

**FIFTH TRIENNIAL REVIEW OF THE AGREEMENT  
ON TECHNICAL BARRIERS TO TRADE: INDIAN PROPOSAL**

Communication from India

The following communication, dated 22 June 2009, is being circulated at the request of the delegation of India.

**I. PRIVATE STANDARDS**

1. Article 4.1 of the TBT Agreement requires that WTO Members ensure compliance of non-governmental standardising bodies with the TBT Code of Good Practice. However, the *inclusive definition* of the term "Non Governmental Body" contained in Annex 1 of the TBT Agreement, does not clarify whether it includes private sector, commercial bodies who make private standards with commercial interests in mind.

2. This is important as several such bodies are bringing in a range of private standards that work towards curbing the effective access of developing countries to the markets of certain developed countries where such bodies exist. This is violative of the spirit of the TBT Agreement and the provisions of GATT Article XI.

3. Hence, the intervention of the TBT Committee is sought to discuss the issue in detail and come up with necessary clarification.

**II. CODE OF GOOD PRACTICE**

4. The TBT Code of Good Practice under Article 4 applies to non-governmental standardizing bodies. This ensures that the standardising body has a Code of Good Practice to follow when it comes to making 'standards'. However, conformity assessment procedures go hand in hand with standards and there is no corresponding Code of Good Practice to govern framing of 'testing' and 'certification' requirements. The non tariff barriers that the developing countries are often grappling with are in the form of testing and certification requirements. Hence, there is need to frame a comprehensive Code of Good Practice to apply to non-governmental conformity assessment requirements. The TBT Committee may like to come up with relevant guidelines in this regard.

**III. INTENTION OF INTERNATIONAL ORGANISATION**

5. Standards/ guides/ recommendations devised by international organisations carry the status of an 'international standard/ guide/ recommendation' under Article 2.5 of the TBT Agreement and carry a rebuttable presumption that it does not create an unnecessary barrier to trade. However, what would be the status of Standards/ guides/ recommendations framed by an international organisation if the

organisation conveys its clear intent that *for purposes of the Marrakesh Agreement Establishing the WTO, the standard/ guide/ recommendation is not intended to be interpreted as an "international standard", "guideline" or "recommendation"*. The Committee should examine the legal implications of the such conditions set by the international standardizing bodies as they have significant implications on global trade flows.

#### **IV. DEFINITION OF "INTERNATIONAL STANDARD"**

6. Definition of the term relevant "International Standard" as used in Article 2.5 and other provisions of the TBT Agreement is currently not included in Annex 1 of the TBT Agreement. No illustrative list of standardizing bodies is given, unlike Article 12.3 of the SPS Agreement which names international organisations such as OIE, Codex, IPPC, etc. India suggests coming up with a definition similar to that in para 3 of Annex A of the SPS Agreement. This will help developing countries to prioritize their participation in international standardizing bodies since developing countries cannot participate in standard-setting activities of all international standards bodies because resource constraints.

#### **V. USE OF INTERNATIONAL STANDARDS**

7. India believes that the multiplicity of standards/ guides/ recommendations as well as the product and process technical regulations and conformity assessment procedures pose a serious barrier to international trade. It has a particularly deleterious impact on developing countries' exports. To fully understand the impact of this diversity and multiplicity of standards on developing country exporters, it is proposed that the Secretariat may conduct a factual study and ascertain the impact of the multiplicity of international standards/ technical regulations and conformity assessment procedures on trade flows of developing countries in some identified sectors of developing country export interest. The study may also estimate the additional cost borne by developing country exporters in complying with these requirements. The Members may thereafter consider the findings and develop ways to resolve the problems so identified.

#### **VI. USE OF MRAS AND EQUIVALENCE AGREEMENTS**

8. The Secretariat may conduct a factual study of the MRAs and Equivalence agreements and evaluate their success in terms of enhanced trade flows. The study may highlight the features of successful MRAs and Equivalence Agreements. The Members may thereafter like to consider framing a model MRA based on the findings of the study.

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