

## NON-TARIFF BARRIERS AFFECTING INDIA'S EXPORTS<sup>1</sup>

Rajesh Mehta<sup>2,3</sup>

### 1. Introduction

Countries use many mechanisms to restrict imports. Till the beginning of 1970s, tariffs (custom duties) were the principle mode of protectionism. But with successive rounds of GATT negotiations, there was a large drop in the average tariff levels of manufactured goods in the developed country markets. When tariffs paled into insignificance, these countries resorted to a form of administered protection known as Non-Tariff Measures (NTM) - Quantitative restrictions, tariff quota, voluntary export restraints, orderly marketing arrangements, export subsidy, export credit subsidy, government procurement, import licensing, antidumping/countervailing duties, technical barriers to trade, to name a few. It was a return to protectionism harder and more expensive than in the 1950's and 1960's. In the 70s and 80s NTMs spread from textiles and clothing to steel, cars, shoes, etc. Although measurement problems are formidable, it is estimated that in 1986, 16 percent of imports of industrial countries were subject to "hard core" NTMs: Quotas, non-automatic licensing and variable levies. If one broadens the definition of NTMs to include state monopolies, import surveillance (including automatic license) countervailing duties and antidumping provision, the results are more compelling. Between 1995 and 2000, according to reliable information<sup>5</sup>, WTO members reported 1441 anti-dumping investigations.

In the Uruguay Round, the approach for dealing with NTMs was to bring existing barriers into the realm of multilateral negotiations, strengthen rules governing their use, develop surveillance mechanisms to enforce compliance, and offer improved dispute settlement procedures – the aim was to minimize trade distorting and trade restricting effect of NTMs. Some notable success was also achieved in reaching substantive agreements limiting, clarifying or disciplining the system that members may use – Article III.8.b allowing subsidies to domestic producers; Article III.9 allowing members to have internal price control measures; Article VI on Anti-dumping and countervailing duties; Article VII on methods of customs valuation; the Agreement on Agriculture converting all quantitative restrictions into tariffs; the TBT Agreement defining the rights and obligations of members with respect to development and application of technical regulations and the ways in which products are to be assessed to determine whether they meet the specified technical standards; and similarly, the Sanitary and Phytosanitary Measures (SPS) with respect to human, animal and plant life. Nevertheless, most would concede that many of the rules fall short of effectively controlling the use of NTMs. More frequently than not, there are instances of flagrant violation of these rules or are applied unreasonably. Some of these such as anti-dumping are used sometimes to foster a climate of uncertainty for foreign suppliers, and or a method of harassment designed to bring about changes in foreign trading practices and policies<sup>6</sup>. In the same way, domestic policies and regulations may also

---

<sup>1</sup> Earlier versions of this paper were presented at technical workshops of ADB Policy Networking Project in October 2004 and Jan. 2005. Author is thankful to the participants of the seminars, particularly Anwarul Hoda, K.L. Krishna and Arvind Virmani, for useful comments and suggestions. Detail comments provided by Hoda were very useful in revising this paper. I am also thankful to Saikat Sinha Roy for his help in preparation of this paper. Prof. R.G. Nambiar and Dr A. Robert have also provided inputs in the write-up of this paper and I am extremely grateful to them. However, I am responsible for any errors or omissions.

<sup>2</sup> Senior Fellow, Research and Information System for Developing Countries (RIS), New Delhi. Email: rajeshmehta@ris.org.in

<sup>3</sup> This report was prepared by consultants for the Asian Development Bank. The views expressed in this report are the views of the authors and do not necessarily reflect the views or policies of the Asian Development Bank (ADB), or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequence of their use.

<sup>5</sup> Prusa, T.J. (2003), "The Growing Problem of Anti-Dumping Protection and What It Means for the Asia-Pacific Region", mimeo.

<sup>6</sup> See, Datta, S. (2003), "Bringing Objectivity to Anti-Dumping Investigations – The India Model", (mimeo), *ALG India*, [www.alg-india.com](http://www.alg-india.com); and Datta, S. (2004), "Discussion paper on the Use of 'Facts Available' in Anti-dumping investigations", paper presented at the national seminar "Negotiations on WTO Rules", organized by Government of India, Ministry of Commerce, New Delhi, Sept. 21-22, 2004.

result in a variety of impediments to trade, depending upon their intent and behavioural responses that are induced.

The ascend of NTMs holds special significance to developing countries like India. These countries have been encountering difficulties in accessing developed country markets because of restrictive standards, burdensome regulations, and expensive compliance costs. Therefore, it is an opportune time to reflect on the current situation regarding NTMs, to assess the extent of the problem, and to suggest policies for its ramification. This is the main objective behind this paper. Specially, the paper seeks to

- (a) Identify and trace the type structure of NTBs affecting India's exports
- (b) Examine these commodity-wise/category-wise with the main focus on developed country markets.
- (c) Suggest or recommend policy options.

After an initial section on definitional and data problems, the organization of paper is essentially chronological: a section on type and nature of barriers other than tariffs faced by Indian business abroad especially in developed country markets; a section dealing with a few case studies primarily to highlight the problems created by these barriers to Indian businessmen; a section on policy options and recommendations; and finally a section on how to raise the present concern over these non-tariff measures from a shouting match to a meaningful dialogue at international forums.

In this paper we could not estimate the impact of NTBs on India's export. Trade barriers (tariff and non-tariff) in destination countries have significant impact on India's exports because these measures impose additional cost on such exports. Theoretically, an estimate of impact of trade barriers on India's exports requires knowledge of the extra cost (sometimes known as 'trade cost' or 'tax equivalence')<sup>7</sup>. It also depends upon market conditions in India, destination market, and the rest of the world. An estimate of impact of tariffs (in destination countries) on India's exports<sup>8</sup> can be derived by using supply and demand price elasticities in India and destination country, if sufficient data exists. It is very difficult, almost impossible, to estimate the impact of non-tariff measures on India's exports<sup>9</sup>, since there is (i) no reliable estimate of extra cost or 'tax equivalence' due to these measures, and (ii) no systematic information is available on NTBs faced by India's exports. NTBs raise export price almost in a manner as a tariff does. Due to non-availability of (i) these price differences and (ii) supply and demand conditions, it is not feasible to estimate the impact of these barriers on India's exports.

## 2. Definitions and Quantification of Incidence of NTBs

### 2.1 Definition of Problem

What we should mean by Non-Tariff Measures (NTMs) or Non-Tariff Barriers (NTBs) is not entirely self-evident. Baldwin (1970) in his seminal work defines "non-tariff distortion as any measure (public or private) that causes internationally traded goods and services, or resources devoted to the production of these goods and services, to be allocated in such a way as to reduce potential real world income"<sup>10</sup> This is a useful definition but is problematic in the context of defining "potential" real world income. Deardorf and Stern (1997) have authored the most recent work, but they use the term, non-tariff barriers (NTBs).<sup>11</sup> According to them, NTBs have the following stylized characteristics, namely reduction in quantity of imports, increase in the price of imports, change in elasticity of demand for imports and variability and uncertainty in their implementation. While the authors' analysis is mostly theoretical, they propose a classification system, which has, at its core, price (other than tariffs) and quantity border measures.

<sup>7</sup> See, Anderson, J.E. and E van Wincoop (2004), "Trade Costs", *Journal of Economic Literature*, and references quoted therein. Authors quote "A rough estimate of the tax equivalent of "representative" trade costs for industrialized countries is 170 percent. This number breaks down as follows: 21 percent transportation costs, 44 percent border-related trade barriers, and 55 percent retail and wholesale distribution costs ( $2.7=1.21*1.44*1.55$ )."

<sup>8</sup> See, among others, Vermani, A (1991), "Demand and Supply Factors in India's Trade", *Economic and Political Weekly*, Feb. 9, 1991; and Mehta, R. and P. Mathur (2004), "India's Export by Countries and Commodities: On the estimation of Forecasting Model using Panel Data", RIS – DP # 84/2004.

<sup>9</sup> Mehta, R. (2000), *QR Removal and India's import*, RIS, make an attempt to estimate the impact of QR removal on India's import using econometric model; NTM (due to QR removal) is measured by an index commonly as "coverage ratio".

<sup>10</sup> Baldwin, R (1970), *Non-Tariff Distortions in International Trade*, Brookings Institutions, Washington, D.C.

<sup>11</sup> Deardorf, A and R. Stern (1997), "Measurement of Non-Tariff Barriers", OECD Economics Department Working Paper No.179, Paris, OECD.

UNCTAD's TRAINS (Trade Analysis and Information System) classification defines over 100 different types of NTMs, and a much smaller subset called "hard core measures" that includes quantity control measures excluding tariff quotas and enterprise specific restrictions; finance measures excluding regulations concerning terms of payment; and price control measures.<sup>12</sup> However, this classification excludes many internal regulatory measures that can also discriminate against imports such as production subsidies, tax concessions, and discriminatory government procurement. Yet another problem with this classification is that it does not distinguish between NTMs that are GATT consistent and not GATT consistent.

Finally there is the WTO inventory of NTMs based on notifications collected from national sources, which in the view of notifying contracting parties constituted non-tariff measures. This inventory includes licenses, quotas, prohibition, voluntary export restraints, plus information related to custom surcharges, minimum import prices, additional taxes and charges and approval process for imports and exports. Table 1 provides a comparative picture of UNCTAD's TRAINS inventory and WTO/GATT inventory of NTMs.

In summing up, there is no single internationally agreed list of NTMs. In general, NTMs cover all measures affecting trade, other than tariffs, and hence any list of NTMs will be very long, and is probably continuously growing as governments invent new and new measures. Being non-transparent, NTMs are difficult to identify and analyse.

Since NTMs cover all measures affecting trade other than tariffs, what then are NTBs. Are the two terms synonymous? In the literature, both the terms are used interchangeably, and the distinction is quite vague. The rationale for using the term "measure" instead of "barrier" is sometimes held on the ground that in some cases policies that stimulate the volume of trade rather than retard trade such as export subsidies cannot be held as a barrier.<sup>13</sup> A barrier means prevention of something – in this case trade. Exports subsidies do not prevent trade, and hence cannot be a barrier. This interpretation will keep many internal regulatory measures out of the NTB bundle. Agricultural production subsidies, for instance, will be out of this NTB bundle. Global agriculture is riddled with national subsidies to farmers that perpetuates a widely criticised disarray in agricultural production and generates substantial trade conflicts – the large agricultural production surpluses in rich countries maintained by a heavily subsidised agriculture lowers the export opportunities of developing countries such as India. Though the GATT – Uruguay Round of negotiations began to address agricultural distortions with agreed disciplines on domestic agricultural support measures, only modest progress is achieved in reducing support and protection levels. By now, a lot has already been written examining the impact of these subsidies on developing countries like India.<sup>14</sup> Without entering too much on this debated problem, we treat in the present context all those measures/policies employed by foreign government as "barriers" when these are found to be used unreasonably or in a discriminatory way against imports from India. To illustrate: take sanitary and phytosanitary Measures (SPS) as Technical Barriers to Trade (TBT). Importing them on imports in perfectly justified so long it is meant to protect human, plant and animal life. However, certain countries have been at times laying very stringent norms much above the level warranted to meet legitimate health and safety concerns. Because of their legitimacy, these measures are hard to control.<sup>15</sup> But there is little doubt that SPS and TBT measures do restrict trade unreasonably and hence are barriers, especially in the food area. A departure from accepted international norms as standards is one way to judge whether a particular measure is a barrier or not. Through out this paper, we use the term NTBs in this latter sense.

<sup>12</sup> See Malcolm Bosworth, (1999), "Non-Tariff Measures As Trade Barriers: Yesterday's Problem or What?" paper prepared for the OECD Workshop with non-Member Economies on Barriers to Trade in Goods and Services in the Post Uruguay Round Context, Paris, 27-28 Sept. 1999.

<sup>13</sup> See Bora, Bijit (2003), "The Quantification and Impact of Non-Tariff Measures", paper presented at *OECD Global Forum on Trade: The Market Access Challenge in the Doha Development Agenda*, Paris 4-6 June 2003, and WTO document *TN/MA/SS*, 11 Sept. 2002.

<sup>14</sup> See, among others, Ashraf, N., M. McMillan and A.P. Zwane (2004), "My Policies and Yours: Do OECD Agriculture Policies Affect Poverty in Developing Countries?", mimeo.; Hoda, A. and A. Gulati (2002), "Trade Liberalization and Food Security in South Asia", ICRIER-ICAR-IFPRI Conference on Economic Reforms and Food Security – The Role of Trade and Technology, April 24-25.

<sup>15</sup> Controlling the use of SPS and TBT regulations that do not overly restrict trade is a major multilateral challenge. It requires sufficiently tightening the disciplines on use of these measures, while still enabling governments the latitude needed to use them to meet legitimate health and safety goals. Although SPS agreement was negotiated during the Uruguay Round and the TBT Agreement revised, there remains plenty of scope for governments to use these measures as a form of protection under the guise of legitimate concern. SPS restrictions therefore remain a very effective protectionist device that, because of their complexity, is particularly deceptive and difficult barriers to challenge.

## 2.2 Measuring the Incidence of NTBs

Two different indices (or methods) are generally used in the literature to measure the extent of protection accorded by NTBs. These indices estimate the “frequency ratio” (i.e. how many lines or products) of imports is subject to NTBs and “coverage ratio of NTBs (i.e. how much of imports of a country are subject to NTBs). Since both the indices have some advantages and at the same time limitations<sup>16</sup>, we will rely on estimates of both these indices.

(i) Index of Coverage Ratio ( $C_j$ ) is defined as

$$C_j = \frac{M_{j,T}}{M_j} \times 100$$

where “ $M_{j,T}$ ” is the value of import subject to reported NTBs in the given product class (or commodity group) and “ $M_j$ ” is total value of import of commodities in that class.

(ii) Index of Frequency Ratio ( $F_j$ ) is defined as

$$F_j = \{ n_{Tj} / n_j \} \times 100$$

where “ $n_{Tj}$ ” is the number of products (or lines) subject to reported NTBs in the given class (or commodity group), and “ $n_j$ ” is the total number of commodities in that class.

Mehta and Mohanty (1999)<sup>17</sup> have used Index of Frequency Ratio based on hard-core NTBs of non-agriculture goods, for 1995 and 1998.

## 2.3 Data

In order to address the issues of NTBs, we need accurate and reliable data. UNCTAD’s TRAINS is the most comprehensive international database available on NTMs. It covers NTMs for over 80 countries. But it has several drawbacks. The data is compiled on a piecemeal basis, and the quality of the data is too suspect. Further, the data has not kept pace with great changes in NTMs, and appear to have become less reliable over time. There are for instance some studies which have observed, using TRAINS database, a downward trend in the use of NTMs, while at the same time business surveys have come out with the result of increasing prevalence of NTMs. While these deficiencies are well known, alternatives are also nil. The WTO has a database based on notifications submitted by member countries, but the data is limited compared to UNCTAD data.

## 2.4 Recent Studies

A few recent studies have examined the incidence of NTBs faced by Indian business abroad.

The Commonwealth Secretariat<sup>18</sup> undertook a case study of NTBs affecting India’s exports of pharmaceuticals, engineering products, leather products, marine products and mangoes. The study concluded by stating that Indian exports, in general, faced NTBs relating to (i) packaging and labeling regulations (ii) standards, (iii) uniformity requirements (iv) labour standards, (v) documentation and related procedures and (vi) company and product registration. The report emphasized that compliance cost with the regulatory requirements often proved to be severe for smaller firms than bigger firms.

A recent study prepared by the Federation of Indian chamber of commerce and Industry (FICCI)<sup>19</sup> observed intensification of NTBs during the post GATT period. The report adds, “Intensification of antidumping measures and quantitative restrictions on many products in the United States .... are all examples of restrictive trade practices adopted by developed nations”. The chamber asks “The ban imposed on import of shrimps if caught in the vessels without turtle excluder device by the United States is a glaring example of restrictive trade practice by developed nations..... Can a country or a group decide what is good and what is not good for the protection of global environment when eco system and level of development in each country is different”; and expresses concern at the slow progress in implementation of various agreements concluded at the Uruguay Round.

<sup>16</sup> Mehta, R (1999), *Tariff and Non-Tariff Barriers of Indian Economy: A Profile*, RIS

<sup>17</sup> Mehta, R. and S.K. Mohanty (1999), *WTO and Industrial Tariffs: An Empirical Analysis for India*, RIS, New Delhi

<sup>18</sup> Wiyaraja, G. et al. (2001), *Non-Tariff Measures Affecting India’s Exports: Case Studies of Pharmaceuticals, Engineering, Leather Products, Marine Products and Mangoes*, Commonwealth Secretariat, Dec. 2001.

<sup>19</sup> See, *FICCI Report on NTBS*, 2003.

The Economic Division of the Department of Commerce together with the Indian Institute of Foreign Trade (IIFT) have examined the incidence of Non-tariff barriers faced by Indian business abroad, and

makes periodic updates to its reports.<sup>21</sup> This report is again based on analysis of available international databases like the UNCTAD's TRAINS database. Government of India has also recently

Table 1: Comparison of UNCTAD's TRAINS and WTO/GATT Inventory of NTMs		
UNCTAD TRAINS	WTO/GATT Inventory	
	Parts and Sections	Description
Price Control Measures	Part I	Govt. Participation in Trade and Restrictive Practices Tolerated by Govts.
▪ Administrative pricing	A	Government aids
▪ Voluntary Export Price restraint	B	Countervailing Duties
▪ Variable charges	C	Govt. Procurement
▪ Antidumping Measures	D	Restrictive Practices tolerated by Govts
▪ Countervailing Measures	E	State Trading, Government monopoly practices, etc.
Finance Control Measures	Part II	Customs and Administrative Entry Procedures
▪ Advance Payment Requirements	A	Anti dumping duties
▪ Multiple exchange rates	B	Valuation
▪ Restrictive official foreign exchange allocation	C	Custom classification
▪ Regulations covering term of payment for import	D	Consular formalities and documentation
▪ Transfer delays	E	Samples
Automatic Licensing Measures	F	Rules of origin
▪ Automatic license	G	Custom Formalities
▪ Import Monitoring	Part III	Technical Barriers to Trade
▪ Surrender requirement	A	General
Quantity Control Measures	B	Technical Regulation and subsidies
▪ Non-automatic Licensing	C	Testing and certification arrangements
▪ Quotas	Part IV	Specific Limitation
▪ Import prohibitions	A	Quantitative Restriction and import licensing
▪ Export Restraint arrangement	B	Embargoes and other restrictions of similar effect
▪ Enterprise specific Restrictions	C	Screen time Quotas and other mixing regulations.
Monopolistic measures	D	Exchange control
▪ Single channel for imports	E	Discrimination resulting from bilateral agreements
▪ Compulsory National Services	F	Discriminatory sourcing
Technical Measures	G	Export Restraints
▪ Technical Regulations	H	Measures to regulate domestic prices
▪ Pre-shipment formalities	I	Tariff Quotas
▪ Special custom formalities	J	Export Taxes
▪ Obligation to retain used products	K	Requirement concerning making, labeling, and packaging
Miscellaneous measures for sensitive product categories	L	Others
▪ Marketable permits	Part V	Charges on Inputs
▪ Public procurement	A	Prior Import deposits
▪ Voluntary instruments	B	Surcharges, port taxes, statistical taxes, etc
▪ Product liability	C	Discriminating film taxes, use taxes, etc.
▪ Subsidies	D	Discriminatory credit restrictions
	E	Border tax adjustments
	F	Emergency Action

Sources: See Bora, Bijit op. cit.

submitted to the WTO a notification that identifies NTBs, which its exporters are facing in various markets<sup>22</sup>.

<sup>21</sup> Economic Division, Ministry of Commerce, *Non-Tariff Barrier (NTBs) Faced by India*, November 1999; and *Non-Tariff Barriers Faced by India and Policy Measures, a Study: Interim Findings*, October 2001.

<sup>22</sup> See, WTO (2003), *Non-Tariff Barriers Notifications*, TN/MA/W/25, TN/MA/W/25, 28 March 2003.

### 3. Incidence of NTBs

In this section, we present some data relating to the extent of NTBs faced by Indian exporters in the

Table 1: Comparison of UNCTAD's TRAINS and WTO/GATT Inventory of NTMs		
UNCTAD TRAINS	WTO/GATT Inventory	
	Parts and Sections	Description
Price Control Measures	<u>Part I</u>	<u>Govt. Participation in Trade and Restrictive Practices Tolerated by Govts.</u>
▪ Administrative pricing	A	Government aids
▪ Voluntary Export Price restraint	B	Countervailing Duties
▪ Variable charges	C	Govt. Procurement
▪ Antidumping Measures	D	Restrictive Practices tolerated by Govts
▪ Countervailing Measures	E	State Trading, Government monopoly practices, etc.
Finance Control Measures	<u>Part II</u>	<u>Customs and Administrative Entry Procedures</u>
▪ Advance Payment Requirements	A	Anti dumping duties
▪ Multiple exchange rates	B	Valuation
▪ Restrictive official foreign exchange allocation	C	Custom classification
▪ Regulations covering term of payment for import	D	Consular formalities and documentation
▪ Transfer delays	E	Samples
Automatic Licensing Measures	F	Rules of origin
▪ Automatic license	G	Custom Formalities
▪ Import Monitoring	<u>Part III</u>	<u>Technical Barriers to Trade</u>
▪ Surrender requirement	A	General
Quantity Control Measures	B	Technical Regulation and subsidies
▪ Non-automatic Licensing	C	Testing and certification arrangements
▪ Quotas	<u>Part IV</u>	<u>Specific Limitation</u>
▪ Import prohibitions	A	Quantitative Restriction and import licensing
▪ Export Restraint arrangement	B	Embargoes and other restrictions of similar effect
▪ Enterprise specific Restrictions	C	Screen time Quotas and other mixing regulations.
Monopolistic measures	D	Exchange control
▪ Single channel for imports	E	Discrimination resulting from bilateral agreements
▪ Compulsory National Services	F	Discriminatory sourcing
Technical Measures	G	Export Restraints
▪ Technical Regulations	H	Measures to regulate domestic prices
▪ Pre-shipment formalities	I	Tariff Quotas
▪ Special custom formalities	J	Export Taxes
▪ Obligation to retain used products	K	Requirement concerning making, labeling, and packaging
Miscellaneous measures for sensitive product categories	L	Others
▪ Marketable permits	<u>Part V</u>	<u>Charges on Inputs</u>
▪ Public procurement	A	Prior Import deposits
▪ Voluntary instruments	B	Surcharges, port taxes, statistical taxes, etc
▪ Product liability	C	Discriminating film taxes, use taxes, etc.
▪ Subsidies	D	Discriminatory credit restrictions
	E	Border tax adjustments
	F	Emergency Action

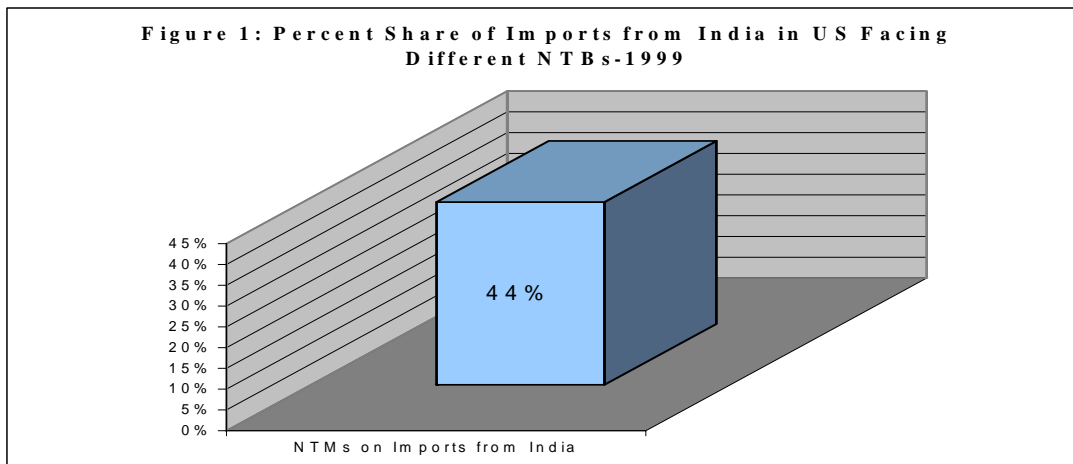
developed country market. The main source for the material used is a recent study by the economics division of the commerce ministry, Government of India. The study again draws on UNCTAD's TRAINS database.

#### 3.1 NTBs Facing India in US Markets

UNCTAD's TRAINS database lists the following hardcore NTBs applicable to all imports to the United States (Table 2)

1	Tariff quota			protect environment
2	Antidumping duty		17	Product characteristic requirements to control drug abuse
3	Countervailing duty		18	Product characteristic requirements to ensure human safety
4	License for selected purchasers		19	Product characteristic requirements, n.e.s.
5	Authorization to protect human life		20	Marking requirements
6	Authorization to protect animal life		21	Marking requirements to protect human health
7	Authorization to protect plant health		22	Labelling Requirements
8	Authorization to protect wild life		23	Labelling Requirements to protect human health
9	Authorization to ensure human safety		24	Labelling Requirements to protect environment
10	Authorization to ensure national security		25	Labelling Requirements to ensure human safety
11	Quota to control		26	Testing, inspection, or quarantine Requirements to protect human
12	Prohibition to protect human health			
13	Prohibition to ensure human safety			
14	Product characteristic requirements for human health protection			
15	Product characteristic requirements for plant health protection			
16	Product characteristic requirements to			

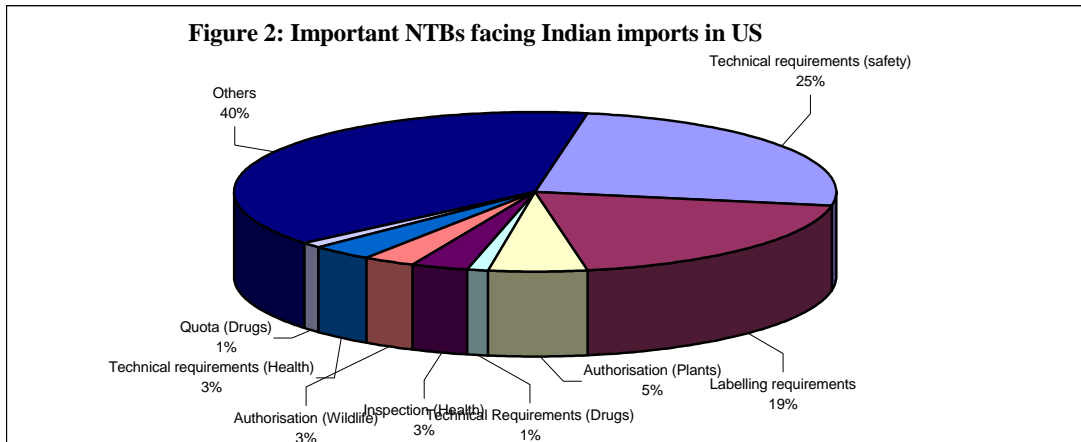
How significant are these for India from the point of exporting to US market? In order to throw some light, we have tabulated the percentage share of imports from India facing different NTBs in US. Figure 1 displays the received result. An inspection of the data given in the figure shows that 44 percent of imports from India to US were facing various types of NTBs. The message is that a sizeable share of Indian exports to US faces various kinds of obstacles in the form of NTBs.



Source: Department of Commerce, Economics Division, Non-Tariff Barriers Faced by India and Policy Measures: A Study, Interim Findings, October 2001.

The US applies a range of non-tariff barriers including compulsory detention and laboratory testing. While the preceding analysis certainly helped to highlight the overall magnitude of the problem, we would still want to know which of the several listed core NTBs are the most prominent ones in overly restricting our exports. To provide a feel of this, we have tabulated value of imports falling under each of the listed NTBs<sup>24</sup> and then calculated the percent share of each in total US imports from India. The received picture is displayed in figure 2.

<sup>24</sup> This excludes anti-dumping duties and countervailing duties as they apply for specific countries.

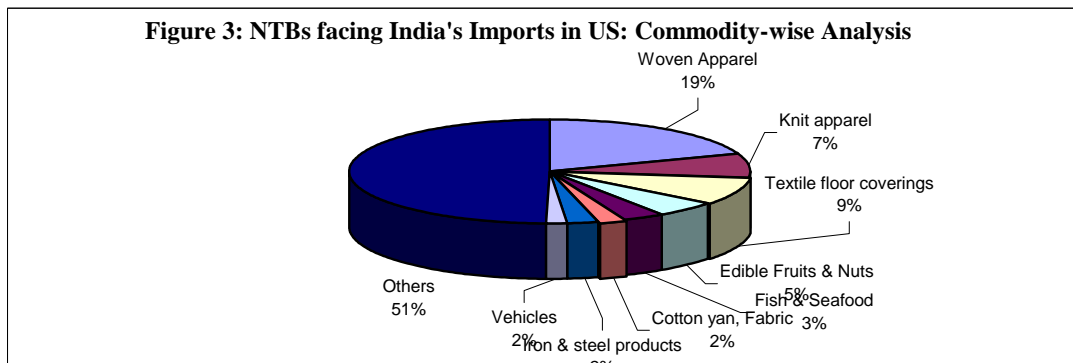


For details of Data Source see Appendix 1

Source: Department of Commerce, Economics Division, Non-Tariff Barriers Faced by India and Policy Measures: A Study: Interim Findings, October 2001.

It can be seen from the figure that the most prolifically applied NTBs by US on Indian Goods are Technical Barriers to Trade (TBT) including safety, and food safety measures, frequently referred as Sanitary and Phytosanitary Measures (SPS).

Which are the commodities affected the most by NTBs? Figure 3 provides the answer. The most prominent ones using Index of Coverage ratio (with the highest percentage share in US imports from India) are: woven apparel (19%), Knit apparel (7%), textile floor coverings (9%), edible fruits and nuts (5%), fish and sea foods (3%), cotton yarn and fabric (2%), Iron & steel products (2%) and vehicles (2%). (An inventory of NTBs faced by Indian exports, commodity-wise is given in Annex-2).



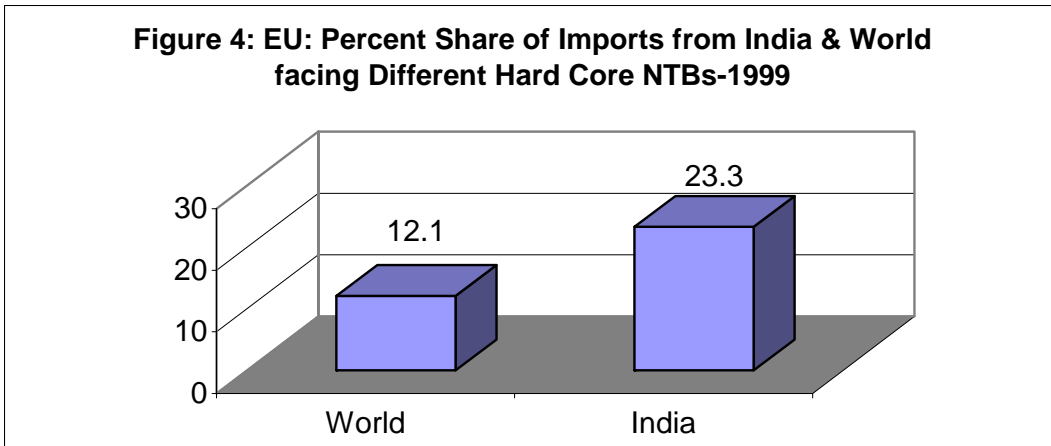
Source: Department of Commerce, Economics Division, Non-Tariff Barriers Faced by India and Policy Measures: A Study, Interim Findings, October 2001.

### 3.2 NTBs Facing Indian Goods in the EU Market

How stringent are the rules in the EU market? In table 3, we have listed an array of NTBs applicable to all imports into EU. To illustrate the magnitude of incidence of these measures on Indian business, we have tabulated percent share of imports from India in total EU imports. The data applies to the year 1999. For comparison purpose, we have also tabulated corresponding share from the rest of the world to EU, and have placed it along with the percentage share of India. An inspection of this data shows that nearly one fourth of imports from India to EU face the so-called NTBs, while for the world as a whole this share is only 12 percent.

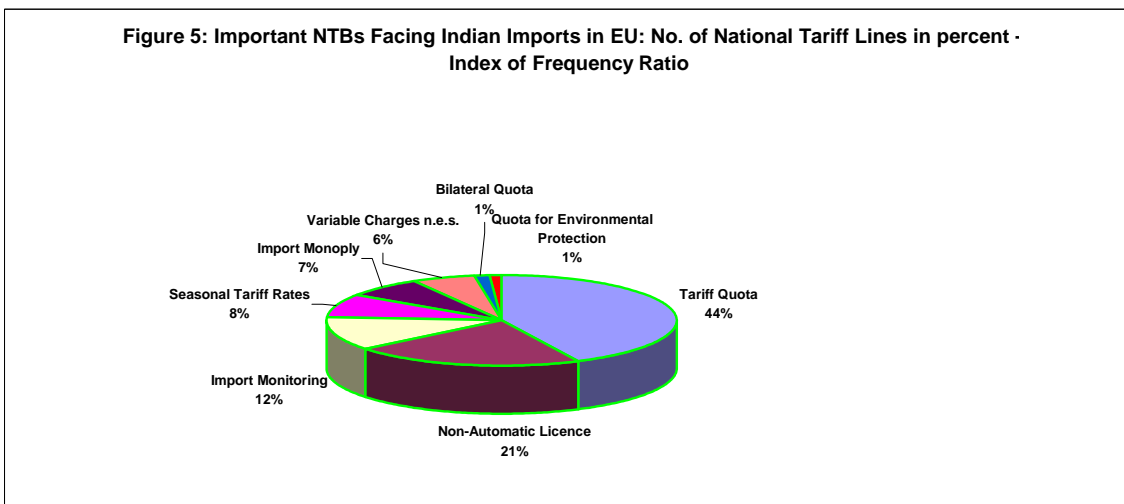
Table 3: List of NTBs in the European Union	
Antidumping Investigations	Quota to protect human health
Antidumping duties	Quota to protect environment (Montreal Protocol)
Countervailing duties	Prohibition
Retrospective Surveillance	Prohibition for human health protection

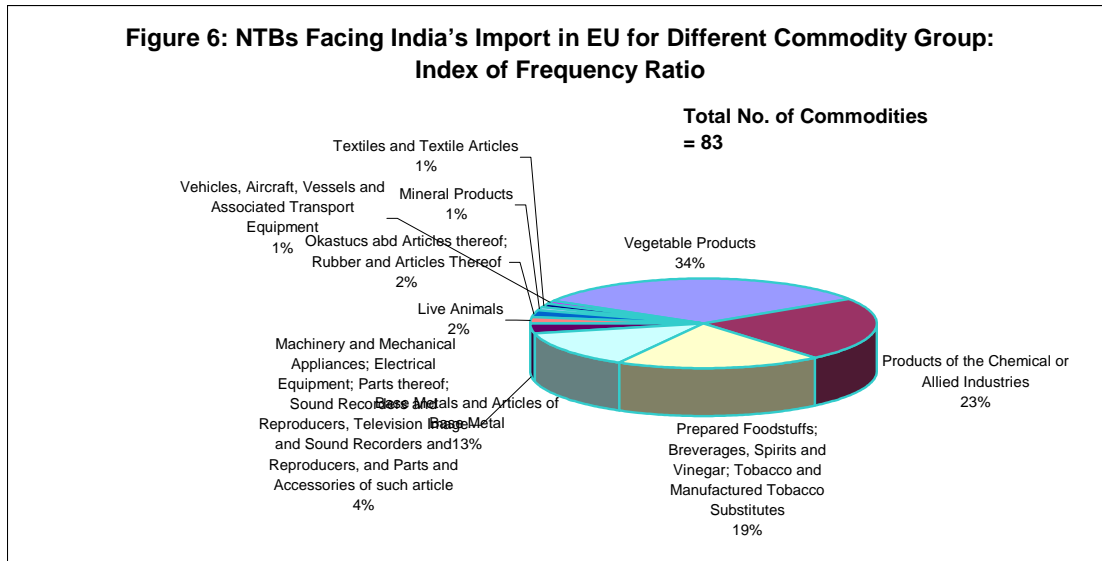
Prior Surveillance	Prohibition on the basis of origin (Embargo)
Prior Surveillance to protect human health	Technical Requirements
Prior Surveillance to protect environment	Product characteristic requirements for human health protection
Non-automatic license	Product characteristic requirements to ensure human safety
Authorization to protect environment	Labelling requirements
Authorization to protect wild life (CITES)	Labelling requirements to protect human health
Authorization to control drug abuse	Testing, inspection and quarantine requirements
Allocated quotas	
Source: UNCTAD's TRAINS database	



Source: Ministry of Commerce, Economics Division, Non-Tariff Barriers (NTBs) Faced by India, Preliminary Report, Nov. 1999.

To probe further which are the most prolifically applied NTBs by EU on Indian goods, we have tabulated the frequency ratio of various NTBs applied by EU on Indian goods. The received results are displayed in figure 5. A glance at these results show that the most commonly applied NTB by EU on Indian goods is Tariff Quota – 44 per cent of national tariff lines come under Tariff Quota. Next comes non-automatic license (21% of tariff lines) Import Monitoring (12% of tariff lines), seasonal Tariff Rates (8% of tariff lines), Import Monopoly (7% of tariff lines), and variable changes (6% of tariff lines).





In figure 6 we show the type of structure of commodities by tabulating the frequency ratio of commodities facing various NTBs in EU. An inspection of these results show that the most important product group facing NTBs in EU is vegetable products – 34 per cent of all commodities facing NTBs are ‘vegetable products’. Next comes products of chemical and applied products (27%), prepared food safety and Beverages etc. (19%), Base metals and articles of base metals (13%), and machinery, mechanical appliances and electrical equipments etc. (4%).

### 3.3 NTBs Facing India's Exports in Japan

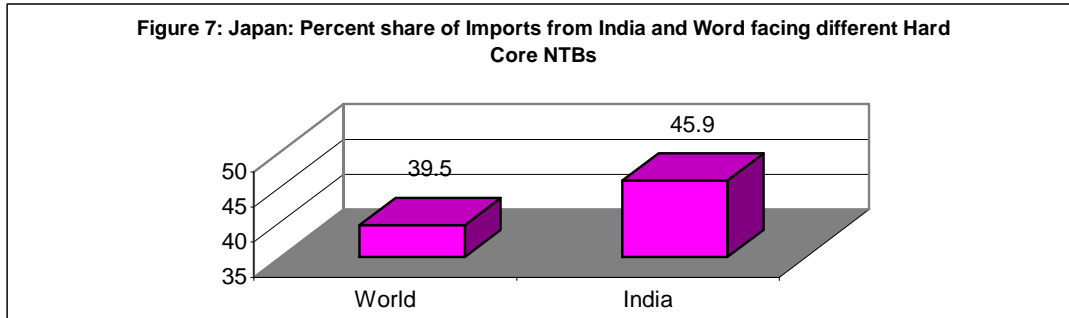
Japan is seen to have the highest listed NTBs for a large number of items compared with EU.

UNCTAD has identified around 36 categories of hard-core NTB, which Japan is imposing on its imported goods. Out of this, at least half of it are imposed on imports of manufactured goods to Japan (Table 4), i.e. there are 2742 manufactured commodities (lines) which face at least one or other type of listed NTBs. Also, a significant number of Japanese imports are subject to multiple types of NTBs; and most of these items, among industrial products, belong to commodity groups like mineral fuel (HS Chapter 27), organic chemical (chapter 29), pharmaceutical products (chapter 30), fur skin and artificial skin (chapter 43) and wood and wood products (chapter 44). Apart from these, imports of a large number of commodities require licenses, must meet particular specifications, and imported only through specific agencies etc. (part II of Table 4 gives a few illustrations).

I	Broad categories of NTBs imposed:
	1. Tariff Quota
	2. Variable charges
	3. Antidumping duties
	4. Automatic license
	5. Non-automatic license
	6. Authorization for wild life protection
	7. Authorization to ensure national security
	8. Authorization for political reasons
	9. Global quota
	10. Quota for seminar products
	11. State monopoly of imports
	12. Sale importing Agency
	13. Product characteristic Requirements to protect human health
	14. Product characteristic requirements to protect environment
	15. Product characteristics to protect wild life
II	Some select examples of NTBs
i)	Tariff quota on certain food products, alcohol, leather and footwear products
ii)	Prior to importation motor vehicles generally need to meet a type approval test.
iii)	Only some select branded vehicles approved for car imports: (a) BMW (46 types), (b) Volkswagen / audi (84 types), (c) Mercedes Bens (62 types), (d) Oper (20 types) (e) GH (12 types) (f) Chrysler (6 types). Examination period: 2 months

iv)	Auto components regarded as essential to vehicle safety called "critical parts" must be replaced either by a certified garage approved or capable of repairing all critical parts, or the replacement needs to be checked by Ministry of Transport.
v)	According to the provision of Law, importing pharmaceuticals require a license from the Minister of Health and Welfare.
vi)	For granting a license to import cosmetics, the MHW uses a protective list, such that only ingredients with prior approval can be used.
vii)	Iron and steel production can apply for government assistance, such as low interest loan, loan guarantees and tax breaks.

Source: Mehta R (2003), "WTO, Liberalization and Industrial Sector: The Case of Market Access", R.I.S Occasional Paper No. 63.



Source: Ministry of Commerce, Economics Division, Non-Tariff Barriers (NTBs) Faced by India, Preliminary Report, Nov. 1999.

Figure 7 displays the percent share of imports from India in total imports of Japan facing different NTBs vis-a-vis the corresponding percent share for the world as a whole. An examination of these results shows that 45.90 percent of India's exports to Japan faces these hard core NTBs. The comparative figure for the world is 39.5 percent. The inference is that a very high percentage of imports from India to Japan face hurdles in the form of NTBs, while for the world as a whole the figure work out less.

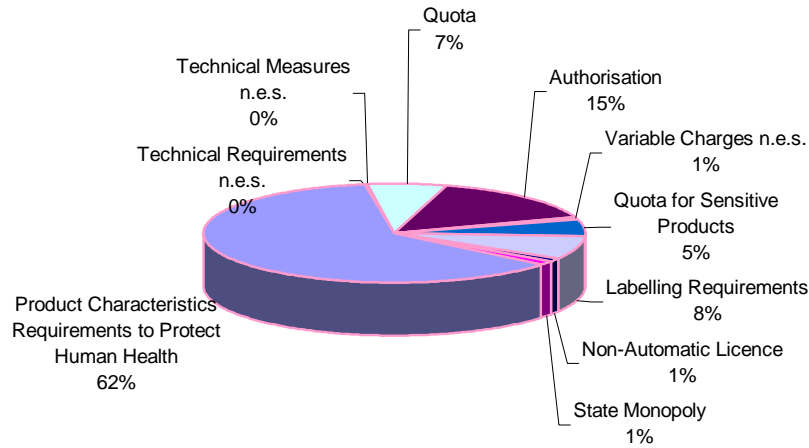
The most prolifically applied NTBs by Japan on Imports from India are Product Characteristic Requirements to Protect Human Health – 62 per cent of national tariff lines are frequented by this NTBs alone Then comes Authorisation (15%), labelling requirements (8%), Quota (7%), Non-automatic license (1%) and state monopoly (1%).

To locate the type structure of commodities which are more frequented affected by Japan's NTBs than others, we have tabulated the frequency ratio of the number of commodities facing these NTBs. The results are shown in Figure 9. As can be seen from the figure, the most important product group that are frequented by NTBs are products of Chemical and Allied Products (37%) out of a total of 354 commodities facing NTBs fall under this product group), textiles and textile products (19%), vegetable products (15%), live animals (7%), prepared food stuffs (5%) etc.

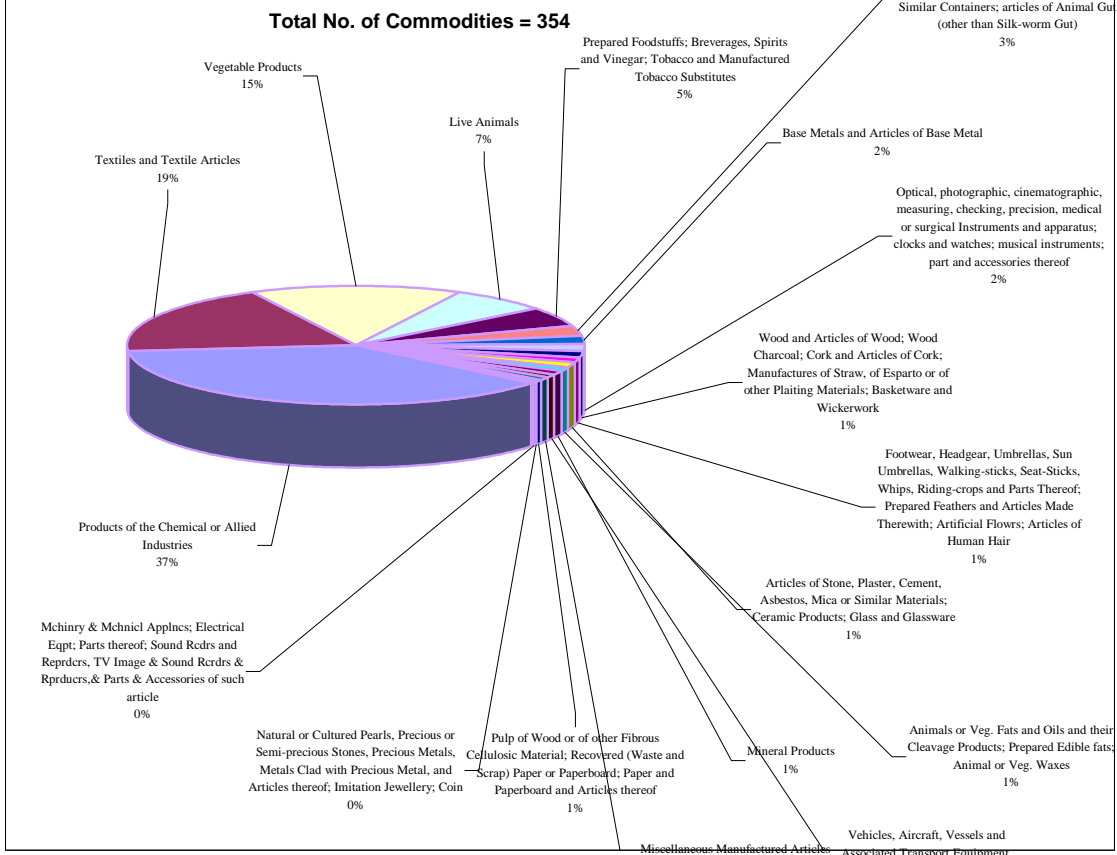
We shall try to summarise what is already a condensed argument. The following points seem worth making.

1. A sizeable share of India's exports to developed country markets – US, EU, Japan and other developed countries – face various NTBs that seek to restrict imports of Indian goods.
2. The types vary from country to country and from product to product.
3. Some prominent NTBs deployed are standards, testing, labelling and certification. Needless to say, many of these such as testing and labeling impose unnecessary costs on business. Then there are others like port fees / taxes, custom procedures and administrative procedures including valuation, port of entry, quota etc. all of which tend to add to costs of Indian exporters.

**Figure 8: Important NTBs Facing Indian Imports in Japan: No. of National Tariff Lines in percent - Index of Frequency Ratio**



**Figure 9: NTBs Facing India's Import in Japan for Different Commodity Groups: Index of Frequency Ratio**

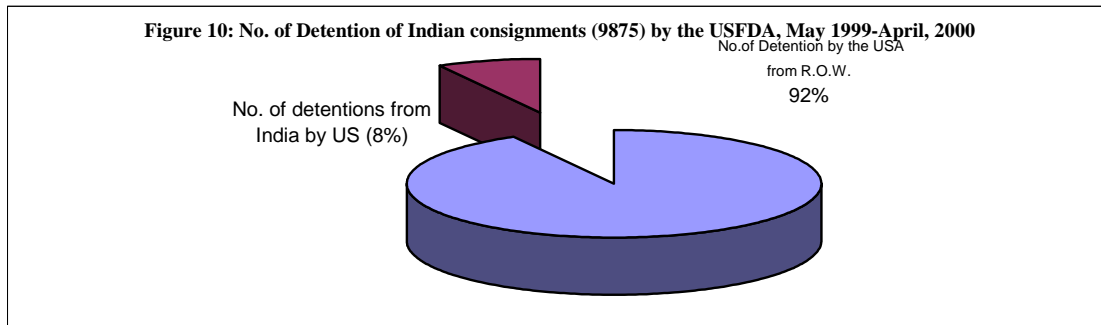


#### 4. Case Studies

There are several issues connected with the deployment of NTBs. Some NTBs affect individual consignments, while some others impose additional cost burden. We illustrate these through three case studies.

Case Study 1: Detention of Shipments by USFDA of India's Exports of Select Food Product<sup>25</sup>

The US is one country, which provides information about detention of shipments based on pre-inspection basis. Table 5 provides data on the number of detentions by the US Food and Drug Administration. An inspection of the data shows that the total number of detentions of shipment by the US from all countries were 9875 during the time period, May 1999 to April 2000. Out of this, 860 shipments had originated from India (figure 10). Again, the number of detention of shipments from India increased to 997 during the 12 months beginning from December 2001 to November 2002. The table also gives the number of detentions per one million dollars worth of imports. While the range of this parameter for all countries was 0.1 – 11.0, the rate for India (shipments) was 4.5. To examine the rate of detention over time, we estimated it for months from December 2001 to June 2002. The estimated results show that the number of detentions per one million dollar has declined from the previous 4.5 (1999-2000) to 1.17 (2001-2002). Similar estimates were repeated for two specific commodities imported from India to US namely shrimps and mushrooms. The detention rates for these sectors were 0.35 and 1.86 for the period 2001-2002; the rejection rate for shrimps is lower than the overall average rate, while for mushrooms the rate is very high.



Country group/ country*/Period	Import Mill US \$	No. of Detentions	No. of Detentions per 1 million dollar worth of imports
Period: May 1999 – April 2000			
Total† [52 countries]	-	9875	0.9
Mean	-	179	1.7
Range	-	11-860	0.1-11.0
India (All commodities)	-	860	4.5
Period: Dec. 2001 – June 2002			
India			
(a) All commodities	847.7	997	1.17
(b) Shrimps	250.96	88	0.35
(c) Mushroom	16.1	30	1.86
Notes: * The number of countries are shown in [ ] brackets., †Total number of detention is net of shipments originating within the USA			
Source: Compiled from the following sources: 1. Import detention: US Food and Drugs Administration, OASIS Website – <a href="http://www.fda.gov/oasis">www.fda.gov/oasis</a> , 2. Import/Export value: (0) UN Trade data tapes held at the international economic database of the Australian National University (Imports), (b) Export Value of India to US, G.O.I., DGCIS., 3. Athukorala, Prema Chandra (2002), "Asian Developing Countries and the Global Trading System for Agriculture, Textiles and Clothing", in Adhikari R. and P. Athukorala (eds.): Developing Countries in the World Trading System: The Uruguay Round and Beyond, Edward Elgar, UK and US.			

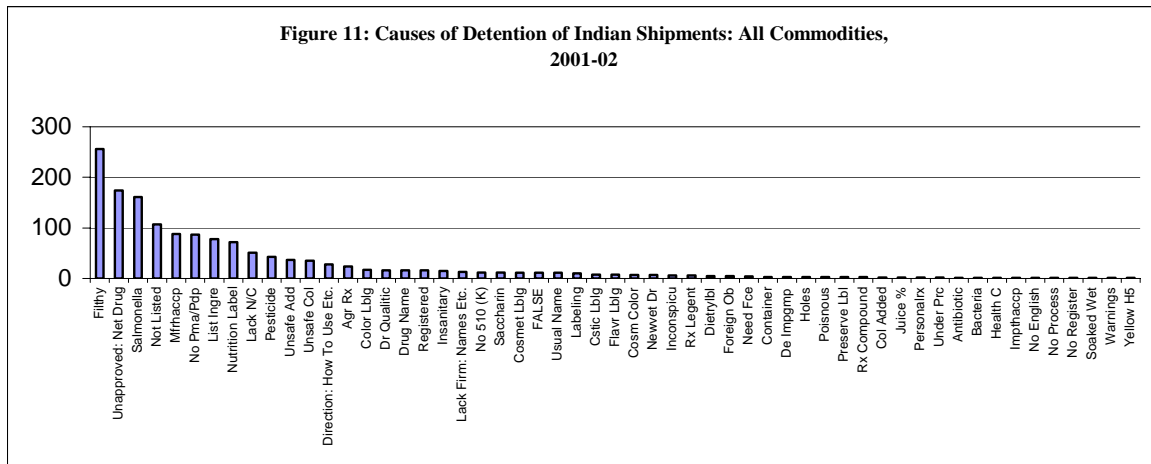
The USFDA also provides information on causes of detention of different shipments. Table 6 lists these causes for all commodities (see also Figures 11). A glance at these results shows:

Based on Data given in Table 6

<sup>25</sup> This sub-section draws from a detailed study, Mehta, R., M. Saqib and J. George (2002), "Addressing Sanitary and Phytosanitary Agreement: A Case Study of Select Processed Food Products in India", *RIS Discussion Paper No. 39*, web [www.ris.org.in](http://www.ris.org.in).

Causes of Detentions	No. of Shipments	Causes of Detentions	No. of Shipments
FILTHY	256	FLAUR LBLG	8
UNAPPROVED: NET DRUG WITHOUT APPROVAL	174	COSM COLOR	7
SALMONELLA	161	NEWWET DR	7
NOT LISTED	107	ICONSPICU	6
MFRHACCP	88	RX LEGENT	6
NO. PMA/PDP	87	DIETRY LBL	5
LIST INGRE	78	FOREIGN OB	5
NUTRITION LABEL	72	NEED FCE	4
LACK N/C	51	CONTAINER	3
PESTICIDE	43	DE IMPGMP	3
UNSAFE ADD	37	HOLES	3
UNSAFE COL	35	POISONOUS	3
DIRECTION: HOW TO USE ETC.	28	PRESERVE LBL	3
AGR RX	24	RX COMPOUND	3
COLOR LBLG	17	COL ADDED	2
DR QUALITIC	16	JUICE do	2
DRUG NAME	16	PERSONAL RX	2
REGESTRED	16	UNDER PRC	2
INSANITARY	15	ANTIBIOTIC	1
LACK FIRM: NAMES ETC.	13	BACTERIA	1
NO. 510 (K)	12	HEALTH C	1
SACC HARIN	12	IMPT HACCP	1
COSMET LBLG	11	NO ENGLISH	1
FALSE	11	NO PROCESS	1
USUAL NAME	11	NO REGISTER	1
LABELING	10	SOAKED WET	1
CSTIC LBLG	8	WARNINGS	1
		YELLOW H5	1
<b>TOTAL</b>		<b>1493</b> <b>(997)</b>	

\* Figures in parentheses represent total number of detained shipments for the period Dec. 2001 – Nov 2002. Total number may not tally with sum of individual causes, because in many shipments, more than one cause is mentioned for detention  
Source of data: USFDA Website, For definition of causes of detention: See USFAS website  
Source: Mehta Rajesh, J. George & M. Saqib (2002), "Addressing Sanitary and Phytosanitary Agreement: A Case Study of Select Processed Food Products in India" RIS Discussion Paper, #39. web [www.ris.org.in](http://www.ris.org.in)



1. A significant number of Indian consignments were rejected on the basis of multiple reasons. For example, a consignment of Nishat Export (of black pepper) in September 2002 was rejected on the grounds of (a) Filthy or adulteration and (b) SALMONELLA, the presence of a poisonous and deleterious substance.
2. Each rejected consignments were on the basis of an average 1.50 percentage of reasons for all commodities, 1.25 percentage for shrimps and 1.17 percentage for mushrooms: the reasons for rejection are higher for shrimps than mushrooms.
3. A large number of Indian consignments of all commodities were rejected by USFDA on the basis of (a) SALMONELLA, (b), FILTHY (c) NOT LISTED, i.e. information about product was not provided and (d) UNAPPROVED, i.e. a new drug without an approved application.
4. A large number of Indian consignments of shrimps were rejected due to UNSANITARY CONDITIONS, i.e. item packed under unsanitary conditions.
5. Out of 30 rejected Indian consignments of Mushroom, 28 were rejected due to PESTICIDE.

#### Case Study 2: Export of An Indian “Egg Powder” Consignment<sup>26</sup>

An Indian consignment of Egg powder was rejected by the EU on the ground that the said consignment did not pass through the “Minimum Required Performance Limit” (MRPL). Obviously this raises the question of ‘time frame’ and ‘reasonable time interval’ between the announcement and enforcement of new directive, as per SPS agreement of the WTO. The cited additional parameter formed part of the Foundational EC Directive 96/23/EC on Measures to Monitor certain Substances and Residues thereof in Live Animals and Animal Products. But no consignment prior to this was ever tested under this directive. As the Indian consignment was for the first time subjected to this examination, the EC is seen to have bypassed both transitional period as well as Reasonable time interval on the ground that the commission’s decision 2002/657 EC of August 2002 was in fact a directive for implementation; and thus criteria and procedures for the validation of analytical methods to ensure the quality and comparability of analytical results generated by official laboratories came into practice for the first time. In March 2003, this decision for establishing MRPL to be used for substances for which no permitted limit has been established was amended by the decision 2002/181/EC setting MRPLs for certain residues in foods of animal origin.

The company whose consignment was rejected had a valid equivalence certificate issued by the EU. Yet, there was a “Rapid Alert” issued in EC that went to all member states as a routine. Even after the consignment was declared to be meeting the additional parameter of MRPL, the “Rapid Alert” was neither withdrawn nor the members de-alerted. The loss of reputation and additional costs incurred will take this company longer time to recover from this episode.

A large number of applications are lying with developed countries for granting “equivalence”; but no action is being taken. For instance, application from India for providing equivalence has been with EU for the last 7-8 years. The EU is not able to process these applications due to non-availability of staff. As an interim measure, temporary equivalence is granted on an annual basis. All these Indian companies have been set up partly as export oriented units (EOUs) and have the approval from EU for exporting egg powder to EU member countries. The ground realities in EU are therefore different from what is normally presented; and is indeed a cause for concern while examining SPS implementation issues of WTO.

In this context, attention may also be called to the Shrimp export by EU for the developing countries in general and Bangladesh in particular. Some other illustrations are: EU ban of African peanut on the ground of aflatoxin (a chemical causing cancer); rejection of fish consignment from Kenya because of the bacterium, which causes cholera.

This case proves that Doha Declaration and Post Cancun concerns of WTO are not being implemented in spirit.

Some issues identified at Doha Declaration as constraining implementation of SPS.

- “Reasonable interval” between publications of a country’s new SPS measure and its entry into force.

<sup>26</sup> The material for this case study is drawn from Mehta Rajesh, and J. George (2003), “Implementation Issues in SPS: A developing Country Perspective for Development Agenda on the Meandering Pathways from Doha to Cancun”, *RIS discussion paper* No. 58.

- Longer time – frame for developing countries to comply with other countries' new SPS measures.
- Equivalence (Article 4) – steps to make it easier.

### Case Study 3: Anti-Dumping and Anti-Subsidy Cases on India's Exports

Indian exporters are facing a number of antidumping and anti-subsidy cases against them from other countries. In what follows, we give a product-wise and country-wise analysis of these cases.

First, a product wise analyses of cases against Indian exporters (table 7) indicates that the highest number of anti-dumping cases continue to be on engineering products, including steel products which account for 32 percent of the total cases, followed by textiles and articles thereof (19 percent), Drugs and pharmaceuticals and chemicals (18 percent), rubber / plastics and articles thereof (13 percent), and consumer industrial goods (12 percent). In the anti-subsidy cases, engineering products, particularly steel products account for 38% of the total cases, followed by rubber/plastic articles (25%) and textiles/articles & drugs (13% each).

Product	Anti-dumping cases	Anti-subsidy cases
Engineering including steel products	27	12
Textile and articles	15	4
Drugs & pharmaceuticals	15	4
Electronics	4	2
Rubber, plastic, glassware and articles	10	8
Consumer industrial goods	9	2
Agri. products	1	0
Total	82	32

Source: Directorate of General of Anti Dumping and Allied Duties, Annual Report, 2002-03

Next, a country-wise analysis of the cited cases brings EU on the top of the list. Out of a total of 82 Anti-dumping cases initiated against exports from India, the highest number of cases are seen to have filed by EU (33%), followed by USA (17%), South Africa (13%), Indonesia (7%), Canada (6%), and Brazil (5%). These details are given in Table 8.

Country	Anti-dumping
Argentina	1
Australia	2
Brazil	4
Canada	5
EU	27
Indonesia	8
Mexico	1
Trinidad & Tabago	1
South Africa	11
Turkey	4
Thailand	2
USA	14
Korea	1
Venezuela	1
Russia Federation	1
China	1
Total cases	82

Source: Director General of Anti-Dumping and Allied Duties, Annual Report, 2002-2003.

Table 9 reports country-wise break up of Anti-subsidy cases. An inspection of this table shows that maximum numbers of cases are filed by EU (44%). This is followed by South Africa (19%), USA (19%), Canada (16%) and Brazil (3%).

Country	Anti subsidy cases
EU	14
South Africa	5
Canada	5
USA	5
Brazil	1
Total	32

Source: Director General of Anti-Dumping and Allied duties, Annual Reports, 2002-03.

Almost all the anti-dumping and anti-subsidy cases against Indian exports were initiated in the latter half of the nineties (Figure 16). This follows from the data given in Table 10.

Year	Anti-Dumping cases	Anti-subsidy cases
1990-91	1	
91-92	1	
92-93	2	1
93-94	3	1
94-95	5	
96-97	6	
97-98	5	2
98-99	16	9
99-2000	13	6
2000-01	7	4
2001-02	13	9
2002-03	7	1
Total	82	32

Source: Directorate General of Anti-Dumping and Allied Duties, Annual Report, 2002-2003.

## 5. What needs to be done? Policy Challenges

The picture that emerges from this analysis of non-tariff barriers faced by Indian business in the foreign markets, especially the US, EU and Japan is not an optimistic one. The Indian business, continue to be hunted by a variety of restrictions in the form of standards and compliance costs that exporting to these markets have become a nightmare. The question now is how the Indian policy makers should respond to these challenges. The way forward, it appears to be, through a multi-pronged approach – multilateral trade forum, bilateral/regional trade arrangements and internal streamlining. We shall comment on each of them.

### 5.1 Multilateral Trade Forum

In all future WTO negotiations, the work programme should include the following.

#### 1. Removal of NTBs should climb to the top of agenda

Policy makers should insist that any negotiations on market access are acceptable only on a precondition that all NTBs be removed under a fast track approach. This can be a powerful negotiating stand of India in the ongoing trade negotiations. In fact, the fourth ministerial conference of WTO held in Doha in November 2001 has already recognized that NTBs are an integral and equally important part of the negotiations. The mandate for NTBs in Doha Development Declaration (DDA) is in para 16 (see Box 1) and is the responsibility of the Negotiating Group on Market Access (NAGMA).

Box 1: NTMS AND THE DRAFT ELEMENTS OF MODALITIES FOR NEGOTIATIONS ON NON-AGRICULTURAL PRODUCTS

The following elements are proposed for the modalities

- a) It is understood that the NGMA maintains overall responsibility for addressing non-tariff barriers (NTBs) as part of the Doha Declaration.
- b) The negotiating group will proceed with the identification and examination of the various types of NTBs.
- c) After completing the identification, participants will aim to categorize the NTBs as well as clarify and seek additional information where necessary, and then proceed in the following manner:
  - Selected NTBs, to be agreed upon by the participants would be dealt with by the NGMA on the basis of modalities, which could include request-offer, horizontal or vertical approaches.
  - NTBs that have a specific negotiating mandate in the Doha Declaration in other areas should continue to be addressed in that body but information on the progress or outcome of those negotiations should be reported to this group for transparency.
  - Work on NTBs which relate to other areas of the Doha Declaration which currently do not have a specific negotiating mandate would progress in other fora but information on the progress should be reported to this group for transparency; and
  - NTBs that currently do not have a specific negotiating mandate would after further clarification and if the group decides there is a need to send them to another WTO body, be reported to the TNC in order to be forwarded to the appropriate WTO body for action and reporting back.

Source: WTO document TN/MA/35.

A problem with the DDA mandate is that it offers no precise guidance on how the NTB negotiation in the market access group is related with other WTO bodies such as negotiating group on Rules and Trade Facilitation, which are handling non-tariff issues as part of Doha mandate, and also the ones handling non-tariff measures as a part of their regular work programme such as Committee on Customs Valuation, Committee on Rules of Origin, and the committee on TBT. The open nature of the mandate carries the risk of conflict and overlap with the mandate of other negotiating groups.

## 2. Plug loopholes in the multilateral rules and make the system less restrictive

In the Uruguay Round notable success was already achieved in controlling the abuse of NTBs by way of strengthening the disciplinary rules, develop surveillance mechanism to enforce, and offer improved disputed settlement mechanisms. The strengthening of dispute settlement mechanism is considered as one of the major achievements of UR. Similarly, the Agreement on Agriculture has virtually made it impossible to impose any type of QRs. Negotiations are also continuing in other areas such as customs valuation, pre-shipment inspection, import licensing procedures, rules of origin, TBT and SPS measures. The underlying objective is to make the system less restrictive and discriminatory. Hence suggestions for improvement of these agreements including how to close the holes in the multilateral rules have to be made. A great deal of work has already been done<sup>27</sup> by identifying changes in order to make the international practice less restrictive. These suggested changes are worth considering.

## 3. Improve Empirical database

It is pretty clear that we do not have a good database on NTBs. What is available is UNCTAD's TRAINS database, but it has many drawbacks. While the WTO notification process is yet another source, these too have limitations. Hence building a sufficiently detailed inventory of NTBs, country-wise and commodity-wise just as the United States and New Zealand has done is an essential requirement for furthering multilateral negotiations in this area. USTR prepares a detailed annual report that surveys significant trade barriers to US exports. The latest report<sup>28</sup> classifies trade barriers into different categories that cover foreign government imposed measures and policies that restricts, prevents and impede the US exports. The report includes trade barriers of 56 countries/regional blocs.

## 5.2 Bilateral/Regional FTAs

The past 3 to 4 years have witnessed a large number of bilateral/regional FTAs. Instead of traditional FTAs leading to reduction of tariffs, they also deal with the reduction or elimination of non-tariff barriers, services, investment, etc. These FTAs are sometimes called comprehensive economic cooperation (CEC). Some of the recently signed FTAs/CECs, which give emphasis on NTBs, are:

<sup>27</sup> See Anwarul Hoda and Rajeev Ahuja, "Agreement on Subsidies and Countervailing Measures: Need for clarification and Improvement" working paper No.101, ICRIER, May 2003; Aradhana Aggrawal "The WTO Anti-dumping Agreement: Possible Reform through the Inclusion of a Public Interest Clause". Working paper No.142, ICRIER, Sept. 2004; and "The WTO Anti-dumping Code: Issues for Post Doha Negotiations", working paper No.99, ICRIER May 2003.

<sup>28</sup> USTR (2004), *Foreign Trade Barriers*, USTR, pp. 1-502.

1. New Zealand – Singapore Economic Partnership: Some features of Agreements particularly relating to NTBs is displayed in Box 2

Box 2: Some Important features of New Zealand-Singapore Economic Partnership		
Agreement	Description	Comment, if any
Tariff	Elimination of all tariffs	
Non-Tariff measures	No non-tariff restrictions except otherwise mentioned in the agreement.	
Anti-dumping	Provisions are still there. The de minimis dumping margin was raised from 2% to 5% and the maximum volume of dumped imports normally regarded as negligible increased from 3% to 5%	Not very different from WTO agreements
Subsidy	Prohibition of subsidy from both parties. If one party maintains any, it should inform the other party and can discuss the possibility of limiting subsidization upon request from the other party.	
Safeguards	No safeguard measures against goods	
Technical, sanitary and phytosanitary regulations and standards	Agreed to implement the principles of mutual recognition, unilateral recognition and harmonization in the removal or reduction of regulatory barriers in the most cost-efficient way. The specification of the implementation of the arrangements is given for electrical and electronic equipment and agreed to identify other priority sectors too for the implementation of the arrangement. Provisions must be consistent with WTO agreement on TBT and SPS and relevant parts of international standards.	Emphasis was given on equivalence and harmonization with international standard (product by product)
Government procurement	Agreed to establish a single New Zealand-Singapore government procurement market and implement the APEC non-binding principles on GP. New Zealand and Singapore companies tendering for government procurement contracts valued at, or above, IMF Special Drawing Rights 50,000 are guaranteed equal opportunities and treatment.	

Source: Agreement between New Zealand and Singapore on a Closer Economic Partnership, 2001.

2. U.S.-Australia Free Trade Agreement: One important feature of this agreement is Open and Fair Government Procurement. Under this agreement, the U.S. suppliers are granted non-discriminatory rights to bid on contracts from 80 Australian central government entities, including key ministries and government enterprises. These commitments are particularly significant and commercially important, because Australia is the only developed country, which is not a party to the WTO Agreement on Government Procurement. Both countries are also committed to extending the coverage of the agreement to sub-central entities, and will be working with their respective states to refine the extent of that coverage in the next few weeks. Australia will eliminate its central government industry development programs, under which suppliers have to provide various types of offsets as a condition of their contracts: Some salient features of this agreement are given in Box 3.

Box 3: Some Important features of US-Australia Free Trade Agreement
<p><u>Non-Tariff measures:</u></p> <ul style="list-style-type: none"> <li>No party can impose any kind of import and export restrictions (except in accordance with article XI, GATT 1994 and its interpretative notes).</li> <li>Administrative fees and formalities except in accordance to article VIII: 1 of GATT 1994 (other than customs duties, other internal charges applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties applied pursuant to a Party's law) are limited in amount to the approximate cost of services rendered and should not reveal any indirect protection.</li> <li>No export taxes can be imposed on either party.</li> </ul> <p><u>Sanitary and phyto-sanitary measures:</u></p> <ul style="list-style-type: none"> <li>They have decided to set up a committee for enhancement of consultation and cooperation on SPS matters with a view to facilitate trade.</li> </ul> <p><u>Technical barriers to trade:</u></p> <ul style="list-style-type: none"> <li>Each Party shall use relevant international standards, to the extent provided in Article 2.4 of the TBT Agreement, as a basis for its technical regulations. Equivalence has given major importance in accepting the technical regulation of other party. A mechanism will be established to discuss various issues regarding standards, technical regulations and conformity assessment procedures.</li> </ul>

Safeguards:

- In the process of reducing or eliminating customs duty (according to the agreement), if domestic production of the importing country is badly affected from increased imports, then a safeguard measure can be taken subject to certain conditions. WTO safeguard measures are retained. The provision for a mutually agreed trade compensation scheme for other party is also present in the agreement.

Government procurement:

- Equal treatment should be given to each party or procuring entities regarding goods, services and suppliers. The estimated value of procurement for several Central and State government agencies (listed in the agreement) is also given.

Source: US-Australia Free Trade Agreement, [www.ustr.gov/Trade\\_Agreements/Bilateral/Australia\\_FTA/Final\\_Text/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Australia_FTA/Final_Text/Section_Index.html)

India has also recently signed some FTAs where some types of NTBs are included. Some select FTAs in this context are:

A India-ASEAN Regional Trades and Investment Area (RTIA)

In October 2003, India and the Association of South-East Asian Nations (ASEAN) signed a framework agreement on Comprehensive Economic Cooperation, with the following objectives<sup>29</sup>:

1. Strengthen and enhance economic, trade and investment co-operation between the Parties;
2. Progressively liberalise and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime;
3. Explore new areas and develop appropriate measures for closer economic co-operation between the Parties; and
4. Facilitate the more effective economic integration of the new ASEAN Member States and Bridge the development gap among the Parties.

As a part of these objectives they have agreed to reduce or eliminate tariff and non-tariff measures including, but not limited to import licensing requirement and procedure, quantitative restrictions, technical barriers to trade, sanitary and Phytosanitary.

B. India – Thailand Free Trade Agreement

India also signed a framework agreement for establishing free trade area with Thailand in October 2003. The agreement is similar to India-ASEAN free trade agreement. It also says that FTA should cover:

- (i) Non-tariff barriers (NTBs) imposed on any products covered ..... of this Agreement, including, but not limited to quantitative restrictions or prohibition on the importation of any product or on the export or sale for export of any products.
- (ii) Safeguards based on the GATT/WTO principles;
- (iii) Disciplines on subsidies and countervailing measures and anti-dumping measures based on the existing GATT disciplines.

5.3 Internal Measures

While trying to dump trade restriction of foreign governments against imports from India, it is equally important to keep own house in the order. (i) There are, for instance, import restrictions levied by Government of India on imports of certain products under Article XX. One should see how many of these restrictions are warranted. Otherwise, any future negotiations will involve a quid pro quo; and it may even pose hurdles for exporters by affecting flow of inputs required for exports. (ii) Then there is also lack of coordination between various departments under different ministries which oversee the implementation and compliance of various standards. For instance, SPS measures are overseered by three agencies: Ministry of Health, Department of Agriculture and the Department of Animal Husbandry. Again, there is little coordination between these departments, and the nodal agency, Ministry of commerce. All this makes the administration of various standards very complex and cumbersome. (iii) A major problem affecting the Indian export is the lack of adequate processing facility and the basic infrastructure like storage and transportation including cold storage. For instance, processing level of Indian food industry is extremely low (only 7 percent), the wastage levels are very high resulting in colossal wastage of national wealth running in thousands of crores of rupees. Therefore, improvement or upgradation of processing facilities, establishment of cold chain, and setting up of facilities for grading / sorting / packaging etc. all of which that would help to improve

<sup>29</sup> Government of India, (2003), *Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of South East Asian Nations.*

quality and shelf life of products at the exporting end would greatly help to reduce or ease detention of our export consignment at foreign ports.

## 6. Voicing the Concern over NTBs at International forums

The fourth ministerial conference of WTO held in Doha in November 2001 contained the mandate on a number of issues. As a part of this it was decided that negotiations on market access for non-agriculture goods should be conducted. Paragraph 16 reads:

“We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without apriori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least developed country participants, including through less than full reciprocity in reduction commitments. To this end, the modalities to be agreed will include appropriate studies and capacity building measures to assist least developed countries to participate effectively in the negotiations” (WTO Ministerial Declaration, WT/MIN (01)/Dec/W/1, Nov. 14, 2001, Doha, 9-14, Nov. 2001). [emphasis is ours]

India and a few other developing countries were actually not in favour of inclusion of market access for non-agricultural goods in the ongoing trade negotiations because the average nominal tariffs in developed countries have already fallen to abysmally low levels, and inclusion of it in the new round is most unlikely to result in greater market access for India. Nevertheless India agreed to Doha mandate probably because it included:

- (i) Reduction and elimination of tariff peaks/tariff escalation, and
- (ii) Reduction and elimination of non-tariff barriers on products which are of particularly interest to developing countries.

After the failure of Cancun meeting, the member countries adopted on 1<sup>st</sup> August 2004 a framework to work on Doha Mandate. The text of the council's decision on the Doha Agenda work programme (the July Package) contains frameworks and other agreements designed to raise negotiations to a new level. Annex B contains the document on “framework for establishing modalities pertaining to market access for non-agricultural products”. Although paragraph 1 of Annex B says, “it contains only the initial elements for future work on modalities by the Negotiating Group on Market Access” it has outlined specific modalities for conduct of tariff negotiations. Unlike agriculture, on NAMA (paragraph 5) the council has agreed for the reduction of industrial tariffs on the basis of the non-linear formula. Most of these frameworks are based on proposals of chairman of NGMA.

Despite the formulation of a framework for negotiations, there is no crucial progress on Non-Tariff Barriers. Paragraph 14 of the Annex states “We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants”. Clearly, there is no deadline on such negotiations. Given the past experience it might come as no surprise if Doha ‘mandate on NAMA’ is dominated by ‘tariff’, and non-tariff barriers are passed on to others committees/groups of the WTO, without reduction and elimination of NTBs.

## 7. Concluding Remarks

In this paper, we sought to identify the type of NTBs facing India's exports in developed country markets. The analysis was carried on two distinct lines. First, we sought to identify the type of NTBs in our destination markets country-wise and commodity-wise, using two indices, commonly known as (i) Index of Coverage Ratio, and (ii) Index of Frequency Ratio. Next, it was supplemented by a few case studies. Based on these we make the following concluding observations:

The first important fact to emphasise is the proliferation of NTBs and its growing menace to India. For instance, around 44 percent of our exports to US face several of the listed hard-core NTBs – the most important being technical requirements (safety) and labelling requirements. The main commodities affected are textiles, including ready-made garments, iron and steel, fish and seafood. To illustrate the

menace created by these NTBs, we take the marine products. In EU there are no common standards and procedures for testing inspection and analysis of seafood consignments. The procedure of Rapid Alert Notification is not harmonised across member states. The number of maximum consecutive checks varies from member state to member state. When the shipper is placed on red alert, the same is circulated by the European commission to all member states. Again in US, EU and Japan there is the use of testing methods for high levels of sensitivity in marine products for chloramphenicol by high performance chromatograph mass spectroscopy (HPLCMS). This equipment cost is significant.

Second, inspite of developing countries, campaign at various rounds of trade negotiations, on eliminating /reducing NTBs, not much has been accomplished. What is required in a coherent negotiating stand taking note of both, the NTBs as well as tariffs, because sectors with NTBs also face tariff peaks and concealed high tariffs in the form of specific duties.

Third, policy option to grapple with the present environment is through a multi-pronged approach; multilateral trade negotiations regional/bilateral trading arrangements, and at the same time setting own house in order.

### Annexes

Annex 1: Share of Imports from India and World Facing different Hard-core NTBs in Total Imports of USA, 1999

TB Code	Type of NTB	India	World
101	Tariff Quota	0.17	0.12
104	License (selected purchase)	0.01	0.67
105	Authorization (Health)	0.00	.006
106	Authorization (Animals)	0.00	0.33
107	Authorization (Plants)	5.48	2.27
108	Authorization (Wildlife)	2.71	1.85
109	Authorization (Safety)	0.001	0.79
110	Authorization (National Security)	0.026	0.24
111	Quota (Drugs)	1.005	0.75
112	Prohibition (Health)	0.0	0.036
113	Prohibition (Safety)	0.0004	0.013
114	Technical Requirements (health)	3.39	4.07
115	Technical Requirements (Plants)	0.042	0.107
116	Technical Requirements (Environment)	0.216	11.621
117	Technical Requirements (Drugs)	1.005	0.746
118	Technical Requirements (Safety)	24.92	21.67
119	Technical Requirements n.e.s.	0.036	2.43
120	Marketing Requirements	0.014	0.674
121	Marketing Requirements (Health)	0.0	0.006
122	Labeling Requirements	19.38	15.92
123	Labelling Requirements (Health)	0.06	0.053
124	Labeling Requirements (Environment)	0.02	0.492
125	Labeling Requirements (safety)	0.034	0.895
126	Inspection Quarantine (health)	3.175	3.34
127	Inspection Quarantine (Animals)	0.018	0.33
128	Inspection Quarantine (Plants)	0.499	0.046
129	Inspection (safety)	1.24	14.04

Source: Department of Commerce, Economics Division, Non-Tariff Barriers Faced by India and Policy Measures: A Study, Interim Findings, October 2001.

## Annex II: Type and Commodity Specific NTBs faced by Indian Exports

## A. Standards and Related Regulations and Procedures

Maintaining Participant: Several
Products affected by the barrier: Various manufactured products including marine products.
WTO/GATT Inventory category (See Table 1, for details of Inventory Categories): Part III A, B & C
Relevant WTO provision: Provisions of Agreement on Technical Barriers to Trade; Agreement on the Application of Sanitary and Phyto-Sanitary Measures
Nature of the barrier: Trade effects of the barrier
Restrictive standards and burdensome regulations and procedures in several countries have been acting as barriers that significantly affect exports as also the capacity to trade. There are several issues involved which are briefly discussed below. Some measures clubbed hereunder affect individual consignments while some like those involving costs put additional burden on exports.
a) Harmonization – Both the SPS and TBT agreements seek harmonization on as wide a basis as possible and for the applied measures to conform to international standards, guidelines or recommendations. A higher level of protection may be introduced or maintained if there is scientific justification (in case of SPS measures) or for legitimate objectives (in case of TBT measures). However, it has been observed that certain countries are at times laying down norms more stringent than those specified by relevant international bodies without any known/justifiable scientific basis or for demonstrably legitimate reasons and which are difficult to meet.
Similarly testing methods are specified for very high levels of sensitivity which may not be justified or required and due to which the cost of testing becomes disproportionately high and prohibitive. Sometimes, levels of sensitivity are raised only because better technology or testing equipment becomes available, and not due to any scientific evidence that a higher sensitivity is required to meet a health concern. Moreover, the standards are revised, mostly upwards, at regular intervals making it very difficult for developing countries to adapt to these changing requirements.
Harmonization of both standards and procedures applicable within a common customs territory is necessary for predictability.
Harmonization with international standards and use of agreed testing methods with scientific justification will reduce the trade restrictive impact
(i) One instance of the use of testing methods for high levels of sensitivity is the testing in marine products for chloramphenicol by High Performance Liquid Chromatograph Mass Spectroscopy (HPLC MS). MS has sensitivity at levels of 0.2 ppb whereas the AOAC <sup>30</sup> specifies test by HPLC which has sensitivity to a level of 10 ppb. The additional equipment means incurring expenditure of around Rs 1.5 crores (US\$ 3.5 Million) per equipment with this cost increase being proportionately reflected in each test carried out.
(ii) Certain countries are using test methods, which are neither those accepted internationally, nor are these validated. An example is use of non-validated test method by a country for testing vibrio cholerae which is felt to be the cause of failure of samples in that country
(b) Transparency - It has often been observed that there is absence of information and lack of transparency on the procedural norms and regulations of various countries regarding specifications as well as methods of sampling, inspection and testing. New Regulations are brought out and implemented without even giving the producers in the exporting country a chance to get familiar with these. Often the standards are available only in the language of the importing country or are presented in a very complicated manner. The result is that exporters are, at times, not clear about the specific requirements prescribed by the country of destination, which has led to rejection at the point of import.
(i) Several countries lay down their specification in their national language with no official English version and for translating these, either facilities in the exporting country are not easily available or these are very costly.
(ii) Some countries have standards for Hessian bags which are not technically achievable and the details relating to the standards are not available in English. Similarly requirements on using certain specified packing materials without providing any reason or justification for the same acts a trade barrier.
(c) Conformity Assessment Issues – Several conformity assessment issues have the effect of restricting trade, these include:
⇒ Excessive costs levied for testing - for small developing country exporters these are a significant barriers;
⇒ Location of testing facilities including testing being done only at single/limited centre(s);
⇒ Limited validity of certificates, requiring re-testing with the attendant costs;
⇒ Procedures involving site/ factory visits by the certifying authorities – both the time taken and costs involved act as hindrances;
⇒ Non-recognition of certificates from accepted international bodies; and
⇒ Easier or preferential conformity assessment for RTA Members which is discriminatory.
Tyre marking is an expensive proposition; in some countries it costs a company around US\$ 20,000 for the first application and approval. The certificate is valid for one year and US\$ 1100 has to be paid for every year for getting the certificate revalidated; in addition for the factory visit of inspectors, an amount of US\$ 600 per day has to be paid which is inclusive of transportation charges, hotel charges, tickets, etc.
(d) Risk-based Approach - While risk to consumers resulting from hazard, particularly in foods, has been identified as a significant concern at the international level, it has been observed that some importing countries are fixing standards without carrying out comprehensive risk assessment work and despite repeated requests details of the basis for the standard are not made available.

<sup>30</sup> Association of Official Agricultural Chemists

C:\JohnRavi\Projects\ADB\task\_history\2005\10 - October\INRM\2005-10-27\Trade\mehta.doc

This may at times be in contravention of Article 5 of the SPS Agreement which requires that sanitary and Phyto-sanitary measures should be based on risk assessment and take into account an appropriate assessment of the actual risk involved and if requested by the exporting country make known details of this assessment.

In the case of marine products where consignments are being rejected due to presence of certain micro-organisms such as *Vibrio parahaemolyticus* a 'nil' limit has been laid down. *Vibrio parahaemolyticus* is a habitant of the marine environment of the tropical waters and there is every chance for the presence of this organism in raw fish and fishery products. However, they are generally destroyed during chilling/freezing or by heating at 60 degrees C. Besides, the organism is not considered as a potential hazard in raw frozen products which are to be cooked before consumption. Some countries are specifying limits for *Vibrio parahaemolyticus* only for ready-to-eat cooked products or seafood for raw consumption and at levels ranging from 1 000 to 10 000 per gram which may be acceptable.

However, despite the above, some countries have specified limits for *Vibrio parahaemolyticus* in products which are to be cooked before consumption and these also at levels as low as 100 per gram. Risk evaluation reports have not been made available in such cases.

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

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

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

(f) Equivalence - Equivalence agreements between Members are seen in the WTO as the means to address the standards related trade problems as they enable pooling and utilization of resources more effectively, avoiding duplication of inspection and testing, and ensuring that health and safety requirements are met effectively without unduly restricting trade. Such agreements would generally benefit exporters in a developing country as financial burden as well as risk of rejection would be reduced.

However, it is observed, Members often do not enter into such Agreements even after receipt of a formal request as either the administrative burden of entering into these is high or they don't want to lose their control over imports. Some countries use regulatory standards to address demand supply conditions. Further, at times it is seen that important components such as provision for re-testing and appeal in case of rejections are not addressed in such Agreements as these are not considered to be in the interest of the importing country. It is also a requirement of TBT under Article 2.7 that alternate equivalent measures should be permitted if these meet the requirements of the importing country. A similar provision exists in Article 4 of SPS.

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

- (i) The consignments found contaminated in the importing country may need to be brought back to enable the competent authority to re-test them and ascertain whether the consignments were contaminated or not as certified. And if contaminated examine the cause and take immediate corrective measures to control/eliminate its recurrence.
- (ii) Destruction of a consignment leads to wastage of a large amount of money as some cases of contamination can be taken care of through reprocessing.
- (iii) Sometimes the importing country adopts different methods for sampling and testing and also testing for parameters/contaminants, which are not notified in their standards, which at times become reasons for rejections.
- (iv) In certain cases the importing country may have higher standards than those followed by the country of export. The returned consignments could be utilised in domestic trade/ purposes. It may be pointed out that a country can fix standards lower than, say Codex.
- (v) Sometimes a product is rejected in one port and accepted in another port of the same market.
- (vi) Sometimes a product is rejected based on a national standard by a buyer, and it is accepted after price discounts; this shows that at times standards are used primarily to depress prices by the buyer.

It may also be noted that Codex has brought out a guideline for the exchange of information between countries on rejection of imported foods (CAC/GL-25-97) wherein the standard provides for destruction of the consignment, retesting of the consignment, re-export of the consignment to countries which state in advance that they are prepared to accept the consignment knowing that it has been refused entry elsewhere.

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

## B. Charges on Imports

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier Trade effects of the barrier 3	Inventory category* 4	Relevant WTO provision 5
Several	All exports	Imposition of high levels of port fees and taxes significantly add to the cost of exports. Fees for authentication of export documents by the Consulates of the importing countries similarly add to cost. The necessity for imposition of the fees and taxes as well as the need to have consular authentication procedures must be linked to the administrative necessity for the same.	Part V B	Article VIII of GATT 1994

## C. Customs Procedures

Maintaining Participant: Several
Products affected by the barrier: All exports
Inventory category (See Table 1, for details of Inventory Categories): Part V B
Relevant WTO provision: Articles VII & VIII:3 of GATT 1994
Nature of the barrier: Trade effects of the barrier Customs procedures including valuation rules in certain countries have been identified to be acting as trade barriers. Some of these include discriminatory valuation methods; appropriateness of the units of measurement for certain products like yarn; classification differences between the exporting and importing country systems and confiscation of the export cargos for minor transgressions.
(i) Customs duty is calculated only on cost of Cut, Make and Trimming (CMT) if the textile goods are made out of domestic fabrics where as duty is levied on full cost of the product if it is made in other developing countries. Such types of discriminatory valuation rules prevent realization of export potential.
(ii) In some countries the quota for yarn is expressed in Square Meter Equivalent (SME), but yarn is basically exported in Kilograms. Since the conversion factor is not on a scientific basis, it creates hurdles for yarn exports.
(iii) In some countries customs clearance is deliberately delayed to increase the transaction cost and thus reduce competition to like domestic products.

## D. Marketing Restrictions including Labeling Practices

Maintaining Participant: Several
Products affected by the barrier: Several products
Inventory category (See Table 1, for details of Inventory Categories): Part IV F, K & L
Relevant WTO provision: Article IX of GATT 1994
Nature of the barrier: Trade effects of the barrier Various requirements for marketing a product in different markets prove to be cumbersome and onerous to developing country exporters. These requirements include detailed labelling requirements with extensive product/ content description. Such labelling requirements become a hindrance especially if the product is being exported to different countries each with different regulations. In several countries there are registration requirements for firms before exporting, distributing and selling, with the registration process itself being costly, time consuming and not always granted. In the case of pharmaceutical products, import in several countries are tacitly encouraged/ allowed only from particular countries and sources, such policies are enabled by the registration mechanism which is not transparent and favours producers only from certain countries even for applying. Some buyer requirements like comprehensive product liability insurance also restrict the export and marketing ability of developing country exporters.

E. Restrictions on Port of Import

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier Trade effects of the barrier 3	Inventory category* 4	Relevant WTO provision 5
Several	Several Products	The restrictions on port of import i.e. allowing imports of particular goods or goods from a particular country only through designated ports have been imposed by some Members. This increases the transit time and transaction cost in clearance of consignments. While in some cases it is demonstrably for administrative reasons with the facilities required for clearance of the goods being available only at the designated port, in some of the other cases the underlying reason for imposing such restriction is more to restrict trade than on account of any administrative necessity.	Part IV L	Article VIII & IX of GATT 1994.

F. Non-preferential Rules of Origin

Maintaining Participant 1	Products affected by the barrier 2	Nature of the barrier Trade effects of the barrier 3	Inventory category* 4
Several	Textiles	Non preferential rules of origin have often been cited in the context of exports of textile products, as an NTB. The issues involve non-recognition of certain processes as origin conferring in addition to discriminatory and unilateral changes to the rules. Such Rules which are established/ changed to favour imports from particular origins are barriers to trade and also discourage value addition taking place in the traditional region of production. In some cases they adversely impact on the quota utilization of some countries. In some countries for fabrics made from wool, dyeing, printing and finishing operations are not recognised as origin conferring. Similarly for made-up articles made of Cotton or cotton blends the origin is now being determined on the basis of where the constituent fabric is formed, thereby ignoring all operations such as dyeing, printing, finishing, designing, cutting, sewing, embroidery etc. contrary to prevailing manufacturing or processing practices.	Part II F.

G. Preferential Treatment

Maintaining Participant: Several Products affected by the barrier: All products Inventory category (See Table 1, for details of Inventory Categories): Part III & Part IV E
Relevant WTO provision: Provisions of Agreement on Technical Barriers to Trade; Agreement on application of Sanitary and Phyto-Sanitary Measures; Article XXIV of GATT 1994; Agreement on Implementation of Article VII of GATT 1994. Nature of the barrier: Trade effects of the barrier It is recognized that clarification of the rules relating to RTAs is a subject of negotiation under a specific provision of the Doha Ministerial Declaration. Nonetheless, certain non-tariff provisions included in some RTAs are significant barriers to trade of non-Members due to their trade diverting and trade restricting impact. Their sanction under WTO provisions may also be questionable. These relate to (i) Use of preferential rules of origin like the diagonal cumulation between RTA Members and non-Members, which allow preferential access to products of the benefiting non-Members to the RTA. While permissible preferences to RTA members are not questioned, it must be ensured that all non-members are treated alike; (ii) Certain valuation practices adopted by some RTA members for the purpose of assessment of customs duty are also not in conformity with the Agreement on Implementation of Article VII of GATT 1994. For example, in some RTAs duty is charged on imported fabrics only on the basis of value addition to the fabric in the Cutting, Making and Trimming when the fabric originates from any of the RTA member countries. On the other hand, duty is charged on the basis of the value of the fabrics plus the value added when fabrics originate from non-RTA member countries. This puts the goods of non-RTA members at a disadvantage vis-à-vis similar goods of RTA members; and  (iii) Inclusion of provisions relating to preferential conformity assessment for technical regulations and standards. These provisions tend to give RTA Members substantial time and procedural advantages. It is observed that the time taken for inspection and testing as well as establishing equivalence of standards under RTAs is much faster while the procedure applicable to non-members of the RTA follows the much more extended route taking a much longer time diverting trade to Members of the RTA during this period.

H. Restrictive Practices Tolerated by Governments

Maintaining Participant	Products affected by the barrier	Nature of the barrier Trade effects of the barrier	Inventory category*	Relevant WTO provision
-------------------------	----------------------------------	---	---------------------	------------------------

1	2	3	4	5
Several	Leather products (Potentially all products)	<p>Attention has been drawn to the increasing instances of campaigns carried out to create public opinion as well as to force buyers to change their source of imports on grounds other than trade related e.g. ethical treatment to animals. These campaigns could have various motivations not necessarily based on truth and certainly not based on any trade issues.</p> <p>There may be two aspects to discussing such measures. First is that they do not follow from any governmental action and therefore the extent to which they could be discussed/ disciplined in WTO would need to be deliberated upon. The second aspect is the increasing use of such methods and potential for these to divert trade and restrict market access especially from developing countries which may be vulnerable due to their own priorities thus making it important to be discussed.</p>	Part I D	None directly.

\* See Table 1, for details of Inventory Categories.

Source: WTO (2003), Non-Tariff Barriers Notifications, Negotiating Group on Market Access, TN/MA/W/25, 28th March 2003.