized System Preferences
ICAO	-	International Civil Aviation Organization
ICTs	-	Intra-Corporate Transfers
IPs	-	Independent Professionals
IPRs	-	Intellectual Property Rights
MHLW	-	Ministry of Health Labour and Welfare
MPF	-	Merchandise Processing Fee
MRAs	-	Mutually Recognized Agreements
MRL	-	Maximum Residual Limit
NAFTA	-	North American Free Trade Agreement
NTE	-	National Trade Estimate
OIE	-	Office International des Epizooties (World Organization for Animal Health)
RAS	-	Rapid Alert System
RMP	-	Residue Monitoring Plan
TBT	-	Technical Barriers to Trade
TRQ	-	Tariff Rate Quota
VMP	-	Veterinary Medical Products
PRA	-	Pest Risk Analysis
EC	-	European Community
BHC	-	Bank Holding Company
ANVISA	-	Agência Nacional de Vigilância Sanitária (National Health Surveillance Agency Brazil)

PREFACE

International trade has been hitherto regulated by tariffs imposed by countries on trade in goods. Therefore, it was not surprising that the liberalization of trade was hinged on the reduction of tariffs through arduous negotiations either bilaterally or in a multilateral fora like the World Trade Organization (WTO). This paradigm has however undergone a marked shift as tariffs have been successively reduced over a number of negotiated rounds under GATT.

India is extremely concerned that a large number of Non Tariff Barriers (NTBs) are being set up by most developed countries and a few developing countries to block Indian exports. These NTBs include export and import restrictions or licensing, tariff quotas, standards, technical regulations and conformity assessment procedures etc.

We are of the view that many of these are carried out to protect powerful domestic lobbies who feel threatened by the fair trading environment. There is a disproportionate increase in the number of such NTBs especially by developed countries which are adversely affecting exports of developing countries.

At the WTO there is very little discussion on such matters and except for lip service, in terms of considering NTBs, very little effective action is taken. This compilation brought out by the Centre for WTO Studies serves to fulfil the first objective of ensuring transparency on the NTBs which are faced by Indian exporters.

Developed countries will have to realize that this is a game which developing countries can also play and it would be in their interest if many of these NTBs are removed suo moto. I would call upon trade and industry, export promotion councils, commodity boards and other trade development agencies to pay greater attention to NTBs faced by them and bring these to the notice of the Government for appropriate action.

New Delhi
1st June, 2009

(G. K. Pillai)
Commerce Secretary
Government of India

Introduction

India's current share of the world merchandise trade is 1.1 % and Services trade is 2.7 %. In merchandise trade, India's target is to reach 5 % of the world trade by 2020. Along with improving export competitiveness, it is also important to improve information base regarding trade policy regime of India's main trading partners and identify areas which impede market access of Indian goods and services. The present report is an endeavour in this direction capturing the market access barriers faced by Indian exporters in its major trading partners and other select countries, 24 in all. The main export markets of India as reflected in the share of India's exports are indicated in Annexure I of this report. The report is compiled on the basis of information obtained from four sources: (1) questions raised by India during the Trade Policy Review of its trading partners, (2) inputs provided by Department of Commerce, Government of India, (3) information obtained through media reports and industry sources and (4) concerns raised by the USTR and the EC on market access barriers in the markets of its trading partners. The market access barriers have been broadly classified into eight categories for the organizing of this report: SPS-TBT issues, labeling issues, tariff issues, customs procedures, issues in services, intellectual property rights (IPRs), requirement of local content and other barriers. Market access barriers in India's major trading partners are organized in this thematic manner.

1. United States of America

Several issues have emerged to be of India's concern during US Trade Policy Review (TPR) in WTO in 2008[1]. Certain other issues have been identified by other sources, including the Department of Commerce, Government of India, trade bodies and media reports. For the issues raised during the TPR of US, the response of the US government is also incorporated.

1.1. SPS and TBT Issues

SPS Issues

In the agricultural area, a number of Sanitary and Phytosanitary (SPS) issues remain a source of difficulty. For example, the US requires that Pest Risk Analysis (PRA) be carried out for new agricultural products before the import conditions are established. The time between applying and inclusion on the list of approved products can be long as for pomegranates from India.

US responded that in July 2007, the Government issued a procedure for issuing new and revised phytosanitary import measures. As an alternative to undergoing the formal rule making-based process, imports that are eligible can now be approved through a notice-

[1] The full text of questions raised by India and the answers by US are available on WTO website under document symbols WT/TPR/M/200/Add.1 (2008) and WT/TPR/M/200/Add.2 (2008).

based process. As with the rulemaking-based process, a pest-risk analysis must first be conducted for new fruits or vegetables considered for importation. However, if the risk analysis shows that the commodity's risk can be sufficiently mitigated by one or more of the five designated phytosanitary measures, a notice announcing the availability of the pest-risk analysis is published in the Federal Register to allow for public comment for 60 days. Barring substantive comments that disprove the findings of the pest-risk analysis, a notice is then published in the Federal Register to announce that the US Government will begin issuing import permits for the commodity.

US further observed that Animal and Plant Health Inspection Service (APHIS) estimates that it takes a minimum of 18 months to evaluate and approve new import requests under the rule-making system. However, the process can take 2 to 3 years and longer in some cases. The notices that were published and finalized since the August 16, 2007 implementation date were completed in significantly shorter time periods.

The time frames indicated for granting approval for import of new agricultural products is rather long and a significant market access barrier.

Standard related Issues

The US has a relatively low level of implementation and use of international standards set by international standardization bodies. Many Indian exporters to the US market face regulatory barriers as products are increasingly being required to conform to multiple technical regulations regarding consumer protection including health and safety and environmental protection. The complex nature of the US' regulatory systems can represent an important structural barrier to market access. Obstacles for Indian exporters include, for example, a burdensome pharmaceutical approval system, documentary and labeling requirements for textiles etc. It is quite common for equipment for use in the workplace to be subject to a number of different standardizing bodies including the US' Department of Labor certification, a country authority's electrical equipment standards, product safety requirements as determined by insurance companies as well as specific regulations imposed by large municipalities. India felt that more integrated, transparent and streamlined regulatory environment would significantly assist domestic consumers and importers as well as exporters to the US.

The US responded in the TPR that it does not agree with the assumptions underlying India's observations. Without specific information from India regarding the alleged problems that its exporters are encountering, they are unable to respond to the question as posed.

Non-use of international standards and multiple technical regulations are significant market access barriers. On specific issues identified by India, there is a need for greater deliberation between the two countries.

Registration of tea consignments under FDA Rules[2]

The registration is required under Bio Terrorism Act of USA. While India does not seek any relaxation of FDA rules for Indian tea consignments, FDA import procedure need to be relaxed for trade samples of tea required by the potential importers in USA.

Regulation of Biogenerics

The US lacks a transparent framework for regulation of Biogenerics or Follow on Protein Products (FOPPs). US' Public Health Service has no provision for regulation of FOPPs. While the Food Drugs and Cosmetics Act (USFDA) was amended in 1984 to open ways for some generic drugs like Human Growth Hormone and insulin that are not regulated by Public Health Service, the US government needs to create a generic pathway for all biotech drugs. There is a need to lay down the scientific requirements that future generics would need to meet.

US responded that the Food and Drug Administration (FDA) supports the goal of making safe and effective drugs available and affordable for American consumers and supports legislation to create such a pathway to allow for the approval of follow-on biologic products through a robust scientific, regulatory, and legal discussion. Any such legislation must, as a first priority, ensure patient safety. Furthermore, it should also include adequate intellectual property protection in order to maintain the research enterprise that has generated life-saving medications. During the last session, Congress considered several bills, but none of them were passed.

Further progress in this regard needs to be monitored.

1.2. Labelling

Product Description Requirements

It is reported that extensive product description requirements complicate exports to the US and result in additional costs. Rules for marking and labelling of retail packages are burdensome. They require details regarding the country of origin, ultimate purchaser in the US and the name of the country in which the article was manufactured or produced. Furthermore, there are requirements relating to the typology / physical characteristic of the clothing labels (given size, font used, etc). These standards imply that special labels are needed for the US market.

The US responded that it is committed to concluding a successful Doha Round in 2008 that achieves new market access for agricultural and industrial products, including textiles

[2] This information has been obtained through Department of Commerce, Government of India.

and apparel, and services in both developed and emerging market economies. They are committed to the agreement that Members made in the Doha Round that non-tariff barriers are an integral and equally important part of the negotiations and will identify and work to reduce non-tariff barriers in the next phase of negotiations. As part of this effort, on October 26, 2007, the US and the European Community (EC) jointly tabled in the WTO Negotiating Group on Market Access a negotiating text on reducing non-tariff barriers to trade related to labelling of textiles, apparel, footwear, and travel goods.

While it is important to seek multilateral solution to these issues, countries also need to unilaterally simplify these requirements in the interest of more seamless international trade.

1.3. Customs procedures

Sampling and Inspection Procedures

A variety of agricultural exports from India to the US have encountered problems due to delays in US' customs sampling and inspection procedures, resulting in damage to the goods and subsequent commercial losses for the exporters, especially in case of mangoes and egg products.

The US responded that it is committed to ensuring that its measures are in compliance with the WTO SPS Agreement and that they are not aware of any delays in their inspection procedures.

Burdensome Customs Formalities

Customs formalities for imports of textiles, clothing and footwear to the US require supply of particularly detailed and voluminous information, which leads to additional costs, and in some cases, includes disclosure of confidential information such as the processing methods (type of finishing, of dyeing, etc). Much of this information seems to be irrelevant for customs or statistical purposes. The extension of the liquidation period up to 210 days also functions as an important trade barrier. The retailer or the importer is often not in a position to re-deliver the goods upon Customs and Border Protection (CBP) request, in which case CBP applies a high penalty of 100% of the value of the goods. These delays are particularly damaging for seasonal products or for fashionable products having short life-span. The trade has reported that these formalities are highly trade restrictive.

The US responded that in 2007, CBP exercising its responsibilities to enforce US trade laws, processed 9.7 million import transactions involving textiles and apparel. Out of these, approximately 959 were detained for additional information to support the country of origin declared to CBP. The information that is required is documents that will show that the goods were produced in the country declared to CBP. The request for such

documents is made to the importer, but the manufacturer may submit the documents directly to CBP if there is a concern about confidentiality. All CBP officials are required to comply with the Trade Secrets Act that preserves the confidentiality of business/ corporate information. All of CBP's work regarding imports of textile and apparel products is risk-based. Because of the amount of illegal transshipment, origin fraud, smuggling, misdescription and undervaluation of merchandise to evade applicable quantitative restrictions and payment of duties, CBP has focused on textile imports as a high-risk import commodity. CBP does extensive analysis to identify actual transactions that are in violation of US' laws. Because goods entered in circumvention of absolute quotas may be inadmissible, CBP has the legal authority to have goods redelivered if information regarding the country of origin is incorrect. In 2007, CBP ordered redelivery of 43 times and issued penalties to companies totaling $2.9 million. Every importer has extensive access to procedures under the law and can protest the amount of the penalty by providing further information regarding the level of reasonable care that was taken regarding the transaction.

On account of concerns on this issue, it is important to further work with US to explore ways to reduce the burdensomeness of the formalities.

Other Customs Impediments

The US Public Health Security and Bioterrorism Preparedness and Response Act was formulated to address security risk surrounding the supply of foodstuffs. The implementation of the so-called Bioterrorism Act (BTA) necessitates the registration of all foreign facilities that supply food to the US, prior notification of all shipments to the US, record-keeping by foreign enterprises to allow traceability of foods, and procedures for the administrative detention of suspect foods. The measures cover all the main food exports to the US, beverages (including wines and spirits), processed foods, dairy products, and fruit and vegetables. Deliveries by international mail by private individuals are exempted, but foreign mail order companies are still subject to these burdens. The additional red-tape resulting from the implementation of the BTA affects Indian agri-food businesses, in particular small and medium enterprises.

The US responded that the four food-related regulations related to the BTA (i.e., recordkeeping, administrative detention, registration, and prior notice) are not intended to have a trade inhibiting effect. The recordkeeping requirement does not generally apply to foreign entities since foreign persons are excluded from the rule, except for foreign persons who transport food in the US. The administrative detention provision imposes no requirements on importers; rather, this BTA provision authorizes FDA to detain an article of food, if there is credible evidence or information that indicates the article presents a threat of serious adverse health consequences or death to humans or animals. The administrative detention final rule describes the procedures that FDA uses to institute an administrative detention order. With respect to the registration and prior notice

requirements, FDA is not aware of continuing problems associated with the registration and prior notice requirements. FDA believes that the graduated enforcement process coupled with the vigorous education and outreach efforts by both the government and the industry have supported a relatively smooth transition to the new procedures and have improved compliance with the new requirements.

The traders in India however continue to face market access problems on account of this regulation.

Indian exporters face a number of additional customs impediments, such as import user fees and excessive invoicing requirements on importers, which add to costs in a similar way to tariffs. The most significant user fee is the Merchandise Processing Fee (MPF), which is levied on all imported merchandise except for products from the least developed countries, from eligible countries under the Caribbean Basin Recovery Act, the Andean Trade Preference Act, US FTA partners, or from US Offshore possessions. Fixed previously at 0.17% of the value of the imported goods, the MPF rose to 0.19% in 1992 and amounts to 0.21% ad valorem on formal entries with a maximum of $485 as from 1 January 1995. At the request of Canada and the European Union, the GATT Council instituted a Panel in November 1987 that held that the US' Customs user fees for merchandise processing were not in conformity with the General Agreement. The Panel ruled that customs user fees should reflect the approximate cost of customs processing for the individual entry in question. This principle was not met by an ad valorem system such as that used by the US. The GATT Council adopted the Panel report in February 1988. The present customs user fee structure is somewhat more equitable, since the fixing of a ceiling makes it less onerous for high-value consignments. However, the fee is still likely to exceed the cost of the service since it is still based on the value of the imported goods. Whilst the MPF was to last until 30 September 1990 when established, it was recently extended (as part of the American Jobs Creation Act of 2004) until 30 September 2014.

The US explained that its MPF with a cap of $485 is limited in amount to the approximate costs of services rendered and is completely consistent with US' WTO obligations.

Use of *ad valorem* fees structure with an artificial upper ceiling on fees indicates that the US system does not conform to GATT Art. VIII requirement that fees and charges should not exceed the cost of services rendered. There is room to simplify the requirements presently in force.

1.4. Issues in Services

Banking Services

There are different kinds of access barriers Indian banks face in the United States. Once a bank obtains a branch license in the United States, the activities of the foreign parent bank

in that country, known as Bank Holding Company (BHC), are restricted to only closely related banking activities and exclude several financial activities such as selling of insurance, Mutual funds, etc. There is no such restriction in many developing countries including India. This severely restricts the opportunities for the foreign banks.

Unites States explained that Title 12 of the Code of Federal Regulations, Chapter 11 regulates the acquisition of control of banks and BHCs by companies and individuals, defines and regulates the nonbanking activities in which BHCs (including financial holding companies) and foreign banking organizations with US operations may engage, and establishes the minimum ratios of capital to assets that bank holding companies must maintain.

The Indian banks also face some other operational barriers. For instance, foreign bank's branch is governed by the BHC regulations, which prohibit the bank from undertaking insurance and underwriting business in the US, as well as restrict the parent bank's equity ownership in non-banking businesses that have operations in the US. These are permitted under the financial holding company regulations; however, transition from BHC to financial holding company status again takes time and is subject to approval of the Federal Reserve, including determination of comprehensive consolidated supervision in the home country. Because of the above reasons, an Indian bank currently cannot have a banking presence and undertake underwriting and insurance at the same time in the US.

The US responded that the requirements for establishing a BHC and financial holding company are prudential in nature.

Another problem facing the Indian banks is the long time taken for clearing applications. Indian banks have been raising issue that the US is taking considerable time in clearing the applications for setting up branches in that country.

US informed that information on application requirements and procedures can be found at the site http://www.federalreserve. gov/generalinfo/applications/afi/intfilings.htm.

It is important to continue to work with US to address the concerns on these issues.

Minimum Amount for Foreign Bank Retail Depositors[3]

Branches are allowed all activities permissible for other national banks in US, but excludes acceptance of initial retail deposits less than $100,000. Foreign bank branches cannot take

[3] This information has been obtained from Department of Commerce, Government of India sources.

deposits below $100,000 since the Federal Deposit Insurance Corporation (FDIC) does not insure deposits of foreign bank branches. Only Deposits of subsidiaries are insured by FDIC. Hence retail deposits can be accepted by only foreign banks established as subsidiaries.

Non Banking Finance Companies[4]

Functions of an 'Agency' in US are limited to asset related businesses, with no deposits (exceptions in some states) and no interface with retail customer.

Other Issues faced in Banking Services[5]

For a foreign bank to operate in the US there is a complex and long-winding process known as the Comprehensive Consolidation Supervision (CCS). The matter is then referred to a number of other regulators such as the Office of the Comptroller and the relevant State. The process takes about 5 years or even more.

The Federal Reserve requires the determination of CCS status for establishment of branches / subsidiaries. India is categorized as – 'Actively working towards CCS' and not 'fully CCS'. This position is alright for establishment of branches, but not to establish a subsidiary for which 'fully CCS' is required. India has enacted comprehensive legislation and adopted regulations to deter money laundering. Banks follow the 'Know Your Customers guidelines-Anti Money Laundering Standards' issued by the Reserve Bank of India. All these are in line with the Financial Action Task Force (FATF) recommendations. However, still the FATF evaluation on India is not favorable and its evaluation states that Indian banks do not meet all its recommendations.

In the US, foreign investment banks, at the national level, must be subject to surveillance procedures not applicable to national institutions (according to the Investment Advisers Act of 1940). There are other discriminatory measures at the State level, which violate National Treatment. Other national treatment restrictions include: a) foreign banks being subject to the requirements of the Community Reinvestment Act (to invest part of the federally insured deposits on community projects), even if its deposits are not insured by the Federal Government; and b) there is a legal possibility (not used until now) that the FED can charge examination fees to audit foreign banks only.

Insurance[6]

The following barriers are identified:

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4 This information has been obtained from Department of Commerce, Government of India sources.
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- Reinsurers are obliged to lodge trust funds in the US, effectively requiring them to fully collateralize their exposures. The sums involved are of a significant size, and thus constitute a significant impediment to trade in such services. In calculating the level of these trust funds, no credit is given for any retrocession that takes place in the US, nor is any account taken of the supervision that takes place in the home jurisdiction of the foreign reinsurer
- The fragmentation of the market into different states jurisdictions, with different licensing, solvency and operating requirements. Each state has its own insurance regulatory structure and, by contrast to banking, federal law does not provide for the establishment of federally licensed or regulated insurance companies
- The decentralized US regulatory / supervisory structure entails heavy compliance costs for foreign companies in each of the state jurisdictions
- Under Mode 1 and Mode 3 the life, non-life and reinsurance services are not allowed for government owned or government controlled companies to conduct business. This has serious market restriction for the major Indian insurance companies.
- There are restrictions like the requirement of US citizens to be member and in the Board of Directors of insurance companies.
- Auxiliary services to insurance, breakage licenses and agency licenses are issued to non-residents only for few insurance products under Mode 1 and Mode 3.
- Federal excise tax is imposed on all life insurance premium and non-life insurance premium on companies not incorporated under US laws. This puts such companies in an unfavourable position vis-à-vis domestic companies.

Telecom Services[7]

There are limitations to National Treatment principle in the telecom sector. For basic Telecommunications Services, ownership of a common carrier radio license (via direct investment) may not be granted to or held by: foreign government or the representative; non-U.S. citizen or the representative of any non-U.S. citizen; any corporation not organized under the laws of the United States or U.S. corporation of which more than 20% of the capital stock is owned or voted by a foreign government or its representative, non-U.S. citizens or their representatives or a corporation not organized under the laws of the United States. For other communication services, Radio and television broadcast licenses may not be held by: a foreign government; a corporation chartered under the law of a foreign country or of which more than 20 per cent of the capital stock is owned or voted by non US citizens; a corporation chartered under the laws of the United States that is directly or indirectly controlled by a corporation more than 25 per cent of whose capital stock is owned by non US citizens or a foreign government.

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[7] This information has been obtained from Department of Commerce, Government of India sources.

Security Issues in Services

Apart from visas, security-related restrictions on federal and state businesses are coming in the way of Indian IT companies doing business in the US. The uncertainty about whether they would be eligible to bid makes business decisions difficult.

The US responded that the tender documentation specifies the security requirements for a particular procurement. Security requirements vary depending on the nature of the good or service being procured. For example, specifications may require personal identity verifications for access to Federal facilities or security clearances for access to classified information (FAR subparts 4.4 and 4.13).

Social Security Totalization[8]

Presently, an employer who sends employees to the US for short term assignments ends up paying double taxes on social security as they have to pay the tax both in India and in the US. If a company relocates an employee to the US for carrying out some on-site works, which are very common in IT industry, both the employer and employee have to pay the social security tax in the US and India, leading to the situation of double taxation. According to NASSCOM sources, each year Indian IT professionals alone contribute more than $1 billion to US social security system and they do not get any benefit out of it.

Visa Issues[9]

NASSCOM has pointed out the visa issues faced by Indian IT professionals, particularly in the US and EU. Most countries across the world do not have short term work visa that Indian IT industry needs. In these times of economic downturn, most countries are tightening the norms further by;

a) Either limiting the number of visa that they grant to skilled foreign workers;

b) Coming up with shortage list and keeping IT jobs out of those list;

c) Putting more stringent criteria's so to avoid people coming in to host countries;

d) Forcing companies by making amendments into their laws so that they are not able to hire any foreign workers. e.g. US companies receiving TARP funding are not allowed to hire H-1B workers

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8 This information has been obtained from NASSCOM sources.

9 This information has been obtained from NASSCOM sources.

e) Some European countries are tweaking their business visa rules also and allot such visa after tedious processes and for very short durations

1.5. Requirement of Local Content

Export of Automobiles

The Indian trade has reported that the American Automobile Labelling Act promotes use of US and Canadian parts, which makes entry of small cars made in India into the US' market difficult.

US clarified that the Congress passed the American Automobile Labeling Act in 1992 to help consumers in the selection of new vehicles by providing information about the country of origin of vehicles and their parts. Passenger vehicles manufactured after October 1, 1994 must have labels specifying their percentage value of US/Canadian parts content, the country of assembly, and countries of origin of the engine and transmission. The requirements are solely informational, and apply in the same way and to the same extent regardless of where a vehicle is manufactured. While there are costs associated with calculating country-of-origin information, the National Highway Traffic Safety Administration, in implementing the American Automobile Labelling Act, has sought to minimize cost impacts to the extent consistent with ensuring that consumers are provided with the information required by the Congress. The US further clarified that it does not believe the American Automobile Labelling Act has made the entry of cars into the US market any more difficult, and they do not believe these informational requirements are burdensome.

Despite clarification of US, there are persistent doubts in the trade regarding NTB-effect of this provision.

Export of Indian Steel

Under the US Steel First Act passed in April, 2008 by the Congress, for all Government funded infrastructure projects, the steel has to be domestically produced. This has raised fears that it will impact market access for Indian steel exports.

The US responded that on April 30, 2008, HR 5935, the "American Steel First Act of 2008," a bill to amend US government procurement provisions vis-à-vis iron and steel products used in public building and works projects, was introduced in the U.S. House of Representatives. The draft legislation has not been voted on by the House of Representatives and has not become U.S. law.

Use American provisions in the stimulus packages[10]

The US in the context of financial crisis is increasingly resorting to protectionist measures to protect domestic industry and jobs of locals. These measures are in violation of national treatment principle of the WTO. The stimulus packages contain a controversial provision that expands the provisions of the "Buy American" Act enacted during the Great Depression, and which would require all stimulus-funded projects, including major public works projects, to use equipments and goods made in the US. Restrictions on outsourcing are also in place for those companies benefiting from the bailout package. Emphasis on the 'Use American' provisions and restrictions on outsourcing are of major concern to India.

1.6. Tariff Issues

Tobacco Exports

India's tobacco exports to the US are low and stand at US$3 million. This is only about 0.3% of US total tobacco imports. One of the major reasons for the poor off take of Indian tobacco by the US is the Tariff Rate Quota (TRQ) regime prevailing in that country. Tobacco imports into the US come under the purview of the TRQ, which was established in September 1995 for all cigarette type tobaccos. Under the TRQ, a tariff rate equal to the concessional rate (40.9 cents per kg) is applied to tobacco imports until the in-quota quantity is filled, after which a tariff rate of 350% ad-valorem is applied. The TRQ is sub-divided into specific allocation for nine Countries and a general allocation for other Countries. Under the North American Free Trade Agreement (NAFTA), Canada and Mexico are excluded from TRQ import duties. India does not have any specific TRQ and is clubbed under 'Others' with an allocation of only 3000 tons. This limits growth of Indian tobacco exports to the US. This system of quotas needs to be reviewed so as to allow for greater market access for Indian tobacco in the US. The out of quota tariff of 350% acts as a barrier to Indian exports. India has made a point that the quotas should be on MFN basis and not country specific.

US has responded that the terms of market access for tobacco are being negotiated in the Doha Development Agenda.

However, there is a scope to undertake autonomous tariff liberalization keeping in view the extremely high tariff rates currently existing on Tobacco.

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[10] This issue has been sourced from media reports.

1.7. Other Issues

Denial of GSP Benefits

In 2005 US government removed Indian Gems & Jewellery from receiving the benefits of GSP. In the Annual review 2006, the US Administration decided not to renew the Competitive Needs Limitation (CNL) Waiver for gold jewellery and brass lamps from India, thereby ending the Generalised System of Preferences (GSP) for these products. The decision of the US Government to end the GSP for gold jewellery and brass lamps from India will lead to a large number of jobs being lost in these sectors.

The US administration replied that in December 2006, when Congress extended the GSP program through December 31, 2008, Congress also amended the GSP statute to direct that by July 1 of each year, the President should revoke any CNL waiver that had been in effect for at least five years if a beneficiary developing country exported to the US, during the preceding calendar year, a quantity of the article that had a trade value in excess of 1.5 times the annual CNL ($130 million in 2007) or exceeded 75 percent of total US imports (the "super-competitive" thresholds). The waivers for competitive need limitations that were revoked for the eight products, as of July 1, 2007, terminated the GSP benefits for those products. This was done after a thorough review of the pertinent statutory considerations.

Another connected issue is that the US-GSP benefit was available to Indian Gold Jewellery Sector till 30th June 2007. As per the data, the exports of Gold Jewellery from India to US, during July '07 to March '08 (after the withdrawal of US-GSP benefit from Indian Gold Jewelry) at US$1.35 billion has shown a major decline by 30% as compared to US$1.95 billion during July '06 to March '07. In this light, India requested the US Administration to consider the restoration of GSP benefits to this sector as it supports livelihood of thousands of Indian workers/craftspersons.

US responded that GSP benefits for gold jewellery from India may only be restored to if import levels in a calendar year fall below the competitive need limitation (CNL) thresholds for that year. In 2007, U.S. imports of gold jewellery from India ($1.9 billion) exceeded the CNL threshold of $130 million for that year.

It is important to note that GSP is an important market access tool which has immediate and visible impact towards reduction of poverty and improvement of living conditions of the people, particularly of artisans, small entrepreneurs etc. Studies have shown that denial of GSP window considerably affects India's export interests. The US GSP scheme can provide boost to Indian exports if the US revisits the issues regarding CNL.

European Commission on Market Access barriers in the US

The European Commission Report (2008) on US Barriers to Trade and Investment highlights following issues which are of relevance to India as well.

a) An increasing tendency of relatively low level of implementation and use of international standards set by the international standardization bodies. All parties to the Technical Barriers to Trade (TBT) Committee are committed to the wider use of international standards as the basis for their regulation.

b) Products are increasingly being required to conform to multiple technical regulations regarding consumer protection (including health and safety) and environmental protection. Although in general not *de jure* discriminatory, the complexity of US regulatory systems can represent an important structural impediment to market access. Like the obstacles Indian exporters are facing, obstacles for European exporters include a burdensome pharmaceutical approval system, the American Automobile Labelling Act and documentary and labelling requirements for textiles, among others.

c) Under Section 232 of the Trade Expansion Act of 1962, US industry can petition for the restriction of imports from third countries on the grounds of national security. The application of Section 232 is however not dependent on proof from industry. Consequently, the law provides US manufacturers with the opportunity to seek protection on the grounds of national security, when in reality the aim can be simply to curb foreign competition.

   Security concerns expressed in US especially in the context of bioterrorism on the imported medicines, if implemented will adversely affect the export of medicines from India. The US pharma which is experiencing drying up of blockbuster patent products may strategically use this provision to restrict imports from competitive producers like India[11].

d) The GATS Basic Telecommunications Agreement, in force since February 1998, has a widely positive impact on communication services. Nonetheless, foreign firms are still faced with substantial barriers to access the US market. These include for example restrictions to investment, lengthy proceedings, conditionality of market access and reciprocity-based procedures.

e) Despite the substantial tariff reduction and elimination agreed in the Uruguay Round, the US retains a number of significant duties and tariff peaks in various sectors including food products, textiles, footwear, leather goods, ceramics, glass, and railway cars.

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[11] The following links catalogue some of the concerns raised in the US on sourcing of medicines from abroad. http://www.fiercepharma.com/story/pharma-too-dependent-foreign-plants/2009-01-20, and http://www.nytimes.com/2009/01/20/health/policy/20drug.html

f) Imposing trade restrictions on beef, pork and poultry products from a region which is affected by disease outbreaks is a quick, administrative process - and rightly so. However, the lifting of these trade restrictions should be equally fast and pragmatic once the disease has been eradicated. In many cases the US administration has used complex and lengthy rulemaking procedures to restore trade, which can take several years longer than the re-acquaintance of an official disease-free status under the global rules of the Office International des Epizooties (OIE).

In the field of public procurement, the main US trade barriers are contained in a wide array of clauses in federal, state and local legislation and regulation giving preference to domestic suppliers or products, or excluding foreign bidders or products altogether. In addition, there are federal restrictions on the use of federal grant money by State and local government, called 'Buy America'. Taken together, these restrictions cover a significant proportion of public purchasing in the US.

2. European Community

Several issues have emerged to be of India's concern during Trade Policy Review (TPR) of EC in 2007[12] and in 2009. EC's response to India's concern raised during the TPRs have also been incorporated. Other sources used for identifying trade barriers include Department of Commerce, Government of India, media reports and US National Trade Estimate Report (2008) on EU.

2.1. SPS TBT Barriers

Market Access Problems of Fishery Products

Consignments of fishery products have been rejected by Italy and Ireland on the grounds of presence of cadmium above the prescribed limits. However, it has been observed that the sampling followed by these countries is not in line with the Commission Directive 2001/22/EC of 8th March 2001, which prescribes drawal of two samples and results reported as mean of the two, where as in the above cited case, it was reported that only one sample was tested. In view of this recurring problem, India requested the European Commission to issue instructions to Member States that they should follow the Commission Directive 2001/22/EC of 8th March 2001 for sampling of consignments (for heavy metal).

EC replied that the application of EC law is the responsibility of the EC Member States. The European Commission has no evidence of incorrect application by Italy or Ireland of EC law concerning products under HS heading 03 (Fish and crustaceans, molluscs and other aquatic invertebrates). EC further observed that global imports from India by EC-25

[12] The full text of questions and answers are available in document WT/TPR/M/177/Add.1 (2007).

of products falling under HS 03 passed from 67.646 tons in the year 2000 to 116.213 in 2005; this is an increase of 70 %. In value, the imports of 2005 could be estimated above 300 million Euros. These import figures confirm that a high level of protection of the European Consumer health is compatible with a satisfactory evolution of the economic exchanges with its trade partners.

Notwithstanding increase in trade volume, it is important to address this problem which will further improve market access conditions in EC.

Meat & Meat Products

EU does not allow import of Indian buffalo meat due to prevalence of foot and mouth disease (FMD) in Indian cattle. Like the Codex standards for food products, OIE guidelines are taken as international standards for trade in animal and animal products. According to article 2.1.1.22 of the OIE Terrestrial Animal Health code, fresh meat could be exported from an FMD infected country provided the veterinary requirements as stipulated in the OIE code are followed. Following OIE guidelines, India exports deboned and deglanded frozen boneless meat. The carcasses are compulsorily chilled at 2-4^{0}C for 24 hours resulting in a pH value of less than 6, which guarantees availability of safe and risk free product for export. Scientifically, it has been proved that deboned and deglanded boneless meat having pH below 6 is a risk free product wherein no harmful virus including FMD virus can survive. OIE experts on FMD have opined that if the recommendations of OIE international animal health code are followed, it would be sufficient to prevent transmission of FMD and rinderpest from one country to another. FMD is not transmissible to humans and pose no public health hazards. The EU does not agree to India's suggestion that they should be guided by the OIE stipulations for trade in livestock products and are adopting higher and more stringent standards than the International Standards. The European Commission is, apparently, taking recourse to the "precautionary principle" in spite of the fact that the Codex Alimentarius Commission, at its 24th session held at Geneva in 2001 had agreed to as follows:*"When there is evidence that a risk to human health exists but scientific data are insufficient or incomplete, the Commission should not proceed to elaborate a standard but should consider elaborating a related text, such as a code of practice, provided that such a text would be supported by the available scientific evidence."*

EC responded that the four Member States hit by the FMD epidemic in 2001 spent a total of 12 billion Euros on eradication measures. To preserve these huge investments, the protective measures applied by the EC follow strictly the scientific advice provided by the European Food Safety Authority (EFSA) and that this measure complies with OIE and WTO law.

India needs to continue to work with EC to find a satisfactory solution to this issue.

Categorization of India as GBR-II for BSE[13]

Categorization of India's Geographical BSE Risk status by EC as a GBR-II country without adequate reasoning is a non-tariff barrier for exporters of meat and meat products.

EC responded that the categorization of BSE status in the EC follows the leading role of the OIE. The EC rely on the valuable work carried out at OIE level to perform this task. India should apply to the OIE to be categorized in one of the three BSE risk categories.

Milk Product related Issues

India's Export Inspection Council (EIC) is operating a food-safety-management system-based-certification (FSMSC) for export of milk products to ensure that the quality of the products exported meets importing country requirements. Under this scheme, processing units having the capabilities to meet the requirement specified in the GOI Notification No. SO 2720 dated 28/11/2000 EC Directive No. 92/46/EEC dated 16/06/92, are approved. The processing unit is assessed in terms of raw materials, process and finished product controls, GMP, GHP, testing facilities, technical competence of manpower, waste disposal mechanism, record keeping and capability to conform to standards. Regular 3-tier surveillance in terms of routine monitoring visits, periodic supervisory visits and corporate audit is done to ensure the implementation of the norms laid down as well as any additional requirements of the importing countries. The farms from where the milk is procured are also monitored and representative samples are drawn and tested for residue and toxic contents as per the Residue Monitoring Plan (RMP). These measures ensure that the requirements of the importing country are met. During the recent visit of the food and veterinary office (FVO) mission team to India to evaluate control of residues in live animal products, including controls on veterinary medicinal products in line with Council directive 96/23/EC, the residue monitoring system for milk was also assessed. The team visited farms, milk collection centre and processing units to assess control of residues of Veterinary Medical Products (VMPs) in milk and milk products. The team also visited a recognized laboratory being used by EIC of India for the purpose of analysis of raw milk for different residues as per RMP. Overall the team was broadly satisfied with the control measures in place from milk production level to processing level and the analytical facilities. In view of the above, the Director, European Commission, Ireland has been requested to send a FVO Mission team for assessment of India's milk product processing plants so as to allow import of milk products from India into the EU. However they have so far not responded or fixed any date and export to EU has still not started. There is an urgent need to organize an FVO mission and to expedite approvals.

EU responded that India has been requested to submit the information which will allow an FVO mission to be organized.

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[13] This issue has been raised by Government of India in the Trade Policy Review of EC held in 2009.

Regulation on the Increased Level of Official Controls on Import of Feed and Food on Non-Animal Origin[14]

The EC introduced a draft proposal on 6th December 2007 for the Regulation on an increased level of official controls at designated point of first arrival or at the designated point of import into the Community of feed and food of non animal origin due to known or emerging risk as foreseen in Article 15.5 of Regulation 882/2004. India had informed EC in January 2008 that, if implemented, the Regulation would create a significant non-tariff barrier for export of agricultural products from India to EU. In its reply of 26th September 2008 EC pointed out that the issues included in the draft proposal were identified on the basis of an assessment of known or emerging risk for animal and public health. The current list of products and level of controls proposed in the draft were still subject to internal discussion and therefore, can still be reconsidered in light of new information being made available.

India in February 2009 again took up with EC the issue of proposed revision of the draft regulation and requested to inform India about the current status of the proposal and the levels being proposed on products originating from India. India received the reply from EC on 8th April 2009 with a copy of the Annex to the draft Regulation reflecting the current situation as regards products that are on the basis of a known or emerging risk subject to increased official control at the EU border posts. As per the Annex, the frequency of physical checks on Indian products is shown in the table below.

Feed/Foodstuff	Hazard	Frequency of Physical Checks (%)	
		Draft of 6th Dec. 2007	Draft Received from EC on 8th April 2009
Spices (Food): • Capsicum SPP (dried fruits thereof, whole or ground, including chillies, chilli powder, cayenne and paprika) • Myristica fragrans (nutmeg) • Zingiber officinale (ginger) • Curcuna longa (turmeric)	Aflatoxins	50	50
Groundnuts (peanuts) and derived products (feed and food)	Aflatoxins	10	10
Chilli, chilli products, curcuma and palm oil (food)	Sudan Dyes	25	20
Basmati rice for direct human consumption	Aflatoxins	20	10

[14] This information has been obtained from Department of Commerce, Government of India sources.

It has been informed by the EC that the revised list has been made on the basis of the number of notifications issued through the rapid alert system (RAS), reports received from third countries, exchanges of information between EC, Member States and EFSA. The draft Regulations will be adopted only after the notification requirements in accordance with the SPS Agreement are complied with. It will then become applicable six months after the date of publication in the official journal of the EC. The EC expects that on completion of the formalities, the new Regulation will become applicable in the early weeks of 2010. The EC has also informed that between the date of adoption and the date of application, the list will be kept under regular review and updated as appropriate. Even after adoption, the list will be regularly reviewed and updated on the basis of new or emerging information.

Egg Products[15]

India is on the list of authorized third countries from which member states of the EU can import egg products (Commission Decision No.94/278/EEC). Therefore, India can export egg products to member states on the basis of bilateral agreements. Presently Belgium, Germany, Austria and Denmark are importing egg products from India on bilateral basis.

However some of the EIC approved establishments have expressed difficulties in exporting their products to some of the European member states like Germany and Denmark in light of the EC Regulation 853/2004, and Decision 2006/696/EC dated 28-8-2006. The Indian authorities have taken up the matter with the German authorities. The German authorities have also been informed that official veterinarians who are authorized by the German Federal Ministry of Food, Agriculture and Consumer Protection may inspect Indian egg establishments for conformity. For exports to Denmark, it is informed that Danish authorities are insisting for a different type of Health certificate in which both Health aspects and veterinary aspects are addressed. Presently EIAs are issuing health certificates for EC as per Directive 89/437/EEC dated 20/06/1989. Meanwhile, Article 25 and 26 of the Commission Decision 2006/696/EC dated 28/08/2006 provides for transitional period which is six months after the day following that of its publication in the official Journal of the European Union. i.e. upto 28 February 2007. Danish Authorities need to accept the present form of Health Certificate i.e. as given in the earlier EU directive, which is presently in force, till the new Commission Decision 2006/696/EC is effective. During the recent visit of the FVO mission team to India to evaluate control of residues in live animal products, including controls on veterinary medicinal products in line with Council directive 96/23/EC, the residue monitoring system for egg was also assessed. The team in their overall conclusion expressed the view that there are comprehensive residue control plans in place for egg products. In view of the fact that different countries are addressing import of egg products differently and also the need to negotiate bilateral

[15] This issue has been raised again in the TPR of EU in 2009.

agreements with countries separately, it is essential that EC notifies a 3rd country list for import into all EC member states which would also help in facilitating trade.

The EC responded that the requirements for the production and placing on the market of egg products are harmonised at EC level. The general hygiene requirements for food processing establishments are laid down in Regulation 852 / 2004, the specific requirements for egg product establishments are laid down in Regulation 853 / 2004. At the moment there is no harmonised list of third countries egg product establishments from which import is allowed into the Member States at Community level. The import of egg products into the EU is allowed from third country establishments agreed by Member States on a bilateral basis.

The EC further observed that it has no evidence of incorrect application by Germany or Denmark of EC law concerning products under HS heading 0408. Moreover EC imports from India of products under heading HS 0408 *Birds' eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter* passed from 815 tons in year 2000 to 3,153 tons in 2005, which is an increase of x 2.3 folds or 280 %. These import figures confirm that a high level of protection of the human and animal health in Europe is compatible with a satisfactory evolution of the economic exchanges with its trade partners.

Notwithstanding the increased imports in EC, it is important to arrive at a satisfactory outcome of the problems outlined above.

Differing Norms for Microbial standards

The EC has not harmonized norms for microbial standards as well as methods of inspection, sampling and test. Member countries are, therefore, having their own norms. Examples of such cases are from Spain, Italy and France where many consignments have been rejected due to detection of *Vibrio parahaemolyticus* and *Vibrio cholerae* in consignments. Based on information collected from other countries, it is observed that none of the importing countries have specified limits for *Vibrio parahaemolyticus* in raw products. Standards for this micro-organism have been laid only in 'ready to eat cooked products' or 'seafoods for raw consumption' and here again, limits have been specified at level ranging from 1,000 to 10,000 per gram. One of the key elements of the Agreement on SPS is 'harmonization' in which member countries are expected to base their SPS measures on international standards. It also means that within the EU member states, there should be common norms followed, and in case of different norms, these should be justified through risk analysis. Further while processing, an exporter may at times not be clear about the specific country of destination within the EU countries. As a result, while certifying the consignments of marine products for export to the countries of EU, it becomes difficult for EIC of India to decide against which norms to certify, which may in effect lead to

rejection of the product. In view of this it is important that EC initiates steps for harmonization of microbiological requirements within the EU.

EC responded that the Commission Regulation (EC) No 2073/2005 on microbiological criteria for food stuffs notified in G/SPS/N/EEC/263 (19 July 2005) harmonizes the situation for the EC. The Regulation came into application on 11 January 2006. Member States may not, thereafter, use national criteria to sample product from outside their territory. Nevertheless, Member States may, under Article 14 (food safety requirements) of the general food law, Regulation (EC) No 178/2002, impose appropriate restrictions if the food is unsafe. EC Member States have especially in the field of food safety still a large responsibility due to subsidiarity. The European Commission has no evidence of incorrect application by Spain, Italy and France of EC law concerning imported products. Furthermore, the global imports from India by EC of products circulation under Heading 03 (Fish and crustaceans, molluscs and other aquatic invertebrates) passed from 67.6 thousand tons in year 2000 to 116.2 thousand tons in 2005, this is an increase of 70 % and confirms that a high level of protection of the European Consumer' health is compatible with a satisfactory evolution of the economic exchanges with its trade partners.

Notwithstanding increased imports in EC, it is important to reach a satisfactory solution to the problem of market access on account of different standards used in EC countries. The negotiation on Trade Facilitation in the ongoing Doha Round presents an opportunity to address these issues, where India has made certain proposals on the subject.

Animal Casings

The matter regarding notification of additional animal casings processing plants was taken up with the EC authorities in Sept. 2004. However, the EC had clarified that since India was categorized as a GBR II country, it could neither certify the bovine casings nor the ovine and caprine casings for exports to the EU. In March 2005, APEDA had sent a detailed justification wherein it was clarified that the ileum part of the small intestine of sheep and goat is removed from casings of sheep and goat in order to remove the SRM. It was also clarified that in case of bovine casings, India is not exporting any part of intestine from duodenum to rectum which have been declared as SRM. However, India is exporting only weasand and bladders which are not part of SRM. The EC was requested to notify the additional animal casings processing plants.

EC responded that it had requested India to submit a definitive consolidated version of the list of casings establishments.

Differential Norms for Pesticide Residue

An important problem being faced by Indian exporters of grapes, gherkins etc., is the differential pesticide residue levels followed by different member states of the EU, in

spite of the fact that there are EU wide harmonized levels prescribed by the EC as well as Codex. Such variation in the residue levels pose difficulties for intra-EU trade for products exported by India. This is resulting in a situation that the Indian exporters are able to trade with only some of the EU countries. This problem is being faced in a number of products and India is expected to have bilateral agreements with the member states for export of various items. It is reported that most of the time, the maximum residue levels of pesticides and antibiotics are introduced without any scientific justification. This is done on arbitrary basis taking recourse to "precautionary principle". This principle is being followed in spite of the fact that the Codex Alimentarius Commission, at its 24th session held at Geneva in 2001 had agreed to as follows: "*When there is evidence that a risk to human health exists but scientific data are insufficient or incomplete, the Commission should not proceed to elaborate a standard but should consider elaborating a related text, such as a code of practice, provided that such a text would be supported by the available scientific evidence."* The EC also keeps reducing the maximum residue levels of pesticides and antibiotics very frequently and without giving adequate notice. It becomes difficult for developing countries like India to keep pace with the ever changing Maximum Residual Limits (MRLs).

EC responded that the difference in maximum authorized pesticide residue levels existing in different Member States of the EC is not in breach of the SPS Agreement. These reflect the situation existing before the harmonization work started and the diverging consumption habits leading to divergent MRL on products-pesticide combinations. It is totally incorrect that "*Most of time, the maximum residue levels of pesticides and antibiotics are introduced without any scientific justification*". The procedure to establish MRLs has been clearly explained several times to India and is also available on the internet site of the Directorate General for Health and Consumer Protection. With the aim to facilitate trade within the internal market and with third countries by overhauling and streamlining the legislation on pesticides while ensuring a consistent level of protection for products which are intended for human consumption and animal nutrition in the European Union, a new frame was established by *Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC*, notified in G/SPS/N/EEC/196 (11 April 2003). This regulation stipulates that maximum residue levels will always be set at Community level and defines the role of the EFSA, which will be responsible for performing risk assessments on the basis of reports from the Member States.

EC further explained that an ambitious work programme launched in 1992 started a Community-wide review process for all active ingredients used in plant protection products within the European Union. In a review process based on scientific assessments, each applicant had to prove that a substance could be used safely regarding human health, the environment, ecotoxicology and residues in the food chain. This programme will be completed by 2008. From the end of 2003, the new EFSA deals with risk assessment issues. These are made by the Panel *on plant protection products and their residues* [PPR]. The work of this panel can be followed at http://www.efsa.europa.eu/en/science/ppr.html. The

EC retains the risk management decision and provides extensive information including the information provided by the competent authorities in Member States, in order to ensure a maximum of transparency on the decision making procedure.

On page http://ec.europa.eu/food/plant/protection/evaluation/index_en.htm information can be found regarding the current situation in the Report from the Commission to the European Parliament and the Council : Evaluation of the active substances of plant protection products , Technical annex to the regulation, Status of active substances under EC review, list of Existing active substances, 4th stage of the review programme, new active substances and contact points in the MS. In addition to the above the EC referred to the WTO document G/SPS/GEN/557 (29 March 2005) "*Questions and answers on the procedure to obtain Import Tolerances and the inclusion of active substances for plant protection uses in the European communities list*". This paper explains clearly that India can apply and obtain "Import tolerances". Import tolerance is defined as a MRL based on a Codex MRL or on a GAP implemented in a third country for the legal use of an active substance. Applications for import tolerances may be made by the EC member States, interested parties, including manufacturers, growers, importers and producers of plant protection products applied outside the European Communities. There are three cases where "import tolerances" would be required (Article 29 of proposal), namely if a trader wants to import a commodity:

- containing residues of a substance used in the European Communities but where the commodity is not produced in the European Communities e.g. papayas. In this case there would usually be expertise (Rapporteur Member State);
- treated with a substance no longer or not yet used in the EC. In this case, there would normally not be expertise in the European Communities and full toxicological and residues data would be required. A significant workload would be expected for each individual evaluation - for which there could be many due to their withdrawal of numerous substances from the market[16];
- treated with a substance in use in the EC but where the foreign good agricultural practice (GAP) allows higher residues than the European Communities' critical GAP. In this case, marginal data specific to the GAP for the crop would be needed since a dossier and Rapporteur Member State would be available. The additional workload would be slight.

In all cases where a particular PPP is not authorized on a commodity or when no data are available to demonstrate that its residues do not endanger consumer health, no residues may be permitted on this commodity at levels higher than 0.01 mg/kg which is an

[16] An exception would be for substances that had been evaluated at EC level and which were withdrawn for reasons of consumer protection e.g. because they were genotoxic. For the small number of cases where this has happened, no import tolerance could be considered.

enforceable default for zero[17]. Exceptions will be made for substances where a level of 0.01 mg/kg is not safe for the consumer by setting MRLs at a lower level (i.e. strong carcinogenic residues).

Harmonization of health related standards within EC will be a significant trade facilitative step in ensuring smoother border crossing of goods.

Impractical Approaches to Product Testing[18]

There are impractical approaches to product testing in the European Union. Taking the example of aflatoxin in spices, processed food, groundnuts, cereals, etc., there is a requirement of meeting MRL of aflatoxin in these products. The sampling procedure for testing purposes is extremely complex and expensive, which makes it technically and economically unfeasible for developing countries like India. Moreover, it is expected that MRL should be measured on arrival of the consignment at the port of the importing countries (e.g. EU ports). This is impractical because aflatoxins can come up at any stage after drawal of samples for testing. The voyage provides an optimum environment for growth of aflatoxins. No exporting country can absolutely guarantee this, not even the most developed countries.

The EC responded that the maximum levels of aflatoxin total in peanuts for further processing are equivalent to the levels agreed in Codex Alimentarius. For the other commodities and for aflatoxin B1, Codex has not yet set a maximum level. Also the sampling provisions in the EC for peanuts for further processing are equivalent to the sampling plan agreed in Codex. Hygiene regulations provide that the peanuts should be transported in good hygienic conditions preventing any further formation of fungi and aflatoxins. As for technical assistance, both the EC and its Member States are funding a wide variety of TBT-related technical assistance programs for developing and least developed countries. The EC provides a yearly update on these activities to the TBT Committee, with the latest submission dating from December 2008 (document ref. G/TBT/W/303).

Non recognition of Indian Whisky[19]

India has been consistently requesting European Commission for recognition of Indian whisky as a "whisky" in the EU market to ensure a level playing field. The EC has so far not responded positively. As per the Commodity Nomenclature Code, an alcoholic beverage can be called a whisky only if it is produced exclusively from cereals by

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17 This also applies to products used outside the European Communities and for which an import tolerance has not been requested.

18 This issue has been raised by Government of India in the Trade Policy Review of EC held in 2009.

19 This issue has been raised again in the TPR of EU in 2009.

distillation and is matured for a period of three years. The EC authorities have informed that there is no scope for change of definition of whisky by them. They suggested that India should come up with some creative solution that could be considered but the use of term 'whisky' may not be possible. The EC has also suggested that in case India can give detailed clarification on technical aspects, their customs experts could consider the issue for tariff concessions. The technical experts from the All India Distillers' Association are of the view that the extra neutral alcohol (ENA) produced from molasses and used as a base for production of Indian whisky is as good as the ENA produced from cereals/grains. In the EU countries, whisky has been traditionally produced from cereals because they do not produce sugarcane. Even in USA, no one has ever challenged whisky produced from molasses. It is also pertinent to mention here that while EU are reluctant to import Indian whisky as "whisky", but at the same time they insist that their whisky should be allowed to be imported into India under the 'national treatment clause'. The Indian side has informed about the difficulties faced by the Indian spirit industry in getting their trade marks registered in the EU

EC responded that the Indian question(s) in relation to whisky call for a number of clarifications. First, under EC law the CN code does not play any role for the denomination ("whisky") under which spirits drinks may be sold on the EC market. The rules on sales denominations are laid down in Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks, Article 1(4)(b). According to this Regulation, a spirits drink may be sold under the denomination "whisky" only if it meets certain requirements. Those requirements apply to spirits drinks irrespective of whether they are produced in the EC or imported from WTO Members, and they are in line with requirements imposed by a number of other WTO members. Indian spirits drinks based on molasses, rather than on grain spirits, do not meet those requirements, and may therefore not be sold under the denomination "whisky" in the EC. However, such spirits drinks may be sold in the EC under other denominations, in accordance with Council Regulation (EEC) No 1576/89. As regards the issue of tariff concessions, whiskies from all destinations already enter the EC duty free, as do most other categories of spirits drinks. Therefore, all (Indian) spirits can be freely sold in the EC, under the correct sales denomination as defined by Council Regulation (EEC) No 1576/89, and benefit from duty-free importation (except products classified as rum under CN code 2208.40 which pay duties at levels which are much lower than those applied by India to imported spirits).

Herbal Products[20]

The EU regulations specify inclusion of only herbal products and the stipulation that they should have a proven use of 30 years out of which 15 years should be in the EU

[20] This issue has been raised by Government of India in the Trade Policy Review of EC held in 2009.

hinder market access for Indian Ayurvedic products. India had expressed its interest in knowing the scientific basis on which such criteria has been developed and mandated.

EC replied that its legislation was developed to create uniform marketing conditions avoiding differences between national laws that could hinder the free movement of foodstuffs. Article 3 of this regulation provides that foods and food ingredients falling within its scope must not present a danger or mislead the consumer. They also must be clearly defined so that clear direction can be given to consumers if these are requested. India will appreciate that the food control authorities, when authorizing the selling of whatever food, must be sure that its normal consumption would not be disadvantageous for consumer either due to the composition of the food itself or because sufficient cultural knowledge is required on how to handle it.

Capping the Greenhouse Gas Emissions of Airlines[21]

The EU is planning to cap the greenhouse gas emissions of airlines by including civil aviation under the purview of its emission trading scheme from 1.1.2012. The scheme would adversely affect operators of Indian airlines operating in Europe. India wanted to know the time period for placing such a proposed regime in to effect and for compliance by foreign airlines.

The EC responded that in order to prevent the most dangerous effects of the climate change, significant reductions in greenhouse gas emissions are necessary. The EU has adopted a comprehensive approach and ambitious targets to reduce emissions across the whole economy including aviation. The EU emission's trading scheme (EU ETS) is an important mechanism by which emission reductions will be achieved. For aviation, inclusion in an open emission trading system is a very cost effective means of mitigating emissions.

The EU took action after the failure of International Civil Aviation Organization (ICAO) to deliver concrete measures to reduce greenhouse gas emissions from aviation. The inclusion of aviation in the EU ETS has been implemented in such a way that it respects the ICAO principle of non-discrimination between aircraft operators on the grounds of nationality. It applies equally to all flights that arrive at or depart from EU airports, so prevents competitive distortions between aircraft operators. Indian aircraft operators are not therefore adversely affected relative to other carriers operating to and from the EU. Furthermore, their analysis has shown that over two-thirds of the emissions covered by the scheme can be attributed to aircraft carriers based in the EU. The proportion attributable to carriers based in India or other Non Annex 1 countries is very small.

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[21] This issue has been raised by Government of India in the Trade Policy Review of EC held in 2009.

The legislation including aviation into the EU ETS explicitly recognizes that the scope of the scheme should be adjusted to take account of equivalent measures to mitigate aviation emissions taken by other states. If India were to adopt measures to reduce the climate change impact of flights departing from its airports, the EU legislation envisages options to provide for optimal interaction between the EU scheme and India's measures, in particular by excluding from the EU scheme of flights arriving from India.

The EU sees inclusion of aviation in the EU ETS as a first step towards the ultimate goal of achieving a global solution to address the climate change impacts of international aviation. It also considers that the EU ETS may serve as a model for the use of emissions trading worldwide. Indeed, the legislation commits the EU to continue to seek an arrangement on global measures to reduce greenhouse gas emissions from aviation. In the light of any such agreement, the EC shall consider whether amendments to the EU ETS legislation are necessary.

Given the scale of the challenge to prevent climate change, inclusion of aviation in the EU ETS is a proportionate and effective response. The EU scheme has been designed in such a way so as to be non-discriminatory between aircraft operators; it cannot therefore be considered to adversely affect the operations of Indian airlines operating in Europe.

Tea[22]

Rapid Alert System

The RAS for food and feed in the EU is issued by any country of the EU and is applied to all other countries of EU on automatic basis. But in the case of lifting of such alert in the present system, there is a need for clearance of at least 10 import consignments by the concerned state. Import of Indian tea in different EU state varies between less than two consignments in some EU states to more than 10 consignments in few other states in a year. The requirement of clearance of at least 10 consignments for the lifting of RAS acts as a barrier for tea exports to those countries where consignments per year is very few. Since RAS issued by one country applies to all the country of EU on automatic basis, clearance of such alert by one country should also be applied automatically to all the countries within the EU.

India also raised this issue during the TPR of EU in 2009. India pointed out that the threat of destruction of rejected consignments, member states taking unilateral decisions for lifting of alerts, lack of appeal mechanism, etc. are still to be addressed.

EC responded that with regard to the consignments notified through the RAS as being serious or repeated infringements then Article 24 of Council Directive 97/78 may be

[22] Information on market access barriers for tea are provided by the Department of Commerce, Government of India.

applied. This gives provision for EC Member States to carry out re-enforced checks on future consignments of the same product from the same country / establishment until there is clear evidence from laboratory sampling and testing that the risk is no longer relevant for subsequent imports. If such tests continue to give positive results, then the deletion of the establishment should be considered or a safeguard measure taken. The Commission is working on guidance for Member States to assist them in the harmonized application of this Article and when such checks may be rescinded. Such guidance will be assisted by the RAS and the TRACES computerized import system of the Commission. It is hoped that this will be in place before the end of 2009.

Non-Recognition of tea testing laboratories of India

In India there are a few NABL accredited laboratories engaged in testing pesticide residue in respect of tea for exports to different countries. But, EU countries do not accept test reports of these labs because for EU states, it is required that such certificates have to be issued by European laboratories.

2.2. Intellectual Property Rights[23]

An important barrier that the Indian pharma exporters face in EU relates to their transit to third countries. Transit shipments are seized on the grounds of alleged violation of patent rights. Indian shipments of medicaments were seized by Dutch customs authorities while they were shipped through Netherlands en route to Brazil, Peru and Columbia, alleging violation of patent rights. Dr. Reddy's consignment of Losartan was alleged to be infringing the patent rights of Merck-DuPond on this drug in Netherlands. But Losartan has no patents either in the originating country, India or in the destination country, Brazil. Article 51 of TRIPS provides for adopting procedures to enable a right holder, who has valid grounds for suspecting that the importation of goods involving infringement of IPRs to lodge an application in writing with competent authorities for suspension by customs authorities of the release into free circulation of such goods. Article 52 of TRIPS clarifies that any right holder initiating procedures under Article 51 will have to provide adequate evidence to prove that there is prima facie an infringement under the laws of the country of importation. In the recent incidents of Dutch seizures, neither India nor the importing countries had patent rights over the concerned medicines and the Dutch had no right to interfere in the legitimate trade between India and its importers. Article 41.1 of TRIPS requires that enforcement procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. The export of approved generic drugs that are not covered by patents in either the country of export or the country of import will qualify as legitimate trade.

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[23] Issues in this section are drawn from media reports

A potential area of concern for Indian pharma exports is the ongoing Transatlantic Market Initiative in harmonizing the standards for protecting the test data (data exclusivity) under article 39.3 of TRIPS Agreement. Associations of generic manufacturers in India, in particular the Indian Pharmaceutical Alliance (IPA), have argued that the global pharmaceutical firms want to extend market exclusivity of patented products beyond the period of 20 years of patent protection by using Article 39.3. Grant of data exclusivity, in view of the IPA, would seriously jeopardize one of the major objectives of the Indian pharmaceutical industry, which is capturing larger share of the international generic market.

2.3. Issues in Services[24]

Obstacles in Accessing Service Market

There are significant administrative and regulatory barriers affecting trade in services. Para 55 of EC Trade Policy Review (2009) states "*…significant efforts have been underway to remove the remaining regulatory and administrative obstacles to trade in services between Member States within the framework provided by the Directive on Services in the Internal Market (the "Services Directive" No. 2006/123/EC) adopted in December 2006 and other sector-specific legislation and initiatives.*" Thus, the EC acknowledges that there are obstacles in accessing its services markets. India wanted to know, in the light of above, whether the EC proposed to remove obstacles to trade in services for its WTO trading partners.

EC replied that the integration of the European market is progressive and existing obstacles are removed step by step. EU legislation intends to facilitate the provision of services between different Member States of the Community, and, to that extent, benefit also WTO trading partners since it increases the economic value of commitments under mode 3, as non-EU companies established in the EU will fully benefit from the Services Directive just like EU companies.

Anomalies Prevailing in the EC in Services Sector

The Para 108 part IV (page 132) of the Secretariat report states "*The low level of intra-trade in services can be partly explained by the remaining barriers, such as monopolies that prevent the establishment of service providers from other Member States (e.g. postal services or energy utilities), and differences in regulation across Member States.*" The footnote 148 to the Para talks about, "*..... SMEs normally cannot afford the extra costs of engaging in cross-border activities.*" These statements are clear evidence of anomalies prevailing in the EC in services sector in which India has major interest. India raised a question as to how the EC proposes to ensure that cross-border trade of SMEs from other WTO Members is enhanced.

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[24] These issues have been raised by Government of India in the Trade Policy Review of EC held in 2009.

EC responded that cross-border trade of SMEs from other WTO Members will be enhanced both by the progressive integration of the European market and by the completion of the Doha development agenda, which would provide for an enhanced access to the European market since the EU has presented a comprehensive offer in the services area.

Benefits to Legal Persons and Physical Persons

The EU Services Directive will benefit any non-EC entity that becomes an EC juridical person by virtue of establishment. However, non-EC nationals cannot enjoy benefits of free movement under this Directive since it is limited to EC nationals. Thus, the foreign entity established in one of the EC member state does not benefit movement of its personnel across other EC member states even after establishing in the EC. India pointed out that this would be a violation of national treatment principle.

The EC replied that as regards legal persons, entities established in the EC will fully benefit from Directive 2006/123/EC (Services Directive) as stated above. As regards physical persons, individuals not having the nationality of an EU Member State are not covered by the concept of service provider in the Services Directive. It must be stressed that free movement of services is a concept that applies within the EU and the scope of such freedom is not comparable with that of mode 4. Hence the application of the national principle is not relevant.

Free Movement of Workers across EC

There is a growing need for the free movement of workers across the EC to provide services, however, the different regimes for work permits in EU member states render the application processes cumbersome and inefficient, which affects the services trade.

EC responded that in coming months, it will partly address this issue. The Commission will present a proposal for a Directive on intra-corporate tansferees, in accordance with the December 2005 Commission Communication on a Policy Plan on Legal Migration (COM(2005)669), that foresaw the adoption between 2007 and 2009 of five legislative proposals on labour immigration.

The aim of the present Directive is in particular, to facilitate intra-corporate transfers (ICTs) of key personnel both to the EU and within the EU so as to effectively and promptly respond to demands for managerial and qualified employees of branches and subsidiaries of multinational companies by setting up transparent and harmonized conditions of admission for this category of workers; by creating more attractive conditions of stay for ICTs and their family; and by promoting the efficient allocation and re-allocation of transferees between EU entities. As a result, provision of services taking place in this particular context of intra-corporate transfers will be facilitated.

Construction Sector

Ownership of real estate is of importance to the construction sector, but several market access and national treatment limitations are imposed in different EC member states as per the EC revised offer. India enquired about the reasons for the national treatment restrictions and if the EC proposed to remove these restrictions in order to allow market access in the construction service sector.

The EC responded that national treatment restrictions and limitation on real estate exist in a few number of Member States. Such limitations are common to many WTO Members. They can be justified on public policy grounds, such as the objective to avoid scarcity or excessive prices of land or real estate in areas where the needs of national for agriculture or housing are important.

Different Tax Regimes for Foreign and Domestic Service Providers

Local service providers get a favourable tax treatment than foreign service providers in EU. For example, in some Member States, the costs of professional training are tax-deductible only if the courses take place within the Member State. Similarly, life insurance and additional insurance policies, pension fund and investment fund contracts can be offset against tax, only if concluded with local insurance companies. Authorization for the reimbursement of medical costs incurred in another Member State is only granted by national authorities under certain conditions, and this may discourage persons insured under social security scheme from turning to service providers established in another Member State.

EC responded that while in the absence of harmonizing measures at Community level, direct taxation falls essentially within the competence of Member States, in the exercise of this competence, Member States must observe their EC Treaty obligations. Hence, they must not discriminate on the basis of nationality or apply unjustified discriminatory rules imposing restrictions on the exercise of the EC Treaty freedoms (including, the free provision of services). Thus for instance, and as confirmed by the European Court of Justice (ECJ) on numerous occasions, in objectively comparable situations, Member States may not apply more burdensome rules to services furnished by service providers of other Member States than to services provided by domestic undertakings. In this regard the EC, by way of example, would like to draw India's attention to the following ECJ decisions: Case C-136/00, *Danner*, of 3 October 2002; C-422/01, *Skandia/Ramstedt*, of 26 June 2003; C-150/04, *Commission V. Denmark*, of 30 January 2007; and C-552/04, *Commission V. Belgium*, of 5 July 2007 (Pension insurance contributions). EC law takes precedence over conflicting national rules, and as provided for in Article 226 EC the European Commission has a very specific role in enforcing the provisions of the EC Treaty. Where the Commission becomes aware of an infringement of the ET Treaty freedoms by a Member State, it will request that Member State to bring its national legislation into line with its Community law obligations and if necessary will bring the matter before ECJ.

As regard access to medical treatment abroad, Community legislation in the field of social security does not harmonize the national social security schemes of the Member States but aims at coordinating these schemes in order to avoid that migrant workers loose their social security protection.

This coordination provisions are contained in Regulation (EEC) No 1408/71 and its implementing regulation (EEC) No 574/72. Persons who are subject or have been subject to a legal social security scheme of a member State are covered by these provisions. Regulation (EC) No 859/2003 extended the personal scope of these regulations to nationals of their countries who are legally residing in the EU and who are in a cross-border situation.

As regards access to health care in another Member State than the competent one, Article 22 of Regulation provides for two situations:

(1) A person who is covered by a legal sickness insurance scheme of a Member State is entitled during a temporary stay in another Member State, to health treatment which becomes necessary during its stay. In this situation the health treatment is provided in accordance with the legislation of the Member State of stay but will be reimbursed by the competent Member State. The European Health Insurance Card (EHIC) certifies this entitlement. EHIC can be used for temporary stays abroad for private and professional reason or when studying in another Member State. In this situation, no prior authorization from the competent institution is required.

(2) The second situation concerns the situation where a person covered by a legal sickness insurance scheme of a Member State is going to another member State in order to obtain medical treatment. The coordination provisions require in such a situation that the person concerned obtains a prior authorization from the competent sickness insurance institution. It is up to the sickness insurance institution to decide whether or not it will grant the prior authorization. The coordination provisions, however, stipulate in which cases such a prior authorization cannot be refused, namely when the treatment requested is among the benefits provided by its legislation but is not available within a time normally necessary with regard to the current medical state of the person concerned.

If such a prior arrangement (form E-112) has been given, the treatment will be reimbursed by the competent institution in accordance with the tariffs applicable in the Member State where the treatment has been given. However, according to recent case-law of the Court of Justice (Vanbraekel, C-386/98), if the tariffs in the competent Member State are more favourable, the person concerned can apply for a supplementary reimbursement, which cannot be higher than the costs he actually paid.

It should be mentioned that the court of justice stated that this system of prior authorization is contrary to the principle of freedom of services and goods as regards to non-hospital

care. When non-hospital care treatment is given without prior authorization, the competent institution must reimburse the costs of this treatment according to its own tariffs.

MRAs: Need to Apply National Treatment[25]

Lack of Mutually Recognized Agreements (MRAs) is a major impediment to trade, particularly in a number of professional services. Current EU Law on the matter stems from the EC Treaty of 1957. Article 47 provides for adoption of measures to ensure MRAs within EC members. In 2005, EU adopted a new directive (2005/36) on recognition to be adopted by all Members by October 2007. While this directive applies only to EC nationals, there are implications for non-EU Members. For instance, an EU national who has obtained qualifications from a non-EU state, would be allowed to practice in the EU subject to the EU Members' regulations. Where the EU national has got his qualifications and training from a non-EU state, he would be allowed to work in any EU Member if the main portion of the training is undertaken in the EC.

Further, if an EU national has acquired qualifications and training in a third country, and has practised the profession for three years in a Member state that recognises the qualification, he becomes automatically eligible to benefit from the Directive. At the moment, non-EU nationals are not only excluded from the benefits of the Directive, but also third country national family members of migrant EU nationals are beyond the scope of the Directive. Hence, if an Indian and French couple obtain an Architecture degree from India, the French spouse can work as an architect anywhere in the EC provided he/she has worked three years in France and France recognises the diploma. This is not possible for the Indian spouse. Even worse, the situation is the same even if both got their degree from France. Hence, if a qualification from a third country is recognized for a EU national by the EC, the same recognition should extend to a non-EU national as well. Not doing so would violate National Treatment.

EU law on Service Provision[26]

EU law distinguishes between service provision (Article 49) and establishment (Article 43). While service provision is temporary and occasional, establishment is more permanent. The difference between the two is based on three parameters: frequency, regularity and continuity. The conditions of entry for a service provider are much more stringent in the case of service provision. There is also the EU services directive and the country of origin principle, which was ultimately diluted. The country of origin principle was replaced by the country of provision regulation. This implied that the regulatory law of the country in which the service is provided would apply and not that of the country of origin of the service provider. However, it is agreed by the EC that restrictive conditions cannot be

[25] This information has been received from Department of Commerce, Government of India sources.

[26] This information has been received from Department of Commerce, Government of India sources.

applied on nationals of third countries, if they are lawfully employed by a service provider established in another Member state. However, discrimination against third country Members continues.

The ECJ has also interpreted the provisions for movement of people in a liberal manner. While it has accepted that Members have the right to regulate so as to minimize the risk arising from non-EC nationals seeking access to the labour markets through service provision and the risk of exploitation of non-EC nationals who come to the EC, it has observed that the entry restrictions such as Visa and residence requirements are disproportionately excessive.

Long Term resident third country nationals (Directive 2003/109)[27]

If a non-EU national has resided legally in the EC for five years, he / she is entitled to long term resident status. This entitles the resident to security of residence and the right to move and carry out economic activities in all Member states. This includes the recognition of professional diplomas, certificates and other qualifications in accordance with relevant national procedures. However, the recognition procedures are onerous since a move from one Member to another is treated as 'establishment' rather than service provision. Second, if the non-EU national moves for a short period from one EU member to another, this would be treated as service provision, but no residence permit will be given. Without a residence permit, the right to non-discrimination cannot be enjoyed.

Services Issues under Doha Development Agenda[28]

India is in the process of a dialogue with EC on market access in services. Most of the issues are negotiated multilaterally, but some are conducted bilaterally as well. The broad range of market access issues which India faces in EC is listed below.

- In Professional Services like Accounting, Auditing and Book keeping services, Architectural Services, Engineering Services and Integrated Engineering Services, the various restrictions in various member states like conditions of nationality and citizenship, requirement of commercial presence for Mode 1 in some cases etc. are barriers to market access.
- The EC schedule has numerous restrictions in various sectors, where the EC itself is a demandeur. These sectors are:
    - Financial services (high capital requirements in UK and Mode 1 restrictions in Insurance and Banking in Germany, Denmark, France, Italy and Finland)

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27 This information has been received from Department of Commerce, Government of India sources.

28 This information has been received from Department of Commerce, Government of India sources.

- Telecom Services (Mode 3 restrictions in Finland, France, Poland and Slovenia. FDI of 20% in France and 49% in Poland)
- Retailing (economic needs tests in France and many other countries)
- Energy (monopolistic dominance in many countries such as France and Germany).

- Insurance sector
  - Under mode 1, there is market access restriction on compulsory international aviation insurance in Austria, Denmark, Germany and Portugal. Portugal does not permit international marine insurance under mode 1, either. Denmark only permits indirect international marine insurance under mode 1. Finland only permits insurers with their head office in the EC or their branch in Finland to provide cross-border marine, aviation and transport insurances covering goods and vehicle. Austria maintains national treatment limitation in the form of discriminatory premium taxation under mode 1. Spain and Italy offer "unbound" for actuarial professions.
  - Under mode 2, Austria, Denmark, Germany and Portugal maintain similar restrictions to those under mode 1 while Finland, Spain, and Italy maintain different type of limitations.
  - Under mode 3, nine member states maintain market access restrictions, typically on the form of legal entities. For example, in Finland foreign branches cannot do statutory pension insurance. In Sweden, insurance broking undertakings not incorporated in Sweden may establish a commercial presence only through a branch. With respect to national treatment, Spain and Portugal impose discriminatory prior operational experience requirements on foreign branches. Greece requires that a majority of the board directors shall be nationals of the EC.
  - Under mode 4, the categories of Contractual Services Suppliers (CSS) and independent professionals (IPs) are not offered.
  - In banking and other financial services, there are restrictions ranging from residency requirements, form of establishment restrictions to scope of business restrictions and selling techniques restrictions.
  - Three MFN exemptions are still maintained in the financial sector.

- EC had already made some improvements in its initial offer on Mode 4 relating to CSS and independent professionals. With respect to IPs, there is not much improvement in the revised offer as the duration of entry remains six months (India had requested for at least 12 months), the coverage of sectors has only been improved to a very limited extent (not covering accountancy, medical and dental services, tourism services, and the whole range of computer and related services requested for by India), the period of professional experience set at six years continues in spite of India's request for

reducing this period. The commitments continue to be subject to the application of a numerical ceiling and the modalities and level of application continues to be unspecified in the revised offer as in the initial offer. This detracts from the value of the offer considerably. Regarding CSS, there are again some minor improvements with respect to the coverage of sectors – book keeping services, environmental services, related scientific and technical consulting services have been added to the list of sectors covered. However, there is no increase in the duration of stay from the six months which was provided in the initial offer. Further, as in IPs these commitments are subject to the application of a numerical ceiling and has the same uncertainty since these are unspecified. There was a requirement of an open-tendering procedure or any other procedure which guarantees the bonafide character of the contract – this particular requirement of open tendering has been removed but the entire limitation has not been completely eliminated as India would have liked.

- There are no commitments in the Medical and Dental Services, Services provided by midwives, nurses, physiotherapists and paramedical personnel. These are sectors of great commercial importance for India in all modes of supply. In the case of Hospital Services, various restrictive conditions relating to nationality etc. continue.
- Large gaps in Cross Border Supply in professional services such as Accounting, Architecture, Engineering and Integrated Engineering, where even the big Members such as France, Italy, Austria, Greece, Portugal and Belgium are restrictive. Further, there are various restrictions in many member states like conditions of nationality and citizenship, requirement of commercial presence for Mode 1 etc.
- In Maritime services, a plurilateral being cosponsored by the EC, there is a requirement of establishment of a registered company. It also has restrictions on Maritime Auxiliary Services in a number of sub-sectors. Mode 4 is Unbound.
- In Postal and Courier services the EC offer is vaguely worded and the scope and coverage is not clear. There is a requirement that licensing systems may be established for some sub-sectors for which a general Universal Service Obligation exists. These licences may be subject to particular universal service obligations and/or financial contribution to a compensation fund. This leaves wide room for the EC to put in place any system and thereby restricts market access
- In Energy services, the EC is the co-ordinator of the plurilateral request and yet has a highly restrictive market in many of the larger Members. In fact, state monopolies in France and Germany ensure that market access is severely restricted. In the Revised offer, there are gaps, both in the sectors covered and the geographical coverage of Members that have offered commitments.
- In Telecom, there are Mode 3 restrictions in Finland, France, Poland and Slovenia. In France, FDI restriction of 20% applies and in Poland the FDI limit is 49%.
- In Financial Services, the EC market is fragmented and many Members have not taken commitments in key financial services. Moreover, the entry barriers in the form of

capital adequacy are very high (eg. It is Eur 5 million in the UK and even after that there is no certainty of getting a license to operate as a subsidiary). Similarly in Insurance and Banking, there are a number of restrictions of incorporation for Mode 1 in Members such as Germany, Denmark, France, Italy and Finland. The very purpose of remote supply is defeated if incorporation is required.

USTR on Market Access Barriers in EC

The USTR's National Trade Estimate (NTE) report (2008) on EU has a detailed description of market access barriers for its exports in the EU, some of which are relevant for India also. The report mentions that though the EU agricultural tariff barriers are relatively low, export of commodities such as corn, beef, poultry, soybeans, pork, and rice are significantly restricted or excluded altogether due to restrictive EU nontariff barriers or regulatory approaches that often do not reflect science based decision making or a sound assessment of actual risks posed by the goods in question. Further, exports also face cumbersome bureaucratic procedures and unnecessary, redundant health and safety assessments. Among the concerns raised, some issues are being negotiated to arrive at amicable solutions and others are remaining as major bottlenecks such as restriction on meat and meat products based on 'precautionary principle' and standards for pesticide residues justified on precautionary grounds, without any scientific justifications.

The restrictions on import on the basis of precautionary principle have been a bone of contention between the EU and the US. US allege that many U.S. exporters view the EU's growing use of the precautionary principle to restrict or prohibit trade in certain products, in the absence of a scientific justification for doing so, as a pretext for market protection. Import of biotechnology products to EC face severe restrictions, which are of concern to India also. The problems faced in this regard by the US are given below.

a) US exporters of agricultural biotechnology products have been harmed not only by a *de facto* EU moratorium on approving new products, but also by the existence of certain Member State prohibitions on products already approved by the EU for marketing within the EU. This was the subject of a successful WTO challenge by the United States (DS 290). The WTO panel decided against EC in 2006 and the Parties agreed on a one year "reasonable period of time" expiring on November 21, 2007, for the European Union to come into compliance with the Dispute Settlement Body's recommendations and rulings; the deadline was subsequently extended to January 11, 2008. During 2007, the United States and the EU held discussions aimed at resolving the dispute and normalizing U.S.-EU biotechnology trade. When the one year period expired in January 2008, the United States took the first steps toward a resumption of dispute settlement procedures, submitting a request to the WTO for authority to suspend concessions. Under an agreement with the EU, however, proceedings on the U.S. request were suspended to provide the EU an opportunity to demonstrate meaningful progress on the approval of biotechnology products. There are fresh attempts in some of the EC members to bring in restriction on

the import of biotech products. On April 27, 2007, Germany announced a planned ban on MON810, a biotechnology corn product. The ban was lifted, however, after agreement with the technology provider on post-market monitoring. On February 9, 2008, France imposed a temporary ban on cultivation of MON810, invoking the safeguard clause, and announced that its ban would remain in place contingent on the EU reapproval process that has been ongoing since April 2007.

This issue is of concern to India as well because it is having increasing acreages under the cultivation of GM crops. Nature of spread is such that it is very difficult to monitor and it is possible that these products might get mixed up with other non-GM products at the time of harvesting. These products may find similar difficulties which the product from US faces while exporting to the EU.

b) US exports to the EU of poultry washed with anti-microbial treatments (AMT) have been blocked for a decade by cumbersome bureaucratic procedures and unnecessary, redundant health and safety assessments – despite the finding by the EU's European Food Safety Agency that these AMTs are safe.

c) Delays in the biotechnology product approval process exacerbate the already large asynchronicity of approvals, creating further trade problems. As the US biotechnology firms commercialize new innovative products they may encounter more trade barriers as even minute traces of new products approved in the United States could make them unsaleable in the EU.

d) *Traceability and Labeling*: In April 2004, EC Regulations 1829/2003 and 1830/2003 governing the approval, traceability, and labeling of biotechnology food and feed became effective. The regulations include mandatory traceability and labeling for all biotechnology and downstream products. Among the traceability rules are requirements that information that a product contains or consists of biotechnology products must be transmitted to operators throughout the supply chain. Operators must also have in place a standardized system to maintain information about biotechnology products and to identify the operator by whom and to whom it was transferred for a period of 5 years from each transaction. The requirements include an obligation to label appropriate products and to indicate if the food is different from its conventional counterpart in composition, nutritional value, intended use, or health implications. In some cases, these burdensome directives have already severely restricted market access because U.S. food producers have reformulated their products to eliminate the use of biotechnology products. Food producers have expressed concern about needing to find expensive or limited alternatives. The Directives are generally expected to have a negative impact on a wide range of U.S. exports, including processed food exports.

The other area where Indian exporters may face market access barriers are in pharmaceuticals. The USTR NTE report (2008) points out that US' pharmaceutical

companies encounter persistent market access problems throughout the European Union due to the effective price, volume, and access controls placed on medicines by Member State governments. India may perhaps need to look into this aspect as Europe is a major destination of Indian pharma exports, accounting for 29% of total exports of generic formulations in 2006-07 worth $ 805 million.

3. China

India raised certain issues of concern during Trade Policy Review of China during its TPR in 2008[29].

3.1. SPS-TBT Issues

Market Access for Fruits

During India-China discussions on China's accession to WTO, both countries had agreed to work on expeditious entry of 17 fruits and vegetables into the Chinese market. So far only three items have been allowed (mangoes, grapes and bitter gourd) into the Chinese market despite the fact that technical details have been provided for all the 17 fruits and vegetables to the Chinese side.

China responded that it welcomes the access of 17 Indian fruits and vegetables into Chinese market. In accordance with the principles set in the WTO SPS Agreement and for the purpose of protection of China's agricultural and biological safety, China conducts pest risk analysis on these products to see if they meet the quarantine requirements. So far, four products (mangoes, grapes, bitter gourd and tobacco leaves) are allowed to enter into the Chinese market. For the access of other fruits and vegetables, they need active cooperation from the Indian side by providing, as soon as possible, requested technical documents to facilitate their risk analysis.

Dairy and Meat Products

Indian exports of dairy and meat products to Chinese market is impeded by lack of clarity in terms of technical standards. For example, bovine meat and meat products from India are not allowed entry into the Chinese market on grounds of concern surrounding FMD in India, even though the disease management of FMD in India is scientific and as per internationally accepted standards. There are areas which are DMB free in India from where such imports should be permitted as is done by many countries importing Indian bovine meat and meat products.

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[29] The full text of questions and answers are available in document WT/TPR/M/199 Add.1 (2008)

China responded that there is a complete set of rules and procedures for market access of imported meat products in China. These rules and procedures are consistent with rules of WTO and Organization for Animal Health, as well as other international practice. China welcomes the timely application from India and China will initiate the access process whenever appropriate. If more detailed information is needed, competent authority in India can contact AQSIQ.

Regarding the approval of dairy exporters in India, China clarified that it has never adopted an approval system on any foreign dairy companies which export their products to China, but only on their dairy products to China. However, since India is still plagued with FMD and DMB, China has to adopt risk analysis on dairy products imported from India to ensure the sanitary safety of dairy products. So long as the processing technique is consistent with OIE's requirement and the risk is tolerable, the product can be imported.

China further informed that to facilitate and streamline importation of dairy products, it demanded that the competent authorities from all countries which export dairy products to China to submit sanitation certificate in a format required by China as early as in 2006. However, India did not respond to this requirement while more than 10 countries such as United Kingdom, France, Germany, Australia and New Zealand did. China requested India to give positive response to this certificate issue and submit necessary risk analysis documents to facilitate the risk assessment process in China. So long as the risk is tolerable, dairy products from India will be imported.

USTR on Market Access Barriers in China

The description of trade barriers in China by its major trading partners such as the US shows that these countries are also facing the kind of barriers Indian exporters are facing in China and suggests that probably India needs to examine further on these issues. The USTR Report to Congress on China's WTO Compliance (2008) observes that some of China's SPS measures continue to enter into force without having first been notified to the SPS Committee, and without other WTO members having had the opportunity to comment on them, contrary to the requirements of the SPS Agreement. The report identified 22 SPS measures implementing important new registration requirements, residue standards, inspection requirements and quarantine requirements on import of frozen meat, dairy products, grain, poultry, feed, horticultural products, a variety of processed products and alcoholic beverages– none of which China notified to the SPS Committee. The report further points out that many of the Chinese import bans based on SPS are not science based, i.e., China did not provide relevant risk assessment. It quotes that in 2008, China was unable to provide a science-based rationale for maintaining import restrictions on grounds of Avian Influenza on U.S. beef products and some U.S. poultry and pork products. The report also raises concerns in the areas of standards, technical regulations and conformity assessment procedures, particularly with regard to transparency, national treatment, China's pursuit of unique Chinese national standards, and duplicative testing

and certification requirements. As one example, China insists on Codex standards which require a zero tolerance limit for the presence of Salmonella bacteria for the import of raw meat and poultry. But it apparently does not apply the same standard to domestic raw poultry and meat, raising national treatment concerns. From these issues raised by the USTR report, some points of concern that emerge for Indian exporters, which can be further examined are:

a) Non-notification of measures in SPS committee affecting Indian exporters' interests

b) Indian exports of fruits, dairy and meat products getting adversely affected on account of lack of science based risk analysis

c) Violation of national treatment principle on standards applied to imports into China and Chinese domestic products.

Other issues raised by the USTR report which may be of concern to India as well are:

a) Industrial policy promoting global recognition of sales of Chinese brands through prohibited export subsidies.

b) Export quotas, export license fees, minimum export prices, export duties and other export restrictions on raw materials.

c) In its Protocol of Accession to the WTO, China committed to ensure that its regulatory authorities apply the same standards, technical regulations and conformity assessment procedures to both imported and domestic goods and use the same fees, processing periods and complaint procedures for both imported and domestic goods. However, in a number of sectors, concern has grown that China has pursued the development of unique national standards as the basis for its technical requirements, despite the existence of well-established international standards. Reliance on national standards could serve as a means of protecting domestic companies from competing foreign standards and technologies. The sectors affected include: automobiles, automotive parts, telecommunications equipment, wireless local area networks, radio frequency identification technology, audio and video coding, fertilizers, food products, and consumer products, such as cosmetics. These China-specific standards, which sometimes appear to lack a particular technical or scientific basis, could create significant barriers to entry into China's markets because of the high cost of producing products that comply with the China-specific standards.

4. Japan

Indian concerns were raised during Japan's TPR in 2007[30] and in 2009[31].

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30 The full text of questions and answers are available in WT/TPR/M/175/Add.1.

31 The full text of questions and answers are not yet on the WTO website and these are sourced from the Department of Commerce, Government of India.

4.1 SPS TBT Issues

General Issues

Indian exports to Japan are affected by a number of issues, which include SPS-TBT measures and high transaction costs. The inspections conducted by the Japanese authorities with regard to the place of origin labeling in case of fruits, vegetables, fish, meat etc is a very strong non-tariff barrier. The rules governing imports of fruits and vegetables into Japan are excessively restrictive and at times stricter than those applicable in other developed nations. In case of processed food items, the presence of additives used for preservation or enhancing the product quality and life and otherwise considered safe are objected to by authorities in Japan. Meat and meat products exports to Japan face difficulties on account of stipulations that ban use of natural and synthetic hormones in livestock production. The distribution channels in Japan are extremely complex and highly regulated. As a result transportation and distribution costs for certain products like rice are excessive and make the same exporting to Japan extremely difficult.

Japan responded that helping developing countries to maintain and expand market access opportunities for their products is indeed one of the key objectives of the Development Initiative for Trade, announced by Japan in December 2005, and Japan will continue to make efforts for the implementation of this initiative. For example, Japan has provided technical assistance through various channels such as contributions to the Global Trust Fund and international organizations.

Poultry Meat and Poultry Products

The import of poultry meat and poultry products from India was banned immediately after the outbreak of bird flu in the country in Feb, 2006. Although India notified OIE in August 2006 that the country had become avian influenza free, Japan has its own set of procedures for lifting the ban including asking for detailed report and its examination to verify that the country is avian influenza free. This process is very time consuming and there is a case to streamline it.

Japan responded that in consideration of the relevant OIE guidelines, confirmation of India's avian influenza-free status is necessary in order to lift the suspension. Japan has not amended any regulation regarding the import of poultry and its products from India since July 2005 (refer to G / SPS / N / JPN / 147). Japan is implementing necessary measures, including a stamping-out policy for regaining avian influenza-free status, while Japan requires an avian influenza-free status from exporting countries / regions regarding fresh poultry meat.

Export of Pharmaceuticals

Indian exporters face a number of difficulties while exporting 'generic formulations'. Japan's pharma market is around US$ 60 billion. Out of which around US$ 10 billion is being imported. But for India access to Japans' market is nearly non-existent due to Non-tariff barriers. Some items in this category need confirmation at customs as these items come under import surveillance. Further Indian manufacturers reported difficulties in product registration in Japan largely because the product registration guidelines are reported to be available only in Japanese language.

Japan responded that it is inappropriate to reform this area solely for export facilitation purpose from developing countries, since pharmaceutical regulations are implemented in order to safeguard public health in Japan. In the Pharmaceutical Affairs Act in Japan, marketing approval holders have an obligation to undertake quality control and post-marketing safety management for their products; applications for marketing approval must then be submitted in Japanese. Because the official language to be used in the public administration processes in Japan is Japanese, any official document, including the marketing approval application, must be in Japanese. Likewise, the official text of the guidelines issued from Ministry of Health, Labour and Welfare (MHLW) is in Japanese. Japan also indicated that it might consider translating the guidelines in future as a service for the users.

Another issue facing Indian Pharma exporters is the requirement that the pharmaceutical export companies have to keep an inventory of product for five years which result in huge losses afterwards. More over the exporting companies feel that mandatory bio equivalence testing on the Japanese population for each generic product also increases the cost tremendously. Although Japanese law allows for generic medicine substitution, in practice doctors do not prescribe substitution drugs.

Japan replied that the government plans to expand the share of generic medicine in the pharmaceutical sector up to more than 30% by the year 2012. To reach the 30% target share by 2012, the MHLW has proposed an 'Action Program for Generic Medicine'. This program is a work plan for both the government and for the industry, one which aims to enable generic medicine to be used by patients and the health care professionals with confidence. Unless the prescription carries a prescriber's signature in a column entitled 'Dispense As Written' the patient, by request, can receive generic medicine as a substitution at a pharmacy. With generic medicine it is necessary to keep an inventory of a product for at least five years in order to maintain a stable supply.

It has also been pointed out that market approval regulations for pharmaceutical products in Japan are more stringent than the US FDA regulations. All these factors amount to very low export penetration of Indian generic medicines into Japan.

Exports of agricultural and meat products

Japan is a net food importer. But India's agricultural and meat exports to Japan are very low. This is attributed to various restrictions imposed by Japan. Indian tea, rice and wheat producers say that Japan imposes very strict regulations with regard to pesticide and chemical residues in these items. Similarly, meat and meat products exports to Japan face difficulties on account of stipulations that ban use of natural and synthetic hormones in livestock production**.** It is not clear whether these SPS requirements are science-based and aligned with which specific international standard.

Japan replied that its positive list system for regulation of agricultural chemicals (pesticides, veterinary drugs including hormones and feed additives) has been introduced for the protection of consumer health based on scientific and technical considerations. This regulation is equally applied to all food items without distinction between domestic and imported products. MRLs established in the process of implementing the system are based on Codex standards and other legitimate international standards. At each stage of consideration of MRLs, Japan has published draft documents and sought comments from inside and outside the country. Japan notified these documents to WTO as G/SPS/N/JPN/145, in accordance with the WTO/SPS Agreement. Following this procedure, Japan has given detailed explanations about the system to foreign countries before and after implementation of the regulation. Given the scientific validity of the system and international harmonization of Japan's standards, it does not believe that the regulation system has created any trade barriers.

Regarding natural and synthetic hormones, Japan responded that it is not clear what individual substances are being referred to. Japan's regulations allow for residue level occurring in nature for Estradiol 17 B, progesterone and testosterone. For Trenbolone acetate, melengestol acetate and Zeranol, which are synthetic hormones, Japan provides MRLs. If the Indian agricultural industry has any request for addition of MRLs for other substances than these compounds or any other revision of the current standard, they can contact the Ministry of Health, Labour and Welfare (MHLW) of Japan through the Indian Embassy in Tokyo. The MHLW has drawn up a guidance procedure for requesting required data sets.

100% inspection of Indian coffee[32]

Indian coffee exports to Japan has shown reduction which is caused by the concerns that India's Arabica growers use Lindane to control white stem borer. Japanese government has decided to subject all shipments to 100% inspection and it has come in the way of Japanese importers placing orders for Indian Arabica. The 100% inspection of all shipments

[32] This information has been sourced from Department of Commerce, Government of India, sources.

is a major impediment to exports from India and Japan should revert to random inspections. The Coffee Board of India has also sensitized farmers not to use Lindane as a white stem borer control measure and have given them technical advisories for alternative methods.

4.2. Tariff Issues

Unbound tariffs

In FY2008, Japan's tariff schedule comprised 8,841 lines at the HS nine-digit level. Japan has bound 98.8% of lines. Unbound lines relate mainly to fisheries (fish, crustaceans, and seaweed), petroleum oils, and wood and articles thereof which constitute important items of India's export basket.

Japan responded that these unbound tariffs are consistent with WTO Agreements and it will continue to engage in discussions in the WTO in a constructive manner and set appropriate types and level of tariffs, while considering the progress and results of DDA negotiations.

High Tariffs

Import of footwear items to Japan face higher level of tariff where India has large export competitiveness. Simple average tariffs are considerably higher for footwear. Leather footwear items are subject to quotas. Under the TRQ (pooled quota) system, an import duty of 17.3% to 24% is levied on import of foot wear within the quota threshold. The import exceeding this quota threshold is subject to higher rate of import tariff of 30%. The TRQ system tends to limit the orders of the Japanese buyers and therefore acts as a non tariff barrier (NTB) to the export of footwear to Japan.

Japan responded that the TRQ system is consistent with WTO Agreements. With regard to the tariff quotas (TQ) on leather and leather footwear, it said that it has no plan to reform the existing TQs due to historic and social difficulty confronting this sector.

India has also pointed out that TRQs which apply mainly to agricultural products including rice, milk, dairy products, prepared edible fat, dried leguminous vegetables, wheat, barley, ground nuts, tubers of konnyaku, starches, and silk worm cocoons and raw silk, cover 1.7% of all tariff lines. This also impairs the competitive edge of developing countries like India.

Japan replied to this by stating that its TRQ regime is consistent with WTO Agreements including the GATT 1994. And the TRQ regime do not necessarily disadvantage exporting countries including developing countries.

Tariff Escalation

The data on tariff escalation show no overall consistent pattern other than that the high level of protection granted to agricultural products results in higher overall tariff protection for primary products than for semi-processed products. Tariff escalation from semi-processed to final goods is present in some sectors, notably textiles, petroleum refineries, and non-electrical machinery. In other sectors, such as food products and manufacturing, leather products, wood and paper products, other chemicals, non-metallic mineral products, and metal products, protection for fully processed goods is lower than for semi-processed products, while escalation from primary to semi-processed and final products is evident only for industrial chemicals and rubber. This pattern of tariff escalation is trade distorting for countries like India.

Japan responded that it sets an appropriate level of tariff rate on each product by taking into account the situations of domestic industries. Issues including tariff escalation are one of the elements of agriculture and NAMA negotiations. Japan will consider the result of the DDA negotiations when addressing these issues in the future.

4.3. Issues in Services

Mode 2 and Mode 4 Services

There are continuing barriers in Mode 2 and Mode 4 with regard to health services. Given the aging population of Japan, the demand for medical services is going to put pressure on the existing health infrastructure in the country and this can to some extent be relieved by easing rules for movement of trained professionals, nurses, physicians etc from India to Japan. India also faces problems in obtaining visas for employees to do on-site work in Japan especially by companies in the IT sector**.**

Japan replied to this by saying that if medical services are not provided appropriately, the public will be exposed to serious and apparent risks for their lives and bodies. Because of the public's high concern in order to assure the confidence of their nationals for medical services, Japan cannot easily accept Mode 4. As for Mode 2, there is no barrier in Japan's belief.

Withholding Tax

Withholding tax is a major issue in service exports to Japan. Indian IT service companies have complained about the 15% withholding tax imposed by Japanese authorities on payments from Japanese firms to the Indian IT service companies labeling the same as 'fees for technical consultancy'. This tax is a major non tariff barrier faced by exporters of IT services.

Japan responded that when a Japanese company entrusts software development to an Indian IT service company, according to the provisions concerning royalties and fees for technical services of the tax treaty between India and Japan, fees paid by the Japanese company for the software development may be taxed in Japan, Japan being the source country of the payments. With regard to this provision of the treaty, in the course of negotiations, the India delegation strongly insisted on leaving the provision unchanged while the Japanese delegation requested its deletion and as a result it was determined to reduce the tax rate from 20% to 10%. Japan understands that both sides reached a mutual understanding concerning taxation on fees for technical services in the protocol amending the tax treaty.

Difficulty in obtaining visa for employees to do on site work in Japan

India pointed out that obtaining visas for employees to do on site work in Japan is a problem faced especially by companies in the IT sector.

Japan replied that the nature of the problem mentioned in the question is not specific but ambiguous. First of all Japan is promoting the acceptance of IT engineers from abroad under the 'e-Japan priority policy program'. The criteria for the Status of Residence of Engineer was partially amended in December 2001 to ease the standards for accepting IT engineers from abroad, namely foreign nationals who have passed foreign examinations or obtained qualifications on information processing skills, which are mutually certified by Japanese IT related examinations or qualifications and are designated by the Minister of Justice in the Official Gazette, may enter Japan irrespective of whether or not they satisfy the criteria for landing permission for engineer, i.e., having graduated from or completed a course at a college or acquired equivalent education or having at least 10 years work experience in the field. The engineer visa may be issued within 5 working days upon bona fide application, in case aforementioned requirements are fulfilled and the foreign IT engineer holds a certificate of eligibility and is employed by an IT company in Japan. In case an IT engineer employed by a foreign based company makes a short term business trip in order to install or maintain machines / systems in Japan, a temporary visitor visa can be issued within 5 working days upon bona fide application. If such an engineer meets certain requirements, multiple entry visa can be issued.

4.4. Requirement of Local Content

Export of Pharmaceuticals

Indian companies face barriers in sectors like pharmaceuticals in the form of a requirement of partnering with Japanese enterprise / trading houses for local marketing. This escalates costs for the Indian manufacturers as they do not have a product profile at the beginning.

Japan responded that in order to market medical products such as pharmaceuticals and medical devices in Japan, it is necessary to obtain licenses to ensure quality and safety under the Pharmaceutical Affairs Law (PAL). A minimum requirement for the acquisition of such licenses is compliance with the various standards of PAL. It is not possible to mitigate these requirements for a specific exporting country's sake, as they are in place to safeguard the safety of public health.

4.5. Other Barriers

GSP Scheme

Items such as dairy products, some footwear, and textiles and clothing are not included in the GSP scheme for developing countries and are therefore subject to applied MFN rates of duty. These items are important for the export basket of India.

Japan replied that it grants preferential tariff treatment under its GSP scheme to 141 developing countries and 14 territories for 337 agricultural and fishery products and 3217 industrial products at the nine-digit tariff level. Japan will continue to examine all aspects of GSP scheme in a preparation for a possible revision of the scheme which is scheduled for 2011.

USTR on Market Access Barriers in Japan

The USTR NTE Report on Japan lists the market access barriers that US exporters face in Japan. They also, like in the case of Indian exporters, face problems of labelling issues and SPS measures related to export of meat products. Following are some issues highlighted in the USTR report which may be of concern to India also.

a) Japan maintains high tariffs on a number of food products including red meat, citrus, wine, and a variety of processed foods. Examples of double digit import tariffs include 38.5% on beef, 32% on oranges, 17% on apples and a 15 to 29.8% on wine depending on the HTS classification. These high tariffs generally apply to food products where Japan is protecting domestic producers.

b) USTR has reported that Japan is unwilling to bring its BSE measures in line with international guidelines set by the OIE by allowing imports of beef and beef products derived from animals of all ages deemed safe under OIE guidelines. Unwillingness of Japan to adopt these science based, international guidelines under which meat and meat products can be safely traded can be a major concern for India also.

c) Japan's requirement of product classification for new-to-market food and dietary supplement products on the basis of ingredients and food additives along with content percentages with a description of the manufacturing process is overly

burdensome and runs into the risk of competitors gaining access to this vital information.

d) Foreign firms and individuals are prevented from providing professional services in Japan by a complex network of legal, regulatory, and commercial practice barriers. Accounting and auditing services also face market access barriers in Japan.

e) Japan's plant quarantine system is restrictive. Some measures that restrict trade are not based on science. One key impediment to trade is Japan's frequent use of nationwide bans in response to quarantine issues in exporting countries, as opposed to regional bans, as recognized by international standards.

f) Japan's biotechnology regulatory system is complex and compliance is costly. Japan's independent Food Safety Commission conducts risk assessments in support of product evaluations by the Ministry of Health, Labor and Welfare and Ministry of Agriculture, Forestry and Fisheries. The regulatory burden is such that only large multinational companies or governments can typically afford to complete the approval process, even for bioengineered traits that are relatively well known. There is also the real possibility of trade disruptions from an unapproved bioengineered variety showing up in trace amounts in imported grain or processed foods. To avoid disrupting trade, the US Government is encouraging Japan's regulatory agencies to take a risk based, case-by-case approach when dealing with unapproved varieties.

5. Brazil

Following concerns on market access barriers have been sourced from the Department of Commerce, Government of India.

5.1. SPS-TBT Issues

Cumbersome process of registration of pharma products

The procedure of registration and issue of product license by Brazilian Agency for Indian pharmaceutical companies for exports of their products to Brazil is cumbersome and time consuming. As a result, Indian pharmaceutical companies are facing difficulty in accessing Brazilian market. Several firms like Zydus, Unique pharma, Cipla operate in Brazil. Pharma companies operating in Brazil require registration with national Health Surveillance Agency (ANVISA). Indian companies also require a product license from ANVISA to export their products to Brazil. ANVISA annually inspects the manufacturing plants and renews the license of the importers. The inspection procedure turns out to be complicated with delay in inspection by the ANVISA team and the consequent delay in renewal of the license, pending which the goods of the company cannot enter Brazil.

5.2. Issues in Services

Delay in issuance of business visa

Indian businessmen and employees face the problem of delay in issuance of visa by the Brazilian Embassy in New Delhi. The pharma and IT companies which have operations in Brazil have reported delay in issuance of work visas for their Indian based operations in Brazil for their employees to be stationed in Brazil.

5.4. Other Barriers

Detainment of glass consignment of Indian company

Due to modification in Brazilian import regulations with effect from July 29 2008, prior licensing has been made mandatory for exports of glass containers to Brazil. This has led to additional transaction costs for exporters.

Antidumping duties on Indian goods

Definitive antidumping duties have been imposed by Brazil on import of Indian PET Films, Jute yarn, Stainless steel bars, Horseshoe nail, Jute bags and Bicycle tyres. An antidumping investigation against export of viscose yarn from India is under process. Besides, Brazil has initiated investigation in December 2008 to extend the antidumping duties imposed on imports of new rubber tyres for bicycles from India. Problems are faced by Indian importers in answering the questionnaire circulated by DECOM (the concerned Brazilian agency) for antidumping and countervailing investigations. DECOM circulates the questionnaire only in Portuguese language and it has to be answered in the same language. The deadline for answering is not extended on request of the Indian Embassy and the DECOM insists that individual importer should make request for the extension of deadline.

USTR on Market Access Barriers in Brazil

The US has raised concern over the issue of onerous and burdensome documentation requirements, which are required before certain types of goods can enter Brazil - even on a temporary basis. For example, the Ministry of Health's regulatory agency, ANVISA (Agência Nacional de Vigilância Sanitária / National Health Surveillance Agency Brazil) must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes about 3 months to 6 months for new versions of existing products, but can take over 6 months to register products new to the market. Registration of pharmaceutical products can take over 1 year, since ANVISA requires that a full battery

of clinical testing be performed in Brazil, regardless of whether or not the drug already has FDA approval.

US has also alleged that Brazil maintains import restrictions based on SPS measures which are not science based. Due to concerns about Bovine Spongiform Encephalopathy (BSE), Brazil restricts US beef imports despite OIE guidelines which specify that trade in all US beef and beef products, with the exception of certain specified risk materials, is safe. Brazil continues to prohibit the import of poultry and poultry products from the United States. Scientific justifications for these restrictions have not been provided.

6. Thailand

Indian concerns on market access barriers were raised during its TPR held in 2007[33].

6.1. Other Barriers

Transparency Issue

The Ministry of Finance notifications are published and are available on line only in Thai language. The new tariff is still not available in English and not submitted to the WTO Secretariat.

Thailand replied that since 1 January 2007, it has adopted the 8-digit ASEAN Harmonized Tariff Nomenclature (AHTN) 2007 for all trading partners. However, some technical errors occurred when the transition from HS 2002 to the AHTN 2007 has been made. As a result, the Ministry of Finance issued the second set of Notifications to correct such technical errors on 18 September 2007. Currently, Thailand is in the process of translating the entire tariff schedule to English and will make a great effort to submit the new tariff schedule to the WTO Secretariat as soon as possible. Nevertheless, the new tariff rates under the AHTN 2007 for specific imported products, in English, can be found online on the website of the Customs Department (http://igtf.customs.go.th/igtf/en/main_frame.jsp)

Restrictions on the import of used motor engines

India is concerned regarding quantitative import restrictions in the form of non-automatic licensing remaining in place on certain used diesel engines (331-1,100 cc). There are also concerns that imports of used motorcycle engines (except for those of 50 cc) and imports of used passenger cars are prohibited.

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[33] The full text of questions and answers are contained in document WT/TPR/M/191/Add.1.

Thailand clarified as follows:

(i) Used diesel engines are generally not under import licensing measures except used diesel engine with a horizontal cylinder capacity exceeding 331 cc but not exceeding 1,100 cc. The rationale for its imposition is to protect environment.

(ii) Used motorcycle engines with a cylinder capacity not exceeding 50 cc and having external diameter of wheel rim not exceeding 10 inches are banned for import. The objectives of the prohibition are to protect environment and public safety.

(iii) Used passenger cars are not prohibited, but subject to import licensing measures. The objective of the imposition is to protect environment.

USTR on Market Access Barrier in Thailand

USTR NTE report on Thailand mentions that import duties and taxes on vehicles in Thailand are among the highest in ASEAN. In response to the 1997 financial crisis, the Thai government raised tariffs on passenger cars and sports utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively. The report points out that the excise taxes on automobiles in Thailand are so structured so as to promote domestically produced vehicles. These taxes are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004 Thailand revised its excise tax structure, but it remains complex and heavily favors domestically manufactured vehicles. Taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, pickups account for more than 50 percent of total vehicle sales in Thailand. This issue can also have a bearing on Indian exports. India may need to further examine this issue.

Some of the issues brought out in the report which may be of concern to India are:

a) High duties on agriculture and food products in addition to arbitrary management of import licenses and SPS measures remain the primary impediments to exports of high value fresh and processed foods.

b) Import licenses are required for at least 26 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, certain consumer products, and agricultural items.

c) The Thai government requires import license fees for meat products of approximately $142 per ton on beef and pork, $286 per ton for poultry, and $142 per ton on offal. US industry has expressed concern that these fees appear to be higher than necessary to cover the costs of import administration.

d) Lack of transparency of the Thai customs regime and the significant discretionary authority provided to Thai officials remain serious concern. Despite Thailand's

commitment to fully implement the WTO Customs Valuation Agreement, the Thai Customs Director General retains the authority to arbitrarily increase the customs value of imports.

7. Canada

India raised certain issues during TPR of Canada in 2007[34].

7.1. Labelling

Spice Exports

Indian exporters of spices to Canada have reported that the labeling requirements in respect of spices are not standardized and therefore it creates complications at the time of import clearance and sale in the domestic market.

Canada replied that its labelling requirements for food products including spices are extensive. There are regulations prescribing the common name that must be used, the manner and format how ingredients must be declared and many other mandatory labelling information. Chapter 2 from the Guide to Food Labelling & Advertising is a plain English guide on the labelling requirements for food products, which includes spices. It can be found at the following web sites:

http://www.inspection.gc.ca/english/fssa/labeti/guide/ch2e.shtml
http://www.inspection.gc.ca/english/fssa/labeti/guide/ch2ae.shtml
http://www.inspection.gc.ca/english/fssa/labeti/guide/ch2-1e.shtml

Currently the Food and Drug Regulations have prescribed standards of composition for 39 spices. However, just because a spice does not have a prescribed standard of composition, it does not mean it cannot be sold as a spice. The Food and Drug Regulations defines the common name to be the name prescribed by the Food and Drug Regulations or other federal regulations and if it is not prescribed by regulations, it is the name by which the product is generally known. Spices with no prescribed standardized common name in Canada would be required to use the common name by which it is generally known as in the Canadian marketplace. If it is not a commonly used spice in Canada, the English and French common names used for the spice in the international market can be considered.

[34] The full text of the questions and answers is contained in WT/TPR/M/179/Add.1.

7.2. Issues in Services

Visas

Indian trade delegates participating at trade fairs in Canada are frequently denied visas in an ad hoc manner. This causes financial loss to them as they have paid up the registration charges, rentals for stalls and it also has an opportunity cost.

Canada responded that in the GATS context, Canada has significant Uruguay Round (UR) commitments and strong offer on mode 4 which covers Business Visitors, Intra-corporate transferees, Contract Service Suppliers and Independent Professionals. Canada's UR commitments have eliminated the need for a labour market test for WTO Members qualifying as a professional – one of the major hurdles business persons face when entering a country to work on a temporary basis. Furthermore, their commitments on Business Visitors cover business persons entering Canada to attend trade fairs, participate in business meetings or similar activities without the requirement of a labour market test or a work permit. As per the Annex to the GATS on the Movement of Natural Persons, paragraph 4, members may apply measures to regulate the entry of natural persons into its territory, including the requirement for a visa. However, Canada is always seeking ways to improve the administration of their immigration framework and have taken note of India's concerns.

Canada further clarified that approval of a temporary resident visa application cannot be guaranteed as each application is considered on its own merit. Visa officers look at many factors in assessing whether an applicant is a genuine temporary resident. They consider the purpose of the visit and the applicant's ties to his or her home country, including the family and economic situation. Foreign nationals wishing to come to Canada as temporary residents must show that they will respect the conditions that apply to temporary residents. One of these conditions is that they will leave voluntarily at the end of the visit.

Canada also stated that it does not differentiate between business visitors and persons visiting Canada for other purposes, such as visiting family or tourism. All visitors are assessed against the same criteria, and the purpose of the visit is only one element that may be considered.

7.3. Other Barriers

Not Honoring Contractual Obligations

The small scale exporters of India have informed that they are facing payment problems as importers in Canada are not honouring contractual obligations. As the scale of such business operations is small, they find it difficult to resort to costly and time consuming legal recourse. This constitutes a type of NTB.

FDI[35]

The Investment Canada Act gives wide discretionary power to the Minister to approve Foreign Direct Investment. Any foreign investment is cleared only after the Minister is satisfied that such investment will provide "net benefit" to Canada. Moreover, the criteria for 'net benefit' are loosely defined.

National Treatment Limitations[36]

- The acquisition of control of a Canadian business by a non Canadian is subject to approval for all direct acquisitions of Canadian businesses with assets not less than a monetary amount established and published in January of each year in the Canada Gazette. The monetary amount for 2005 is $C153 223 250 million to be adjusted thereafter annually for changes in nominal GDP.
- There is a National Treatment limitation for all subsidies within the public sector, subsidies for R&D, subsidies for income security or insurance, social security or insurance, social welfare, public education, training, health and child care.
- There is a National Treatment limitation on all taxation measures
- There is a National Treatment limitation for all measures for the welfare of aborigines.
- The acquisition of control of a Canadian business, or establishment of a new business related to Canada's cultural heritage or national identity, by a non Canadian is subject to approval.
- Limitations maintained by individual states are essentially geographical restrictions, which increase the business cost of foreign services suppliers. While some restrictions have been removed in some states, there are many that still continue and even new restrictions have been introduced. For example, a residency requirement has been introduced in Nova Scotia for Auditing Services.
- In Tourism Services, there is a requirement of citizenship or permanent residency for license to serve liquor.
- In Telecommunication Services, foreign investment in facilities-based telecommunications service suppliers is permitted up to a cumulative total of 46.7% of voting shares, based on 20% direct investment and 33-1/3% indirect investment. Such suppliers must be controlled by Canadians. In addition, services regulated under the Broadcasting Act and measures affecting such services are excluded. Further, telecommunications services supplied for the transmission of services regulated under the Broadcasting Act where such services are intended for direct reception by the public

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35 This information has been obtained from Department of Commerce, Government of India sources.

36 This information has been obtained from Department of Commerce, Government of India sources.

are also excluded. The Act imposes a Canadian owned and controlled system of broadcasting, and includes provisions regarding Canadian content in programming and production. It encourages the development of Canadian expression, and the use of Canadian talent and creative resources. There is also a specific emphasis on reflecting Canada's cultural diversity. Finally, the offer limits competition in inter-exchange voice services and local wireline telephone services. In short, the footnote and the restrictions take away much of the commercial value of the commitment and leaves a lot of discretion with Canadian authorities.

USTR on Market Access Barriers in Canada

The USTR NTE report (2008) raises a few issues which may be of concern for India also. The issues are:

1) Canada prohibits import of fresh or processed fruits and vegetables in packages exceeding certain standard package sizes unless the government of Canada grants a Ministerial exemption. To obtain an exemption, Canadian importers must demonstrate that there is an insufficient supply of a product in the domestic market.

2) Canada has specific stipulations on container sizes on a wide range of processed fruit and vegetable products. The requirement to sell in container sizes that exist only in Canada makes it more costly for producers to export their products to Canada. For example Canada's Processed Products Regulations (Canada Agricultural Products Act) require manufacturers of baby food to sell in only two standardized container sizes: 4.5 ounces (128 ml) and 7.5 ounces (213 ml).

8. Argentina

The following issues have been sourced from the Department of Commerce, Government of India.

8.1. SPS-TBT Issues

Restriction of import of Indian pharmaceuticals

Under the Argentine Presidential Decree 150 issued in the year 1992, pharmaceutical imports into Argentina are allowed freely from the following mentioned as Annexure-I countries (USA, Japan, Sweden, Switzerland, Israel, Canada, Austria, Germany, France, UK, Holland, Belgium, Denmark, Spain and Italy). There is another group called Annexure-II countries (Australia, Mexico, Brazil, Cuba, Finland, Hungary, Ireland, China, Luxemburg, Norway and New Zealand) from which imports are allowed if the plants of the companies of these countries have been approved by one of the countries included in Annexure-I. For all other countries there is a complicated procedure which makes it

virtually impossible to effect exports. Since India is not in either lists, hardly any pharmaceutical exports are made from India. Exclusion of India from the list is illogical since it exports pharmaceutical products to all the countries mentioned in the Annexure-I and that its global exports are around $5 billion. Interestingly, most Argentine pharma manufacturers import raw materials from India. The Argentine government receives 3-4 million dollars of vaccines supplied by Serum Institute of India which are bought by Pan-American Health Organization in Panama which distributes to various countries in Latin America including Argentina. Argentina is sourcing medicaments from India through various channels and hence the restrictions on import of pharmaceutical products from India need to be removed.

8.2. Issues in Services

Restriction on issue of business visas to Indian business visitors

The process of obtaining Argentine visa by Indian businessmen is cumbersome and complicated. Embassy of Argentina insists that every business visa applicant should be accompanied with original invitation signed by Argentine company which should be attested by a notary public in Argentina. The Embassy asks for the invitation from the CEOs of the Indian companies who have invested in Argentina.

USTR on Market Access Barriers in Argentina

The USTR NTE Report (2008) on Argentina has raised the issue of Government of Argentina not lifting the ban on the import of meat products from US, despite the certification of OIE. Government of Argentina banned import of all beef and beef products from animals of all ages from the United States since December 2003 when BSE was discovered in Washington State. In May 2007, the OIE classified the US as controlled risk for BSE. Argentina has not made any changes to bring its import requirements for beef and beef products from the United States since December 2003.

9. New Zealand

India raised certain concerns during the TPR of New Zealand in 2003[37].

9.1. Tariff Issues

Although the applied MFN tariff rate in New Zealand is 4.1%, considerably high tariff rate is applicable to textiles, clothing and leather products, which are sectors of crucial export interest to many developing countries. Tariff peaks and escalation are also very evident in these three sectors.

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[37] The full text of the questions and answers are available in the document WT/TPR/M/115/Add.1.

New Zealand replied that the current tariff review covers all industries, including the textiles, clothing and leather industries. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles, clothing and footwear (TCF) sector. New Zealand would be pleased if the maximum ad valorem tariff it faced in its export markets was just 19%. The review will also consider the most appropriate tariff structure, including the structure for the textiles sector and the application of alternative specific tariffs.

Clothing products are subject to 'alternative specific tariff rates' i.e importers pay the higher of the due amount under the ad-valorem duty rate and under the specific duty rate. The use of such a system not only unduly penalizes low value exports but also introduces a lot of complexity and unpredictability to the system.

New Zealand responded that the current tariff review covers all industries, including the textiles sector. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles sector. The review will also consider the most appropriate tariff structure, including the structure for the textiles sector and the application of alternative specific tariffs.

Tariff Structure in Clothing Sector

As per the existing taxation system prevalent in the clothing sector, in cases where importers feel that the specific rate of duty they are required to pay is unreasonably high, they may apply for 'concession'. In case concession is granted, the tariff could be paid at the ad-valorem component of the alternative specific duty. India requested for greater clarity on the parameters, which guide the authorities in granting such tariff concessions and the normal time frame within which authorities decide about the grant of tariff concessions.

New Zealand replied that applications for tariff concessions are considered for goods that are subject to alternative specific rates of duty where the goods are of such low value that the resultant duty payable is manifestly excessive. The goods that are considered under this concession category are parts of apparel for use as manufacturing inputs or disposable articles of apparel classified in the plastics / textile apparel chapters of the Tariff. In all cases the goods must be identifiable as having an intrinsically low value for which the specific rate of duty was not designed. Each application is considered on merit but applications are not accepted under this policy in respect of low value "wardrobe" type garments or complete articles which are not manufacturing inputs and which are designed [intended] to be worn more than once.

New Zealand further clarified that if a concession is approved under the above policy, the concessionary rate of duty is the alternative ad valorem rate applicable to the tariff item under which the article is classified, i.e. these concessions only result in the removal of the specific tariff.

New Zealand also informed that the normal time frame for the receipt of a tariff concession application through to the final decision is about 5 weeks. This includes a three week public notification period of the concession application during which local producers may notify the Ministry of Economic Development of their objection to the granting of a concession. Concessions are effective from the first day of the month in which the Ministry of Economic Development receives the application. When a concession is issued after a product is imported, the importer may apply for a refund of the tariff duty paid. Similarly, should an importer omit to claim a pre-existing concession on import, a refund of duty based on that concession might be applied for.

New Zealand also informed that the New Zealand Customs Service provides a binding ruling system that covers both tariff classification and concession applicability against imported goods. Opinions issued under this arrangement are designed to provide the importer with certainty in the tariff treatment that their goods encounter on importation.

They further informed that the tariff concession system is continually being reviewed. Transparency and predictability is achieved through a procedure of notifying all applications and decisions in the New Zealand Gazette as well as on the Ministry's website:http://www.med.govt.nz/buslt/tariffs/reference_99/index.html. It is also achieved by having the Tariff Concession Policy and Procedures Manual freely available to all.

USTR on Market Access Barriers in New Zealand

Two of the issues raised by the NTE Report (2008) of USTR on New Zealand may be of relevance for India.

1) Mandatory labeling requirements for genetically modified foods took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived from genetic modification must be so labeled. Meeting New Zealand's food labeling regulations for genetically modified foods can be extremely burdensome for agricultural exporters who deal primarily in processed food.
2) New Zealand maintains a regimen of SPS controls for virtually all imported agricultural products.

10. South Africa

Indian concerns were raised during TPR in 2003[38].

10.1 Intellectual Property Rights

India expressed concern that export of recorded video cassettes, recorded CDs etc. get affected because of piracy and violation of intellectual property rights / copy rights that take place in the field of recorded video cassettes and recorded CDs in South Africa.

South Africa responded that they introduced the Counterfeit Goods Act in 1997 and the law is rigorously enforced through co-operation with the private sector, South African Revenue Service and South African Police. South Africa is continuously exploring means to enhance its enforcement capacity with regard to intellectual property rights.

11. Armenia[39]

11.1. SPS-TBT Issues

Pharmaceutical Products

Certain import restrictions have been imposed for health, security and environmental reasons. Recently some of the pharmaceutical products and medicines have been subjected to import and export permissions, issued by the Ministry of Health of the Republic of Armenia.

12. Russia[40]

12.1. SPS-TBT Issues

Meat Products

Russian standards for Bovine meat are more stringent than the OIE Terrestrial Animal Health Code. Conformity Certificates issued by EIC are not recognized and Certification with respect to swine fever and FMD are insisted upon for poultry exports which are not relevant. All this adds to the transaction cost.

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38 The full text of the questions and answers is contained in the document WT / TPR / M / 114 / Add.1.

39 The information has been sourced from Department of Commerce, Government of India sources.

40 The information has been sourced from Department of Commerce, Government of India sources.

Additional standards and certification requirements

Phytosanitary norms are particularly restrictive. In addition to phytosanitary certificate, quality certification of agricultural products is a requirement

Pharmaceutical Products

There are cumbersome testing and certification procedures of pharmaceutical products (technical varieties)

12.2. Other Barriers

Physical restrictions on import of agricultural goods

Russia has permitted import of agricultural goods only through specified ports of Leningrad Region, Kaliningrad Region, Vladivostok and Novorossiysk on the plea that only the specified ports have the requisite facilities for conducting examination for the presence of quarantine pests

USTR on Market Access Barriers in Russia

The NTE Report (2008) of USTR on Russia mentions that the import tariffs on automobiles in Russia have presented obstacles for the export. The current import duty on new passenger vehicles is 25%, which, when combined with the excise tax based on engine displacement and the VAT, increases the price of larger US passenger cars and sport utility vehicles by 70%. Similarly, for motorcycles, Russia imposes a 20% special duty on large motorcycles, plus an additional 18% VAT, increasing prices significantly on imported large motorcycles.

Importers of alcohol face a variety of discriminatory measures. As part of the Law on Production and Turnover of Alcohol, as amended in April 2006, all customs duties, excise taxes and VAT on alcohol must be paid in advance using a bank guarantee and deposit. Importers face additional burdensome and discriminatory procedures under the current regulatory regime. The United Federal Automated Information System requires importers and domestic manufacturers to print Universal Product Code data on a small paper excise stamp attached to each bottle. This system, comprising both hardware and software, is expensive to purchase, difficult to use and has failed thus far to fulfill its purpose to track alcohol from manufacture or import to the retail sales point.

13. Turkmenistan

13.1. Issues in Services

Visas

The present Turkmen visa regime is very restrictive. Prior visa clearance from State Service for Registration of Foreigners is a prerequisite and is difficult to arrange. Often, there are cases of visa refusal or non-renewal even for businessmen based there.

14. Uzbekistan

14.1. Customs Issues

Local Customs Charges

In addition to the tariff fixed by the Government on imports, local Customs Department charges 0.7% of total value of the consignment as processing fee which is not a part of tariff.

14.2. Other Barriers

Procedure for registration and certification

Procedure for registration and certification of imported items is cumbersome and takes a considerable time which indirectly discourages import.

Conversion of local currency into hard currency

There is a lengthy procedure for conversion of local currency into hard currency for repatriation as profits or service fees which takes at least 4 to 6 months and is restricted to once or twice a year.

Procurement Policy

Government procurement policy is not transparent unless the funding is from a multilateral agency.

15. Ukraine

15.1. SPS-TBT Issues

Pharmaceutical Products, Cosmetics and Toiletries, etc

The Cabinet of Ministers of Ukraine regulates import licences. Licenses are granted by the Ministry of Economic Relations, or by one of its regional branches. There is a compulsory Certification requirement for several goods imported into Ukraine. Certificates may be one of two types: (a) Certificate of Acceptance of a foreign certification issued by a Ukrainian certifying agency (DerzhStandard), (b) Conformance certificate issued by a Ukrainian agency upon certification of goods.

Certificates issued by foreign certification authorities are to be recognized in Ukraine only to the extent provided in international treaties to which Ukraine is a party. Ukrainian certifying agency DerzhStandard has adopted a national Standards ISO-9000 series for certification of production systems. Based on these standards, Ukrainian certification bodies can evaluate the quality of a production system rather than the quality of a single product. The procedure for issuing ISO Certificate requires a visit by specialists of Ukrainian standards to the importers' production facilities to inspect the system's quality. Adoption of the ISO-9000 series should facilitate the process of certifying goods as system quality certificates are issued for a three year period. According to DerzhStandard, the ISO-9000 standard certificate does not prevent the importer from certifying individual products. However, with the Certificate, only selective goods will be certified according to the procedures described above.

16. Azerbaijan[41]

16.1. Tariff Issues

Hurmat tariff and Non-transparent working of Customs

There is discrimination against imports through the instrument of officially authorized tariff called 'Hurmat'. The import of tea, coffee and marine products is restricted by the control of cartels. The processes for the grant of business licences are non-transparent and subject to 'Hurmat' payment. Although labour laws are uniform for domestic and foreign employers, these are applied discriminately on foreign firms.

[41] The information has been sourced from Department of Commerce, Government of India sources

17. Kazakhstan[42]

17.1. Issues in Services

Visa

Kazakhstan follows a restrictive policy while issuing visas to Indian businessmen as well as private sector representatives. Thus, non-issuance of business visa acts as a barrier for Indian businessmen. The issuance of visa requires sponsorship of Embassy of India, Almaty, rather than through the partner enterprise in Kazakhstan, even though the partner in these cases are the State owned companies in Kazakhstan.

18. Tajikistan[43]

18.1 SPS-TBT Issues

Pharmaceutical exports[44]

The pharmaceutical market of Tajikistan is estimated at more than $80 million. Largest suppliers of pharmaceutical products to Tajikistan are USA, Turkey, Russia, Hungary, Ukraine and Austria. Indian export of pharmaceutical products to Tajikistan in 2006-07 was only Rs 8.55 crores. The drug regulatory authorities of Tajikistan (GENSEL) is seeking documents on par with the standards of the European standards. Indian firms while complying with CIS standards for drug approvals for exporting to CIS countries, face the problem of meeting another standard for exporting to Tajikistan. Recently the Pharmaceutical Exports Promotion Council (Pharmexcil) has been nominated by the Department of Pharmaceuticals, Government of India as the coordinating agency to arrange fast track drug approvals and registration for Indian pharma exports to this CIS member.

18.2 Customs Procedures

Cumbersome procedures for transit of Trucks/cargo

There are cumbersome procedures for transit of trucks / cargo within the region particularly through borders with Uzbekistan and Afghanistan. There are regional initiatives under way to sort these out.

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42 The information has been sourced from Department of Commerce, Government of India sources

43 The information has been sourced from Department of Commerce, Government of India sources

44 This issue has been obtained from media reports.

18.3 Other Barriers

Difficulties in registration of companies

There is no single window clearance system for the investors and they need to get clearances from all the agencies concerned.

19. Moldova

19.1. SPS-TBT Issues

Licensing of certain types of activity

The law of the Republic of Moldova Nr.451-XV from 30th July 2000 regarding licensing of certain types of activity has been put into effect. The types of activity that have been licensed include those activities whose illegal practice can violate the rights, the legal interests and health of citizens, can pose problems to the environment and state security and whose legalization can be accomplished only through licensing.

Safeguard measures

In 2004, a temporary four-year exceptional tax was imposed as a safeguard measure on imports of sugar (whether made from cane or beets). Currently according to Law No.8, dated 2.5.2004, on safeguard measures, starting January 2007 until February 15, 2008, the import of sugar is subjected to a customs duty of 40% of the customs price, but not less than € 100 a ton. The period for application of safeguard measure was extended by Law nr. 289 dated 20.12.2007. It has been notified to the WTO Secretariat and entered into force on 16.2.2008.

20. Iran

20.1. SPS-TBT Issues

Plant Master File Requirement of Ministry of Health[45]

Ministry of Health, Government of Iran has imposed a new quality requirement namely plant master file requirement which includes GMP and HACCP parameters. Exporter of tea are required to be registered with Iranian health authorities after filing in designated form and paying one time registration fee of US$6000.00. Such registration fee and other cost of legislation prior to shipment is acting as a barrier towards export of tea to Iran.

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[45] Information has been obtained from Department of Commerce, Government of India

21. Ecuador

21.1. Other Barriers

Countervailing measures[46]

The Ecuadorian government under official register No 512 has established countervailing measures for imports valid for one year to certain imports that enter Ecuador including imports from those countries that have commercial agreements with Ecuador as follows.

a) Application of ad valorem tariff in addition to the national applied tariff for the following goods

   a. Plastics and articles thereof (HS 39): 35%
      Two items are included in this list, falling under HS heading 39264000 and 39269090.
   b. Electrical / electronic machinery and equipment (HS 85): 30-35%.

b) Additional charge to the national applied tariff for the following articles:

   a. Articles of apparel and clothing accessories (HS 61&62) - US$ 12 / kg. This restriction affects exports of made ups and garments but not of textiles.

c) Establishment of limit quotas (in US dollars) for the following products:

   a. Vehicles other than railway or tramway rolling-stock and parts and accessories thereof (HS 87)
   b. Plastics and articles thereof (HS 39)
   c. Machinery and mechanical appliances (HS 84)
   d. Optical, Medical, Surgical etc instruments (HS 90)
   e. Furniture, bedding etc (HS 94)
   f. Toys, games and sports requisites (HS 95)
   g. Miscellaneous manufactured articles (HS 96)

22. Australia

Some sources indicate that Australian government maintains a regime for the application of SPS measures that effectively bans or severely restricts imports of many agricultural products.

23. Malaysia

The NTB Report (2008) of USTR has raised following concerns which may be of relevance for India as well.

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[46] Information has been obtained from Department of Commerce, Government of India

1) Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and nontariff trade barriers. Malaysian government policies also distinguish between national cars, *i.e.*, domestic producers Proton and Perodua, and non-national cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. Significant barriers, including highway bans, also exist to the importation, sale, and usage of large motorcycles. The Malaysian government has slowly started to dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement. In March 2006, the Malaysian government issued a new National Auto Policy that paves the way for further sectoral liberalization. Nonetheless, certain government policies continue to block trade in the automotive and motorcycle sectors. The Ministry of International Trade and Industry oversees a system of approved permits (AP) that allows the holder to import cars and motorcycles and distribute them locally. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector.

2) All meat, processed meat products, poultry (except turkey), eggs, and egg products must receive *Halal* certification from an approved Islamic Center. Slaughterhouses, meat processors, and egg processors must also be inspected and approved by the Department of Islamic Development (JAKIM) for *Halal* beef, lamb, poultry, and egg exports. In September 2007, JAKIM announced that all meat and poultry will need to originate from dedicated *Halal* slaughterhouses, requiring them to provide fulltime *Halal* slaughtering and processing operations. This requirement, if implemented, would render export of meat products to Malaysia difficult.

3) Distribution Services, including Direct Selling: Malaysia's requirements for the licensing and operation of direct selling companies include a provision that a locally incorporated direct selling company must allow for 30% *bumiputera* equity. The Ministry of Domestic Trade and Consumer Affairs also recommends local content targets. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

4) Engineering Services: Foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. The license is only valid for the duration of a specific project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job.

5) Accounting and Taxation Services: Foreign accounting firms may provide accounting and taxation services in Malaysia only through affiliates.

6) Banking: Foreign banking institutions are limited to an equity stake in investment banks of 49%. Currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30%.

24. Republic of Korea

Some sources indicate that Korea maintains certain standards, technical regulations, and conformity assessment procedures that are burdensome and appear to have a disproportionate effect on imports.

ANNEXURE I

Table 1: Exports from India in 2007-08

Sr. No	Country	Exports (US$ Mill.)
1	European Union	32878
2	USA	20723
3	China	10834
4	Japan	3856
5	Korea Republic (South)	2853
6	South Africa	2659
7	Malaysia	2569
8	Brazil	2518
9	Iran	1950
10	Thailand	1809
11	Canada	1266
12	Australia	1151
13	Russia	940
14	Ukraine	399
15	Argentina	290
16	New Zealand	159
17	Kazakhstan	112
18	Ecuador	55
19	Uzbekistan	40
20	Turkmenistan	36
21	Azerbaijan	26
22	Armenia	20
23	Tajikistan	12
24	Moldova	7
25	Total (1-24)	87161
26	Exports to World	162988
	Share of 24 countries in Total Exports (25/26)*100	53%

Source: Computed from India Trades data base.

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