

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

Revised Proposal by India¹

The following communication, dated 17 July 2009, is being circulated at the request of the delegation of India.

I. PRIVATE STANDARDS

1. WTO Members have in previous meetings of the Committee, expressed concern about the proliferation of private standards, such as voluntary eco-labelling schemes and pointed out that such standards could result in the creation of unnecessary barriers to trade. The issue was also discussed in the Workshop on the Role of International Standards in Economic Development organized by the WTO Secretariat in March 2009 where it was pointed out that the issue of private standards was being addressed by the WTO Sanitary and Phytosanitary Measures (SPS) Committee.

2. India is of the view that Article 4.1 of the TBT Agreement requires that WTO Members take reasonable measures to ensure compliance of non-governmental standardising bodies with the TBT Code of Good Practice. The TBT Code of Good Practice is applicable to all standardizing bodies located within the territories of WTO Members, unlike the ISO/IEC Guide 59 "Code of Good Practice for Standardization" which is limited only to consensus-making standardizing bodies. Further, the definition of the term "Non Governmental Body" contained in paragraph 8 of Annex 1 of the TBT Agreement is an inclusive definition which includes standards formulated by private sector/ non-governmental standardizing bodies.

3. India suggests that the TBT Committee discuss the issues surrounding the adverse trade implications of private standards, such as voluntary eco-labelling schemes and clarify the scope and applicability of provisions of the TBT Agreement, especially the TBT Code of Good Practice, *vis-à-vis* such private standards. India also notes the ongoing work of the SPS Committee and other international organizations to address the issue of private standards and suggests that the Secretariat organize a workshop or a special session for Members to discuss specifically how private standards such as private eco-labelling schemes can be regulated by the TBT Agreement.

4. Further, in order to assess the impact of private standards, the TBT Committee may seek inputs, from interested Members, based on a model questionnaire, as to how such private standards impact some key products of export interest to WTO Members.

¹ Replacing earlier Indian proposals G/TBT/W/314 dated 10 June 2009 and G/TBT/W/318 dated 23 June 2009

II. USE OF INTERNATIONAL STANDARDS

5. The multiplicity of international standards/ guides/ recommendations and conformity assessment procedures could constitute a serious barrier to international trade, particularly for developing countries. India suggests that the WTO Secretariat consider developing a mechanism to track the development of international standards and conformity assessment procedures across various international standardizing bodies and to monitor their use. More specifically, India suggests that:

- (a) The WTO Secretariat work along with International Standardizing Bodies such as ISO and IEC to create and maintain an online database of existing and proposed International Standards, along with a description and HS Code of the product that is affected by such a standard;
- (b) Although Members may not be required to notify technical regulations where such Regulations are in accordance with relevant international standards (Article 2.9), Members may discuss the possibility of providing additional information to the WTO Secretariat identifying the relevant International Standard on which their technical regulations are based, if any;
- (c) Members who choose not to use international standards may give an explanation for deviation (a revised column for the purpose may be added in the TBT notification format). Members would be required to give an explanation only when they choose to base their regulation on a risk level that requires compliance with more onerous requirements than the one on which the international standard is based;
- (d) India concurs with the proposal made by Singapore.² Members may consider using the existing TBT notification mechanism to track the use of international standards in the formulation of new Technical Regulations;
- (e) The TBT Committee may utilize the existing information exchange mechanism³ to seek information from international standardizing bodies on International Standards that they are formulating, that may have a significant implication on global trade flows and to communicate the views of WTO Members on the content of such International Standards; and
- (f) The WTO TBT Secretariat should assess reasons why the Members deviate from International Standards and conduct a Workshop with participants from international standard-setting organizations such as ISO and the IEC and representative from national standard-setting organizations, to discuss ways in which national deviations from international standards may be minimized.

III. USE OF MRAS AND EQUIVALENCE AGREEMENTS

6. India concurs with Singapore's proposal⁴ that Members should work towards developing a template for Mutual Recognition Agreements (MRAs) and voluntary guidelines on their use. This model MRA could be developed after reviewing the information exchanged between Members on this issue and Members may be invited to share their experiences, including examples of successful MRAs in order to frame a model MRA.

² G/TBT/W/312, paras. 5(a) and (b), 14(a).

³ G/TBT/5, 19 November 1997.

⁴ G/TBT/W/312, para. 14.

IV. TRANSPARENCY

7. India is of the view that the transparency provisions in the TBT Agreement, including the notification requirements are of immense importance, particularly for developing countries, many of whom have no other means of tracking changes in key export markets. India suggests that the Committee consider a few modifications to its notification system:

- (a) India concurs with Jordan's proposal⁵ that the Secretariat provide a platform to enable national notifying authorities to post comments received from other Members and responses to them. India supports Mexico's proposal⁶ that all comments on notifications as well as responses to such comments be hosted on a website;
- (b) The non-availability of the full text of the TBT Notifications and the laws referred to in such notifications in English and other WTO languages is a major hindrance in the examination of TBT notifications, particularly for developing countries who lack the resources to translate the notifications and furnish effective comments within the prescribed time period. While India notes the existence of the unofficial translations (Notification Format)⁷ informing Members of the availability of unofficial translations of TBT notifications, it suggests that the Committee establish a formal mechanism to make translations of the text of the laws available in English and other WTO languages to Members. The Committee may also discuss the extension of the comment period to 90 days in those instances where Members do not make translations of the full text available in English;
- (c) India concurs with the proposal made by the European Communities⁸ that where translations are not made available, the Committee consider requiring Members to provide a comprehensive description of the law being notified, which describes the technical regulation or conformity assessment procedure comprehensively.

V. SPECIFIC TRADE CONCERNS

8. We agree with Canada (JOB(09)/50) that specific trade concerns have to be expeditiously addressed for the WTO to be meaningful. However, since developing countries face a resource and capacity constraint, India would like to clarify that meeting the time-lines suggested by Canada may not work out in practice.

9. Regarding the resolution of Specific Trade Concerns, India also calls attention to the fact that the TBT related NTBs have been notified by several members in the NAMA negotiations. Members are, in the NAMA negotiations, considering procedures that will transparently discuss and possibly resolve the specific trade concerns, including those relating to TBT. The TBT Committee should keep itself updated on these negotiations.

10. India also proposes that the Committee consider circulating a bi-annual, consolidated summary of all specific trade concerns raised at meetings, including responses by Members to the specific trade concerns raised against them and the resolution of issues, if any. This will form a useful database for Members to track concerns of importance to them.

⁵ G/TBT/W/311, para.2.

⁶ G/TBT/W/313, para.11(f).

⁷ G/TBT/1/Rev.9, page 45

⁸ G/TBT/W/309, paras. 14-17.